

SUPPLEMENTARY BENEFIT

Resources—calculation of disregard of earnings of single parents.

The claimant, a single parent, worked part-time and earned £12.82 gross. In calculating her entitlement the adjudication officer allowed a disregard of £4 plus half of the difference between £4 and her net earnings, i.e. after expenses in connection with her employment had been deducted. The claimant appealed

contending that she was entitled to a disregard of £4 plus half of the difference between £4 and her gross earnings. The tribunal confirmed the adjudication officer's decision and the claimant appealed to a Social Security Commissioner.

Held that:

1. the disregard under regulation 10(5)(b) of the Supplementary Benefit (Resources) Regulations is to be calculated on the amount of net earnings after expenses allowable under regulation 10(4) of the Supplementary Benefit (Resources) Regulations have been deducted (paragraphs 6 and 8);
2. the word "any" regulation 10(5)(b) is to indicate that the additional disregard applies only in so far as the earnings actually exceed £4 but do not exceed £20 (paragraphs 6 and 8).

The appeal was dismissed.

Note. An appeal by the claimant from the decision of the Commissioner to the Court of Appeal was dismissed. See Appendix hereto.

1. For the reasons hereinafter appearing the decision of the supplementary benefit appeal tribunal given on 12 April 1983 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant brought with my leave against the decision of the supplementary benefit appeal tribunal of 12 April 1983. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant was represented by Mr. D. Ryden and the benefit officer by Mr. C. d'Eca of the Solicitor's Office of the Department of Health and Social Security. I am indebted to them both for their submissions.

3. The claimant, a single parent with 3 dependent children, has been in receipt of supplementary benefit since she separated from her husband on 2 June 1980. She is employed 2 days a week earning £12.82. She has expenses connected with her employment of 50p per day in respect of travelling costs, 15p per day in respect of meals and 30p per week in respect of laundry. In addition, she has to bear the cost of having her children looked after amounting to £5.50 per week during the school holidays and 50p per week throughout the rest of the year. The benefit officer decided that all the above expenses should be deducted from her gross earnings under regulation 10(4)(c) and (d) of the Supplementary Benefit (Resources) Regulations 1981, and accordingly as far as this aspect of the case is concerned there is no dispute. Moreover, the claimant is entitled to a £4 per week disregard pursuant to regulation 10(5)(a). The real question at issue is the effect of regulation 10(5)(b), which reads as follows,

- “(5) The amount of a person's earnings to be taken into account shall be the whole of his earnings as calculated on a weekly basis in accordance with this regulation and regulation 9(2) less—
- (a) ...
 - (b) in respect of a single parent, an additional amount equal to one-half of the amount by which any earnings exceed £4 but do not exceed £20.”

4. It is the benefit officer's contention, reinforced by Mr. d'Eca in his oral submissions to me, that the claimant, who is a single parent, is only entitled under paragraph (b) to one-half of the difference between £4 and her net earnings i.e. her earnings after the expenses referred to above have been deducted. On the other hand, the claimant submits through Mr. Ryden that the relevant sum is represented by one-half of the difference between £4 and the claimant's *gross* earnings, i.e. before the above expenses have been taken into account.

5. Mr. Ryden argued that, unless regulation 10(5)(b) received the construction he contended for, a grave injustice would be done as between a claimant who incurred expenses and whose earnings were correspondingly reduced, and a claimant who had no expenses and who suffered no such reduction in earnings. On the basis that Mr. d'Eca's construction was right, then the claimant who suffered a reduction in his earnings by reason of his or her expenses would not receive as much disregard under paragraph (b) as someone whose earnings were not affected in this way. Mr. Ryden illustrated the point as follows. Suppose there are two women doing a part-time job, each earning £20 a week. Woman A incurs child-minding fees and bus fares totalling £6 a week, whilst Woman B has no such expenses. Then their respective income resources would be calculated as follows:

<i>Woman A</i>		<i>Woman B</i>	
Gross Pay	£20	Gross Pay	£20
Deduct by way of expenses	£6	Deduct by way of expenses	0
	£14		£20
Disregard	£4	Disregard	£4
Additional disregard	£5	Additional disregard	£8
	£9		£12
Income resource	£5	Income Resource	£8

Although the income resources attributable to Woman A are for Supplementary Benefit purposes £3 per week less than those attributable to Woman B, the former has nevertheless incurred expenses of £6 per week. In other words, instead of Woman A being regarded as having resources £6 per week less than those of Woman B to reflect expenses of that amount, her income resources are treated as being only £3 per week less, and this arises simply because Woman B enjoys a high additional disregard, namely £8 as against £5. Mr. Ryden contended that this was wholly inequitable and submitted that I should be slow to interpret the relevant statutory provision so as to bring out a result both unjust and at variance with what must have been Parliament's underlying intention.

