

Decision

1. This appeal by the claimant does not succeed. I confirm the decision made by the Fox Court (London) tribunal on 20th December 2004 under reference U/42/242/2004/02690 to the effect that the claimant is not entitled to working tax credit (“WTC”) after 1st August 2003 in respect of the claim on which the award for that date and the previous period had been made.

Background and Procedure

2. The claimant is a woman who was born on 15th June 1960. She was in receipt of higher rate mobility component and lowest rate care component of disability living allowance (“DLA”) until 1st August 2003 and at the relevant time she was working for 20 hours each week and had no dependent children.

3. During the period/tax year 6th April 2001 to 5th April 2002 she had a relevant income of £19,675. She claimed WTC for the period 6th April 2003 to 5th April 2004. An award of WTC was made, but then revised when she supplied more up to date details of her income. As I understand it, the calculations are not in dispute. The dispute arises from the fact that because entitlement to DLA ceased on 1st August 2003, on 24th December 2003 the Board of Inland Revenue (“the Board”) changed the earlier decision (exercising its general power under section 16 of the Tax Credits Act 2002) so as to bring entitlement to WTC to an end on 1st August 2003, the date on which DLA ceased.

4. On 2nd March 2004 the claimant appealed to the tribunal against that decision of the Board, arguing that as she was in receipt of DLA when she applied for WTC, entitlement to WTC should continue throughout the period 6th April 2003 to 5th April 2004 (“the relevant year”).

5. The tribunal first considered the matter on 2nd July 2004 but identified a further legal issue and adjourned for further evidence and submissions. The tribunal was next due to consider the matter on 14th September 2004, but the chairman (who had constituted the previous tribunal) postponed that hearing with further Directions, and attached a draft decision in favour of the claimant, indicating that the Board should make further submissions if it wished to contest the contents of this draft.

6. A differently constituted tribunal finally considered the matter on 20th December 2004, decided against the claimant’s argument, and confirmed the decision of the Board. On 27th January 2005 the District Chairman of the tribunal granted the claimant’s application for leave to appeal to the Commissioner against the decision of the tribunal. The matter was assigned to Miss Commissioner Fellner, who issued Directions on 7th March 2005 and 22nd June 2005. On 21st July 2005 the

Commissioner reluctantly directed an oral hearing, which took place on 23rd November 2005. Unfortunately, she became indisposed before she could make a decision. I took over the conduct of the matter and on 19th January 2006 I issued a Direction informing the parties of this fact and that I could take no account of what was said at the oral hearing before Miss Commissioner Fellner. I asked the parties whether they wished to have a further oral hearing before me and by the end of February 2006 both parties had indicated that they did not wish this. I regret the delay that these events have caused to the decision on this case.

The Relevant Law

7. So far as is relevant, section 10(1) of the Tax Credits Act 2002 provides as follows:

10(1) The entitlement of a person ... by whom a claim for working tax credit has been made is dependant on [her] ... being engaged in qualifying remunerative work.

8. Regulation 4(1) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 sets out conditions which must be satisfied in order or a claimant to be treated as engaged in qualifying remunerative work. It is not disputed in this case that the claimant satisfied the first, third and fourth conditions. The second condition may be satisfied in one of a number of different ways. The only basis on which it has been suggested that the claimant satisfies this condition is in relation to (a)(ii) of that condition, which requires that she:

(ii) ... has a physical or mental disability which puts [her] at a disadvantage in getting a job and satisfies regulation 9(1)(c) (my emphasis).

9. Regulation 9(1)(c) refers to a person who satisfies one of a number of Cases “on a day for which the maximum rate is determined in accordance with these regulations”. This is the key provision, the meaning of which is disputed in this appeal.

The only Case which it has been suggested that the claimant satisfies is Case C(a), which is set out in regulation 9(4)(a):

9(4) Case C is where the person is a person to whom at least one of the following is payable –

(a) a disability living allowance

...

