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Commissioner's File: CF/30/1984
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Region: Child Benefit Centre, Washington

CHILD BENEFIT ACT 1975

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name:

Appeal Tribunal:

Case No:

[ORAL HEARING]

1. (1) This appeal is by an adjudication officer against the unanimous decision dated 27 June 1984 of a social security appeal tribunal ("the tribunal") allowing the claimant's appeal from the decision dated 14 June 1983 of an insurance officer upon a question referred to him on 4 May 1983 by a benefit officer pursuant to the provisions of regulation 5 of the Supplementary Benefit (Determination of Questions) Regulations 1980 [SI 1980 No 1643] as amended and in force at the date of such reference.

(2) By their decision the tribunal allowed the claimant's appeal against the insurance officer's decision. The necessity for reference to the insurance officer arose in the circumstance that the claimant had claimed supplementary benefit on 15 April 1983 and that amongst the issues upon which his eligibility to be awarded such benefit depended was the answer to the question - which was the question the subject of the reference:

> "Whether for the purposes of regulation 10 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 (circumstances in which persons are to be treated as receiving relevant education), [the claimant]:
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> (i) is by virtue of paragraph (1)(a) of that regulation, receiving full-time education, not being advanced education, by attendance at a recognised educational establishment, for the purposes of section 2(1)(b) of the Child Benefit Act 1975; or
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> (ii) has, for the purposes of paragraph (1)(b) of that regulation, ceased to receive such education."

2. (1) The insurance officer's decision upon the so referred question was that from and including the date of the claim to supplementary benefit the claimant was a person receiving full-time education, not being advanced education, for the purpose of section 2(1)(b) of the Child Benefit Act 1975 ["the CB Act"]. The tribunal's decision was somewhat elliptically expressed in the terms "to allow the appeal that as from 25.3.83 the appellant ceased to receive full-time education"; but read in context

it is clear, and has been common ground before us, that by such terms the tribunal were holding that, in reversal of the insurance officer's determination, the claimant had not been at the date of his claim for supplementary benefit and was not at any material time thereafter receiving full-time education, not being advanced education, for the purpose of section 2(1)(b) of the CB Act.

(2) Our decision follows upon a directed oral hearing held on 4 February 1985 at which the adjudication officer was represented by Mr. D.M. James of the Solicitor's Office of the Department of Health and Social Security, and the claimant was represented by Mr. R. Allen, of counsel, instructed by Mr. P. Jones, Bureau Solicitor with the claimant's local Citizens Advice Bureau. We are indebted to both Mr. James and Mr. Allen for cogent submissions in a field of considerable legislative complexity, and indebted also to Mr. M.N. Potter who gave evidence on the claimant's behalf before us and who had been at all material times the headmaster of a secondary school at and in connection with which (to use for the moment a neutral phrase) relevant events had taken place. By reason of the oral evidence of Mr. Potter and also of written evidence of his which had been put in since the tribunal's hearing, we have had the advantage of evidence additional to that which was before the tribunal. Mr. Potter was, if we may say so, an exemplary witness, whose evidence as to material facts and circumstances we have had no hesitation in accepting save in so far as it verged upon conclusions as to matters of law which it is proper should rest for our own decision. And there is now no significant dispute as to any material facts, such difficulty as lies in the case lying exclusively in the correct application of material legislation.

(3) The appeal does not succeed. Our decision is that the claimant was not at 15 April 1983 (the date of his claim for supplementary benefit) or at any material time thereafter a person receiving full-time education, not being advanced education, for the purpose of section 2(1)(b) of the CB Act.

3. At the inception of the oral hearing before us we invited and heard submissions upon several preliminary points concerning procedure and jurisdiction, as to which it transpired that Mr. James and Mr. Allen were at one; and our rulings upon those left the field clear for a substantive determination of the appeal. We will in the course of this decision indicate how those questi arose and what our rulings were; but for convenience we will defer that to paragraphs starting at paragraph 20 below.

