

*Earnings spread forward over a month & so no TP
for childminding expenses ~~mean~~ when employment
started on 5 April.*

CPAL

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DGR/SH/42

Commissioner's File: CIS/16/1988

Region: London North

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. For the reasons hereinafter appearing the decision of the social security appeal tribunal given on 23 August 1988 is erroneous in point of law, and accordingly I set it aside. However, as it is expedient that I give the decision the tribunal should have given, I further decide that the claimant's earnings for purposes of income support shall not be subject to any deduction in respect of child-minding expenses.

2. This is an appeal by the adjudication officer, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 23 August 1988. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant was present, but not represented, whilst the adjudication officer appeared by R Buckley of the Chief Adjudication Officer's Office.

3. The facts of this case are not in dispute. The claimant, who had been in receipt of supplementary benefit since 1984, commenced part-time employment on 5 April 1988. (She was working 21 hours a week). She was paid monthly and on 29 April 1988 she received a net wage of £249.51. She was paying £20 a week for minding her small son. Under the regulation 10(4)(c)(ii) of the Supplementary Benefit (Resources) Regulations 1981 she was entitled to deduct from her earnings the expenses of having her child looked after. However, under the income support legislation, which from 11 April 1988 replaced the supplementary benefit provisions, there was no right to deduct child-minding expenses. Being mindful of the situation, the claimant arranged for her employment to commence on 5 April 1988, i.e. before the commencement of the income support legislation. Having achieved this object, she contended that, from that date, she was entitled to deduct the cost of child-minding under the supplementary benefit legislation, and from 11 April 1988 onwards was, pursuant to regulation 10(1) of the Income Support (Transitional) Regulations 1987, entitled to a transitional addition, which effectively represented the costs of child-minding.

4. The adjudication officer rejected this interpretation, but on appeal the tribunal would appear to have accepted the claimant's contention that her employment had commenced before 11 April 1988, that child-minding expenses had been incurred prior to that date, and

accordingly that child-minding expenses should continue after 11 April 1988 to be taken into account in reduction of the claimant's earnings.

5. The first matter for determination is the date on which the claimant's income is to be treated as paid. Regulation 31 of the Income Support (General) Regulations 1981 provides, so far as is relevant, as follows:-

"31. - (1) ..., a payment of income to which regulation 29 (calculation of earnings derived from employed earner's employment and income other than earnings) applies shall be treated as paid -

(a) ...

(b) ..., on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account."

The claimant's earnings for the period from 5 April 1988 to the end of the month were paid on 29 April 1988, and accordingly on any footing such earnings fell to be taken into account in a benefit week after 11 April 1988. In accordance with regulation 29(2)(a) the payment of 29 April 1988 was to be spread forward over a period of one month, commencing on the date on which the income was treated as paid pursuant to regulation 31. Now, since from 11 April 1988 onwards child-minding costs were not deductible from earnings, it was not possible for the claimant to deduct them from the payment received on 29 April 1988 for the purposes of calculating her entitlement to income support for the following month.

6. The claimant argued that the expenses of child-minding had been incurred throughout the period prior to 29 April, and in particular during the benefit week from 4 April 1988 to 10 April 1988, i.e. when the supplementary benefit legislation was still in operation, and contended that this was a factor that should be taken into account. Unfortunately for her, there is nothing in this submission. Any expenses which are properly deductible can only be deducted from the relevant earnings when they are paid, or more accurately treated as paid. As explained above, the relevant earnings had to be treated as paid after 11 April 1988, but at that time child-minding fees ceased to be deductible.

7. It follows that the tribunal erred in point of law in treating the child-minding fees as deductible from the claimant's earnings for income support purposes, and that I must set aside their decision. However, as all the facts are known, it is unnecessary for me to remit the matter to a freshly constituted tribunal for rehearing. I can conveniently substitute my own decision.

8. Accordingly my decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

Date: 23 August 1989