

Good cause for late claim - reliance on advice of accountants; difficulties with the English language.

MJG/SH/11

Commissioner's File: CFC/029/1993

FAMILY CREDIT (GENERAL) REGULATIONS 1987

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Walthamstow

Case No:

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 1 February 1993 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to an entirely differently constituted social security appeal tribunal: Social Security Administration Act 1992, section 23.

2. This is an appeal to the Commissioner by the claimant a married woman born on 15 February 1968. The appeal is against the majority decision of a social security appeal tribunal dated 1 February 1993 which dismissed the claimant's appeal from a decision of the adjudication officer in the following terms,

"The claimant is entitled to Family Credit at the weekly rate of £72.70 for 26 weeks from 30.6.92. [the claimant] is not entitled to Family Credit from 1.8.91 to 29.6.92 (both dates included). This is because she has not proved that there was continuous good cause before 29.6.92 for the delay in making the claim. Social Security Administration Act 1992, sections 1(1) and 187. Social Security (Claims and Payments) Regulations [1987] regulation 19(2). I refuse to review the decision of the adjudication officer covering the period from 1.8.91 to 29.6.92 (both dates included) because I am not satisfied that the decision was given in ignorance of or was based on a mistake as to some material fact. The decision was not erroneous in point of law.

Social Security Administration Act 1992, sections 20, 21, 22, 23 and 25."

3. At the claimant's request the appeal was the subject of an oral hearing before me on 9 February 1994 at which the claimant was not present but was represented by Mr D Seddon of the Free Representation Unit. The adjudication officer was represented by Mr S Jones of Central Adjudication Service. I am indebted to Mr Seddon and to Mr Jones for their assistance to me at the hearing.

4. I have set the original tribunal's decision aside because I accept the concurring submissions of Mr Seddon and Mr Jones that the tribunal's findings of fact and reasons for decision were not sufficient to comply with the requirement of regulation 25(2) of the Social Security (Adjudication) Regulations 1986 i.e. they were in some respects inadequate although it is also clear from the detailed record of decision made by the tribunal on Form AT3 that they took considerable trouble with this case. I also accept the concurring submissions that the tribunal did not correctly deal with the relevance to "good cause" of the claimant's husband (see below).

5. I therefore set the tribunal's decision aside but as this is a case requiring the careful evaluation of evidence an inquiry into fact I have considered that the proper course is to remit it for rehearing, in accordance with the normal practice, to an entirely differently constituted tribunal. They will want to look at the reasons why the claimant considers that she has "good cause" for delay such as to enable her claim for family credit (received on 26 June 1992) to be back-dated to a date 12 months before the date of that claim which in accordance with payment days etc means in effect back-dating to 25 June 1991. It appears that this is what the claimant was asking for although in a letter dated 22 July 1992 she asked for the back-dating only to 1 August 1991 but that apparently according to Mr Seddon was the result of some erroneous advice given to her by the family accountants.

6. The tribunal will need to make its own detailed evaluation of the facts and for that purpose the claimant and her husband should attend the tribunal's hearings. Suffice to say that at the hearing before me on 9 February 1994 it emerged that one matter on which the claimant relies as showing "good cause" i.e. her assertion that the accountants told her that she could not claim family credit until the accountants were prepared to release the accounts (i.e. when they were paid or secured for payment) only operated some three months prior to the date of claim i.e. could only occasion back-dating to a date when the accountants gave this advice in March 1992 (the new tribunal will need to ascertain more precisely that date if possible). It was common ground before me at the hearing on 9 February 1994 that if as appears to be the case the accountants did give this advice with the result that the claimant delayed putting in her claim for family credit until the accounts were ready that would enable back-dating on the ground of "good cause" to the relevant

day in March 1992. I confirm that provided that evidence is available that in law "good cause" would be shown then to the date the erroneous advice was given by the accountants in March 1992 and the tribunal should act accordingly.

7. As to the earlier period i.e. the approximate period of nine months from 25 June 1991 to the relevant date in March 1992 the claimant as I understand it relies on her own difficulties with the English language. Apparently she only came to the United Kingdom in 1990 and has virtually no English. She is also comparatively young, she was aged 23 at the relevant time. The tribunal will be well aware of the ruling by a Tribunal of Commissioners in R(S) 2/63 on these matters and the need to take into account the whole complex of facts including the claimant's age, state of health, circumstances, information available to her and so forth.

8. It should be borne in mind that it is only of the claimant that it should be asked whether there was "good cause" for the delay. That is because under regulation 4(2) of the Social Security (Claims and Payments) Regulations 1987 the claim was made by the claimant i.e. the married woman and not by the husband because regulation 4(2) requires claims to be made in that manner. For this reason the original tribunal also erred when it gave as its reason for holding that there was not good cause for making a delayed claim, "... that [the claimant's husband] had had experience of claiming benefit from the Social Security albeit Child Benefit and also he spoke reasonable English and therefore he should have at least made enquiries from the Department of Social Security about the claim between 1 August 1991 and 25 June 1992 ..". In so far as the tribunal were requiring the husband also to show "good cause" for the delay that was erroneous in law.

9. However the tribunal should also take note that the knowledge experience and ability to speak English of the claimant's husband is not entirely irrelevant. It is relevant to asking whether the claimant had "good cause" for delay. Here is a case of a family all living together (hence the claim for family credit) where clearly the availability of advice from the husband could be a factor in determining whether the claimant had "good cause" for the delay. I note that the husband was just over three years older than the claimant and that he was in business as a waiter. It would be reasonable to expect him to be available to give advice and the benefit of his knowledge (such as it was) to the claimant herself. Conversely in such a family one would expect the claimant to rely heavily not only on the accountant's advice but also on her husband's advice and counselling or even indeed instructions as to what she should do. To that effect if the husband misled her into delaying the claim that could of course constitute "good cause" for her delay. The new tribunal will wish to evaluate all these factors and make a decision accordingly.

