

MJG/SH/7

Commissioner's File: CIS/210/1989

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. I dismiss the claimant's appeal against the decision of the social security appeal tribunal dated 13 April 1989 as that decision is not erroneous in law: Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant, a widow aged 76 at the relevant time. At the request of her son, the appeal was the subject of an oral hearing by me on 5 February 1992. The claimant was not present but was represented by her son. The adjudication officer was represented by Mr J M Reed of the Office of the Chief Adjudication Officer. I am indebted to the claimant's son and to Mr Reed for their assistance to me at the hearing.

3. The appeal is from the unanimous decision of a social security appeal tribunal dated 13 April 1989, which dismissed the claimant's appeal in the following terms,

"To confirm the Adjudication Officer's decision [issued on 18 January 1989] that week commencing from 10 April 1989 the appellant is entitled to Income Support of £2.50 per week and the Transitional Addition is no longer payable."

4. The situation that gave rise to that decision was summarised by the adjudication officer to the local tribunal as follows,

"[The claimant] is a widow, aged 76, who lives in local authority accommodation. She has been in receipt of Income Support which includes a transitional addition of £1.19

weekly since 11.4.88. [The claimant's] only income is Industrial Death Benefit of £41.15 per week (from 10.4.89 [the claimant's] Industrial Death Benefit will increase to £43.60 per week). On 18.1.89 [the claimant's] Income Support was re-assessed and her rate of benefit revised from 11.4.89 due to uprating procedures. The transitional addition was eroded because of the increase in her applicable amounts. On 15.1.89 [the claimant] appealed against the decision to reduce her Income Support when it now has to cover part of the rates and ever increasing household bills."

5. In point of fact the £1.19 weekly transitional addition was negated altogether because the claimant's weekly applicable amounts of income support (for details see below) as from the annual uprating on 11 April 1989 increased by £2.05 per week and thus, being more than the transitional addition of £1.19 a week, cut out the transitional addition altogether. The appeal is against this having been done, in view of the fact that the claimant had to pay at the relevant time householder's rates to the local authority of £3.84 per week increasing to £4.34 per week. Moreover, the incidence of inflation caused the actual money she was receiving to have less purchasing power.

6. At the hearing I explained that the Social Security Commissioner is a judicial authority whose powers are confined to interpreting and applying the relevant Acts of Parliament and Regulations made thereunder. The Commissioner has no power to waive or vary the contents of Acts or Regulations. In so far as it is suggested in any case that a regulation is ultra vires (outside the powers of) the enabling Act, that is not a matter which a Social Security Commissioner can decide (see the decision of the Court of Appeal to that effect in Chief Adjudication Officer and Secretary of State for Social Security v. Foster 21 February 1991 [1991] 3 W.L.R. 473.)

7. The relevant Regulations are the Income Support (Transitional) Regulations 1987, S.I. 1987 No. 1969, made by the Secretary of State under sections 84(1) and 89(1) of the Social Security Act 1986. Regulation 10(1) of those Regulations provides as follows,

"Transitional addition

10. (1) ... Where -

(a) a former beneficiary was entitled to supplementary benefit in respect of his first benefit week; and

(b) either -

(i) he is awarded income support in respect of his second benefit week; or

(ii) [not relevant in this case]; and

(c) his total benefit income in his second benefit week is less than his total benefit income in his first benefit week, he shall be entitled to a transitional addition."

"Total benefit income" is defined in regulation 9 of the Transitional Regulations and includes supplementary benefit and "any benefit under the Social Security Act", which of course includes in this case the Industrial Death Benefit that the claimant was receiving.

8. It was under the above provisions that the claimant received as from the inception of income support on 11 April 1988 a transitional addition of £1.19 per week. However, when in April 1989 income support was the subject of general increase under the annual uprating provisions, there then had to be considered the further provision of regulation 14(1)(a) of the Transitional Regulations 1987, which provides as follows,

"Reduction and termination of transitional and personal expenses addition"

14. (1) The amount of a claimant's transitional addition shall be reduced -

(a) if, in respect of any benefit week subsequent to his second benefit week, he is entitled to income support as well as a transitional addition and his applicable amount under Part IV or VI of the General Regulations increases, by the amount of that increase ..

.....

