



THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case no: CG 173 2002

SOCIAL SECURITY ACTS 1992 - 1998

**APPEAL FROM A DECISION OF AN APPEAL TRIBUNAL
ON A QUESTION OF LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Commissioner David Williams

Claimant:	Mrs Helen Louise Finn
Respondent:	Board of Inland Revenue
Benefit:	Home responsibility protection
Tribunal:	Chester
Tribunal case ref:	U 06 065 2001 01164
Tribunal decision:	17 October 2001

DECISION OF THE COMMISSIONER

1 I allow the appeal. But I do so only for technical reasons, and my decision is to the same effect as that of the tribunal. It is expedient that I replace the decision of the tribunal with the decision it should have made. That is:

The decision of the Inland Revenue is confirmed. The appellant is not entitled to home responsibilities protection for the tax years to 2000-01 because she was not awarded child benefit for those years.

2 The appeal was against the decision of the Chester appeal tribunal on 17 October 2001 under reference U 06 065 2001 01164. It was brought by my permission. The decision of the tribunal was that "the decision of the Secretary of State on 20. 6. 2001 is confirmed". This is wrong because there was no relevant decision of a Secretary of State. The decision was a decision of the Inland Revenue that the appellant could not have Home Responsibility Protection (HRP) for the tax years 1992-93 to 2000-01.

3 On 30 January 2001 the appellant's husband (Mr F) wrote to the Child Benefit Centre asking that his wife, the appellant (Mrs F), be made the claimant for child benefit. He added that his wife had not paid NI contributions since the birth of their first child, so would like to claim HRP backdated to 29. 2. 1992. That was the date on which their older child was born.

4 An officer from the NI Contributions Office wrote on 26 April 2001 advising that Mrs F could not have HRP because she was not the "main payee" for child benefit for any full tax year in the period claimed, but that HRP was awarded to her from 6 April 2001. Mrs F challenged that decision on the grounds that she had been looking after the children since the day the first was born and that the child benefit had been paid into her building society account. The NI Contributions Office replied that she was not the "main payee". Mrs F replied that, according to the dictionary definition of payee, she was the main payee. The Office replied yet again that she was not the main payee. She appealed, again saying that she was, and adding a number of other points.

5 The tribunal decided the case at a paper hearing. It confirmed the Revenue's decision. It produced a full statement that concluded:

"The letter of the 26th April 2001 from the Inland Revenue sets out the position. The appellant's husband accepts that he was the main payee of the child benefit and asked for the benefit to be transferred to his wife."

6 That is wrong in law. It is wrong because there is no test in the legislation of "main payee". The legislation is set out in the case papers. Unfortunately the tribunal does not appear to have spotted the inconsistency between the decision and the legislation. If it had done so it would have spotted that the Revenue had failed to explain what it meant by "main payee" and that in using that term it had misled Mr and Mrs F about the basis of its decision. The letter of 26 April 2001 nowhere explains that the Revenue had given a special meaning to the term "main payee", and the tribunal consequently failed to consider the proper question.

7 The tests for entitlement to HRP are set out in the Social Security Pensions (Home Responsibilities and Miscellaneous Amendments) Regulations 1978. The relevant test in this case is:

“that child benefit, awarded to him under the Child Benefit Act 1975, was payable in respect of a child under the age of 16” (regulation 2(2)(a)).

In other words the test is not whether the claimant is the “main payee” but whether child benefit was “awarded to” the claimant. That may in practice be the same thing, but it is not so in law. As a result Mrs F’s arguments about the meaning of “payee” are not relevant, and nor are the counter-arguments from the NI Contributions Office. In a case where the child benefit is paid into a joint bank account, both parents may be “the main payee” in the ordinary sense of the term while only one has the award. That happened here. Understandably, it is why Mrs F objected. She is correct in observing that she was in the ordinary sense of the language a main payee.

8 The question that the tribunal should have examined and answered was: to whom was child benefit awarded? It is clear from the letter of Mr F on 30 January 2001 and the enclosed claim form that he and not Mrs F had, for some reason, been awarded the child benefit from 1992. As that information came from Mr and Mrs F, I accept it as clear evidence of that position. There is other confirmatory evidence and I see nothing to dispute that position in the papers. It is normal for child benefit to be awarded and then paid to the mother, not the father. I do not know why Mr and Mrs F decided not to claim in this way, but unfortunately their decision has stopped Mrs F getting HRP until their new claim in her name from April 2001. Mrs F’s appeal cannot therefore succeed in its substance, although the tribunal decision is wrong in law and must be corrected.

9 Several other issues were raised by the appellant in making her appeal and by me on granting permission to appeal. But in so far as they are relevant to this appeal I do not think they help the appellant in the light of the issues decided in paragraph 9, and so do not discuss them further.

10 I draw to the attention of the Inland Revenue the fact that the formal decision misled both the appellant and the tribunal in this appeal because the wrong terminology was used. The letter of 26 April 2001, which appears to be in a standard form, failed to explain that the Revenue has chosen to replace the statutory language with other language which is meant to be (but without definition is not) to the same effect. The letter of 18 May 2001 failed to make good this omission. The letter of 20 June 2001 also failed to make good this omission. This appeal could have been avoided had those letters been clearer.

David Williams
Commissioner

10 May 2002

[Signed on the original on the date shown]