

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I dismiss the appeal. For the reasons below, the decision of the tribunal is not wrong in law.

2 The claimant and appellant ("Mr M") is appealing with my permission. His appeal is against the decision of the Nottingham appeal tribunal on 09 03 2006 under reference U 42 045 2006 00206. The respondent is Her Majesty's Revenue and Customs ("HMRC").

REASONS

3 I granted permission because the appeal raises an issue of tax credit law that has not previously been before Commissioners. It relates to the way in which income is assessed for tax credits purposes. I indicated that I did so in order to consider the matter. In the event, having received submissions from both parties, I do not consider that any error made by the tribunal is an error of law that could affect the operative effect of the decision of the tribunal. That is why I do not allow the appeal. Nor, for the reasons below, do I consider that I should hold an oral hearing of this appeal before deciding it.

Decisions on awards and decisions on entitlement

4 The decision before the tribunal related to the effect of Mr M's income on his receipt of tax credits. He could not understand the difference between (a) his entitlement to tax credit for the year 2004-05 and (b) the award to him for the year 2005-06, given that his income and circumstances were the same in both years, save for one point he accepted.

5 It is important to keep these decisions apart. Decision (b) is open to consideration again at the end of the year, while decision (a) is final. It is unfortunate that the decision for 2005-06 is said to be that Mr M is entitled to tax credit of £1,326.65. The decision should be that he is awarded that sum. Only the decision for 2004-05 is an entitlement decision. That is the wording of the Act itself. HMRC was wrong in law in using the term "entitlement" about the decision for 2005-06, and the tribunal was wrong not to correct it. And, for the same reason, the 2004-05 decision was not an award but a decision on entitlement. Calling it a "finalised award" also confuses. That confusion is compounded by a total failure to distinguish between "award" and "entitlement" in the official schedules and calculations produced by officers of HMRC and in the papers. The terms are used interchangeably in ways that ignore the differences Parliament laid down as applying to them. Those differences have practical importance and should not be ignored.

6 I add a more general point about the language used. The submissions to the tribunal by HMRC give proper references to the relevant statutory provisions. But the vocabulary used in the papers differs in several respects from the vocabulary used in the legislation. No attempt is made to explain what the changed phrases mean. I deal below with "income thresholds" and "taper start points", but that is not the only example. That may leave claimants such as Mr M with a real difficulty reading a tribunal decision using the proper vocabulary, as it must, alongside HMRC papers using a different vocabulary without explaining it.

The facts

7 Mr M was over 50 at the relevant time. He worked over 30 hours a week. He is not married and has no children. He is entitled to claim working tax credit but not child tax credit. The amount of tax credit payable to him depends, as he is aware, on how much he earns from his work.

8 At the end of 2004-05 Mr M completed the standard Annual Declaration about his income for the year. He declared it to be £7,800. Following this he was awarded working tax credit of £1,326.65 for 2005-06. It was also decided that he was entitled to £2,966.56 for 2004-05. Those are the proper terms for the decisions. The actual wording of the decisions seems, as noted above, to have reversed the proper usage of “award” and “entitlement”.

9 Mr M appealed because he could not see why he was given decisions for the two years of such different amounts of tax credit when his earnings had not changed. He accepted in his appeal that his “Over 50s Payment” - as he termed it - had stopped but still did not consider that the figures added up properly. A lengthy exchange of forms and letters followed. Out of this emerged the fact that a small overpayment from a previous year was being recovered during 2005-06. That also did not explain the difference. The answer was hidden behind the unexplained different “taper start points” used for calculating the tax credit payable in the two years. But there is nothing in the correspondence between the parties that explains these non-statutory terms or why the taper start points varied between the two years.

The tribunal decision

10 The matter went to an oral hearing by the tribunal. Mr M attended and HMRC was represented. The tribunal confirmed the decision for HMRC. Through his Member of Parliament Mr M asked for full reasons. The statement of reasons shows that the tribunal accepted that the calculation of tax credits had taken place on the basis of the £7,800 income declared by Mr M for both years. It shows also that the tribunal tried to explain the issue about the “taper start point”. The grounds of appeal suggest that Mr M, who was not represented, did not understand the explanation. Mr M raised another issue about the hearing. He stated that the chairman concluded after the HMRC officer had put the case that she would have to rule against him (Mr M) without hearing his case. He also raised a point about housing benefit and council tax benefit. He did not think he had been given a fair hearing on those points.

Taper start points

11 “Taper start point” is not a term to be found in any of the tax credit legislation. It is used in place of the statutory term “income threshold”. This is the term in the Tax Credits Act 2002, section 7(1) and the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002 (SI 2002 No 2008) (“the Income Thresholds Regulations”). It is the income figure above which individual claimants stop receiving the maximum entitlement to tax credit. If the claimant’s income for the year is greater than the income threshold or taper start point, then the amount of tax credit is reduced or tapered down from the maximum in proportion to the excess. The main rate of reduction, as in this case, is 37% of the excess of the annual income over the amount set as the income threshold or taper start point for the claimant for that year.

12 The reduction in Mr M's tax credit between 2004-05 and 2005-06 was due, in the view of the tribunal, to two separate reasons. Both altered Mr M's income threshold or taper start point between 2004-05 and 2005-06.

