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CHAPTER 28

State Pension Credit

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CHAPTER 28

State Pension Credit

Part 1: General

*(at the time of going to print there was no recorded decision on this matter)*



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## Part 2: Conditions of entitlement

### 1 Habitual residence

i The claimant, a Chinese national, applied for indefinite leave to remain in the UK as her daughter's dependant under Immigration Rule 317, supported by a sponsorship undertaking from her daughter. The application was refused because the claimant did not meet all the conditions therein, but she was subsequently granted indefinite leave outside the Immigration Rules on compassionate grounds. She was initially awarded SPC but this was revised and disallowed when the DM became aware of the sponsorship undertaking. The DM decided that the claimant had been granted leave to remain as a result of the sponsorship undertaking from her daughter and was therefore a person subject to immigration control under S. 115(9) of the Asylum and Immigration Act 1999. The decision was upheld by the tribunal and the claimant appealed to the Commissioner. Allowing the appeal the Commissioner held that, where leave to remain was granted outside the Immigration Rules it was necessary to establish whether a maintenance undertaking had been a factor in the decision to grant leave to remain. He held that it was for the Secretary of State to show that the claimant was a person subject to immigration control, and that it was for the Secretary of State rather than the claimant to investigate what considerations had weighed with the immigration DM when granting leave to remain. There was no evidence in this case of a casual link between the sponsorship undertaking and the grant of leave to remain outside the Immigration Rules. The Commissioner did, however, confirm that where the grant of leave to remain within Immigration Rules depends on a maintenance and accommodation undertaking by a relative, and such an undertaking has been given, this may readily justify an inference that leave to remain was given as a result of the maintenance undertaking. R(PC) 1/09



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## Part 3: Membership of household

*(at the time of going to print there was no recorded decision on this matter)*



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## Part 4: Normal amount payable

*(at the time of going to print there was no recorded decision on this matter)*



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## Part 5: Additional amounts and special groups

*(at the time of going to print there was no recorded decision on this matter)*



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## Part 6: Payment questions

*(at the time of going to print there was no recorded decision on this matter)*



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## Part 7: Assessed income periods

*(at the time of going to print there was no recorded decision on this matter)*



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## Part 8: Deemed weekly income from capital

### 1 Calculation of capital

i The claimant had failed to declare savings above the limit of £6,000 at which tariff income fell to be calculated. A decision was given that the claimant had been entitled to a reduced amount of pension credit on the basis of money in her accounts which included four weeks' receipt of RP recently credited. The AT disallowed the appeal. The claimant's executor appealed to the Commissioner. The main issue before the Commissioner was whether current receipts of RP should count as capital. The Commissioner held that R(IS) 3/93 was based on the general proposition that payments received as income were not capital merely because of their receipt into a claimant's current account, but only after their transformation into capital, and was not dependent on the existence of the specific rule in the relevant Regs. about attribution of income, which was merely adopted as a convenient measure of the timing of the transformation. The Commissioner went on to say that even if that were wrong, the state pension credit legislation must work on an assumed notion of a period of attribution to identify what income a claimant has on the start date of the assessed income period. The main indicator of the metamorphosis into capital of income paid in respect of a period will therefore be the expiry of a length of time equal to that period, giving effect to the ordinary meanings of capital and income. The AT erred in law by including the four weeks' receipt of RP as part of the claimant's capital and the calculation of her capital should have been revised to produce a lower tariff income. See 17.8.3 vii *above*.

R(PC) 3/08



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## Part 9: Income other than earnings

*(at the time of going to print there was no recorded decision on this matter)*



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## Part 10: Earnings

*(at the time of going to print there was no recorded decision on this matter)*