6. Mr. Ryden conceded, however, that whatever the practical result of the supplementary benefit legislation the issue in the final analysis depended upon the strict interpretation to be given to the relevant provision. In this connection, he argued that the words "any earnings" appearing in paragraph (b) were a throw-back to the "earnings" referred to in regulation 10(1). (For convenience the relevant provisions of regulation 10 are set out in the appendix hereto). In contrast, Mr. d'Eca contended that the word "earnings" underwent a change in meaning as the various paragraphs of the regulation followed one another. Initially, it comprised gross earnings as defined in paragraph (1) but did not take into account the benefits in kind referred to in paragraph (3). Later, such earnings were reduced by the deductions allowed in paragraph (4). Accordingly, when paragraph (5) was reached, the opening words "The amount of a person's earnings to be taken into account shall be the whole of his earnings as calculated on a weekly basis in accordance with this regulation..." meant the net earnings after all disregards and all deductions had been taken into account. These earnings as so defined suffered a further reduction to take account of a £4 disregard under regulation 10(5)(a), and in the case of one-parent families a further disregard under regulation 10(5)(b). In Mr. d'Eca's submission, the word "earnings" in regulation 10(5)(b) referred to the earnings "as calculated ... in accordance with this regulation". There could be no throw back *simpliciter* to the initial "earnings" appearing in paragraph (1), and the word "any" was there to show that not all earnings "as calculated ... in accordance with this regulation" were envisaged by

regulation 10(5)(b), but only such of those earnings as “exceed £4 but do not exceed £20”.

7. The construction point is a difficult one, and it would have been far more helpful if the draftsman had put the matter beyond doubt by either saying in regulation 10(5)(b) “any earnings derived from any employment” or if, the opposite construction was intended, “any earnings calculated as aforesaid” or even “any such earnings”. However, I have to do the best I can without the employment of such unequivocal language.

8. I think that the words “any earnings” coming so closely after the opening words of paragraph (5) “earnings as calculated . . . in accordance with this regulation . . . ” must refer to earnings of this kind, and not to earnings in any wider sense. I am satisfied that Mr. d’Eca has given a satisfactory meaning to the word “any” in the context, and accordingly on balance I am satisfied that his construction is the correct one. If it is thought that an injustice is done by reason of this construction, then it is for Parliament, and Parliament alone, to make appropriate alterations to the relevant statutory provision. I have to interpret the regulation as Parliament has enacted it.

9. The interpretation contended for by Mr. d’Eca was that adopted by the tribunal, and accordingly they did not err in point of law. They correctly construed the relevant provision and therefore this appeal fails.

(Signed) D. G. Rice
Commissioner

APPENDIX

Regulation 10 of the Supplementary Benefit (Resources) Regulations 1981

- “10.—(1) Subject to . . . the following paragraphs, for the purposes of these regulations a person’s earnings shall consist of all remuneration or profit derived from any employment and shall include—
- [There follows a list of different types of payment]
- (2)
- (3) In calculating the amount of a person’s earnings the following shall be disregarded—
- [There follows a list of different items]
- (4) In calculating the amount of a person’s earnings, there shall be deducted from the earnings which he derives from any employment—
- [There follows a list of different items]
- (5) The amount of a person’s earnings to be taken into account shall be the whole of his earnings as calculated on a weekly basis in accordance with this regulation and regulation 9(2) less—
- (a) in respect of any member of the assessment unit whose earnings fall to be taken into account, the first £4; and
- (b) in respect of a single parent, an additional amount equal to one half of the amount by which any earnings exceed £4 but do not exceed £20.
- (6)”

**NOTE ISSUED ON THE AUTHORITY OF THE CHIEF
COMMISSIONER**

The claimant appealed to the Court of Appeal. On 16 May 1985 the Court of Appeal dismissed the appeal and affirmed the decision of the Commissioner. The Judgment of the Court of Appeal is appended in full as an Appendix.

