



TC02202

Appeal number: TC/2011/09837

*Statutory Maternity Pay – Employer’s Liability – application for permission
to appeal out of time - refused*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**SHIRES HEALTHCARE (WOODSIDE) LIMITED Appellants
COLLINSON CARE LIMITED
- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE ALISON MCKENNA
SONIA GABLE**

Sitting in public at Bedford Square on 16 August 2012

The Appellant did not attend the hearing.

**The Respondent did not attend, having previously notified the Tribunal of that it
would not be appearing.**

DECISION

5 1. The Tribunal was satisfied that the Appellant had been notified of today's hearing by letter from the Tribunal dated 12 June 2012 and decided, pursuant to rule 33 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, that it was in the interests of justice to proceed with the hearing in the Appellant's absence.

10 2. The Appellant's application is for an extension of time in which to appeal against HMRC's decision dated 13 July 2011, in respect of the Appellant's liability for Statutory Maternity Pay ("SMP").

3. HMRC sent its 13 July 2011 decision to the Appellant but has informed the Tribunal that it did not receive a reply. On 10 August 2011 HMRC says it telephoned the Appellant and spoke to Mr Patel, who advised that the letter had not been received. A further letter was faxed and the Appellant given 30 days to appeal.

15 4. HMRC says that no appeal was received, so it telephoned the company twice in September 2011 but was told Mr Patel was unavailable and he did not call back. As no appeal had been received, HMRC paid the SMP to the employee and sent a penalty determination to the Appellant. The penalty notice is included in the Tribunal's papers and is dated 28 September 2011.

20 5. The Appellant asked to appeal the penalty determination on 10 October 2011. HMRC offered a review, which Mr Patel accepted. The review found that there was a technical error in the penalty determination, which meant that it was cancelled and re-issued. HMRC advised Mr Patel that there was a fresh right of appeal to the Tribunal in relation to the second penalty notice.

25 6. The Appellant lodged a Notice of Appeal with the Tribunal dated 18 November 2011, in which he asked to appeal both the SMP determination and the penalty. HMRC contends that the appeal against the penalty is invalid as it was made during the period of review. It does not accept that there was a good reason for the late appeal against the SMP liability so as to permit the Tribunal to allow that appeal to proceed out of time.

7. In the Notice of Appeal, the Appellant gives the reason for the late appeal as

35 The appeal was made on 15 August 2011 following a faxed letter from HMRC on 10 August 2011. On 20 September 2011 we received a penalty determination and to my misunderstanding confused this with the appeal.

It appears HMRC have only considered my letter on penalty determination and not the review. I was appealing for a review to be undertaken.

8. In his Grounds of Appeal Mr Patel asserts that

The company received a fax from HMRC on 10/08/2011. We replied to this by post on 15/09/2011 asking for a right to appeal on the notice of decision.

5 9. If the Appellant had attended today's hearing, we would obviously have wanted to ask him about the discrepancy between the two dates of 15 August and 15 September that he mentions. An appeal made on 15 August would have been within the 30 days offered by HMRC following non-receipt of the earlier letter. But an appeal made on 15 September was out of time. We note that either date precedes that of the penalty notice.

10 10. As no one from the Appellant company attended today's hearing, we must consider the matter on the papers before us. We are not satisfied, on the basis of the unsubstantiated statement in the Notice of Appeal, that an appeal was made, within time, on 15 August 2011. It would have been open to the Appellant to send us a copy of that letter but he has not done so.

15 11. We are also not satisfied, on the basis of the contradictory and unsubstantiated statement in the Notice of Appeal that an appeal against the SMP liability decision was made to HMRC, albeit out of time, on 15 September 2011. No evidence has been produced to support this assertion.

20 12. We conclude that the first contact the Appellant made with HMRC was, as stated by HMRC, on 10 October, in response to the penalty notice and that the appeal then made was in respect of the penalty notice only.

25 13. In all the circumstances, the only explanation we have before us for the late appeal in relation to the SMP liability is that HMRC had misunderstood what the Appellant wanted to appeal about and failed to consider that the appeal made in October was intended to include within its scope the SMP decision. We are not satisfied that this was the case and find that HMRC understood the correspondence sent to them correctly as an appeal against penalty only.

30 14. The Tribunal has power to extend the time for filing an appeal pursuant to rule 5(3)(a) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. In exercising that power it is required to have regard to the overriding objective in rule 2 of the Rules. We have considered whether to exercise this power in respect of the SMP decision, however it does not seem to us that the Appellant has advanced a good reason for the late appeal in relation to the SMP determination. We accordingly dismiss the application.

35 15. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to
40 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**ALISON MCKENNA
TRIBUNAL JUDGE**

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RELEASE DATE: 17 August 2012