

SOCIAL SECURITY ACT 1986
SOCIAL SECURITY ADMINISTRATION ACT 1992

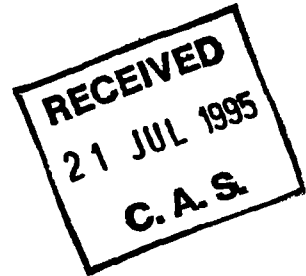
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:



[ORAL HEARING]

1. This is an appeal by the adjudication officer against the decision of the Bexley Heath social security appeal tribunal, given on 10 October 1994, whereby the tribunal allowed the claimant's appeal against the decision of an adjudication officer that "The claimant is not entitled to income support from 29.4.94. This is because he is treated as being in remunerative work". At the oral hearing of the appeal the adjudication officer was represented by Mr D. Jones of Counsel. The claimant was represented by Mr J. Smith of the Musicians' Union.

2. The claimant is a freelance musician but manages to get musical engagements only very infrequently. He has some part-time teaching work but only for about 4 hours a week. On 6 May 1994 he made a claim for income support. The claim was turned down because the adjudication officer took the view that the claimant was engaged in remunerative work for more than 16 hours a week: see section 124(1)(c) of the Social Security Contributions and Benefits Act 1992 and regulation 5(1) of the Income Support (General) Regulations 1987. The adjudication officer accepted that the hours the claimant taught or for which he had musical engagements fell far short of 16 but he took the view that the 2 to 3 hours a day during which the claimant practised should be taken into account. The tribunal did not agree.

3. At the outset of the hearing Mr Jones submitted that the tribunal's decision was not erroneous in law and that the adjudication officer's appeal could not succeed. He did not formally withdraw the appeal because he said guidance was wanted as to when practising by a professional musician counted as remunerative work.

4. Regulation 5(1) of the General Regulations reads -

"(1) Subject to the following provisions of this regulation, for the purposes of section 124(1)(c) (conditions of entitlement to income support), remunerative work is work in which a person is engaged, or, where his hours of work fluctuate, is engaged on average for not less than 16 hours a week being work for which payment is made or which is done in expectation of payment."

In the recent case in the Court of Appeal of Smith v Chief Adjudication Officer (11 October 1994) the Master of the Rolls said (pages 16 to 17 of transcript) -

"This is not, I think, a field in which it is possible to draw any line of principle, or indeed to formulate any test which would yield a clear and decisive answer as to whether the conditions of regulation 5(1) are satisfied or not. ... The evidence appears very clear that Miss Hussey was doing a great deal of work to try and establish herself in business. Once the business was established, once it was up and running, once she had a business to conduct, then it would be reasonable to infer that what she was doing was done for payment, or in the expectation of payment, but until that stage had been reached, when she was still seeking to obtain work, seeking to solicit custom, trying to get herself known in the market, trying to set herself up and establish herself, then it would seem to me that the work which she was doing was not done, either for payment, or in the expectation of payment."

In the same way it seems to me clear that the hours spent by a musician in practising to keep up his level of skill, to keep musically proficient, to keep his hand in or however it may be put are not hours which satisfy the conditions of regulation 5(1). Hours spent rehearsing for a particular engagement may be regarded differently but it would be inappropriate for me to try to lay down any general rule.

5. The outcome is that, there being no error of law on the part of the tribunal, this appeal by the adjudication officer does not succeed.

(Signed) R A Sanders
Commissioner

Date: 6 July 1995