

SOCIAL SECURITY ADMINISTRATION ACT 1992

**SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL
ON A QUESTION OF LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the adjudication officer against the decision of the Coventry social security appeal tribunal dated 27 February 1996 whereby they allowed the claimant's appeal against the decision of the local adjudication officer who had decided that the claimant was not entitled to income support from 19 December 1995. The local adjudication officer had reached that decision on the ground that the claimant was a student attending a full-time course of study and that therefore he was not to be regarded as available for employment. The tribunal found that he had ceased to be a student and had become available for work.
2. The claimant requested an oral hearing before me but, as he has not raised any tenable argument to show why I am not bound by clear authority to determine the case against him, I am satisfied I can properly determine the appeal without a hearing.
3. The claimant was a university student on a sandwich degree course. He has completed 2 years at the university and the interim year working in industry. In October 1995 he was to start his final year at the university. Unfortunately, he contracted glandular fever and, having missed 8 weeks of his course, it was decided that he should give up any attempt to complete his degree in that academic year and that he should wait until the beginning of the next academic year in order to start his final year of study from the beginning. On 15 December 1995 he handed in his library and other cards and left the university, intending to resume his studies in October 1996. He had to repay his student grant. He started looking for work and claimed income support.

By virtue of section 124(1)(d)(i) of the Social Security Contribution and Benefits Act 1992, the claimant's entitlement to income support depended upon his being available for employment. It is not disputed that, after he had left the university, he was actually available for employment. However, by virtue of regulation 10(1)(h) of the Income Support (General) Regulations 1987 the claimant was deemed not to be available for employment while "he is a student during the period of study". By virtue of regulation 2(1) of those regulations, "student" has the meaning prescribed by regulation 61 which provides:-

"'Student' means a person, other than a person in receipt of a training allowance, aged less than 19 who is attending a full-time course of advanced education or, as the case may be, a person aged 19 or over but under pensionable age who is attending a full-time course of study at an educational establishment; and for the purposes of this definition -

- (a) a person who has started on such a course shall be treated as attending it until the last day of the course or such earlier date as he abandons it or is dismissed from it;
- (b) a person on a sandwich course shall be treated as attending a full-time course of advance education or, as the case may be, of study."

Regulation 2(1) also provides:-

"'Period of study' means the period beginning with the start of the course of study and ending with the last day of the course or such earlier date as the student abandons it or is dismissed from it; but any period of attendance by the student at his educational establishment in connection with the course which is outside the period of the course shall be treated as part of the period of study."

5. The local adjudication officer drew the tribunal's attention to the relevant legislation but unfortunately did not refer the tribunal to the decision of the Court of Appeal in Chief Adjudication Officer and Secretary of State for social Security v Clarke and Faul (The Times, February 22, 1995). The tribunal made no reference to the legislation on their decision and so it is impossible to know precisely what their reasoning was. However it is clear that it cannot stand with the Court of Appeal decision.

6. Ms Clarke and Ms Faul were two students in precisely the same position as the present claimant. A Social Security Commissioner had decided that they had temporarily abandoned their courses and so were no longer "attending" a course of

education. The Court of Appeal rejected that approach because they considered that, in the particular context of regulation 61 of the 1987 Regulations, "abandons" connoted permanent abandonment. However, by a majority, they determined the case in favour of these students because, at that time, in the definition of "student" there appeared after the words "attending it" the words "throughout any period of term or vacation within it" and they took the view that the claimants did not have any identifiable terms or vacations during the period when they had temporarily left the university. It is clear that the removal of that phrase from the definition of "student" by regulation 2 of the Social Security Benefits (Miscellaneous Amendments) 1995, with effect from 1 August 1995, was a deliberate reversal of that part of the court's decision. It must follow that the decision of the tribunal in the present case was erroneous in point of law. On the undisputed facts, they were not entitled to find that the claimant had ceased to be a "student" on 15 December 1995.

7. The claimant protests at some of the reasoning of the Court of Appeal in Clarke and Faul. However I am bound to follow that decision to the extent that it has not been reversed by legislation. The claimant also protests that it is unfair that he should not be entitled to income support when he had to repay his grant and had ceased to be entitled to obtain a student loan. I sympathise with him. Like the Court of Appeal in Clarke and Faul, I can see no obvious reason why there should be an anomalous class of people left to destitution without state support of any kind. However, the law is clear and I must give effect to it.

8. Accordingly I allow the adjudication officer's appeal. I set aside the tribunal's decision and I restore the decision of the local adjudication officer.

(Signed) M Rowland
Commissioner

(Date) 2 December 1996