

### FAMILY INCOME SUPPLEMENT

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**Self employed, calculation of net profit—treatment of repayment of loan for purchase of assets.**

The claimant, a self-employed man, was running a business for which he had borrowed monies from his bank to enable him to provide capital equipment. The bank required repayment of the capital sum in addition to the interest due on the loan. In assessing the net profit of the business the supplement officer [adjudication officer] accepted the payment of interest charges as an allowable expense but excluded the repayment of the loan itself. The tribunal upheld the claimant's appeal and awarded benefit.

*Held that:*

1. the decision of the tribunal was erroneous in law and is set aside; family income supplement is not payable (paragraph 1);
  2. in calculating the net profit of the business, for the purposes of regulation 2(3) of the Family Income Supplements (General) Regulations 1980, the sum related to the provision of capital for that business was not an item to be included [as an expense] in the trading, profit and loss account of that business (paragraph 5).
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1. My decisions are that (a) the decision of the appeal tribunal of 14 June 1984 is erroneous in point of law and is set aside and (b) family income supplement is not payable to the claimants in respect of the claim made by them on 13 September 1983.

2. On 21 September 1983 the supplement officer (now the adjudication officer) gave the following decision in relation to a claim made by the claimants on 13 September 1983—"Family income supplement is not payable because on the date when the claim was made the resources of the family in respect of whom the supplement is claimed were equal to or exceeded the appropriate prescribed amount." Following an appeal from this decision the appeal tribunal gave this decision on 14 June 1984—"Appeal allowed and benefit payable from the 13.6.83 since the relevant date is the 13.9.83 i.e. the date when the claim was made. i.e. £5.42 per week." The adjudication officer then appealed to the Commissioner, having been given leave to do so by the chairman of the tribunal. The appeal was heard by me on 28 January 1985. The male claimant attended and the adjudication officer was represented by Mr. E. O. F. Stocker, a member of the Solicitor's Office of the Department of Health and Social Security.

3. There was general agreement that the basic issue in the case was whether in assessing the normal gross weekly income of the family concerned for the purposes of determining their entitlement to family income supplement it was in order to deduct from the net profit of the male claimant's business (he was a self-employed auto-electrician) the sum of £1,254 a year or £24.11 a week, which he was required to pay to the bank to reduce the sum of £3,800 borrowed by him from the bank to enable him to provide himself with the necessary capital equipment to conduct his business. The claimant was required to pay an additional £546 a year to the bank in respect of the interest due on the sum he had borrowed from the bank. In his submission to the Commissioner, the adjudication officer observed that "The account which the claimant produced in support of his claim shows various expenses which he has incurred in connection with the running of the business; all of which, subject to the adjustments indicated at paragraph 5 above, [these related to the female claimant's wages and to the private use of the telephone and were not the subject matter of any dispute] were accepted by the adjudication officer. In particular, amounts of £546 in respect of Bank Loan Interest, and £225 in respect of Depreciation have been deducted from the figure for gross profit. The claimant has indicated (page 6) that the bank loan was used for the purchase of equipment and vehicles and (page 7) that depreciation has been estimated for the total value of equipment thus indicating that this included that purchased with the bank loan. In my submission it is reasonable that these deductions be attributed to the running expenses of the business, and therefore that they should be taken into account in assessing the net profit. However I submit that it is not appropriate for repayments of the loan itself additionally to be deducted in arriving at the figure of net profit and that these have properly been excluded from the claimant's trading and profit and loss account (page 4). To allow a deduction in respect of repayment of the loan would give rise, I submit, to a figure which did not accurately reflect the net profit from the business over the period of the trading year." It was accepted by Mr. Stocker and by the male claimant that if it was not in order to deduct the £1,254 (or £24.11 a week) then family income supplement was not payable. Having had regard to the findings of fact of the tribunal, I am satisfied that this is so. The appeal tribunal had clearly arrived at their decision on the basis that it was in order to do so.

4. In his submission to me, Mr. Stocker supported, in substance, the approach adopted by the adjudication officer in his submission to the Commissioner. He suggested, somewhat tentatively, that the position was comparable to that of a claimant to supplementary benefit whose home is subject to a mortgage when allowance would be made in respect of the mortgage interest which was payable, but no allowance would be made in respect of sums required to be paid towards the repayment of the capital sum lent. He referred me to regulation 2(3) of the Family Income Supplements (General) Regulations 1980, which provides that—

"(3) In so far as a person's earnings from any gainful occupation comprise salary, wages or fees related to a fixed period, the gross amount thereof shall be taken into account; and in so far as a person's earnings from any gainful occupation do not comprise salary, wages or fees related to a fixed period, the net profit derived from that occupation shall be taken into account"

and submitted that, when calculating the net profit derived from the male claimant's occupation, one should not take into account the sum paid by him towards the reduction of the capital sum advanced to him, but that the interest paid by him on that sum should be taken into account. He readily agreed that he was unable to refer to any decisions or to any statutory

provisions which supported his submission. I accept that when determining whether the claimants were entitled to family income supplement, the tribunal was required to apply the provisions of regulation 2(3). I have no doubt that the claimants made their claim in all good faith. In his observations to me at the hearing, the male claimant stated that while on the one hand he realized that if the £1,254 should be taken into account when arriving at the net profit derived from his business then the State would, in effect, be providing the capital for his business in instalments, on the other hand the money available to the family to maintain themselves was in fact reduced by this amount. It is very understandable that he should make this latter assertion.

5. I have come to the conclusion that in calculating the net profit derived from the male claimant's occupation the sum of £1,254 (or £24.11 a week) should not be taken into account. This sum related to the provision of capital for the business and was not an item to be included in the trading, profit and loss account of that business. In taking a contrary view, the appeal tribunal erred in law. I am satisfied that it is expedient, in the circumstances, to give the decision the tribunal should have given, which is that set out in paragraph 1. I wish to add that, in my judgment, the appeal tribunal also erred in law in other respects but that, in view of the conclusion to which I have come, it is not necessary to deal with these errors.

6. The adjudication officer's appeal is allowed.

(Signed) E. Roderic Bowen  
Commissioner

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