

2005. Execution of
Remunerative work - Act
The execution arrangements
12/2/2005
Floor CCA -
1985

DGR/SH/25

Commissioner's File: CIS/039/1993

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

unal:

Case No

1. My decision is that the decision of the social security appeal tribunal given on 5 June 1992 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give the decision the tribunal should have given, I further decide that the claimant is not entitled to income support for the inclusive period from 1 August 1989 to 9 May 1991, because during that period the claimant was engaged in remunerative work.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 5 June 1992.

3. On 10 May 1991 the claimant applied for income support, and it was awarded from that date. On 6 November 1991 he sought to have his claim backdated to 1 August 1989. Manifestly, the claim for back-dating was out of time, and there could be no question of the claimant's establishing title unless he could show continuous good cause up to the date of claim. The adjudication officer decided that the claimant had not established good cause, and when in due course the claimant appealed to the tribunal, the tribunal upheld the adjudication officer. The substantive grounds for their decision read as follows:-

" 2. The claimant has failed to prove good cause during any part of the material period, namely 1.8.89 to 6.11.91 for his failure to claim the backdating of income support (to 1.8.89) until 6.11.91, because, in the period of 1.8.89 to 10.5.91 (when he initially claimed income support) it simply never occurred to him to claim income support because he

regarded himself as in work as a self-employed writer who expected to be paid for his writings and in so far as he was short of money in this period he was able to borrow money from the bank. The reality in this period 1.8.89 to 10.5.91 was that the claimant did not consider he was in need of income support and did not therefore wish to claim income support."

4. This was not really a case involving the question of "good cause"; it was really a case involving the question whether during the relevant period the claimant was in remunerative work. Manifestly, the claimant was acting perfectly reasonably in not claiming income support timeously if "he regarded himself as in work as a self-employed writer who expected to be paid for his writings". And to that extent, I suppose, it could be said that he had good cause for his lateness. However, nothing turns on the point. The claimant simply had no entitlement to income support during the relevant period, because he was engaged in remunerative work and the question of good cause was simply irrelevant.

5. The adjudication officer now concerned has in his helpful submissions dated 18 June 1993 demonstrated that the claimant was, throughout the relevant period, engaged in remunerative work, and in consequence was not entitled to income support. I accept his submissions, and in particular the two final paragraphs which read as follows:-

" 7. In the present case the claimant was an established writer. The evidence indicates that between 1981 and 1986 he had 4 books published. The claimant himself stated in a letter to the Department (page 13) that:-

"Since I have been making my living this way for many years, I fully and reasonably expected to receive income for this period on the publication of the books."

Consequently the claimant was engaged in work for which he had a reasonably held expectation of payment. The fact that, at the relevant time, no publisher had been found, whilst unfortunate, is not relevant.

8. The claimant's line of argument is that as no payment had been received in respect of the work done throughout this period, it cannot be deemed remunerative. To accept this argument would, I submit, have the effect of indemnifying a person who undertakes work in the expectation of payment, which subsequently turns out to be a false assumption."

6. For completeness, I should mention that I have carefully considered the claimant's observations in reply, but they go no way to defeating the force of the adjudication officer's contention that, on the facts of this case, the claimant was engaged in remunerative work throughout the relevant period and, as a result was not entitled to income support.

7. It follows from what has been said above that I must set aside the tribunal's decision as being erroneous in point of law in that they have proceeded on a misconception of the position. However, it is unnecessary for me to remit the matter to a new 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) 3 November 1993