Relevant education — Even if studying for more than 12 hours, not in relevant education unless education full-time (see S.6(3) 1976 Act).

JCM/BC

Commissioner's File: CSB/0761/1986

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Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal dated 15 January 1986 was erroneous in point of law and it is set aside. In exercise of the power conferred on me by regulation 27 of the Social Security (Adjudication) Regulations 1984 [SI 1984 No 451] (the Adjudication Regulations) I deem it expedient to give the decision that the tribunal should have given viz. that the claimant's claim to supplementary benefit from 2 September 1985 should be dealt with on the basis that he was not, from that date for so long as there was no relevant change of circumstances precluded from being awarded supplementary allowance by section 6(2) of the Supplementary Benefits Act 1976.

2. The claimant is a young man who was at the relevant time aged 18. On 2 September 1985 he registered as unemployed and claimed supplementary benefit, his formal claim being dated 4 September 1985. On 6 September 1985 he notified the office that he would be attending a technical college to study for two A levels (in physics and chemistry) attending for 12 hours during the day and that he would be attending for a mathematics A level for 3 hours per week in the evenings. On the basis of this information he was refused a supplementary allowance on the ground that he was in terms of section 6(2) of the Supplementary Benefits Act 1976 receiving "relevant education." This decision was confirmed on appeal by the appeal tribunal and the claimant now appeals to the Commissioner. His appeal was presented by his father at the hearing before me. The adjudication officer was represented by Mrs A Saxon of the Solicitor's Office of the Department of Health and Social Security.

3. Section 1 of the Act provides that a person over the age of 16 shall be entitled to a supplementary pension or supplementary allowance in certain circumstances. Section 6(2) provides that a person under the age of 19 receiving relevant education shall not be entitled to supplementary benefit. Section 6(3) provides that regulations may make provision as to the circumstances in which a person is or is not to be treated for this purpose as receiving relevant education, and that in the section "relevant education" means full-time education by attendance at an establishment recognised by the Secretary of State as being comparable to a college or school. But for this last mentioned provision one would have concluded that there was complete freedom in effect to prescribe by regulations exactly what was meant by "relevant education". The closing words possibly constitute

overriding limitation on this freedom; and incidentally raise the question whether a college or school itself can be recognised by the Secretary of State as comparable with a college or school. Presumably it can.

4. Before I go on to the regulations I should point out that there appears in this area to be some sort of correlation between supplementary benefit and child benefit, in that the person (or, if more than one, one of the persons) responsible for a child under the age of 16 will be entitled to child benefit in respect of that child, but, if he is between the ages of 16 and 19, it is a condition of such entitlement that the child shall in terms of section 2(1)(b) of the Child Benefit Act 1975 be receiving full-time education by attendance at a recognised educational establishment. There thus seems to be an intention (more apparent perhaps when one considers the relevant regulations) that a person between the ages of 16 and 19 should be a possible object of one but not both of child benefit and supplementary benefit. In the present case the claimant's parents' claim for child benefit in respect of him was disallowed from 6 September 1985 on the ground that the claimant was not receiving full-time education by attendance at a recognised educational establishment. I understand however that an appeal against his decision is being held in abeyance pending the result of the present claim.

5. When in 1980 supplementary benefit ceased to be awarded on a purely discretionary basis, regulation 10 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 [SI 1980 No 1586] (the 1980 Regulations) provided that a person should be treated as receiving relevant education broadly if child benefit was payable in respect of him. This provision was re-enacted as regulation 10 of the Supplementary Benefit (Conditions of Entitlement) Regulations [SI 1981 No 1526] (the 1981 Regulations). The correlation between the two benefits was thus close. This regulation has however twice been modified since then. First the Supplementary Benefit (Miscellaneous Amendments) Regulation 1982 [SI 1982 No 907] introduced a new regulation which (broadly) provided that a person should be treated as receiving relevant education if among other things for the purposes of the Child Benefit Act 1975 he would be treated as receiving full-time education other than advanced education, by attendance at a recognised educational establishment. The correlation between the two benefits still remained close.