(2) A claimant shall cease to be entitled to a transitional addition if -

(a) in the case of a claimant who is entitled to income support as well as a transitional addition -

(i) [not relevant]; or

(ii) the amount of his transitional addition is reduced to nil by virtue of paragraph (1);"

9. The effect of those provisions of regulation 14 is that if, for any reason, including an annual uprating a claimant's "applicable amount under Part IV or VI of the General Regulations

increases" (regulation 14(1)(a)), then his transitional addition has to be reduced by the amount of the increase in the applicable amount. Moreover if that increase is more than the transitional addition, it will negate it altogether and there will be no further entitlement to a transitional addition (regulation 14(2)(a)(ii)).

10. The question therefore in this case is what is meant by "applicable amount under Part IV or VI of the General Regulations" The reference to the "General Regulations" is to the Income Support (General) Regulations 1987. Part IV of those Regulations is headed "Applicable amounts" Part VI is headed "Applicable amounts and assessment of income and capital in urgent cases". Part VI is not relevant here. Part IV contains general provisions in regulation 17 as to what is meant by "applicable amounts". They are in effect fixed weekly payments applicable to any claimant if he or she satisfies the requirements of regulation 17. There is for example a personal 'allowance' and there are allowances which are described as "premiums". In the present case, the claimant was entitled on the inception of income support on 11 April 1988 to a single person's allowance of £33.40 and a pensioner premium of £10.65 per week. By the annual uprating which took place on 11 April 1989, those amounts increased to £34.90 single person's allowance and £11.20 pensioner premium. The difference of £2.05 per week between the pre- and post - 11 April 1989 figures, representing the increase in the applicable amounts, was more than the amount of the claimant's £1.19 transitional addition and thus extinguished it under the provisions of regulation 14(1)(a) of the Transitional Regulations.

11. The comparison under regulation 14(1)(a) is only to be made between the amounts for the standard applicable amounts. It is not taken as an overall calculation of the difference in income from all sources. Moreover, the only provision for the effects of inflation is in the annual uprating, In this particular case, because the claimant was in receipt of a transitional addition, that addition had to be set off against the annual uprating increase, with the result that the claimant did not receive that uprating increase except to the extent that its amount of £2.05 per week exceeded the £1.19 per week transitional addition. However, also under the uprating provisions, the weekly amount of her Industrial Death Benefit increased from £41.15 per week to £43.60 per week.

12. The claimant's son's submission to me, however, was that overall his mother was worse off, taking into account the effects of inflation and also the fact that she was having to pay rates. However, whether that is so or not, that is undoubtedly the effect of the Regulations in this case and I must apply them as they are. As to the question of rates, it is noteworthy that in working out the amount of the claimant's benefit income as at the changeover from supplementary benefit to income support, to see whether she would be entitled to a transitional addition, there has been added in the sum of £1.30 per week as her former benefit income when entitled to supplementary benefit, in that she was

"entitled to housing benefit in the form of a rate rebate" (see regulation 9(4)(b) of the Transitional Regulations). To that extent therefore credit had been given, in working out the transitional addition, to the claimant for the fact that she previously was entitled to housing benefit in the form of a rate rebate. Whether she is now entitled to any form of rebate of rates from the Local Authority is of course not a matter on which I can pronounce.

13. For all the above reasons, I must therefore affirm the decision of the social security appeal tribunal. As for that decision, Mr Reed drew to my attention that the tribunal's record of decision (on Form AT3) did not give a detailed account (as I have done) of the various Transitional and General Regulations. However, I note that the tribunal was in fact dealing with the appeal in the absence of the claimant or of any representative of hers. They dealt with it in a sympathetic manner, despite the fact that the claimant had in fact stated (on Form AT6) "I do not wish to take this matter any further ..". In those circumstances I do not think that it would be right to 'fault' the tribunal on the technical matter of not detailing the relevant regulations, particularly as the written submission to them by the adjudication officer (a copy of which would have been sent to the claimant) contained a detailed explanation of and reference to the Regulations. I therefore affirm the tribunal's decision not only in respect of its actual substantive result but also because in the circumstances of this case I consider that their record of decision complied with regulation 25(2) of the Social Security (Adjudication) Regulations 1986, requiring the recording of material findings of fact and giving grounds for decision. I ought to add that, even if I had held their decision to be erroneous in law for want of sufficient reasons, I should still have had to give my own decision, to the same effect as that of the tribunal.

(Signed) M.J. Goodman
Commissioner

(Date) 4 March 1992