

**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. This is an appeal against the decision of the Birkenhead social security appeal tribunal held on 20 July 1993. I do not find any error of law either on the face of or in connection with the appeal, and accordingly it must be dismissed.

2. The short facts of this case are that the claimant has a child who was born in August 1990. She was on income support from April 1992 until August 1992. A part of the income support which she received was in respect of an order for weekly maintenance in the sum of £15.00 per week, the order having been made on 25 November 1991. The payment of this maintenance was irregular. The income support which the claimant received included an element of the amount of maintenance which the claimant should have been paid by her child's father. This maintenance was substantially in arrears.

3. The child's father made a payment in respect of arrears of maintenance on 4 December 1992. That sum was paid over to the Department on 8 December of that year. On 16 January 1993 £180.00 of the total of £405.00 which had been received by the Court was paid by the child support section of the Department to the claimant. £225.00 was set off against income support which the claimant had been receiving, no doubt in respect of the maintenance element contained in it. Subsequently on 7 February 1993 £200.00 (making a total of £380.00 in all) was paid to the Court and forwarded by it to the claimant.

4. The claimant claimed family credit on a form FC1 dated 14 March 1993. By a decision dated 20 April 1993 it was decided that the claimant was entitled to a family credit at the weekly rate of £24.70 for 26 weeks from 30 March 1993. The claimant appealed against that decision on two grounds, one of them being in respect of the maintenance element contained in the calculation. The appeal was heard as set out in paragraph 1 above. The appeal was allowed in part in that it was held that the claimant should have the benefit of the alternative assessment put forward by the adjudication officer in his

submissions to the appeal tribunal, and that the amount should be £28.03 for the period just mentioned. The submissions with regard to the calculation of the maintenance payment aspect of the decision was rejected. It is against that rejection that this appeal lies.

5. The right to family credit arises under section 128 of the Social Security (Contributions and Benefits) Act 1992. There is no doubt but that the claimant fulfilled all the requirements of that section and was entitled to family credit. Since the claimant was entitled to a maintenance payment of £15.00 a week for her child, for the purpose of determining the amount of family credit to which she was entitled, her income other than her earnings fell to be calculated under regulation 16 of the Family Credit (General) Regulations 1987. In respect of the maintenance payment just mentioned regulation 16(2) was apposite. That reads as follows:-

"16(2) Where a claimant's income consists of any payments made by a person whether under a court order or not for the maintenance of any member of the claimant's family and those payments are made or due to be made at regular intervals his normal weekly income shall ... be determined:-

- (a) if before the date of claim those payments are made at regular intervals and at regular amounts by reference to the normal weekly amount;
- (b) if they are not so made, by reference to the average of such payments received in the 13 weeks immediately preceding the week in which the date of claim falls."

6. The submissions made on behalf of the claimant were simple and cogent. They were that the monies received by the clerk to the justices, alternatively received from the clerk by the Department, were received either by the clerk or by the Department as agents for the claimant. A payment to an agent is a "payment received" within the meaning of regulation 16(2)(b) of the Regulations just set out. Accordingly the money which actually got into the hands of the claimant, partly on 16 January 1993 and partly on 7 February 1993, were received by her outside the 13 week period. It was agreed that if these monies were received by the claimant within the meaning of the Regulations on 16 January 1993 and 7 February 1993 respectively they fell within the 13 week period, and accordingly the calculation of the amount of family credit had been correctly made, subject to the alteration made by the appeal tribunal.

7. I cannot accept either of these submissions. The payment to the clerk to the magistrates, it seems to me, must have been made under section 59 of the Magistrates Court Act 1980. By reason of section 59(2) of that Act where an order is an affiliation order or an order under the guardianship of Minors Acts 1971 and 1973 or an order under Part I of the Domestic

Proceedings and Magistrates Courts Act 1978 the Court, unless satisfied that it is undesirable so to do, must order that the payment is made to the clerk to the magistrates. Under sub-section (3) of that section, where a payment should be so made, and the person for whose benefit it should be made so requests in writing, the clerk may take proceedings for the recovery of arrears in his own name. But he is only obliged so to do if he does not think it unreasonable to take proceedings.

8. In my view the whole scheme of this section is contrary to the submission made. If the clerk were an agent, the agency is forced on the claimant. The claimant cannot get rid of the agent by terminating the agency, and when proceedings are requested by the principal of the supposed agent, the agent must decline to follow the instructions of the principal if he thinks that those instructions are unreasonable. All these things, in my view, show that the suggested agency does not exist.

9. The position of the Department, in my view, is somewhat different. Payment was made to the Department as an administrative measure, so that the Department might be reimbursed any payments in respect of maintenance that were included in the income support previously paid to the claimant. It is to be noted that the Department has not accounted for the whole of the monies received by the clerk to the claimant. The sum paid is £25.00 less than the sum received by the clerk. If the Department were the agent of the claimant, then the claimant could instruct the Department to hand over the whole of the money received by it to herself, no reimbursement taking place. In my view the true analysis of the position, if any agency is involved, is that the Department held the money paid to it as agent for the clerk of the justices to reimburse itself any monies due to it, and then to pay the remainder to the clerk or to his order. There is certainly no document before me that suggests that the claimant either gave, or was entitled to give, any instructions to the Department with regard to the money received by it, allegedly on her behalf. She has not called upon the Department to account for the total sum received by it. And she has not authorised it to receive money on her behalf.

10. In these circumstances it is my view that the submissions in respect of the suggested agencies are incorrect. I reach this view with satisfaction. If the submissions, or either of them, were correct, then the matter would be attended with the inconveniences for claimants so forcibly pointed out by the chairman of the appeal tribunal.

11. I should add that R(SB) 17/87 shows that receipt of money by an agent such as a solicitor or a bank is equivalent to receipt by a claimant. I do not think that this decision has any further effect, and has no relevance to this appeal.

12. Accordingly this appeal must be dismissed.

(Signed) N J Inglis-Jones
Deputy Commissioner

Date: 4 November 1994