

Rent-free accommodation is remunerative.
- Remunerative - not entitled to cash payments
& s/s 1/81 followed

N.A.C.A.B.

DGR/SH/29

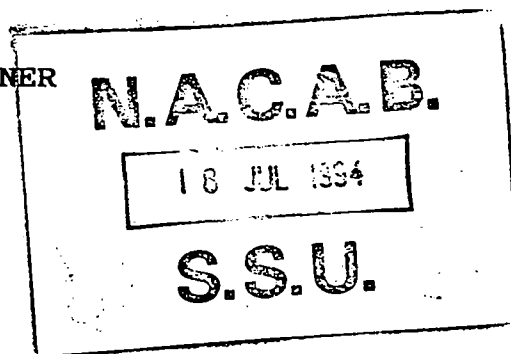
Commissioner's File: CFC/033/1993

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



1. My decision is that the decision of the social security appeal tribunal given on 25 May 1993 is erroneous in point of law, and accordingly I set it aside. As it is convenient that I give the decision the tribunal should have given, I further decide that the claimant was not disentitled to family credit at the date of claim on the ground that neither she nor her partner could be treated as being in remunerative work.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 25 May 1993.

3. On 7 October 1992 the claimant made a claim for family credit in respect of herself, her husband and their son then aged 13 years. On the claim form she stated that her husband worked for 40 hours per week as a director of Masra Ltd, where he was a property manager. The claimant confirmed that she also worked for the Company doing the paperwork. In response to enquiries sent to the Company's accountants, the latter confirmed that both the claimant and his wife were directors of Masra Ltd, and did work for the Company, but stated that neither had received any wages within the assessment period, and did not expect the Company to be paying anything in the near future. However, it was confirmed that they did live in a flat owned by the Company, rent-free. On 3 February 1993 the adjudication officer decided that the claimant was not entitled to family credit because neither the claimant nor her partner could be treated as being in remunerative work.

4. In due course, the claimant appealed to the tribunal, who in the event upheld the adjudication officer. They were not prepared to treat the occupancy of the flat free of rent as constituting payment within regulation 4 of the Family Credit (General) Regulations 1987, and as a result were not prepared to treat the claimant as engaged in remunerative work. She was not therefore entitled to family credit.

5. The claimant, if she was to succeed, had to satisfy section 128(1)(b) of the Social Security Contributions and Benefits Act 1992. That provision reads as follows:-

" 1-8. (1) a person in Great Britain is entitled to family credit if, when the claim for it is made or is treated as made -

....

(b) he or, if he is a member of a married or unmarried couple, he or the other member of the couple, is engaged and normally engaged in remunerative work."

Remunerative work for the purposes of family credit is defined in regulation 4 of the Family Credit (General) Regulations 1987, and this reads, so far as is relevant, as follows:-

" 4. - (1) a person shall be treated as engaged and normally engaged in remunerative work where -

(a) the work he undertakes is for not less than 16 hours per week;

(b) the work is done for payment or in expectation of payment; and

(c) he is employed at the date of claim and satisfies the requirements of paragraph (5)."

It was not in dispute that both the claimant and her husband worked, at the date of claim, in excess of 16 hours per week. Moreover it was not disputed that the claimant satisfied 4(1)(c). The real question was whether or not the work was done for payment or in expectation of payment.

6. On this point, the adjudication officer now concerned has made a helpful submission. She says as follows:-

" 5. both the adjudication officer and the tribunal cited the reported Commissioners decision R(FIS) 1/83 as being relevant as it contains a definition of remunerative work. In that decision at paragraph 7, the Commissioner said:-

"In my judgment, remunerative work means work

performed for an employer in return for wages, salary or some other quantifiable consideration"

I submit that neither the claimant nor her husband had received an actual wage or salary. However, I respectfully submit that the tribunal erred in law in not considering whether the rent-free accommodation that they lived in could be considered to be '.... some other quantifiable consideration ...'. Remuneration does not have to be in the form of money to be treated as the payment. The accommodation was not owned by the claimant or her husband, but by the Company for which they worked. As they did not have to pay rent to the Company there was some value to the claimant in this accommodation. The claimant had also stated that the Company would pay their gas and electricity bills This is, in effect, payment in kind for the work that the claimant and her husband did for the Company and therefore both the claimant and her husband could therefore be considered to be working for a payment."

I accept that submission.

7. Unfortunately, the tribunal misinterpreted the meaning of "payment" giving it too limited a meaning. Accordingly they erred in point of law, and on that ground I must set aside their decision.

8. The adjudication officer now concerned also identifies two other errors of law committed by the tribunal. She submits as follows:-

" 6. I submit that the tribunal further erred in law in failing to mention in their decision if they had considered whether the claimant's partner was in remunerative work. The decision only makes reference to the claimant, when the Contributions and Benefits Act provides that where a claimant is married, either of them can be in remunerative work in order to satisfy the conditions of entitlement. There also appears to be a typing error on the record of the tribunal's decision as in section 3 ... it states that the claimant is not entitled to family credit from 17 October 1992, whereas the correct date of claim is 7 October 1992."

9. It follows from what has been said above that I must set aside the tribunal's decision as being erroneous in point of law. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently dispose of the matter myself. Manifestly, the claim should not have been disallowed on the basis that the claimant could not be treated as being in remunerative work. My decision is, therefore, as set out in paragraph 1. The adjudication officer will have to consider the claim on the basis that the claimant or her husband were in

remunerative work, and, in the light of that, will have to determine whether or not there was in fact any entitlement to family credit, and if there was, the extent thereof.

(Signed) D.G. Rice
Commissioner

(Date) 6 June 1994