

C.P.A.C.

AWEW/SH/1

Commissioner's File: CIS/428/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal ("the appeal tribunal") dated 18 April 1990 was erroneous in law and falls to be set aside.

2. The claimant, with leave granted by the appeal tribunal chairman, appeals from their decision, confirming the decision of the adjudication officer, that the claimant was not entitled to income support because at the material time he was married and living with his wife who was engaged in remunerative work within the meaning of section 20 of the Social Security Act 1986.

3. By section 20(5)(c) of the 1986 Act, if the claimant or his partner is in remunerative work, there is no entitlement to income support. Regulation 5 of the Income Support (General) Regulations 1987 defines remunerative work as work in which a person is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 24 hours a week being work for which payment is made or which is done in expectation of payment.

4. The background facts, which would not seem to be in dispute, are that in December 1988, the claimant, who was already receiving invalidity benefit, claimed income support. His statement that his wife was only doing part-time charitable work was accepted and an award was made. In July 1989 the adjudication officer decided that his wife was, in fact, engaged in full-time remunerative work and his entitlement to income support was revoked. In February 1990 the claimant made a fresh claim for income support asserting that his wife only worked in the shop for about 20 hours per week. The adjudication officer did not accept that statement and held that the shop, being open for at least 34 hours a week, the claimant's wife was engaged in

remunerative work within the meaning of section 20. The claimant appealed.

5. At the hearing before the appeal tribunal, the claimant, who appeared in person, explained that he knew nothing about his wife's business, did not call her as a witness and asked that she should be interviewed by the Department. In dismissing the appeal and affirming the decision of the adjudication officer, the appeal tribunal gave the following reasons:-

"Mr Wilkinson has nothing to do with the running of his wife's business, but their domestic life is shared and, whilst both have disabilities, we were satisfied that Mrs Wilkinson was sufficiently well, at present, to be able to run the business which she does. The business is not legally a charity, and we were satisfied that it could potentially make a profit, so we accepted that, in fact, it probably does not do so. We were of the opinion that Mrs Wilkinson works in the expectation of payment, and that she is very likely to work for more than 24 hours per week, since the business operates for 34 hours per week, or more. Since no accounts are available it is impossible to ascertain whether any of the hours worked could be disregarded for the purposes of regulation 6 of the Income Support (General) Regulations 1987. Consequently, we were satisfied that Mr Wilkinson is not able to claim income support."

6. I have no hesitation in holding that those reasons fall short of what was required to explain clearly and adequately to the claimant why his claim failed. What they said does not demonstrate that they properly evaluated the evidence or that they made findings of fact on all material matters. It is true that they did find, as they were entitled to find, that the wife was a working wife but their other findings were insufficient to entitle them to reach the conclusion that the work was remunerative work within the meaning of the section. In particular, the appeal tribunal's finding that the claimant's wife worked more than 24 hours a week because the business operated for 34 hours a week was unsatisfactory. It was unsatisfactory because they failed to show that in reaching that conclusion they had taken into account the assertion of the claimant to the adjudication officer that his wife was now only working 20 hours per week and the further statement to the adjudication officer that the wife had an unpaid assistant. It follows that the appeal tribunal's reasons for their decision were inadequate and thus wrong in law.

7. In my view the decision of the appeal tribunal was also in breach of the rules of natural justice. At the hearing before the appeal tribunal the claimant expressly requested that the Department should interview his wife with regard to her work at her business premises which he pointed out, were adjacent to the local DSS office. Nothing was done about that and neither was the claimant asked to produce the evidence himself. This in the circumstances was manifestly unfair on the claimant and in my

view it constituted a breach of the rules of natural justice on the part of the appeal tribunal. On this ground also their decision must be set aside.

8. The result is that I allow this appeal and set aside the decision of the appeal tribunal. The case is remitted to a differently constituted tribunal for consideration of the whole matter afresh.

9. Before leaving this matter, I should mention that I have considered the claimant's letter dated 27 January 1992 but I do not read it in the circumstances as a request to withdraw this appeal. As to the concern which the claimant expresses in the letter regarding his invalidity benefit claim, I note that the adjudication officer now concerned with the case in hand in his submissions dated 17 October 1990 confirms that an appeal is in fact pending before the social security appeal tribunal on this further matter....

(Signed) A.W.E. Wheeler
Commissioner

(Date) 17 March 1992