

R(CS) 1/08

**Mr H Levenson
Commissioner
5 September 2007**

CCS/821/2006

Variation – costs of contact – costs of travel for purposes of overnight care of the child

The father, who was the non-resident parent, had shared care of his daughter and had substantial travel costs for purposes of that care. The Secretary of State made a maintenance calculation, including an adjustment for the shared care but refusing a variation to make provision for the travel costs as contact costs under regulation 10(1) of The Child Support (Variation) Regulations 2000, on the ground that the travel costs were excluded by regulation 10(4) of those regulations as costs “which relate to periods where the non-resident parent has care of a qualifying child overnight as part of a shared care arrangement”. The father appealed and an appeal tribunal allowed his appeal, holding that travel costs incurred on the way to or from the child arose outside the period of the shared care arrangement and were therefore not caught by regulation 10(4). The Secretary of State appealed to the Commissioner.

Held, allowing the appeal, that:

The words “which relate to” have a much broader meaning than “during” and if costs are incurred for the purposes of a period, then they “relate to” that period and are excluded from eligible contact costs by regulation 10(4) (paragraph 9).

DECISION OF THE CHILD SUPPORT COMMISSIONER

1. This appeal by the Secretary of State, brought by leave of a chairman of the tribunal, succeeds. In accordance with the provisions of section 24 of the Child Support Act 1991 I set aside the decision made by the Colchester tribunal on 15 February 2005 under reference U/42/132/2004/01409 and substitute my own decision. This is to restore the decision made by the Secretary of State on 20 August 2004 to the effect that the weekly child support maintenance payable is £100.29 with effect from 30 July 2004 and that the requested variation cannot be made.

2. The first respondent is the mother and (at the relevant times) parent and person with care, and the second respondent is the father and (at the relevant times) non-resident parent, of a daughter born on 4 October 1996 who is and was a qualifying child for the purposes of the child support legislation. The mother and father have not lived together during the period to which this appeal relates.

3. I held an oral hearing of this appeal on 29 August 2007. The father attended in person but was not represented. The mother did not attend and was not represented. The Secretary of State was represented by Ms Wise from the Office of the Solicitor to the Department for Work and Pensions.

4. My decision is based on a relatively narrow and specific point of law and it is not necessary to go into the whole history or detail of the matter or to comment on the points raised by the parties that are not relevant to those issues or that relate to subsequent events.

5. On 20 August 2004 the Secretary of State made the decision to which I have referred in paragraph 1 above. The calculation was based on the fact that the father

had shared care of his daughter. This reduced by nearly £12 weekly the amount for which he would have been liable had he not had shared care.

6. Schedule 4B to the Child Support Act 1991 provides for cases in which a variation may be agreed from the amount of child support maintenance for which a non-resident parent would otherwise be liable. In particular, paragraph 2(3)(a) authorises the Secretary of State to make provision with respect to “costs incurred by a non-resident parent in maintaining contact with the child”. Regulation 10(1) of The Child Support (Variation) Regulations 2000 (SI 2001/156) provides for such contact costs and lists certain kinds of travel costs. However, regulation 10(4) provides as follows (my emphasis):

“**10.**—(4) For the purposes of this regulation, costs of contact shall not include costs **which relate to** periods where the non-resident parent has care of a qualifying child overnight as part of a shared care arrangement ... ”

7. On 8 September 2004 the father appealed to the tribunal against the decision of the Secretary of State on the grounds that he had travel costs to see his daughter, who lived 200 miles away from him, in respect of which there should be a variation, and (although he did not put it this way) that the regulation 10(4) exemption related only to overnight costs.

8. The tribunal considered the matter on 15 February 2005 and reduced the weekly maintenance by £17.40 in respect of a variation for travel costs. It accepted the father’s argument and took the view that costs involved while the child was at the father’s home would be excluded from the variation regulations but that travel costs incurred on the way to or from the child arose outside the period of the shared care arrangement. To hold otherwise, according to the tribunal, would mean that shared care increased the amount of the maintenance assessment instead of reducing it, and that this could not have been the intention.

9. It is against that decision that the Secretary of State now appeals. I agree with the Secretary of State that the tribunal has read regulation 10(4) as if, instead of the words that I have emphasised in paragraph 6 above, it contained the word “during”. The use of the words “which relate to” show that a much broader meaning is intended. If costs are incurred for the purposes of a period, which is a question of fact, then they are incurred “in relation to” the period. This might create an anomaly in cases such as the present, where the travel costs are relatively high, but that does not justify giving the regulation a meaning that it cannot bear. The items listed in regulation 10(1) might be relevant where there is contact that is not overnight, or where there is no shared care, but cannot apply to the occasions when there is overnight care.