

Transitional and special transitional additions -
When these can be reinstated following a break
in entitlement to Income Support.

C P A G



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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

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal given on 25 August 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 a transitional addition or to a special transitional addition as from 10 April 1990.

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 25 August 1992. The claimant asked for an oral hearing, a request which was acceded to. At that hearing, the claimant, who was present, was not represented, whilst the adjudication officer appeared by a Mr J Polland of CAS.

3. On 7 November 1989 the claimant, who had previously been in receipt of income support, including a transitional addition of £6.24 per week and a special transitional addition of £40 per week, was sentenced to a term of imprisonment, and he was a prisoner, as defined by regulation 21(3) of the Income Support (General) Regulations 1987 [S.I.1987 No.1967], continuously until 10 April 1990, when he was released as a result of the Court of Appeal's substituting for the term of imprisonment a period of probation. On his release, the claimant applied for income support, which was awarded from 10 April 1990. However, the adjudication officer refused to reinstate from the aforesaid date either the transitional addition or the special transitional

addition. In due course, the claimant appealed to the tribunal, who in the event upheld the adjudication officer.

4. Regulation 16(3) of the Income Support (Transitional) Regulations 1987 (which was added, as from 11 April 1988, by Regulation 11 of the Income Support (Transitional) Amendment Regulations 1988 [SI 1988 No.521]) provides as follows:-

" 16. (3) A prisoner within the meaning of regulation 21(3) of the General Regulations (Special Cases) shall not be entitled to a transitional addition, personal expenses addition or special transitional addition."

Accordingly, the claimant who was a prisoner, as so defined, for the period from 7 November 1989 to 10 April 1990 was not entitled to a transitional addition or a special transitional addition.

5. However, on 10 April 1990 he sought reinstatement of these additions as from that date. To succeed, as far as the transitional addition was concerned, the claimant had to bring himself from the relevant date within regulation 14(3) of the Transitional Regulations. This provides as follows:-

" (3), a claimant who either -

(a) or

(b) has ceased to be entitled to income support and a transitional addition,

and immediately before he so ceased he was entitled to a transitional addition of £10 or more shall, if he becomes re-entitled to income support not more than 8 weeks after the day on which he has ceased to be so entitled, in the benefit week in which he becomes re-entitled, be re-entitled to a transitional addition of an amount equal to the amount of the transitional addition to which he was previously entitled subject to any reduction in that amount which would have occurred under paragraph (1)(a) had he remained entitled to income support."

It will be seen that, before it becomes necessary to consider the later conditions, the claimant has first to satisfy subparagraph (b). Manifestly, from the day the claimant went into prison he ceased to be entitled to a transitional addition by virtue of regulation 16, but did he also cease, during the relevant period, to be entitled to income support? Except where they are detained in custody pending trial or sentence following conviction by a court, prisoners are entitled, under Schedule 7 to the Income Support (General) Regulations 1987, to an applicable amount of 'nil'. In the present case, the claimant was a prisoner outside the exception, and as a result his applicable amount was nil. And if he was entitled to nothing, I do not see how he was entitled to income support (see Section

124(1)(b) of the Social Security Contributions and Benefits Act 1992). This is not a case where payment was denied of an underlying entitlement. Here there was no entitlement in the first place.

6. Support for the above construction can be seen in regulation 15(3)(c) of the Transitional Regulations, which will be discussed more fully later. That provision reads as follows:-

" 15. (3) Subject to paragraph (4) a claimant shall cease to be entitled to a special transitional addition under paragraph (1) if -

(c) in the case of a claimant who is entitled to income support as well as a transitional addition he ceases to be entitled to income support and a transitional addition for a reason other than that his applicable amount under Part IV of the General Regulations does not exceed his income."

Manifestly, the draftsman contemplated the loss of entitlement to income support where a claimant's applicable amount did not exceed his income. If the applicable amount is nil, it can never exceed the claimant's income, even if his income is also nil. The implication must be that, where the applicable amount is insufficient to give rise to an award, there is no entitlement to income support.

7. It follows from what has been said above that, in my judgment, the claimant was able to satisfy the initial condition of regulation 14(3)(b), in that on 10 April 1990 he had previously ceased to be entitled to income support and a transitional addition. However, unfortunately for the claimant, this was of no practical value to him. For he failed to satisfy two further conditions. Firstly, his transitional addition was less than £10, and secondly his claim to re-entitlement of income support arose more than eight weeks after the day on which he had ceased to be so entitled. Accordingly, the claimant was not entitled to restoration of the transitional addition.

8. For the claimant to succeed in establishing, from the relevant date, restoration of the special transitional addition, the claimant had to bring himself within regulation 15(4)(a) of the Transitional Regulations. This reads as follows:-

" 15. (4) Where a claimant ceases to be entitled to a special transitional addition -

(a) by virtue of paragraph 3 ... (c) he shall be re-entitled to such an addition of the same amount as previously if, during the permitted period determined in accordance with regulation 2A (permitted period)

beginning with the day after the day on which he ceased to be so entitled, he becomes re-entitled to income support or a transitional addition."

Paragraph 3(c) has already been cited, and unless the claimant can bring himself within that provision, he cannot rely on paragraph 4(a).

9. Was the claimant's cessation of entitlement to income support and a transitional addition for a reason other than that his applicable amount did not exceed his income so as to activate regulation 15(3)(c)? Manifestly, the loss of his transitional addition was for another reason. It arose as a result of the disentitling effect of regulation 16(3). But did the claimant cease to be entitled to income support for a reason other than that his applicable amount did not exceed his income? The answer is clearly "no". What stopped his continuing to be entitled to income support was not, of course, some extraneous matter such as the operation of regulation 16, but the mere fact that, as a prisoner, his applicable amount became nil, and as a result his applicable amount could not exceed his income. Consequently the claimant could not bring himself within sub-paragraph (3)(c), and as a result could not rely on sub-paragraph (4)(a). However, even if the claimant could have brought himself within sub-paragraph (3)(c) and could therefore have satisfied the preliminary condition as set out in paragraph 4(a), it would have been of no practical advantage to him, in that he could not have established re-entitlement within the time specified in regulation 2A, i.e. the permitted period of 8 weeks.

10. It follows from what has been said above that this claim is doomed to failure. The claimant, in his oral submission to me, seemed to be contending that, as he had received certain other social security benefits retrospectively as a result of his sentence of imprisonment having been commuted by the Court of Appeal to one of probation, a similar concession should be forthcoming as far as his claim for transitional addition and special transitional addition was concerned. However, it cannot be over-emphasised that I have to determine this matter on the regulations, and, for the reasons already given, these clearly establish that there is no entitlement as from 10 April 1990 for restoration of the additions.

11. As for the decision of the tribunal, although they reached the right conclusion, I am not satisfied that their reasons properly explain the position, and in those circumstances I must set aside their decision for breach of regulation 25(2)(b) of the Adjudication Regulations. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision.

12. Accordingly, for the reasons given above, my decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

(Date) 18 February 1994