6. But this was in substance re-enacted (though in form only amended) by the Supplementary Benefit (Miscellaneous Amendments) Regulation 1984 [SI 1984 No 938]. Whereas the existing regulation had opened with the words:

> "For the purpose of section 6(2) .... a person shall be treated as receiving relevant education............."

and there followed a number of alternative sub-paragraphs, the regulation now opens with the same words but with the word "only" inserted between "shall" and "be treated" and it substitutes a complete new set of alternative sub-paragraphs indicative of the alternative circumstances in which a person shall only be treated as receiving relevant education, sub-paragraph (a)(iii) being where the person is -

> "attending a course of education other than a course of advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations 1976 at a recognised educational establishment as defined in section 24 of the Child Benefit Act 1975, and in the pursuit of that course the time spent in receiving instruction or tuition, undertaking supervised study, examination or practical work, or taking part in any exercise experiment or project for which provision is made in the

curriculum of the course, no account shall be taken exceeds 12 hours per week, so however that in calculating the time spent in pursuit of the course no account shall be taken of the time occupied by meal breaks or spent in unsupervised study, whether undertaken on or off the premises of the educational establishment;....."

7. This last mentioned change took effect from 6 August 1984 and on the same date there came into force the Child Benefit (General) Amendment (No 2) Regulations 1984 [SI 1984 No 930] which introduced into the Child Benefit (General) Regulations 1976 [SI 1976 No 965] a new regulation 5 which extended the former regulation by including a sub-paragraph (b). This provided that a person shall be treated for the purpose of the Child Benefit Act 1975 as receiving full-time education if -

"he is attending a course of education at a recognised educational establishment and in the pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course, exceeds 12 hours per week, so however that in calculating the time spent in pursuit of the course account shall be taken of time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the establishment."

This provision seems to indicate that there was an intention to continue the correlation between the two benefits. As will appear however it is uncertain how far this object has been achieved.

8. The adjudication officer and on appeal the appeal tribunal took the view that the claimant was spending 15 hours on the course or courses mentioned in paragraph 2 above and that as this was in excess of the 12 hour limit in regulation 10(1)(a)(iii) he was receiving relevant education at the relevant time and could not receive supplementary benefit. I think (the matter was not before me) that he would have accepted that by parity of reasoning his parent would have been entitled to child benefit in respect of him. Having reached the conclusion that the claimant was excluded from supplementary benefit by section 6(2) and regulation 10(1)(a)(iii), the adjudication officer and tribunal did not find it necessary to determine whether the claimant satisfied any other conditions of entitlement such as that of being available for work; nor did he determine at what rate any allowance would have been payable.

9. The claimant's father put forward a number of objections to the conclusion reached. He submitted that the three hours spent in the evenings each week should be disregarded either because they were in the evenings or because they were on a different course. He also submitted that the phrase full-time education should be given its ordinary meaning and that what the claimant was receiving could not possibly be described as full-time education. Mrs Saxon contested the proposition that the evening hours could be disregarded; and while she conceded that what the claimant was receiving was not full-time education in the ordinary sense she contended that it fell squarely within regulation 10(1)(a)(iii).

10. I cannot accept the contention that the three hours can be disregarded either because they were in the evening or on the ground that they constituted a different course. The question under regulation 10(1)(a)(iii) is whether the claimant was at the relevant time attending a course of education other than a course of advanced education and in pursuit of it was receiving instruction etc for more than 12 hours per week. Section 6 of the Interpretation Act 1978 provides that, unless the contest otherwise requires, words in the singular include the plural. In my judgment the words "a course" include the plural and thus means a course or courses. The courses must, of course, be courses of non-advanced education; and courses in subjects that ought properly to be regarded as recreational rather than educational would be excluded. But subject to that one is not concerned with courses in different subjects. Subjects can indeed by infinitly subdivided (as between pure and applied mathematics, or organic and inorganic chemistry; and courses in modern languages can be subdivided into different languages; and the individual languages can be subdivided into language and literature. In my judgment the context, far from excluding the rule that the singular includes the plural, imperatively demands it. Furthermore I can see no ground for distinguishing between daytime and evening classes. The claimant's day time classes were in physics and chemistry and the evening class was in mathematics. The object was to obtain A levels and the courses were in non-advanced education.

