

CF 8/1983

CHILD BENEFIT ACT 1975

CLAIM FOR CHILD BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Brian Mills

Local Tribunal: Hertford

Case No: 35/5

[ORAL HEARING]

1. This is a claimant's appeal from the decision of a local tribunal dated 21 October 1982 confirming the decision of the insurance officer dated 19 May 1982 but promulgated on 2 June 1982. This appeal fails. My decision is that from 29 April 1981 down to 13 September 1981 Brian Mills was a person in respect of whom child benefit would be payable if a claim for that benefit were made; Supplementary Benefit (Determination of Questions) Regulations 1980, regulation 5(1)(d) and the Supplementary Benefit (Conditions of Entitlement) Regulations 1980, regulation 11.

2. In this case I held an oral hearing. Mr M Roland of Counsel instructed by the Child Poverty Action Group appeared for the claimant. Mr J H Swainson from the Solicitor's Office of the Department of Health and Social Security appeared for the insurance officer. I am indebted to both for their assistance in this case.

3. The question at issue in the case was whether, for the purposes of the provision of regulation 11 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980, Brian Mills was a person in respect of whom child benefit would be payable from and including the 29th April 1981 if the claim for it were made. If Brian Mills was such a person then supplementary benefit would not be payable.

4. The facts fall within a narrow compass. The claimant was born on 12th October 1964 and therefore reached the age of 16 years on 12 October 1980. He was then attending the Sele School, Hertford. He was studying two subjects, namely, Technical Studies (Woodwork) and Motor Vehicles Studies. We are concerned in this appeal only with the Technical Studies (Woodwork). This course of study was based upon the syllabus and scheme of the East Hertford Advisory Group of Schools. The appropriate examination was held under the auspices of the East Anglian Examination Board. The course consisted of a practical project spread over three terms before the examination and carrying 80% of the marks for the course and secondly a

theory paper carrying 20% of the marks for the course. The rules for the admission of candidates have been supplied to me and the interpretation of those rules given by the Schools Council is that pupils aged 16 who, whilst legally entitled to leave at Easter, return to school in the summer term are eligible candidates and may be allowed to leave school as soon as they have completed their CSE examinations. In a letter dated 10 May 1983 the East Anglian Examination Board confirms that it was a requirement of their examination that the candidate "must be in full-time attendance at school at the time the examination is taken". The difficulty that arises in this case is caused by the date of the examination in the woodworking course. The Spring term ended on 10 April 1981 and of course the claimant was entitled to leave school on that date. The next term started on 29 April 1981. It had been generally known that some of the written papers were to be taken at the beginning of the new term. This was the case in relation to the woodworking course. The claimant returned to school on 15 May 1981 to attend the examination and thereafter left school. His name was removed from the school's register on 18 May 1981. Before me it was agreed that if the claimant left school on 10 April the terminal date for child benefit was the 27 April whilst if he did not leave school on that date and actually returned to school during the next term the appropriate terminal date was 7 September 1981.

5. The claimant's mother was in receipt of child benefit in respect of the claimant. Payment of benefit ceased on the 3 May 1981 based on information that she had provided in an earlier declaration regarding the termination of the claimant's full-time education. On the 18 May 1981 she requested that child benefit be reinstated and the relevant enquiry forms were issued to her but were not returned. Eventually child benefit was reinstated to the mother for the period 4 May 1981 to 13 September 1981. On 27 April 1981 (that is to say after the end of the summer term and before the date of the examination) the claimant registered for employment and claimed supplementary benefit. The supplementary benefit was disallowed.

6. On the 26 May 1981 he appealed to the supplementary benefit appeal tribunal who decided by a majority decision that supplementary benefit was payable from 29 April 1981. The supplementary benefit officer appealed to the Commissioner against that decision and the Commissioner directed that an insurance officer's decision be given as to the claimant's mother's eligibility to child benefit. That decision is the decision of the insurance officer referred to in paragraph 1 hereof.

7. I say that I draw no inference adverse to the claimant from the fact that child benefit was in fact reinstated to his mother and that she accepted child benefit in respect of the claimant.

8. Before me it was argued that -

- (i) the fact that the claimant's name remained on the school register was an administrative action of a third party over which the claimant had no control;
- (ii) attendance for an examination could not be education within the meaning of the various regulations.

Let me now consider those arguments.