The Issues

10. The claimant argued that these provisions required only that the claimant was in receipt of DLA at the date of claim for tax credits and that, if she was, she would then

be entitled to tax credit for the whole of the relevant year. Reference was made to various handbooks and guides that indicated that a person satisfied the qualifying benefit test if DLA is payable on the date of claim. However, it seems to me mistaken to argue that such guides (which, in any event, are not to be taken as authoritative statements of law) indicate that entitlement remains throughout the year. The tribunal accepted the Board's argument that entitlement to tax credit could only be established (in this case) in respect of each day on which the claimant was entitled to DLA.

11. The grounds of appeal to the Commissioner also argue that the tribunal gave inadequate reasons for its decision. I am not persuaded by this. If the relevant facts are not in dispute and a tribunal is in no doubt about the meaning of a legal provision, and there are no relevant authorities to consider, it is difficult to see what further reasons it can give for its conclusion. (The draft decision by the chairman of the earlier tribunal is not an authority in this sense.) It seems to me that the issue is whether its view of the law was correct, not whether its reasoning was adequate.

12. In its submission to the Commissioner, the Board explains how WTC is to be calculated on a daily basis. I accept the explanation given in paragraphs 40 to 43 of its submission of 6th April 2005 (reproduced on pages 58 and 59 of the bundle of papers before me). The Board also argues that if the interpretation offered by the claimant is correct, then the award could not be amended to reflect changing circumstances. This is a weak argument because the issue is not whether, but how speedily, the award can be changed (when DLA ceases or at the end of the relevant year in which it ceases).

13. The claimant argues that under the provisions for the predecessor benefit of disability working allowance entitlement would continue for the whole year even if entitlement to DLA ceased, and the same rule should continue. The Board argues that that was replaced, first by disabled persons tax credit and then by the current system. The current system operates under the Tax Credits Act 2002, which repealed the previous provisions and created a whole new system, and the previous rule cannot be relied upon. It seems to me that, in the absence of any relevant saving or transitional provision, the Board must be correct on this point. There was a very clear and specific provision in the previous system. The provision is not the same under the new system.

14. The claimant argues that the Board's interpretation involves reading "a day" in regulation 9(1)(c) as meaning "every day". The Board argues that the claimant's interpretation involves reading "a day" as meaning "any day". The claimant replies that the word "a" can mean "any". These arguments are futile. What matters is how the provision is to be applied, rather than some attempt to paraphrase it.

15. The Board argues that to accept the claimant's interpretation would mean that there would be a different rule where a claimant qualifies through receipt of DLA from where a claimant qualifies on one of the alternative bases. This is a reasonable argument but not one which is itself conclusive, because such anomalies often exist in social security law, often by design.

16. The Board also argues that the policy behind the 2002 Act, as is clear from the relevant Treasury documents, is that the tax credit system is intended to be quickly responsive to changes in circumstances. I accept that, but on the facts of this case that would not be inconsistent with the interpretation for which the claimant is arguing.

Conclusions

17. When the relevant regulations are considered together the meaning is clear. Removing the extraneous words, the various regulations state:

“A person shall be treated as engaged in qualifying remunerative work if ... [she] ... satisfies regulation 9(1)(c) ... [because] ... on a day for which the maximum rate is determined ... [DLA] is payable”.

On any day for which DLA is not payable, the claimant does not fall within Case C(a) and therefore, on the facts of the case before me, does not satisfy regulation 9(1)(c) and is not to be treated as engaged in qualifying remunerative work and therefore is not entitled to WTC. There is no reference to the date of claim or to any day other than a day for which the maximum rate is determined.

18. Other issues have been raised in this case that are dependant on the position that the claimant might have found herself in had she taken a course of action other than the one she took, or on a different interpretation of regulation 9(1)(c). In view of my decision, these issues need not be addressed.

19. The claimant also argues that it is common for claimants to lose DLA on starting work because of the view taken by the Secretary of State of their new circumstances. Claimants need the incentive of knowing that even if they lose their DLA, they will continue to qualify for WTC. This argument does not work. In what circumstances would a claimant be entitled to WTC if she were not working? If a working claimant is not entitled to WTC on any other ground, why should she be entitled on the grounds that she used to be entitled to DLA?

20. For the above reasons this appeal does not succeed.

H. Levenson
Commissioner
25th April 2006