13 The first was the ending of the Over 50s Payment. Mr M accepted this.

14 The other was the provision allowing an increase in earnings from one year to another of up to £2,500 to be ignored. This is in section 7(3) of the Tax Credits Act 2002 and regulation 5 of the Income Thresholds Regulations. This operated to reduce Mr M's income, for the purposes of calculating the excess of income over the income threshold, from £7,800 to £5,300 in 2004-05 but not again in 2005-06. The legislation provides that the income to be taken into account is the larger of this year's income and last year's income. If this year's income is not more than £2,500 above last year's income then last year's income is used. If this year's income is more than £2,500 above last year's then the first £2,500 is disregarded. That is what happened in Mr M's case. In 2004-05 the first £2,500 of that year's income of £7,800 was disregarded. In 2005-06 his income was the same as 2004-05 so none of the £7,800 was disregarded. [The disregard has since been increased to £25,000 a year but that is not relevant to this case.]

15 It is clear from the tribunal's statement that it did, but Mr M did not, understand this issue. In fairness to Mr M, this was not explained anywhere in the papers until the formal submission was made by HMRC to the tribunal. However, the tribunal was correct in accepting from HMRC that this was the proper approach to assessing Mr M's income in these two years in accordance with the law.

16 The other, minor, difference between the actual payments in the two years was related to a small overpayment. That is outside the tribunal's jurisdiction. Tribunals are concerned only with awards and entitlements not actual rates of payment. It was right not to comment on that.

Was the tribunal right?

17 When I first looked at the papers, I noted that the calculation of income had not been tested and that there might be issues about work expenses. There was no direct evidence in the papers of what Mr M actually earned in the year. The tribunal had accepted without further consideration the correctness of the asserted figure of £7,800. There was nothing in the papers showing whether this was the correct figure calculated in accordance with the Tax Credits (Definition and Calculation of Income) Regulations 2002 (SI 2002 No 2006). In particular, there seemed to be nothing indicating that account had been taken of any expenses of employment to which Mr M might be entitled by reference to the sections in the Income Tax (Earnings and Pensions) Act 2003 listed in regulation 4(5) of those Regulations.

18 In its submission HMRC drew my attention to the provisions in the *Notes to go with your Annual Review and Declaration Forms (leaflet TC603RD Notes)*. At page 23-24 it instructs claimants to deduct any relevant expenses. It provides a space on the form to do that in the calculation on page 25. It also explains what may be included as expenses.

19 Mr M did not claim any expenses. The figures used by HMRC and the tribunal were the figures he gave them. He did not raise any issue about expenses at the tribunal hearing, and I see nothing in the papers that should have alerted the tribunal to considering this matter to be in issue. Accordingly I am satisfied that the matter was not in issue before the tribunal and it did not err in law in accepting Mr M's figures.

20 Having been alerted to the point by my directions, Mr M sought to claim travel expenses in this appeal. It is not obvious to me that he would have been entitled to a deduction for those expenses had he made a claim at the right time. Mr M could only claim a deduction for these purposes if he was also able to claim a deduction against income tax for income tax purposes. In broad terms, travel costs are only deductible if incurred necessarily in the performance of employment. That does not include travel to work, but only necessary travel at work. In any event, the tribunal's decision cannot in my view be criticised for error of law because it did not look at this point when the appeal was before it. I do not consider that the tribunal had any reason to do so.

21 I conclude that, save for getting the terminology right, the tribunal took the only decision it could properly take on the evidence before it. The reasons why the award decision of 2005-06 was lower than the entitlement decision of 2004-05 were identified and confirmed. There was no substantive challenge to the 2004-05 figures, and the calculations were based on Mr M's own returns. Mr M can gain nothing from a correction of terminology, and I see no reason to set aside the tribunal decision simply to correct the wording.

22 Mr M also criticised the way that the tribunal conducted the hearing. He states that he was denied a hearing. There is a full contemporary record of proceedings of the hearing and further comment about the hearing in the statement of reasons. There may have been some misunderstanding between the tribunal and Mr M about this. According to the record of proceedings he was making points about tax credits outside the jurisdiction of the tribunal, and the chairman was entitled to stop those points being made. It is also clear, if entirely understandable, that Mr M did not follow some of the points being made about the calculation of his award and entitlement. Any error about his case not being fully heard can be corrected by using the right of appeal. I allowed this appeal to be heard, and I am satisfied that there is nothing relevant in Mr M's case that was not taken into account by the tribunal. I do not therefore consider that he has been denied a fair hearing of relevant points.

23 Mr M raised two other sets of issues in his appeal here. One is about the way the law and procedures required, and arrived at, the decisions reached in these appeals. I am satisfied that the tribunal looked at the issues where it had power and jurisdiction to do so. As it rightly said, its task is to apply the law. It has no power to change it. Any question about the terms of the law may be taken up with his Member of Parliament. The other issue related to the way that the decision on tax credits affected Mr M's entitlement to housing benefit and council tax benefit. That can be considered only by reference to the decisions taken by the local council on an appeal from those decisions. I can see why Mr M is unhappy with what has happened, but I cannot consider those benefits in this appeal and I cannot ask the tribunal to consider them.

24 Mr M asked for an oral hearing of the appeal. HMRC did not ask for an oral hearing. I decided not to hold one because I could see no argument that suggested that the tribunal could reach, on the evidence before it, any other decision than the decision it did reach. The main points that now concern Mr M are outside the jurisdiction both of the tribunal and of a Commissioner.

25 I therefore confirm the decision of the tribunal. This confirmed the decision of HMRC in respect of the award to Mr M of tax credits for 2005-06.

David Williams
Commissioner
9 01 2007