

FAMILY INCOME SUPPLEMENT

Self-employed person—activities constituting remunerative work.

In claiming family income supplement the claimant stated that she was employed as a part-time teacher and also self-employed as a silversmith. She had worked 7 hours, 20 hours, 17 hours and 22 hours in the 4 relevant weeks. The adjudication officer disallowed the claim on the ground that the claimant was not engaged in remunerative full-time work within the terms of regulation 5(1) of the Family Income Supplements (General) Regulations 1980. On appeal to the social security appeal tribunal the claimant stated that in connection with her work as a silversmith she had only included the hours spent on practical work at her bench. She had not included time spent on visits to and from clients, trips to retailers and wholesalers, at the craft centre and Assay Office and in working out ideas for a design competition. The tribunal, however, upheld the adjudication officer's decision taking the view that these activities did not constitute remunerative work.

Held that:

1. the decision of the tribunal was erroneous in law and therefore set aside (paragraph 1);
2. activities in the course of remunerative work are not, in respect of the self-employed, restricted only to those activities which are costed (paragraph 6);
3. the activities described by the claimant are for the most part essential to her self-employment and are therefore carried out with the desire hope and intention of claiming a reward or profit (paragraph 6).

1. My decision is that the decision of the social security appeal tribunal dated 1 June 1984 is erroneous in point of law and is therefore set aside.

2. The claimant requested an oral hearing in connection with her appeal to a Commissioner, but I have decided that the appeal can properly be determined without a hearing.

3. On 26 January 1984 the claimant made a claim to family income supplement in respect of a family consisting of herself and one child. She stated that she was employed as a part-time teacher and a self-employed silversmith. She also stated that she had worked for 7 hours, 20 hours, 17 hours and 22 hours in the weeks ending 13 January 1984, 20 January 1984, 27 January 1984 and 3 February 1984 respectively. The supplement officer decided that the claimant was not entitled to family income supplement on the basis that she had not undertaken activities in the course of remunerative work for not less than the statutory minimum hours required in any of the said 4 weeks. The claimant appealed against that decision, but a social security appeal tribunal upheld the supplement officer's decision. Thereafter the claimant applied for leave to appeal to a Commissioner on a question of law from the tribunal's said decision, and a regional chairman granted leave to appeal. I am now concerned with the appeal.

4. The effect of the relevant statutory provisions relating to the present case contained in the Family Income Supplements Act 1970 and the Family Income Supplements (General) Regulations 1980 is that the claimant can only be found entitled to family income supplement if she is engaged and normally engaged in activities in the course of remunerative work for not less than 24 hours a week during the week of claim, either of the 2 weeks immediately preceding the week of claim or the week immediately following the week of claim.

5. Having regard to the information which the claimant gave in connection with her claim for the benefit in question the supplement officer decided that the claimant did not satisfy the said requirement of having worked in remunerative work for a period of not less than 24 hours per week in any of the said above-mentioned 4 weeks. At the hearing before the said social security appeal tribunal, however, it was submitted by the claimant or on her behalf that in connection with her work as a self-employed silversmith she had only included the hours which she had spent on practical work i.e. at her bench. It was maintained that she had spent 14 hours each week "knitting (to sell)". It was also maintained that each week she spent an average of 4 hours on visits to and from clients, trips to retailers and wholesalers, at the craft centre and the Assay Office and additionally that in January she had spent at least 10 hours each week "working out and thinking out ideas" for a design competition. In support of these contentions she produced 2 letters from clients detailing consultations that they had had with her during January/early February. In the Note of Evidence given by the chairman of the tribunal it is recorded that the tribunal accepted that these activities were a part of the work as a silversmith but "that if it is linked to a claim for F.I.S. then it must be COSTED as part of the WORK and charged to the CLIENT...". In their reasons for upholding the adjudication officer's decision they stated that "when the regulations speak of remunerative work, the Tribunal, when relating this to F.I.S. consider it to mean FINANCIAL remunerative. The tribunal held that if a person is NOT paid for the hours, you cannot claim they are hours worked, when related to FIS Regulations". The claimant contends that the tribunal erred in law when they decided that these hours spent on design work etc. had to be costed to be included for the purposes of the said statutory provisions relating to remunerative work, and that these activities even if they were not actually costed were nevertheless activities in the course of remunerative work.

6. In decision R(FIS) 1/83 a Commissioner stated that in his view remunerative work meant work performed for an employer in return for wages, salary or some other quantifiable consideration, or, where the person concerned was self-employed, work carried out with the desire, hope and intention of claiming a reward or profit. I agree with these views. The adjudication officer now concerned with the case submits that activities in the course of remunerative work are not in respect of the self-employed restricted only to these activities which are costed. The adjudication officer also submits in that connection "The activities which the claimant has described are for the most part essential to her self-employment as a silversmith. Without undertaking them she could not produce the items which she then sells and they are therefore carried out with the desire hope and intention of claiming a reward or profit. In my submission, in deciding otherwise the tribunal did err in point of law". I agree with that submission. The adjudication officer thereafter in his written submission proceeds to consider the evidence before him and concludes that the claimant should be regarded as having worked for more than 24 hours in at least one of the 4 relevant weeks. I agree with the adjudication officer's views in that connection. I am, however, only entitled to deal with questions of law in an appeal from a social security appeal tribunal relating to the question of entitlement to family income supplement. The tribunal chairman of the tribunal in question recorded in his Note of Evidence that "the information presented [regarding the number of hours worked] is not sufficiently clear as to be accepted as FACTS". Also, in giving the reasons for the tribunal's decision it is further stated that in respect of the hours spent on design work and visits that "there was NO clear record of such hours". I consider that

I cannot give a decision on questions of fact, and in my opinion I have no option but to send the case back for consideration by another tribunal to enable a decision to be given with findings of fact (having regard to the views which I have expressed above) regarding whether the claimant should be regarded as having been involved in remunerative work at least 24 hours in at least one of the 4 relevant weeks. In this whole connection I would add that it would be desirable that the local adjudication officer who appears at the hearing before the next tribunal should be in a position to put forward a submission regarding the amount, if any, of family income supplement payable to the claimant should the tribunal decide that the said 24 hours' condition is satisfied.

7. The claimant's appeal is allowed.

(Signed) Douglas Reith
Commissioner