4. We find that the basic facts (there are some others that we will introduce later) were as follows:-

(1) The claimant was born on 19 January 1967, and was thus in April 1983 16 years of age.

(2) At all material times down to 25 March 1983 the claimant had been attending on a normal full-time basis (using that expression here in its everyday sense) the secondary day school of which Mr. Potter was headmaster, and where the claimant had accordingly (and in conformity with education legislation in point) been a registered pupil. Prior to 25 March 1983 the claimant had been entered by the school for CSE examinations in 6 subjects, all of which involved written examination in one or more examination sessions and five of which included additionally an award of ranking marks in respect of performance, prior to

25 March 1983, in oral examination, course work, or school projects.

(3) The school's Easter term ended on 25 March 1983, by which date the activities material to the examination marking other than the written papers had been completed. And although it had at one time been a requirement of eligibility for these examinations that a candidate should at the date of the examination be a registered pupil at a recognised secondary school (which the material school was), a recent change in the examination regulations had dispensed with that requirement. Having regard to his age and the legislation in regard to compulsory education it was also permissible for the claimant to become a "school leaver" with the expiry of the Easter term.

(4) It lay within Mr. Potter's authority, as headmaster, to offer to the claimant (and other pupils in like case) to become school leavers at the end of that Easter term and not to continue as (to use a neutral phrase) school pupils on a normal basis into the school's Summer term which would next follow upon the Easter school holiday. Mr. Potter took the view that in the case of the claimant (and others in like case) it was of advantage for such a pupil to do that, in order to enter the labour market as soon as possible. It was, however, made clear that a pupil so deciding would not of necessity be abandoning his pre-arranged CSE written examinations. He would be able to return to the school premises and sit the written papers there on the due dates - which were in late April and early May. If he was not by then in employment there would be no likely obstacle to his being available to do so; and, even if he was, there was a reasonable expectation that an employer would allow him day release for the purpose. The pupils so offered and accepting - of whom the claimant was one - were, however, treated in the context of the education legislation as to registration of pupils at a school as falling to be de-registered from the school's register at the end of the Easter term; and the claimant was so de-registered.

(5) The school's Summer term started on 12 April 1983. The claimant did not re-enrol, and on 15 April 1983 instituted his claim for supplementary benefit. He was not then or at any material time in employment.

(6) Thereafter the claimant did return to the school to sit his written CSE examinations there as pre-arranged. On 25 April 1983 he sat one paper of $1\frac{1}{2}$ hours, on 26 April 1983 three papers totalling $3\frac{1}{2}$ hours, on 27 April 1983 two papers totalling $2\frac{3}{4}$ hours, on 28 April 1983 one paper of $1\frac{1}{2}$ hours, on 29 April 1983 two papers totalling 3 hours, on 3 May 1983 three papers totalling $3\frac{1}{2}$ hours, and on 6 May 1983 one paper of $1\frac{1}{2}$ hours.

5. Section 6 of the Supplementary Benefits Act 1976 as amended and in force at all material times provides as follows:-

> "6. (1) A person who is engaged in remunerative full-time work shall not be entitled to supplementary benefit; and regulations may make provision as to the circumstances in which a person is or is not to be treated for the purposes of this subsection as so engaged.
>
> (2) A person who has not attained the age of 19 and is receiving relevant education shall not be entitled to supplementary benefit except in prescribed circumstances.

(3) Regulations may make provision as to the circumstances in which a person is or is not to be treated for the purposes of the preceding subsection as receiving relevant education; and in this section 'relevant education' means full-time education by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school.

