

Continued under Reg 19(3) C + P Regs Part C
Believed by [redacted] [redacted]

RAS/SH/2

Commissioner's File: CFC/11141/1995

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [redacted]

Social Security Appeal Tribunal: [redacted]

Case No: [redacted]

1. This is an appeal by the claimant against the decision of the Manchester social security appeal tribunal given on 11 May 1995. The tribunal dismissed the claimant's appeal against the decision of an adjudication officer awarding family credit to the claimant from 29 November 1994 at the weekly rate of £20.70p. That rate took account of earnings of the claimant's husband who had commenced employment either on 22 November 1994 (according to the employer) or 28 November 1994 (according to the claimant). The issue in the appeal is whether the calculation of the claimant's undoubted entitlement to family credit should take into account earnings of her husband.

2. The claim form for family credit was completed by the claimant and dated 9 December 1994. She said that she had worked for some time as a domestic assistant and that her husband had commenced 'agency work' on 28 November 1994. Although, as I have said, the claim form was dated 9 December 1994 the claimant gave details of two weeks work by her husband; on 4 December 1994 he was paid £99.65p for 16 hours work and on 11 December 1994 £46 for eight hours. On the claim form the claimant said that her husband worked for an agency and was not guaranteed permanent work; one week he could get two days but the next week he might only get one. The claim form was received at the claimant's local office on 13 December 1994. It is not in dispute that on that date the claimant did no work and that he had had no work since 8 December 1994.

3. Family credit if awarded is payable for a period of 26 weeks and, with some exceptions not relevant to this case, an award and the rate at which it is payable 'shall not be affected by any change of circumstances during that period':

section 128(3) of the Social Security Contributions and Benefits Act 1992. So once the award is made it lasts, at the rate awarded, for six months. Section 128(1) makes it plain that the conditions for entitlement have to be satisfied 'when the claim is made or is treated as made'. It follows that it is crucially important that the commencement date for the award and its calculation are correctly determined.

4. That brings me to the Social Security (Claims and Payments) Regulations 1987. The general rule, under regulation 6(1)(a) of those Regulations, is that the date on which the claim is made is 'the date on which it is received in an appropriate office'. In this case that date was 13 December 1994. Regulation 19 fixes the time limits for making claims by reference to Schedule 4. If a claim is not made within the appropriate limited time benefit entitlement will be lost for the period in question. There are however, in regulation 19, provisions to extend the time limits. One such provision is that allowing an extension where good cause for the delay is shown. Paragraph (3) is relevant to this case. It reads (so far as relevant) -

"(3) Where a claim is made for any benefit specified in column (1) of Schedule 4 and the Secretary of State certifies that to do so would be consistent with the proper administration of the Social Security Acts the prescribed time shall be extended -

(a) except in a case to which sub-paragraph (b) applies and if the time prescribed in relation to that benefit in column (2) of that Schedule is less than one month, by such period as may be specified in the certificate, but not so as to extend the prescribed time for claiming to more than one month;"

That paragraph applies to most claims including claims for family credit. In this case, according to the adjudication officer's written submissions to the tribunal -

"Mrs Wallace made a claim for Family Credit on 13/12/94. An Officer acting on behalf of the Secretary of State backdated Mrs Wallace's claim to the first day of work of Mr Wallace."

As far as I can see, no evidence that the Secretary of State had certified to such effect was produced to the tribunal. I notice that there is no mention of a certificate in the list of documents which, according to the adjudication officer's written submissions, had been considered by the adjudication officer. No point appears to have been taken about the certificate or about the backdating of the date of claim when the case came to the tribunal.

5. Following the grant of leave by the Commissioner in this case a nominated officer directed that -

"When making his submission on this appeal, the Adjudication Officer should produce a copy of the certificate of the Secretary of State extending the prescribed time for claiming in this case (see paragraph 6.1.1 of the adjudication officer's submission to the tribunal at page T1C of the case papers)."

In response, the adjudication officer submitted, on 28 March 1996, that -

"In Mrs Wallace's case, the Secretary of State extended the period for claiming to 28 November 1994, the date that Mr Wallace commenced work, and the adjudication officer calculated entitlement to benefit based on the claimant's circumstances on that date. There appears to be no record of a Secretary of State's certificate being completed when the claim was received and, in accordance with the Nominated Officer's direction, I have now arranged for a certificate to be issued covering the period of extension and this is now at paper T61. I therefore request that the Commissioner finds this certificate acceptable, despite the delay in its issue."

So there appears to have been no such certificate, or at any rate no record of it, until nearly two years after the claim was received. In fact no certificate was forwarded with the adjudication officer's submissions and it was another four months before a certificate made an appearance. A copy is the Appendix to this decision.

6. Let me first, before returning to the form of the certificate, reiterate its relevance. But for an effective Secretary of State's certificate the date of claim in this case would be 13 December 1994. On that date the claimant's husband was not in employment and he did no work at least for the next six months. Had the family credit calculation been made as at that date it would not have taken account of any earnings of the husband - there were none. However, on the basis of a date of claim of 28 November 1994, the calculation took account of husband's earnings £81.62p per week for six months when, in the real world, the husband did not work for more than two weeks of the six months.