9. Section 6(2) of the Supplementary Benefits Act 1976 provides that a person who has not attained the age of 19 and is receiving relevant education shall not be entitled to supplementary benefit except in the circumstances prescribed. 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 the purpose of the preceding sub-section as receiving relevant education. Relevant education means full-time education by attendance at an establishment recognised by the Secretary of State of being or comparable to a college or school. There is no doubt in this case that Sele School satisfies that description.
10. Regulation 11 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 provides that for the purpose of section 6(2) a person shall be treated as receiving relevant education for any period during which child benefit is or would if a claim were made be payable in respect of him under Part I of the Child Benefit Act 1975.
11. Regulation 5 of the Supplementary Benefit (Determination of Questions) Regulations 1980 provides for the question as to whether or not child benefit would if a claim were made for it be payable under Part I of the Child Benefit Act to be referred for decision to an insurance officer.
12. Section 1 of the Child Benefit Act 1975 provides that person who is responsible for one or more children in any week shall be entitled to child benefit for that week in respect of that child.
13. Section 2(1) defines the meaning of child. For the purposes of this decision that section provides that a person shall be treated as a child for any week in which he is under the age of 19 and receiving full-time education by attendance at a recognised educational establishment. Section 2(2) provides that in determining for the purposes of the definition above whether a person is receiving full-time education no account should be taken of such interruptions as may be prescribed. Full-time education is defined in regulation 1(2) of the Child Benefit (General) Regulations 1976 as full-time education by attendance at a recognised educational establishment. Regulation 6(1) provides that a person can continue to be regarded as receiving full-time education during the period when his education is interrupted due to a cause considered to be reasonable in the circumstance of the case. Except that cause were lengthened by illness or disability the maximum period of interruption which can be disregarded under the provision is 6 months. Under regulation 7 a person who ceases to receive full-time education over the age of 16 continues to be treated as a child up to a date fixed by reference to a Monday at the end of the holiday after he so ceases.
14. It is common ground that up to the 10 April 1981 the claimant attended on a day-to-day basis at the school. He did not go back to school when the school opened on 29 April 1981 but did in fact return to sit his examination on the 15 May 1981. During the period 10 April down to 18 May 1981 the claimant's name appeared on the school register.
15. I have been supplied with the Pupils' Registration Regulations 1956, [SI 1956 No 357]. By regulation 3 in respect of each school there must be kept firstly an admissions register and secondly an attendance register. Deletions from the admissions register are dealt with in regulation 4. A pupil's name may be deleted from the admission register under regulation 4(a) (viii) on the grounds that he will cease to be of compulsory school age before

the school next meets and intends to discontinue attendance thereat. The claimant of course was over the compulsory school leaving age at the beginning and could have left school on the 10 April 1981. Regulation 4(b) deals with the situation of a pupil who is not of compulsory school age. His name may then be deleted from the register on the grounds that he has ceased to attend the school. I stress that the claimant's name was not removed until after the examination and I further point out that the claimant could not have sat the theory paper were he not a pupil who was at the date of the examination in full-time attendance at school.

16. Taking a realistic view of the situation the examination in woodwork, which the claimant sat on 15 May 1981, was the culmination of several years' study. I am driven to the conclusion that it was an integral part of his course of secondary education in that subject. I am not attracted nor convinced by the argument that the examination was not part of the full-time education but was merely a method of testing the claimant's achievement. I have indicated already that only 20% of the marks were referable to the theoretical written paper. I do not accept the argument advanced by Mr Roland that the claimant was not at the material time receiving full-time education.

17. It was forcefully argued before me that the observation of the Commissioner in Decision R(SB)22/82 where he says "it seems to me that the date when the pupil's name is removed from the school register should be regarded as the determining factor" was wrong in law and was obiter, that is to say was not necessary for the decision reached by the Commissioner in that case. I accept that the observation was in fact obiter and that the Commissioner had not had argument before him on that point. It was argued before me that I should look at the realities and that the fact that the claimant's name remained on the register until the 18 May 1981 was something over which the claimant had no control. For the reasons I have already indicated above the claimant could not have taken his woodwork theory paper had he not been still on the school register. I accept therefore that in the circumstances of this case that the date when the pupil's name was removed from the school register was a matter of some fundamental importance. I am satisfied that the dictum of the learned Commissioner in the decision to which I have referred applies to this case and that the claimant was still a child for the purposes of section 2(1) of the Child Benefit Act up to and including the 18 May 1981.

18. The claimant did not return to school when the new term started. He only attended school for the purpose of sitting the examination. It seems to me the period between the cessation of lessons and the date of the examination and his absence during that period was sanctioned by the school authority. However this non-attendance does not mean that full-time education ceased at the end of the term on the 10 April 1981. In my view there was only an interruption of that full-time education, which can be regarded as reasonable in the circumstances of the case, in terms of regulation 6(1) of the Child Benefit (General) Regulations. I come therefore to the conclusion that full-time education ceased when his name was removed from the register. In accordance therefore with regulation 7 of the Child Benefit (General) Regulations as substituted by regulation 3 of the

Child Benefit (General Amendment) Regulation 1981 the claimant continued to be treated as a child within the meaning of section 2(1) of the Act up until the 13 September 1981. Child benefit therefore was in my judgment properly paid to his mother and it follows that the claim made for supplementary benefit on 27 April 1981 was properly disallowed.

(Signed) I O Griffiths
Chief Commissioner

(Date) 27 February 1984

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CIO File: IO 30/CHB/82
Region: Child Benefit Centre, Washington