6. In the circumstances, section 6(1) above clearly did not bear upon the claimant. However, the claimant had not at the material time attained the age of 19. Accordingly, section 6(2) presented a potentially fatal obstacle to his claim for supplementary benefit if he was then 'receiving relevant education' - unless that claim was saved by the reference later in section 6(2) to entitlement in prescribed circumstances. We are not, however, in the present case concerned with giving any substantive determination upon the claimant's claim for supplementary benefit - see paragraphs 1(1) above and 20 below. But it is against the background to section 6(2) that section 6(3) goes on to indicate that regulations may make provision as to the circumstances in which a person is or is not to be treated for the purposes of section 6(2) as receiving relevant education. That leads indirectly to the issue with which alone our present decision is concerned.

7. Regulation 10(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [SI 1981 No 1526], as amended with effect from 9 August 1982 by regulation 6(8) of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1982 [SI 1982 No 907 ], provided that for the purposes of section 6(2) above, a person should be treated as receiving relevant education -

"(a) for any period during which he is, for the purposes of section 2(1)(b) of the Child Benefit Act 1975, receiving full-time education, not being advanced education, by attendance at a recognised educational establishment; or

(b) in the case of a person who has ceased to receive full-time education, not being advanced education, for the purposes of that section 2(1)(b) and who -

(i) is under the age of 16 when he so ceases and attains that age on or before the terminal date, or

(ii) is aged 16 or over when he so ceases,

for the period beginning with the starting date and ending with the said terminal date."

Regulation 10 goes on to prescribe what, in the context of (b) above, is to constitute the 'starting date' and the 'terminal date'. Since, however, it is only regulation 10(1)(a) which - because it leads to the substantive issue which we are concerned to decide - is of direct relevance to the present appeal, we need not go into those prescriptions beyond indicating that it is not in dispute that in relation to the claimant's leaving school at the end of the Easter term, and taking that in isolation, the 'terminal date' would have been the Monday next following Easter Monday, as under the regulations referred to in paragraph 12 below.

8. One of the questions which concerned the benefit officer who dealt with the claim instituted by the claimant on 15 April 1983 was whether the claimant was a person within the thrust of regulation 10(1)(a) above. However, under the Supplementary Benefit (Determination of Questions) Regulations 1980 [SI 1980 No 1643], as amended by regulation 10 of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1981 [SI 1981 No 815] and as in force

at the time when his adjudication on the claim was required, there was a special procedure in point. Regulation 5A of those regulations, as so amended, provided that if a decision had been given under the adjudication procedures under the Social Security Act 1975 in respect of the same question, the conclusion there arrived at should be conclusive for the purposes (amongst others) of regulation 10(1)(a) above cited. But otherwise the benefit officer had to refer the regulation 10(1)(a) question to an insurance officer for determination, but give a decision on the claimant's claim for supplementary benefit arrived at on the assumption that the insurance officer's decision on the referred question would be in the sense adverse to the claimant - and since in the context of the claimant's supplementary benefit claim, his claim would be defeated were that question to be answered in the sense that the claimant did fall to be treated as receiving relevant education - upon that assumption. Such provision was complemented by further provision for subsequent correction by a review decision should the adverse assumption be displaced by a decision of the insurance officer in the other sense - but we need not pursue that.

9. The true thrust of the regulation 5A above mentioned has since the date of reference to the insurance officer in the present case been explained in Decision R(SB)3/84 in a sense peripherally relevant to the present case although directly concerned with a different subject matter of reference or presumption under the Determination of Questions Regulations. In brief summary it is there indicated that if an antecedent decision under the Social Security Act 1975 is to be taken as concluding the question otherwise to be referred such decision must be one which in material respects covered the same ground as would fall to be covered upon a reference to an insurance officer under regulation 5. We mention this only in the context of the propriety or otherwise of the reference instituted by the present case on 4 May 1983 - having regard to the circumstance, also apparent on the case file, that there had been a decision or decisions by an insurance officer directly upon claims for child benefit in respect of the claimant upon which awards had been made which must have been based upon conclusions that the claimant was, at times material to such decision or decisions, **receiving full-time education**, not being advanced education, by attendance at a recognised educational establishment, for the purposes of section 2(1)(b) of the CB Act. We have, however, no reason to doubt that the benefit officer who made the reference instituted on 4 May 1983 was correct in regarding occasion for reference as having properly arisen.