7. I now return to the Claims and Payments Regulations. In paragraph 4 above I set out regulation 19(3)(a) under which the Secretary of State may backdate the date of claim by any period not exceeding one month. That provision in that form had effect from 27 September 1993. Previously sub-paragraph (3)(a) read -

"Where a claim is made for any benefit specified in column (1) of Schedule 4 and the Secretary of State certifies that to do so would be consistent with the proper administration of the Social Security Act, the prescribed time shall be extended -

- (a) except in a case to which sub-paragraph (b) applies, to one month, ..."

Under the provision in that form the Secretary of State could backdate to or by one month or not at all. There were reasons why that was thought to be unsatisfactory and the provision was amended to allow backdating by any period not exceeding one month. The certificate issued in this case, on 19 March 1996, certified that -

"it would be consistent with the proper administration of the Social Security Acts to extend the prescribed time for claiming family credit to one month."

Miss Hartridge, who appeared for the adjudication officer, sought to persuade me that that meant up to one month and that the date, 28 November 1994, in the box at the top right of that form was the date to which time was actually extended. I am not persuaded. That part of the document which contains the certificate repeats the words of regulation 19(3)(a) as they were before the amendment and, if the certificate has effect, I take the view that it produced a backdating of the date of claim by one month.

8. It appears to me that the method of the form is that the family credit official refers the claim for family credit to a Secretary of State official and asks that consideration be given to an extension of the prescribed time for claiming under regulation 19(3). The handwriting on the form suggests to me that there was no such reference for consideration in this case as everything hand-written has plainly been written by the same person. In CSIS/61/92 the Commissioner drew attention to the need to keep separate, in relation to regulation 19(3), the functions of the adjudicating authorities and the Secretary of State. It is far from clear to me that there is in this case evidence that the Secretary of State, through his officials, ever dealt with the matter. Such 'certificate' as there is was given many months after the claim had been lodged and the award made. It is at best uncertain as to the period for which it extended time and, while its form is suggestive of separate persons exercising different functions it appears to have been completed by one person. The idea that one clerical officer should, in relation to the same case, ask himself, in his capacity of adjudication officer, whether, in his capacity of Secretary of State's representative, time should be extended is from Alice in Wonderland.

9. I have come to the conclusion that, when the award decision was made in this case, there was no Secretary of State certificate backdating the date of claim in accordance with regulation 19(3)(a) or at least no evidence of such. And I take the view that the document dated 18 March 1996 is ineffective to backdate the date of claim to 28 November 1994 or to any other date. Accordingly, under regulation 6(1)(a) of the 1987 Regulations the date of claim is 13 December 1994. The husband was, on that date, not in employment and had no earnings to be taken into account under regulation 14 of the Family Credit (General) Regulations 1987. The tribunal's decision is erroneous in law because they assumed, wrongly in my view, that the date of claim was 27 November 1994. I therefore allow this appeal and set aside the tribunal's decision. My decision is that the date of claim is, as I have said, 13 December 1994 and an adjudication officer must calculate entitlement on that basis. Miss Steyne for the claimant addressed me on a number of other matters but, in view of the conclusion I have reached, I do not need to deal with other points.

10. In his written submissions dated 28 March 1996 the adjudication officer said -

"A claimant does not need to apply for an extension under regulation 19, the Secretary of State has a duty to identify any claims that may benefit from such an extension and to issue a certificate accordingly."

I am sure that that represents the spirit and indeed the purpose of the provision authorising the Secretary of State to extend time for claiming; as is pointed out in Income Related Benefits: The Legislation (1995 ed.) the provision has the effect of giving the claimant time to take away, complete and return a claim form. I do not believe that the provision should be used, as seems to have been tried in this case, to produce what was, if the adjudication officer's original decision were allowed to stand, a rank injustice. That is particularly the case in this case when the very temporary and uncertain nature of the husband's employment was made absolutely clear by the claimant in her claim form and by the husband's agency on the form returned by them. It is gratifying to think that the outcome of this appeal appears to accord with the justice of the circumstances.

(Signed) R.A. Sanders
Commissioner

(Date)

04 NOV 1996

26 APR '95 21:48

APPENDIX

1. EO

T.61

EO (S of S)

Please see FCS1 dated / received 13/12/94

and consider if the prescribed time limit for claiming Family Credit should be extended From: 28 / 11 / 94
(Claims and Payments) Regulations 1987 - Regulation 19(1)(3) and Schedule 4(7).

Surname

WALLACE

Other Names

PATRICIA

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On behalf of the Secretary of State I certify that it ~~would~~ ^{would not} be consistent with the proper administration of the Social Security Acts to extend the prescribed time for claiming Family Credit to one month.

Signed on behalf of the Secretary of State

Signature: A McCORMICK
Name in Capitals: A MCCORMICK

Date

18/03/96

*delete whichever is not applicable
FCS 144

6/91

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