10. I should mention in this particular context that Mr Seddon made a helpful and closely researched written submission dated 6 February 1994. In that submission he dealt with a number of Commissioner's decisions dealing with this particular matter. I set out as an Appendix to this decision paragraphs 7-13 of the submission for the new tribunal's assistance. I accept those submissions as being correct in law though I would emphasise that ultimately I regard this matter as a question of fact. I ought also to say that I do not regard R(F) 1/92, cited by the adjudication officer, as being any authority that a husband can automatically ignored where the question is whether a wife had "good cause" for delay or vice versa. R(F) 1/92 was a case dealing with "good cause" and in an entirely different context namely a failure to cash child benefit giro's within the relevant period. Such giro's are normally made out to the wife alone and it would not therefore be as R(F) 1/92 held relevant to ask what the husband's position was regarding the encashment of those giro's. But in the ordinary case of "good cause" for delay I would not wish it thought that R(F) 1/92 was any authority for a proposition that one spouse should automatically be ignored altogether when considering whether the other had "good cause" for delay. I do not consider that to be the legal position.

(Signed) M.J. Goodman
Commissioner

(Date) 16 March 1994

APPENDIX

RELIANCE ON FINDINGS CONCERNING CLAIMANT'S HUSBAND

7. The Tribunal's primary preoccupation in approaching the question of good cause was to apply the test to a person other than the claimant, the claimant's husband. Regulation 19(2) of the Social Security (Claims and Payments) Regulations 1987 provides for the extension of the prescribed time for making a claim "Where the claimant proves that there was good cause ...". It is submitted that the standard tests for good cause anticipate the application of criteria to the claimant alone to determine whether or not 'good cause' is satisfied:

"Good Cause means ... some fact which having regard to all the circumstances (including the claimant's state of health and the information he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did."

(R(S)2/63)

"Has the person done or omitted what can reasonably be expected of him having regard to his rights and responsibilities under the social security scheme?"

(CI/386/92)

8. The case-law bears testimony to the above interpretation.

See R(F) 1/92 quoted in the Adjudication Officer's submission at para. 26. In CIS/C72/1990, a claimant with very little English and little experience of the Social Security system was held to satisfy the test and the tribunal's reliance upon the fact that she had an 18 year old son in the household who spoke good English was rejected. Commissioner Goodman states (at para 9):-

"I of course take the point about the possibility that the claimant's 18 year old son could have advised her but what has to be asked here is whether the claimant herself (Commissioner's emphasis) had "good cause".

9. It is submitted that this is an entire rejection for the proposition that the criteria can be applied to persons in the claimant's household to discover whether they could have been expected to take action of their own so as to nullify the good cause of the claimant. It is further submitted that Commissioner Goodman rejected also the question of whether the good cause of the claimant can be negated or prejudiced by the failure of the claimant to seek advice from relatives simply because they have more experience or better English language skills than does the claimant. This is implicit within the

decision when one considers that the decision of the tribunal was made precisely on this latter basis ie. (at para. 6):

"There appears no reason why she could not have made a claim particularly as she had an 18 year old son who understands English who could have been sent to the local office to make enquiries."

10. In CSB/913/1987 a decision of the SSAT that a grand-daughter who had superior English to the claimant ought to have explained forms or at least to have enlisted the help of others to gain a translation of forms appears to have been rejected. On the contrary, it was held (at para. 3) that because the rudimentary English of the grand-daughter was an element of good cause given that the claimant had, presumably reasonably, relied on her to some extent. It is submitted that it was reasonable for Mrs Begum to rely upon her husband and that, in those circumstances, his lack of English and experience were relevant to her good cause.

11. It is submitted that the only other relevance of the criteria as they apply to relatives of the claimant is to go to show whether or not it was reasonable for the claimant to rely upon that relative ie. because they spoke better English or had a better understanding etc. (This is without prejudice to the above submission that a failure to approach a relative with such attributes will not go to negative good cause). CIS/145/91 is a case where an illiterate claimant was found to have no knowledge of her rights but relied upon her son who was "quite capable of making the necessary enquiries". Commissioner Skinner held: (at para. 5):

"The members of the tribunal appeared to have considered the question as if it were the claimant's son who had to show good cause for late claim and not the claimant herself. This is an error of approach ... I am satisfied that I must set aside the decision because of it."

At para. 6:

"[after quoting test in R(S)2/63] The question therefore for the new tribunal is was it reasonable for the claimant to rely on her son and to choose not to do anything other than to rely on him. They must have regard to all the circumstances, including her health, age and failure to speak English, and consider whether those circumstances would probably have caused a reasonable person of her age and experience to act or to fail to act as she did. If they find that it was reasonable, then she is not to be penalised because of the inaction of her son. He was her appointee. However, the issue turns on the facts of the case. If it were to be shown that the claimant and her son had discussed the question of her claim, then the issue turns on whether it was reasonable for her to do nothing more than to rely on his advice."

12. This analysis is strengthened by that in the string of cases where the delay is caused by the failure of a person to whom the claimant has specifically delegated the making of the claim (See 'Proposition 9' in Bonner in notes to Regulation 19). The test as to whether the claimant can rely upon the failure of the person delegated to is the reasonableness of the conduct of the claimant — save where an appointment has been made under regulations (See R(IS)5/91).