SUPPLEMENTARY BENEFIT

Resources—expenses deductible from earnings.

The claimant started part-time work for which he was paid £15 a day. He could not undertake this work without the use of his car. In the calculation of his earnings he claimed that allowance should be made for the cost of petrol and for wear and tear on his car at a rate of 10p per mile, a total of between £8 and £13 a day. The supplementary benefit officer allowed only for the cost of petrol, approximately 5.7 pence per mile, and on appeal this decision was confirmed by the appeal tribunal. The tribunal decision was subsequently set aside by a Commissioner and referred to another tribunal, which again confirmed the original decision of the supplementary benefit officer. The claimant appealed to a Social Security Commissioner against the decision of the second tribunal.

Held that:

1. in determining the amount of reasonably incurred expenses under regulation 10(3) of the Supplementary Benefit (Resources) Regulations the relationship between the gross earnings and the amount of the expenses incurred in obtaining such earnings is relevant, but the allowable deduction is not a fixed percentage. The proportion that is reasonable will vary with the circumstances. An expenditure of £8 to £13 to earn £15 was not necessarily unreasonable (paragraphs 8 and 12);

2. where on appeal a Commissioner has set aside a tribunal's decision with directions for re-hearing and there is then an appeal against the remit tribunal's decision, the Commissioner hearing that appeal may be bound to accept the directions given by the first Commissioner as binding on him; but it is for him to interpret those directions (paragraphs 7 and 8);

3. the question whether the expenses to be allowed in respect of travelling by car are solely the expenses which are directly attributable to each journey, or should include some part of the overheads or cost of purchase, might well depend on whether the car was acquired only for use in earning (paragraph 9).

The appeal was allowed.

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1. I grant to the claimant leave to appeal and he and the adjudication officer having at the hearing consented to my doing so I proceed to determine the question of law arising on the application as if it were a question of law arising on the appeal itself. So proceeding I hold that the decision of the supplementary benefit appeal tribunal dated 14 September 1983 was erroneous in point of law and is set aside. In lieu thereof I substitute in exercise of the power now conferred by regulation 27(a)(i) of the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No 451] (the Adjudication Regulations) a decision in relation to the claim for travelling expenses that in computing the earnings of the claimant for the period to which the decision related the claimant is to be allowed a deduction for expenses at the rate of 10 pence for every mile for which the benefit officer had allowed a deduction for the cost of petrol, such deduction being in lieu of and not in addition to any deduction for the cost of petrol. I leave undisturbed the decision in relation to the claim for the cost of meals.

2. The claimant being in receipt of a supplementary allowance while unemployed, succeeded in obtaining some part time work for which he was paid £15 for each day on which he worked. The work involved him in travelling in his motor car, and it has never been doubted that there was no other way in which he could undertake the work. The amount which he earned in any week was, subject to a £4 disregard under regulation 10(5)(a) of the Supplementary Benefit (Resources) Regulations 1980 [S.I. 1980 No 1300] in force at the relevant time, treated as an income resource and thus effectively deducted from the amount of his supplementary allowance.

3. The claimant claimed to be entitled, in the computation of his earnings, to deduct for the cost of travelling and for the cost of meals taken while travelling. Regulation 10(3) of the above regulations provides so far as is material as follows:—

> "10—(3) In calculating the amount of a person's earnings, there shall be deducted from the earnings which he derives from any employment—
>
> (a) .....
>
> (b) .....
>
> (c) expenses reasonably incurred by him without reimbursement in respect of—
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> (i) travel between his place of residence and his place of work, and travel which he undertakes in connection with and for the purposes of that employment,
>
> (ii) .....
>
> (iii) the cost up to 15 pence, of each meal taken during the hours of that employment for which no meal voucher has been provided;"

4. The benefit officer allowed the deduction of 15 pence for meals taken but (although initially the claimant was allowed 10.8 pence per mile in respect of the cost of travel in his motor car) over the period before me he was allowed only the cost of petrol (taken to be roughly 5.7 pence per mile). The claimant appealed to an appeal tribunal who confirmed the benefit officer's decision on both points. But the appeal tribunal decision was, on 19 May 1983, set aside by the Commissioner and referred back to another tribunal who again on 14 September 1983 confirmed the decision of the benefit officer without mentioning the point about deduction for meals, which does not seem to have been put in issue. It is against this second decision that the claimant now appeals. He presented his own case at the oral hearing before me and the benefit officer was represented by Mr. E. O. F. Stocker.

