

MASTER

D. / lunch hours, though paid
C of E / not "remunerative work."

JBM/SH/34



Commissioner's File: CIS/3/1989

Region: Wales & South Western

SOCIAL SECURITY ACT 1986

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 appeal tribunal is not erroneous in point of law.
2. This is an appeal by the adjudication officer to the Commissioner with the leave of the tribunal chairman against the unanimous decision of the appeal tribunal reversing the decision of the adjudication officer issued on 18 May 1988 which decision of the adjudication officer is to the following effect:-

"The claimant is not entitled to Income Support because he is engaged in remunerative work."

3. The facts of the case are dealt with by the adjudication officer first concerned in these appeals in box 5 of Form AT2 as follows:-

"1. [The claimant] is a single man aged 48. He lives alone in rented accommodation. He is currently employed on the Community Programme with the Y.M.C.A. Prior to Income Support he was receiving Supplementary Benefit.

2. In week ending 23.4.88 the claimant advised that he worked 21 hours per week, for Y.M.C.A. "Y reach", when he signed on at the Unemployment Benefit Office. On 18.5.88 when the details were checked it was found that the claimant works 3 ~~hour~~ days per week. Each day he works 7 hours and get one hour's paid lunch break, making a total of 24 hours paid work per week. He has no other income.

3. The claimant has appealed because he feels that he only works 21 hours per week, although he is actually paid for 24 hours per week (although he is actually paid for 24 hours per week) [sic]. He also says that due to only receiving half of his previous housing benefit he is worse off financially."

The appeal tribunal on the face of their record found as fact:-

"We accepted the facts contained in the grounds of appeal and adjudication officer's summary and submission, except that we find the total hours of work per week were 21

and not 24."

The claimant has had the opportunity to comment in respect of the submission made by the adjudication officer dated 21 December 1988 and has so commented to me in his observations dated 12 April 1989 in which he submits that the decision in his favour made by the appeal tribunal should stand.

4. The relevant statutory provisions are section 20 of the Social Security Act 1986 and regulation 5 of the Income Support (General) Regulations 1987.

Section 20(3)(c) of the Social Security Act 1986 states that a person in Great Britain is entitled to income support if he is not engaged in remunerative work and, if he is a member of a married or unmarried couple, the other member is not so engaged.

Regulation 5(1) of the Income Support (General) Regulations 1987 (1987 No.1967) provides as follows:-

- "5. - (1) Subject to the following provisions of this regulation, for the purposes of section 20(3)(c) of the Act (Conditions of Entitlement to Income Support), remunerative work is work in which a person is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 24 hours a week being work for which payment is made or which is done in expectation of payment."

In my judgment regulations 5(2)-(5) have no application to the circumstances of this case.

5. In my judgment the decision of the appeal tribunal is not erroneous in point of law. The issue before them was whether three lunch breaks of one hour each in any week fall to be treated as hours on which the claimant was engaged in remunerative work for the purposes of regulation 5(1) of the Income Support (General) Regulations 1987 and section 20(3)(c) of the Social Security Act 1986. If the three lunch hours each fall to be treated as hours in which the claimant was engaged in remunerative work the claimant was properly excluded from income support by the adjudication officer's original decision. If, as the tribunal held, the three lunch hours do not fall to be treated as hours in which the claimant was engaged in remunerative work, the claimant is not excluded from income support - which latter view is in my judgment correct. The question of construction of the relevant statutory provisions referred to in paragraph 4 of this decision is a short one and is not susceptible of elaboration. However I cannot see that one hour lunch breaks (though they are paid breaks) can be described as "remunerative work .. in which a person is engaged," I cannot see that a paid hour off work for the purpose of eating lunch can be described as work - what the claimant is doing in that one hour is eating his lunch and relaxing in between his periods of work. The words "remunerative work is work in which a person is engaged," might apply in the case of an actor eating a meal as part of a play - then in such circumstances an actor might legitimately be described as being engaged in acting work for which he is paid, but this does not apply in the instant case. On the facts before them as detailed by the adjudication officer and set out in paragraph 3 above of this decision (and the claimant did not attend the appeal tribunal hearing) there were no grounds to warrant the appeal tribunal considering the deeming provisions of regulation 6 of the Income Support (General) Regulations 1987, in particular Regulation 6(c) which provides:

"he is engaged by a charity or voluntary body or is a volunteer where the only payment received by him or due to be paid to him, is a payment which is to be disregarded under regulation 40(2) and paragraph 2 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings);" and applies by regulation 40(2) and paragraph 2 of schedule 9 to

"Any payment in respect of any charges incurred by a claimant ..." cannot on the evidence

before them apply here even though the appeal tribunal might have taken judicial notice that the Y.M.C.A. is a charity, see *Groves v. Y.M.C.A.* (1903) 4 Tax Cases 613.

Additionally Regulation 6(d) which provides:-

"he is engaged in a scheme for which a training allowance is being paid"

Cannot on the evidence before them that the claimant was "employed on the Community Programme" apply. The Community Programme is one providing "temporary employment, either Full-Time or Part-Time, on projects of benefit to the Community" see Decision R(U)6/86 paragraph 12 and The Second Appendix thereto. The Community Programme provides work and not training.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision.

7. Accordingly the adjudication officer's appeal is dismissed.

(Signed) J.B. Morcom
Commissioner

Date: 17 May 1989