16.5.85

R(SB) 36/85*(Appendix)*

APPENDIX TO R(SB) 36/85

PATRICIA PRICE

Appellant

v.

CHIEF ADJUDICATION OFFICER

Respondent

(Transcript of the Shorthand Notes of the Association of Official Shorthandwriters Ltd., Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London, W.C.2).

MR. RICHARD DRABBLE (instructed by Roger Smith, Esq., Child Poverty Action Group) appeared on behalf of the Appellant.

MR. CHRISTOPHER SYMONS (instructed by the Solicitor, Department of Health and Social Security) appeared on behalf of the Respondent.

JUDGMENT

A THE MASTER OF THE ROLLS: This appeal from a decision of Dr. D. G. Rice, a social security commissioner, raises a short point of construction arising out of regulation 10 of the Supplementary Benefit (Resources) Regulations 1981 S.I. No. 1527, as amended by S.I. 1982 Nos. 1125 and 1126. As usual “short” is not synonymous with “easy” and this particular point is said to affect large numbers of single parent families. We therefore
B decided to reserve judgment.

Mrs. Price, the claimant, is a single parent with three dependent children. She is employed for two days a week earning £12.82. From this she has to pay travelling expenses of 50 pence per day, laundry expenses of 30 pence per week and the cost of having her children looked after, that cost varying
C according to whether they are at school (50 pence per week) or on holiday (£5.50).

The supplementary benefit scheme is simple enough in concept. The capital and income resources of claimants are assessed and if they fall below a specified level, the claimant is paid sufficient supplementary benefit to
D bring them up to that level. This appeal concerns one aspect of the assessment of those resources.

Part III of the regulations is concerned with income resources. Regulation 9 provides, in substance, that income resources shall be calculated on a weekly basis and, subject to making some deductions and
E disregarding some income in accordance with regulations 10, 11 and 12, shall include all earnings and other income.

Regulation 10 is headed “Calculation of Earnings” and the opening words are “Subject to the following paragraphs, for the purposes of these regulations a person’s earnings shall consist of . . .” Paragraphs (1) and (2)
F define earnings qualitatively, i.e. what income from whatever source is to be treated as earnings, but do not define earnings quantitatively, i.e. tell you how to add up the earnings to reach a total figure expressed in money terms. This calculation is subject to paragraphs (3) and (4) and, in Mrs. Price’s case, have rightly led to deductions being made in respect of her travelling expenses, the cost of having her children looked after, the cost of laundry
G and the cost of meals taken during the hours of her employment (limited to 15 pence per meal). The result was a figure which is less than her actual earnings, which were £12.50 per week, because of the deductions. It is not even a figure for her net earnings, because it is subject to a limited deduction for the cost of meals. It is, in fact, simply a statutory figure for
H “the whole of her earnings calculated on a weekly basis in accordance with this regulation and regulation 9(2).”

A At this stage one still does not know whether the whole or, if not, what part of this statutory amount is to be taken into account as an income resource in calculating the amount of the supplementary benefit which will be payable. This question is answered by paragraph (5), but there are two views on what the answer is. Hence this appeal.

Paragraph (5) provides that:

- B** “The amount of a person’s earnings to be taken into account shall be the whole of his earnings as calculated on a weekly basis in accordance with this regulation and regulation 9(2) less—
- (a) in respect of any member of the assessment unit whose earnings fall to be taken into account, the first £4; and
- C** (b) in respect of a single parent, an additional amount equal to one half of the amount by which any earnings exceed £4, but do not exceed £20.”

It is common ground that, in accordance with sub-paragraph (a), no account is taken of the first £4 of the whole of Mrs. Price’s earnings calculated in accordance with the regulations. The problem arises under sub-paragraph (b) which applies to Mrs. Price, since she is a single parent.