5. The claimant accepted at the hearing before me that the allowance of 15 pence per meal was a statutory maximum and that the decision of the first tribunal in relation was correct, as it clearly was. The contest at the hearing before me was about the amount allowable by way of travelling expenses. The claimant submitted that the travelling cost him not only the petrol but also the wear and tear on his car. He did not suggest that the car was a vehicle which he ran only on account of his having employment in which he used it, and he did not suggest that any contribution towards the general overheads (such as licence and insurance), should be allowed as an expense. He suggested that 10 pence per mile (as opposed to 5.7 pence the cost per mile of petrol) was reasonable to ask for.

6. The first appeal tribunal in upholding the benefit officer's decision to allow only the cost of petrol simply expressed themselves as finding no reason to depart from the view of the supplementary benefit officer in allowing fuel consumption alone as travelling expenses reasonably incurred. The Commissioner (to whom I shall refer as "the first Commissioner") in setting aside this decision cited a passage from paragraph 8 of the decision of the Commissioner in R(G) 1/56 where a question arose whether certain expenses were reasonable expenses incurred by a claimant in connection with her employment in terms of regulation 4(1)(a) of the National Insurance (General Benefit) Regulations 1948 [S.I. 1948 No 1278] as amended by the National Insurance (General Benefit) Regulations 1949 [S.I. 1949 No 1984]. The passage cited was as follows:—

> "The permissible deduction must, however, be limited to the reasonable cost, and in judging what is reasonable in any particular case regard must be had, as it seems to me, to the claimant's earnings. The expense and the earnings are directly related....."

The first Commissioner after saying that the earnings were £15 for each day worked, and the claimed travelling expenses had varied between £8 (minimum) and £13 (maximum) said:—

> "It may well be that the tribunal reached the conclusion that in these circumstances the expenses were not "reasonable", and that they may have restricted them to the cost of petrol alone in order more reasonably to relate the expenses to the earnings. If they did this, I would see nothing inherently unjudicial. It is for them to decide as a tribunal of fact what is reasonable."

He went on however to say that the tribunal had failed to explain why only the cost of petrol should be taken into account, and on that ground he set aside the decision.

7. The second tribunal gave as their reason for allowing only the cost of petrol that such allowance was reasonable taking into account the remuneration. Mr. Stocker submitted to me that as there had been no appeal from the first Commissioner's decision I was bound to accept as correct on the second appeal the conclusion of law reached by that Commissioner on the first appeal; and that I was therefore bound to accept that the statement of reasons and conclusion of the second tribunal (which, so runs the submission, faithfully followed the Commissioner's directions) were not erroneous in point of law.

8. It may well be that I am bound to treat the directions of the first Commissioner as binding in this second appeal. But there is scope for interpreting them. I have to ask myself whether the explanation of the second tribunal was sufficient even in terms of the direction implicit in the first Commissioner's decision. There is obviously some relationship between the amount of the gross earnings and the amount of the expenses incurred or claimed to be incurred in obtaining such earnings that can be regarded as reasonable. But it is not a fixed percentage which is the same for all cases, and I do not consider that there is anything in the first Commissioner's decision to suggest that there is such a fixed percentage. A decision that an allowance for petrol is reasonable when taking the remuneration into account could only be regarded as a sufficient statement of reasons for the conclusion if there were such a fixed percentage. The proportion that is reasonable varies with circumstances. Some earnings in their nature can be achieved only with expenditure while others may require very little. Some expenditure is absolutely unavoidable, while other expenditure may represent only one of several alternative means of achieving an object or may (like advertising) be of a speculative nature.