10. By way of further narrative we should mention that the benefit officer, having instituted the reference to an insurance officer, then went on to decide the claimant's claim for supplementary benefit upon the prescribed adverse assumption, giving a decision issued on 20 April 1983 that the claimant was not entitled to supplementary benefit; and that the claimant appealed against that decision to a supplementary benefit appeal tribunal. However, by the time that appeal first came before the supplementary benefit appeal tribunal the claimant's advisers were aware of an insurance officer's determination, by decision of 14 June 1983, of the question so referred; and at their request on his behalf that tribunal adjourned that appeal in order to enable the insurance officer's decision on the referred question to become the subject of an appeal to a national insurance local tribunal. We were told at our oral hearing that the supplementary benefit appeal so adjourned still awaits determination. That appeal is, however, to be distinguished from the separate appeal against the insurance officer's determination of the referred question, which was duly instituted by letter of 18 July 1983; came before the tribunal on 27 June 1984; and was allowed. And, it is to be emphasised, it is the adjudication officer's appeal against that tribunal decision, reversing the

insurance officer's determination of the referred question, which alone is before us for determination.

11. (1) Section 2(1) of the CB Act prescribes who is for the purposes of that Act to be treated as a child for any week. It provides that a person shall be so treated for any week in which he is under the age of 16 (which the claimant was not at any material time) but also that a person shall be so treated for any week in which -

> "(b) he is under the age of nineteen and receiving full-time education by attendance at a recognised educational establishment."

(2) Section 24(1) of the CB Act prescribes 'week' for child benefit purposes as a period of 7 days beginning with a Monday.

(3) The claimant was in all material weeks under the age of 19.

(4) It followed that, since the insurance officer determined the referred question on the basis that the claimant was at all material times receiving full-time education by attendance at a recognised educational establishment, he was giving a decision which, when applied in the context of the claimant's claim for supplementary benefit, would accord with the benefit officer's assumption in the same sense embodied for the purposes of the latter's decision of 20 April 1983.

12. The above mentioned provisions of the CB Act, coupled with regulations made under that Act, further provide that a person over 16 who ceases full-time education on or after 24 November 1980 is to be treated as a child within section 2(1)(b) of that Act up to and including whichever of certain specified annual dates next occurs after the date of cessation. However, we need not pursue that in any detail, because the claimant was over 16 when he ceased full-time education on 25 March 1983 and the first of the prescribed dates next occurring after that was the Monday (11 April 1983) following Easter Monday, which antedates the inception of the claimant's claim for supplementary benefit. Accordingly, those 'treating' provisions are not material to the issue with which we are concerned. However, by regulation 6(1) of the Child Benefit (General) Regulations 1976 [SI 1976 No 965], as amended and in force in April 1983 (and subject to exceptions not relevant in the claimant's circumstances), it is provided that in determining for the purposes of section 2(1)(b) of the CB Act whether a person is receiving full-time education, not being advanced education, -

> "....no account shall be taken of a period (whether beginning before or after the person concerned attains age 16) of up to 6 months of any interruption to the extent to which it is accepted that the interruption is attributable to a cause which is reasonable in the particular circumstances of the case;....."

and provision is further made for the extension of such period of 6 months in circumstances which have no relevance in this case.

13. Neither the CB Act nor the Supplementary Benefits Act 1976 defines what is 'full-time' in the context of 'education' - nor does either Act define 'full-time education'. However, save where the legislature makes provision as to 'treating' persons as receiving full-time education who in reality and fact are not so doing, the question whether a person is receiving full-time education

within the meaning of that term as used in the CB Act is in our judgment a question of fact - a conclusion which the members of this Tribunal of Commissioners have already reached in the context of the same expressions as used in the Supplementary Benefits Act 1976 - see our decision on Commissioner's File No CWSB/49/84. Moreover, the same conclusion was reached in Decision R(F)4/62 in the context of family allowances (the predecessor to child benefit) and in regard to the expression 'full-time instruction'.

