

RESOURCES — Other INCOME — rare
20 Sch 9 applies whenever claimant makes a charge for board & lodging — claimant doesn't have to be in the business of providing board & lodging.
JJS/16/LM
Commissioner's File: CIS/55/1989

✓
see MSPP



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

Name:
Social S
Case No:

1. The sum of £35.00 only, being part of the weekly charge paid to the claimant for board and lodgings, is to be disregarded in the calculation of his income.
2. This is an appeal by the adjudication officer against a decision of the Norwich social security appeal tribunal dated 21 December 1988. The tribunal allowed an appeal by the claimant against a decision of the adjudication officer, and decided that the sum of £25.00 was not to be taken into account as income in the calculation of income support from 20 May 1988.
3. In order to calculate a claimant's weekly benefit by way of income support, his income is deducted from the applicable amount as assessed under the Income Support (General) Regulations 1987. Chapter 2 of the same Regulations provides the rules for the calculation of income. Regard has to be had to the earnings of the claimant or his partner, whether as employed earners or self-employed earners, and rules are provided in respect of these categories in order that calculations may be made. But, in addition, all other income is taken into account. Regulation 40 deals with the calculation of income other than earnings and paragraph (4) thereof provides certain categories, which do not count as earnings, are to count as other income. Regulation 40(4) is as follows:

"For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 35(2) or 37(2) (payments not earnings) applies."

Regulation 37(2) is as follows:

"'Earnings' shall not include, where a claimant is employed in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge except where the claimant is a seasonal worker to whom regulation 43 (notional earnings of seasonal workers) applies and the payment is due during the period of his normal employment."

It is to be noted that sums received in this capacity are to be treated as income and not as earnings. Regulation 43(2) provides that there shall be discarded from the calculation of a claimant's other income, any sum, where applicable, specified in Schedule 9 to the Regulations. In so far as the disregards in the instant case are concerned, it is paragraphs 18, 19 and 20 of Schedule 9 which are material. I set them out:

"18. Any payment made to the claimant by a member of his household which is a contribution towards his living and accommodation costs except a payment to which

paragraph 19 or 20 applies.

19. Where the claimant occupies a dwelling as his home which is also occupied by a person other than one to whom paragraph 13 refers or one who is provided with board and lodging and that person is contractually liable to make payments in respect of his occupation of the dwelling to the claimant -

- (a) £4 of any payment made by that person; and
- (b) a further £5.70 where that payment is inclusive of an amount for heating.

20. Where a claimant is employed in providing board and lodging accommodation for which a charge is payable, £35 of the weekly charge paid by each person provided with such accommodation."

These paragraphs have been amended, but I am concerned with them in their unamended form.

4. The claimant is a married man who lives with his wife in a local authority house. He has been in receipt of income support since the week commencing 11 April 1988 and was in receipt of supplementary benefit prior to that date. The couple's only source of income is by way of a board and lodging payment of £60.00 per week from their lodger. He moved to their house on 20 May 1988. The claimant and his wife were asked by the Homeless Persons Unit to take in the lodger in order to prevent his homelessness. The lodger has a heart condition and needs the support of a home environment. He has his own bedroom. He eats with the couple and watches television with them in the evening. He has bed, breakfast and an evening meal, in addition laundry and heating are included in the £60.00 per week. By a decision issued on 7 July 1988 the adjudication officer decided that an amount of £25.00 was to be taken into account as income other than earnings in the calculation of the claimant's income support from 20 May 1988. In reaching this decision he had regard to regulations 37(2) and 40 of the Regulations and to Schedule 9 thereof, in particular paragraph 20 of the Schedule.

5. The claimant appealed to the tribunal. He stated his ground of appeal to be that he was not employed in providing board and lodging accommodation. The provision of the room was not by way of business. The claimant's appeal was allowed by the tribunal, who held that the sum of £25.00 was not to be taken into account as income in the calculation of income support from 20 May 1984. They found as fact that since 20 May 1988 the claimant had the lodger living with them who paid £60.00 a week. This was by way of a referral from the Homeless Persons Unit who needed the lodger to be in a supportive home environment because of his heart condition. They further found that the lodger paid £60.00 a week for bed and breakfast, an evening meal and heating and laundry, and that he is not related to the claimant or his wife but he lives as one of the family. The adjudication officer was given leave to appeal by the chairman of the tribunal.