- D** Mr. Drabble, for Mrs. Price, submits that “any earnings” means “any earnings” and has nothing whatever to do with the notional figure for the “whole of Mrs. Price’s earnings calculated on a weekly basis in accordance with this regulation.” If the sub-paragraph had meant to refer to the notional statutory figure, it could easily have used the word “such” instead of “any”. If Mr. Drabble is right, the amount of Mrs. Price’s earnings
- E** which fall to be taken into account as income resources in term time is £2.31, being the notional statutory figure for earnings of £10.72 less (i) £4 under (a) and (ii) £4.41, being half the amount by which her actual earnings of £12.82 exceed £4 under (b). During the school holidays the figure would be nil because, starting from £5.72, the deduction of £4 under (a) leaves only £1.72, which is less than the deduction of £4.41 which has to be made
- F** under (b).

- Mr. Symons, for the Chief Adjudication Officer, accepts that “any” is an unfortunate word to have used and suggests that it is included in contemplation of a case in which the notional statutory earnings do not exceed £4. However, he submits that any ambiguity in the word “earnings”
- G** or “any earnings” is resolved by two considerations. The first is that the opening words of regulation 10 make it clear that, for the purposes of the regulations, a person’s earnings are not their actual earnings whether actual, gross or net, but a statutory concept both in kind and amount to be derived from the subsequent paragraphs of the regulation including

- A** paragraphs (3) and (4). Second, in the context of paragraph (5), where one is bidden to take account only of part of the statutory earnings, it would be more natural that, in defining the part to be ignored, “earnings” should refer to the earnings which make up the statutory whole rather than to a quite different concept of earnings. If Mr. Symons is right, the amount of Mrs. Price’s earnings to be taken into account in term time is £3.36, being
- B** the statutory figure for earnings of £10.72 less (i) £4 under (a) and (ii) £3.36, being half the amount by which £10.72 exceeds £4 under (b). In the school holidays it is £0.86, being the statutory figure for earnings of £5.72 less (i) £4 under (a) and (ii) £0.86, being half the amount by which £5.72 exceeds £4 under (b).

The argument included references to the supposed policy of the

C regulations, but, for my part, I think that either contention could be supported by policy considerations. As a pure matter of construction, I find that supported by Mr. Symons far more convincing. That was the decision of the learned commissioner, and I would dismiss the appeal.

- LORD JUSTICE ROBERT GOFF:** Mr. Drabble’s argument was founded primarily on the words “any earnings” in regulation 10(5)(b) of the
- D** Supplementary Benefit (Resources) Regulations 1981. He submitted that those words were inapt to refer to the relevant person’s “earnings as calculated on a weekly basis in accordance with this regulation and regulation 9(2)”; and he pointed out that, if it was intended to refer to those earnings, this could have been done very simply, for example by the use of the word “such”. I think that there is much force in that verbal point. But
- E** it is still necessary to attach some sensible meaning to the words “Any earnings” in regulation 10(5)(b); and here Mr. Drabble found himself in some difficulty. He suggested that the words simply meant what they said, and referred to any earnings from any source. That I cannot accept. The whole of regulation 10 is concerned with calculation of earnings; and I cannot believe that, after a series of provisions in the regulations which are
- F** designed for that very purpose, the word “earnings” should suddenly be used in 10(5)(b) without regard to those provisions. Mr. Drabble submitted in the alternative that “any earnings” referred to earnings as defined in 10(1), and that on that basis it was possible to leave out of account the so-called “disregards” in 10(3) and the deductions in 10(4). But the trouble with that approach is that it ignores the opening words of 10(1), which read,
- G** “Subject to the following paragraphs, for the purposes of these regulations a person’s earnings shall consist of . . .” I do not think it can be right to adopt the definition in 10(1) while ignoring the opening words. Finally Mr. Drabble urged us to adopt a purposive construction of 10(5)(b), submitting that it could not have been the intention of the draftsman to penalise a

- A** single parent who had to incur expense in order to work. But it is plain that one of the purposes underlying 10(5) is to encourage people to work; another purpose may well have been to encourage them to minimise their expenses, in which event the basis of Mr. Drabble’s purposive approach goes. In the end, I am driven to the conclusion that the words “any earnings” in 10(5)(b) must be read as meaning “any such earnings”, and
- B** so refer to any earnings calculated in accordance with the previous provisions of the regulation. For these reasons, in agreement with the Master of the Rolls, I would dismiss the appeal.

LORD JUSTICE PURCHAS: I agree that for the reasons given in both judgments already delivered that this appeal should be dismissed.

(Order: Appeal dismissed. No order for costs
save legal aid taxation of appellant’s costs)

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