14. (1) On the evidence and contentions before us, it is in our judgment quite clear that the claimant was not in fact receiving any education at all - still less full-time education - when on 15 April 1983 he instituted his claim for supplementary benefit.

(2) The real issue before us is as to whether or not, in the circumstances of the claimant's return to the school to sit, and his there sitting, his written CSE examinations on the 8 days in late April and early May 1983 for the periods which we have already specified (see paragraph 4(6) above), the period after his termination, at 25 March 1983, of what, it is common ground, was his receipt of full-time education was (as regards at any rate so much of it as fell after the commencement of the Summer term at the school on 12 April 1983 and on or after the inception of his claim for supplementary benefit on 15 April 1983) to be treated as a period of interruption of his receipt of full-time education within the meaning of regulation 6(1) of the Child Benefit (General) Regulations, of which interrruption, accordingly, no account fell to be taken. If that were so, of course, the referred question fell to be determined in the sense that at and after (in so far as material) 15 April 1983 the claimant was, for the purposes of section 2(1) of the CB Act, to be considered a person receiving 'full-time education, not being advanced education'.

(3) It was (in our view rightly) common ground before us that if the claimant did fall to be treated as so receiving full-time education, that education was not 'advanced'. And we reiterate that the school was at all material times a 'recognised educational establishment' within section 2(1)(b) of the CB Act.

(4) It was also (again, in our view rightly) common ground that for a date to be accepted as falling within a period of 'interruption' it must fall after an antecedent period of qualifying full-time education - which could be taken to be constituted by the period ending on 25 March 1983 - and be followed by a resumption of what constituted further qualifying full-time education. However, it was not contended before us that there was any legislative provision requiring the period, or any part thereof, over which the written examinations were held and attended by the claimant to be treated as full-time education if not such in fact.

15. (1) The substantive issue so isolated and narrowed was the subject of strenuous and closely reasoned arguments before us. But, with no disrespect to the advocates, that issue is in our judgment one which turns solely upon a due evaluation of all the circumstances of the case, in conjunction with the ordinary, everyday sense of 'full-time education'; the combination of which is to lead to a judgment representing the conclusion to be arrived at by a reasonable layman, properly instructed in the relevant law, upon the evidence in the case.

(2) In summary (but the wording here is our own), Mr. James put the adjudication officer's case thus: True it was that the claimant had

become a 'school-leaver' on 25 March 1983. But he had become so in circumstances in which it had been pre-arranged that he should return to the school to sit his written examinations. And (as was not in dispute) the local education authority had paid, or would be paying, the examination fees. Sitting written examinations was an ordinary feature of school life, were they internal examinations or external examinations for which the school staff acted administratively (eg in invigilation) as agents of the examining board. In a perfectly normal course of education the taking at a school by its pupils of external examinations was no more than a normal incident within the compass of what was on any view full-time qualifying education. Returning to the premises of the school antecedently attended in that behalf, the claimant was completing the educational course for which he had been antecedently prepared, and part of the examination marks would be for work which he had already done prior to the written examination. Over the period of the written examinations he was, in effect, re-absorbed into the school system and had resumed qualifying full-time education. He might not, on each of the examination days, have been actually sitting examinations for the whole of the normal school day - but no more would pupils at the school who had continued full-time education there after the Easter holiday and into the Summer term as before and who had been taking the same examinations. In proper contemplation, taking examinations was, in the claimant's case, the culmination of his education at the school and fell properly to be regarded as an integral part of that education - albeit a part separated from the rest by an interruption.