9. I can follow that, where for instance there are alternative means of travelling (e.g. first or second class), the relationship of the earnings to the expenditure is a direct one. But if the travelling is essential I find it difficult to see how in any circumstances it would be reasonable to disregard the expense of travelling by the cheapest available method, even if that was a high proportion of the gross earnings. Indeed in Decision R(U) 5/83 (a decision on the very similar provisions of regulation 4(b)(i) of the Social Security (Computation of Earnings) Regulations 1978 [S.I. 1978 No 1698] expenses that totally exhausted the gross remuneration were allowed and that though the incurring of the expenses was not absolutely unavoidable

but merely contributed materially to the efficient performance of the duties of an office. When it comes to the expenses of travelling by car there is the question whether it is simply the expenses directly attributable to the journey that are to be allowed or whether it would be more reasonable to allow also some part of the overheads or the cost of acquisition. This may well depend on whether the car has been acquired specifically for use in earning or whether the car would have been kept in any event. It is not right that supplementary benefit should by the allowance of unreasonable expenses be used simply as a means of acquiring or keeping up a car used for purposes other than earning. This particular problem does not however arise in the present case because the claimant has limited his claim to wear and tear actually incurred in the relevant journeys.

10. I derive some support for the view that the first Commissioner giving his decision did not intend anything to the contrary of the foregoing from the fact that about two months later (in the Decision on file C.S. 442/82 (not reported)) he cited a passage from Decision R(G) 1/56 that included most of what is quoted above in paragraph 6, and reached a conclusion on the law not differing materially from that expressed by me in paragraphs 8 and 9 above. It has to be accepted that the passage so quoted taken out of its context might suggest that expenses that exceed a particular proportion of gross earnings are necessarily unreasonably incurred. But I do not think that such a proposition can be extracted from the decision as a whole.

11. In R(G) 1/56 the question concerned the deduction of expenses incurred by a widow in having her child looked after while she was at work. She was earning £7.15s per week and paying to the person looking after her children £3.18s.11d. (including her stamp). She was allowed to deduct only £1.13s.6d per week. In paragraph 9 of the decision the Commissioner expressed the view that she could have made arrangements for her child to be looked after for a much lower figure of £3.18s.11d. per week. The statement of facts in paragraph 6 of the decision shows that the person employed to look after the child for the money paid, as well as looking after the child, did general housework and washing and ironing. It is entirely understandable that the whole amount paid should not have been treated as reasonable expenses incurred by the claimant in connection with her employment.

12. In the present case the tribunal did not indicate why they considered it reasonable to exclude wear and tear actually sustained to the claimant's car on journeys that were admittedly necessary in order to enable him to earn his £15 on each day worked. One is left with a suspicion that they simply thought that an expenditure of between £8 and £13 to earn £15 was of itself unreasonable. And while in some circumstances it may be, it is not necessarily unreasonable. I consider that the reasons for the decision were not adequately stated and there was thus a failure to comply with the regulation then in force and now replaced by regulation 19(2)(b) of the Adjudication Regulations as to the statement of reasons for decisions. I set the decision aside accordingly.

13. Mr. Stocker submitted that as it was admitted that the claimant had no alternative to using his car for travel to and from work and that there was evidence on which one could find that an allowance of 10 pence per mile would not exceed the aggregate of the cost of petrol and the wear and tear on his vehicle sustained in the travelling I should not again refer the matter to the tribunal but in exercise of the power conferred by regulation

27(a)(i) of the Adjudication Regulations, I should myself give the decision that the tribunal should have given. I think that it is expedient that I should do so and I give the decision in paragraph 1 accordingly.

14. The claimant's appeal is allowed.

(Signed) J. G. Monroe
Commissioner