11. This leaves the argument that the course did not amount to full-time education in the ordinary sense of the word. In order to deal with this point I have to look back at some previous Commissioner's decisions on the subject of education. I shall start with Decision CF/3/73 (not reported). In this case the Commissioner was concerned with the question whether for the purposes of the old family allowances law a person was undergoing full-time education at a particular establishment. The Commissioner accepted the submission of the adjudication officer favourable to the claimant that he was doing so notwithstanding that the course pursued was a correspondence course not involving attendance at any establishment. The Commissioner drew attention to the point that he was not construing the words "attend at". This decision was considered and distinguished by a Tribunal of Commissioners in Decision R(SB) 26/82. The Tribunal were concerned with the phrase "attending for no more than 21 hours a week a course of education ...." in regulation 7(2) of the 1980 Regulations. They considered that actual attendance at the establishment was involved for the specified number of hours and they indicated the activities that could be counted towards the 21 hours.

12. Next came two decisions of the year 1983, R(SB) 40/83 and 41/83. Each of these decisions was concerned with the definition of "student" in regulation 2(1) of the 1981 Regulations, which at the time read as follows:

> "'student' means a person under pensionable age who has ceased relevant education and is attending a course of full-time education but he shall not be deemed to be a student during periods when he is not attending his course and is not engaged in a programme of studies."

There is a peculiarity about this definition, because having defined a student as a person attending a course the draftsman goes on to make an exception that seems to imply that a student so defined can be a student when not attending a course if he is engaged in a programme of private studies. This paradox was resolved by the decisions last referred to. In Decision R(SB) 40/83 it was emphasised that the question for determination was whether the person said to be a student was attending a full-time course, not whether he was a full-time student; nor, it may be added, whether he was attending a course full-time. And it was indicated that a person could be attending a full-time course without attending at the establishment full-time, though it was left

open how far the hours of such attendance could be relevant to the question whether a person was attending a full-time course. Decision R(SB) 26/82 was distinguished as a case specifically concerned with the time for which the person concerned was attending an establishment. And in my judgment the reference to attendance in the exception at the end of the definition of student has to be distinguished in the same way. In that exception the period of actual attendance is crucial.

13. I turn therefore to section 6(2) of the Act and regulation 10(1)(a)(iii). In paragraph 3 above I referred to the possibility that the definition of relevant education as full-time education in section 6(3) imposed some limitation on the power in that subsection to make provision as to the circumstances in which a person is or is not to be treated as receiving relevant education. I do not need to decide whether it does or not since I have (as will appear) reached the conclusion that regulation 10(1)(iii) is not inconsistent with the requirement that relevant education is full-time education.

14. Effectively section 6(3) confers a power to prescribe that a person shall be treated as receiving full-time education if something is (or is not) the case; and conversely to provide that he is not receiving full-time education if something is not (or is) the case. A condition introduced by the word "if" will ordinarily be a sufficient, but not a necessary, condition so that if a person is said to be in relevant education if something is the case, it does not automatically follow that he is not in relevant education if that something is not the case. If instead the condition is introduced by the words "only if" the condition is then a necessary, but not a sufficient, condition rather as if the words "not unless" had been used; and a condition that a person is in relevant education only if something is the case imports that he is not in such education if that something is not the case but not that he is necessarily in relevant education if it is the case. A condition that is both necessary and sufficient should be introduced by the phrase "if and only if". These distinctions, though logical, are not always carefully observed in ordinary conversation; but they ought to be observed in drafting legislation, though I do not think that they are always there observed. But it is right to start with the assumption that they are.