(3) Mr. James further relied in support of his argument upon the decision on Commissioner's File No CF/8/83. That too was a determination on appeal of a question originally referred to an insurance officer under regulation 5 of the Supplementary Benefit (Determination of Questions) Regulations and in the context of regulation 11 of the Supplementary Benefit (Conditions of Entitlement) Regulations. In that case a claimant had, up to 10 April 1983, received full-time education at a qualifying school, had attended that school on a day to day basis, did not go back to school when the school opened on 29 April 1981 for its Summer term, but did in fact return to sit a single written examination there on a single date in May 1981 (such examination being so conducted under the aegis of an external examination board). And the learned then Chief Commissioner held that the intervening period between the end of the Easter term and the claimant's attendance for examination constituted an interruption in his full-time education within the meaning of regulation 6(1) of the Child Benefit (General) Regulations 1976. In that case also the written examination formed only a portion - and there only a small proportion - of the total marks by which the examination result would be arrived at. However, on close consideration of the facts in that case we are satisfied that it is clearly distinguishable from the present case. To begin with, it was, at the times with which the appeal was concerned, a qualifying requirement for sitting the relevant examination that the candidate should be in full-time attendance at the school at the time the examination was taken. Next (and whether or not on that account) it was also the fact that the claimant's name was never removed from the school register until a few days after the examination date. Nor does there appear in that case to have been before

the learned Chief Commissioner evidence (as there has been in the present case) as to the claimant's status at the time of his attendance for the examination being vis-a-vis the school, its headmaster, its disciplinary procedures, or otherwise, different in any respect from that of its pupils pursuing a perfectly normal course of full-time education over the school terms as they ensued. There was, moreover, evidence, which the learned Chief Commissioner accepted, that - as well over the period of the Summer term that elapsed prior to the examination date as during the Easter holidays themselves - the claimant's absence from attendance, although he was a registered pupil, was sanctioned by the school authority. In contrast, whilst we doubt not that had Mr. Potter's sanction been at all material for the claimant's authorised absence throughout the Summer term dates which elapsed before the examinations it would in the circumstancss have been forthcoming, the truth of the matter is that any such sanction was quite irrelevant. For the claimant, having been de-registered at 25 March 1983, was free to lead his own life in his own way independently of any sanction which Mr. Potter could grant or impose on him. If the claimant chose not to attend the examinations no disciplinary action could follow.

(4) It is, in our judgment, a clear instance of 'circumstances alter cases'; and we do not regard CF/8/83 as affording us the authority which Mr. James wished us to draw from it.

16. Mr. Allen, for his part, set much store upon the change of status vis-a-vis the school, and the educational system, which befell the claimant when he became a 'school-leaver' - and with which he was still cloaked when he returned to the school premises to sit the written examinations and when he there sat them. Relying upon provisions of the Education Act 1944 ("the 1944 Act"), of the School Attendance Order Regulations 1944 [SR & O 1944 No 1470] and of the Pupils' Registration Regulations 1956 [SI 1956 No 357], he took us painstakingly through the formalities required for the due implementation of the 1944 Act's provisions for compulsory school (or other acceptable) education for pupils below a prescribed school leaving age; and in particular the procedures for the registration of all pupils (whether below or above school leaving age) on the school register, and for their de-registration only in accordance with prescribed procedures and in prescribed circumstances. The CB Act was, he contended, in its material provisions as to receipt of full-time education by attendance at a recognised establishment using the term 'full-time education' as a term of art, bearing the special sense which it bore in the 1944 Act. If a claimant was on a school register in conformity with the provisions of that Act and regulations thereunder, he would properly be regarded as in full-time education. But if and so long as he was not so registered, he could not properly be so regarded. And since it was common ground that the claimant had been de-registered at 25 March 1983 and had never been re-registered, it was as simple as that. Should that argument not prevail, then as an alternative submission Mr. Allen pointed to a number of factors distinguishing the circumstances in which the claimant came again upon the school premises for the purpose of taking the written examinations which in his contention effectively distinguished the position of the claimant at that time from that of a person in full-time education. First, the claimant was never there 'full-time' in the sense of attending a full ordinary school day in a normal course. Whether he attended at all, and if so for how long (if at all) outside the examination times, was primarily up to him - though dependent also upon the headmaster's consent. Secondly, he did not receive any tuition whilst there, and the taking of examinations was an exercise concerned with the demonstration (or otherwise) of the knowledge acquired by antecedent education and was not