6. The adjudication officer's case is that the tribunal's decision is erroneous in point of law because they have disregarded the £60.00 paid to the claimant and he contends they have done so under the provisions of paragraph 13 of Schedule 9. He argues that they must have concluded that paragraph 20 of the Schedule did not apply in the circumstances of the case, but he points to their findings of fact and in particular to the finding that the claimant provided board and lodging for which a charge was made. He submits that they must have construed the words "is employed in providing" in paragraph 20 as meaning employed as an employed earner. It appears to me that the interpretation of paragraph 20 adopted by the tribunal was that a claimant, in order to fall within it, had to be providing board and lodging by way of business. This was the argument addressed to them by the claimant.

7. A perusal of regulation 37(2) and regulation 40(4) shows that a special rule is applied to those who take in boarders; the payment which they receive is treated as other income rather than self-employed earnings. Paragraph 20 of Schedule 9 is complimentary thereto and provides for £35.00 to be disregarded in the calculation of income other than earnings. It may be that such rules were adopted in order to avoid having to calculate the net profit made from a boarder; but whatever the reason the payment is to be treated as other income, but the first £35.00 of it is to be disregarded. Paragraph 20 has to be read with paragraph 13 which provides that any payment made to a claimant by a member of his household which is contributed towards his living and accommodation costs is to be disregarded save payment to which paragraph 20 applies.

8. The adjudication officer submits that the words "is employed" in paragraph 20 are used in their ordinary everyday meaning. He refers me to the Shorter Oxford Dictionary under "employ". The meaning which he relies on is that which equates the word with "often merely to be occupied". He says that it is sufficient if the claimant is occupied in providing board and lodging accommodation. His reliance on the words "is employed" goes some of the way towards ascertaining the meaning of paragraph 20. But these words must not be looked at in isolation, regard has to be had to their collocation and the combination of words used in the paragraph. It seems to me that the sentence, which I have to construe, means no more than that if a claimant is to be entitled to a disregard he must be making a charge for the board and accommodation which he provides. In that sense he may be said to be acting commercially. But to say that he must be in the business of supplying board and accommodation by way of occupation would be to put an unjustifiable gloss on the words. In order to come within paragraph 20 the claimant has to supply board and lodgings for which he makes a charge. I have construed that paragraph in its context and borne in mind the provisions of paragraph 13, and it does not appear to me that any absurdity arises. I have had regard to the Shorter Oxford Dictionary under "charge". The second meaning there includes "pecuniary burden; cost 1460; the price demanded for services or goods 1343". I regard that as the popular sense. The lodger envisaged by paragraph 20 bears the cost or price of the accommodation and food, the member of the household envisaged by paragraph 13 bears a part only of such cost. If the member of the household is charged for his accommodation, then the claimant, who makes such charge, is not entitled to the disregard under paragraph 13.

9. A definition of "board and lodging accommodation" was added to the Income Support (General) Regulations, regulation 2, by the Income Support (General) Amendment No 5 Regulations 1988, with effect from 10 April 1989. But I have had to have regard to the regulations in their earlier form. It does not appear to me, however, that such definition would have been of any significance in dealing with the question before me.

10. The tribunal found as fact that the claimant was providing board and lodging accommodation for which a charge was made. But then went on to say that he was not employed in providing board and lodging accommodation, which, in the opinion of the members "is completely different". In my judgment the decision contains a false proposition of law arising from an erroneous construction of paragraph 20 of Schedule 9. Consequently I must set it aside.

11. In view of the findings of fact made by the tribunal it is open to me to exercise the jurisdiction provided for by section 101(5)(a)(i) of the Social Security Act 1975. Consequently I have given the decision which I consider the tribunal should have given, and it appears in the first paragraph hereof.

(Signed) J J Skinner
Commissioner

Date: 27 July 1989