15. Regulation 10(1) uses the word "where" rather than "if" but the principles are the same. In my judgment when the regulation was amended in 1984 and the word "only" was inserted before "where" and a different set of sub-paragraphs was introduced the new sub-paragraphs were alternative necessary, but not sufficient, conditions, whereas the old sub-paragraph alternative sufficient, but not necessary conditions. The effect in my judgment is that a person is not in relevant education unless as well as receiving full-time education he satisfies one of the conditions in the sub-paragraphs of regulation 10(1)(a), the sub-paragraph under consideration requires that there is a minimum level of actual attendance. And as the claimant was not receiving full-time education it matters not that he happens to have satisfied that minimum level. He was not therefore receiving relevant education. This conclusion is supported by the possibility that the definition of relevant education is section 6(3) limits the scope of what can be provided for in regulations made under it.

16. I have not overlooked that the corresponding condition cited in paragraph 7 above in relation to child benefit seems to be a sufficient condition; and it may be that some degree of correlation between the two benefits has been lost. I say may be, because I have not discovered any provision of the Child Benefit Act which enables regulations to be made extending the meaning of the phrase "full-time education" in section 2(1)(b) to include anything that is not full-time education. The preamble to the enacting regulations alludes only to sections 22(1) and 24(1) of the Act, which lay down the method of making regulations under the Act and not the matters that may be covered by them. Miss Saxon suggested section 4(1) which provides for regulations to be made making child benefit not payable under section 2(1)(b) in such cases as may be prescribed. It would certainly be an odd way of exercising such a power to give a special definition for all purposes to the phrase "receiving full-time education". But in any case the effect of the enlargement of the meaning of full-time education for purposes of section 2(1)(b) is to make benefit payable where it otherwise would not; and that is certainly outwith the powers conferred by section 4(1).

17. I reach the conclusion therefore that the claimant was not at the relevant time receiving relevant education and that the tribunal's decision to the effect that he was not receiving such education was erroneous in point of law. I have to consider what decision I should give. The case is one of a common class frequently met with in practice where the adjudication officer (and the tribunal have been able to dispose of the claim by deciding one only of the issues raised by the claim. Where one adjudicating authority disposes of a claim in this way and an appellate authority considers that it has incorrectly disposed of it in that way, there necessarily remains a further question or questions to be determined. The alternatives open to the appellate authority are reflected in the long-standing practice in cases under the National Insurance Acts and the Social Security Act 1975 where a claim for benefit has been rejected by the adjudication officer (or insurance officer) on the ground say, that the claimant is disqualified (eg on the ground of late claim) for receiving benefit, without going into the question what would have been the case if he had not been disqualified. It has been a very common practice for the adjudication officer to submit to the appeal tribunal that if they reverse the decision they should simply confine their decision to doing that, leaving the adjudication officer to deal with the outstanding matters. On the other hand if the appeal tribunal confirmed the adjudication officer's decision and there was a further appeal to the Commissioner the adjudication officer would invite the Commissioner to take on board the whole claim. In my judgment these two alternative courses are in general in such cases open to the appellate authority. Section 99(3) of the Social Security Act 1975, which by virtue of Schedule 4 to the Adjudication Regulations applies to supplementary benefit provides that different aspects of the same claim may be submitted to different adjudication officers; and it clearly follows that they can be dealt with separately. Accordingly where an adjudication officer has dealt soley with one aspect of a claim an appellate authority can properly confine its attention to that aspect only leaving other aspects to be dealt with by the adjudication officer. Nevertheless the claimant has placed his entire claim before the adjudicating authorities and an appellate authority has jurisdiction to consider aspects of the claim that were not considered at the lower level because on the view there taken they did not arise. The adoption of this course avoids repeated references back: and I have no doubt that it is a proper course.

18. But in this case, deeming it expedient to give the decision that the tribunal should have given I cannot adopt this latter course here because I have no fact-finding jurisdiction. I can therefore adopt only the course of reversing the decision that the claimant is adversely affected by section 6(3) and leaving it to the adjudication officer to consider the aspects of the claim that have not yet been considered.

19. The claimant's appeal is allowed.

(Signed) J G Monroe
Commissioner

Date: 23 March 1987