itself education. Thirdly, the claimant was not on the examination dates coming and remaining upon the school premises in the capacity of a pupil of the school - he was there simply as an invited member of the public, as would also be anyone sitting the examination there under arrangements mutually agreed between the examining body and the school for the latter's temporary function as an examination centre for the external examinations. The headmaster had over the claimant at those times none of the authority enjoyed by a headmaster over the pupils at his school. In particular, he had no disciplinary powers over the claimant. Had the claimant misbehaved, the headmaster no doubt had duties to the examining body as to the steps which he might adopt. But - in contradistinction to the normal authority held and exercisable in relation to a school pupil whilst on school premises - the headmaster's only recourse, had the claimant so behaved himself as to merit the headmaster's intervention, would (give or take wholly informal approaches in the matter) have been to call the police and require the removal of the claimant. In correct analysis the claimant was a young adult who as a member of the public was being admitted to the school premises for a legitimate purpose which was not that of his full-time education.

17. (1) We do not accept that the presence or absence of the claimant's name upon or from the school register was conclusive. We regard the circumstance that a claimant's name is upon a school register as a powerful factor bearing upon the issue; and the circumstance that it is not so to be found as a significant factor bearing in the contrary direction. But there may from time to time be circumstances - perhaps delays, errors or omissions in a clerical context - such as to make the register no sure guide.

(2) As we have already stated (see paragraph 13 above) the question whether a person is receiving full-time education (within the meaning of that term as used in the CB Act) is a question of fact. The correct approach is to look to the substance of the situation overall - and beyond the form alone. We re-affirm what we said in paragraph 12(3) of our decision on Commissioner's File No CWSB/49/84 as to the undesirability - indeed impropriety - of an adjudicator's attempting to prescribe what the legislature has refrained from prescribing or has omitted to prescribe. Accordingly, we make no attempt to define exhaustively the circumstances which might properly be taken into account - or the weightings to be attributed to any particular factor.

18. We would add that in our view the complicated provisions for determining whether a person is receiving full-time education and relevant education, when in fact he is not, are highly artificial. We suggest for consideration whether an entirely different approach to the exclusion of such persons from supplementary benefit (which appears to be the object of the provisions) might be evolved - an approach which is both intelligible to persons affected and simple of application by the adjudicating authorities.

19. (1) However, in the absence of some relevant and special circumstance contra-indicating, we do not regard the attendance at a school at which he has been in antecedent receipt of full-time education by a former pupil who has left it as a 'school-leaver' as a return to full-time education, even where such later attendance is by pre-arrangement and in order to sit an examination. And it follows that the interim period does not constitute an 'interruption' within the meaning of regulation 6(1) of the Child Benefit (General) Regulations - unless, again, there are relevant and special circumstances contra-indicating. And we do

not find in this case any circumstances such as to constitute grounds for taking it out of the generality.

(2) It is our view that if the legislature wishes to achieve the result contended for by Mr. James it can readily so do by well-established techniques as to 'deeming' or 'treating' as so that which in reality is not so. To date, however, the legislature has not so done - and in our judgment the reality in the instant case is that the claimant was making temporary visits to the school premises for a specific and limited purpose which did not in ordinary contemplation give rise to any resumption of 'full-time education'.

20. We turn now to the matters of procedure and jurisdiction to which we have briefly referred in paragraph 3 above. As appears from what we have said in paragraphs 9 and 10 above, our direct concern in this appeal is solely with the 'referred question'. Our decision thereon will, of course, be binding upon the tribunal which determines the claimant's (adjourned) supplementary benefit appeal. Our decision may also (albeit indirectly) lead to the review and/or revision of a decision or decisions pursuant to which child benefit was paid in respect of - but not, of course, to - the claimant; but that is no part of our concern.

21. The particular matter which conerned us at the inception of the oral hearing of the present appeal was whether or not it was proper for us to receive and entertain the additional evidence of Mr. Potter which Mr. Allen wished to tender on the claimant's behalf. That stemmed from the circumstance that the 'referred question' had arisen in the context of a claim for supplementary benefit and was referred to an insurance officer for determination in exercise of jurisdiction conferred on him in that behalf by the supplementary benefit legislation - regulation 5 of the Supplementary Benefit (Determination of Questions) Regulations. It is therefore a matter which, although coming before us by way of an appeal from an insurance officer's decision, is in one sense a question falling to be determined under the Supplementary Benefits Act 1976 as amended. And, of course, an appeal to a Commissioner or to a Tribunal of Commissioners in the main stream of that jurisdiction lies only with leave and upon a question of law; and further evidence is not admissible upon the hearing of such an appeal. However, paragraph (5) of such regulation 5 clearly contemplated that a 'referred question' should be subject to the whole of the machinery of adjudication provided in and under Part III of the Social Security Act 1975; and an appeal to a Commissioner (whether dealt with by a single Commissioner or by a Tribunal of Commissioners) under that jurisdiction is what is technically styled an appeal 'by way of rehearing'. In such an appeal further evidence is admissible. On that account we concluded that we could properly receive and entertain Mr. Potter's evidence. In so concluding, however, we had to take into consideration the fact that regulations 2 to 5A of the Supplementary Benefit (Determination of Questions) Regulations have been revoked and replaced by (materially different) provisions of the Social Security (Adjudication) Regulations 1984 [SI 1984 No 451]. The provisions of the erstwhile regulation 5 in respect of what were 'referred questions' are replaced by a new procedure. It is provided that such questions shall be determined by the adjudication officer charged with adjudicating upon the supplementary benefit claim in which the relevant question arises, albeit that he is also given power to give an initial decision upon the adverse assumption. The transitional provisions in regulation 92 of the Adjudication Regulations broadly provide for the continuation of pending matters in accordance with the new code as if begun thereunder - and not as if begun under the antecedent legislation. We are, however,

satisfied that it is implicit in the transitional provisions that any outstanding appeal from a tribunal's decision which, in turn, was given on an appeal from an insurance officer's decision given under the adjudication procedures of the Social Security Act 1975, must retain that character notwithstanding the changes wrought by the Adjudication Regulations. And so, as we have said, we admitted Mr. Potter's evidence.

22. Whilst it is not a matter which we have here to decide, we should add that it does appear to us that in cases begun under the new procedure the questions which formerly constituted 'referred questions' will lie for determination exclusively under the Supplementary Benefits Act 1976 as amended - and that, in consequence, an appeal to a Commissioner upon such a question may be brought only with leave and upon a question of law, and further evidence will not be admissible at that level.

23. We should for completeness add that whilst we were told at the hearing of this appeal, and have no reason to doubt, that the question arising under section 2(1)(b) of the CB Act is, in the context of adjudication of claims for that benefit, a question of continuing and important relevance (and one upon which our present decision may be regarded as of some practical force as authority), recent legislation in the separate context of supplementary benefit and 'relevant education' renders obsolescent in that latter context our conclusions upon the referred question in this case.

24. Our decision is as indicated in paragraph 2(3) above.

(Signed) J.S. Watson
Commissioner

(Signed) I. Edwards-Jones
Commissioner

(Signed) J. Mitchell
Commissioner

Date: 18 March 1985