

ERB/RC

COMMISSIONERS DECISION
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CHILD BENEFIT ACT 1975

CLAIM FOR CHILD/SUPPLEMENTARY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that for the purposes of regulation 10 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 the claimant should be regarded, in so far as the period 29 September 1982 to 5 October 1982 (both dates included) is concerned, as being a person 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, but should not be so regarded in so far as the period 6 October 1982 to 14 November 1982 (both dates included) is concerned.

2. The mother of the claimant, who was born on 15 November 1963, was in receipt of child benefit in respect of her. On 20 September 1982 the claimant registered for employment and claimed supplementary benefit. When interviewed on 5 October 1982 she stated that "I am taking a part-time course at W... Technical College Law and Sociology 'A' Levels, 18 hours per week, private study time 8 hours per week - I am willing to give up the course should I get work." On 19 October 1982 she stated that "I started at the college on the 29/9/82 as a full-time student, however on the 6/10/82, I became a part-time student, doing 15 hours per week" and on 10 November 1982 she stated that "I attend college for 6 hours of law, and 7½ hours of Sociology, total 13½ hours, and do approximately 4-5 hours private study per week." Her claim to supplementary benefit was disallowed. She appealed to the supplementary benefits appeal tribunal. On 18 January 1983 the child benefit insurance officer gave the following decision: "For the purposes of regulation 10 of the Supplementary Benefit (Condition of Entitlement) Regulations 1981 my decision is as follows:- From and including 4 October 1982 [the claimant] is a person 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" and on 7 February 1983 the supplementary benefits appeal tribunal upheld the supplementary benefit officer's decision disallowing her claim to benefit. The claimant's appeal from the child benefit insurance officer's decision to the local tribunal, which she attended and at which she was represented by her solicitor, Mr. R.J. Panting, was disallowed. Her solicitor then appealed on her behalf to the Commissioner, having been given leave to do so by the chairman of the tribunal. The appeal was heard by me on 28 November 1983. The claimant attended and was represented by Miss H. Miffen of counsel, instructed by Mr. Panting. Mr. D.M. James, a member of the solicitor's

office of the Department of Health and Social Security, appeared for the insurance officer.

3. It was indicated at the hearing that there was no dispute that as from 6 October 1982 the claimant attended at the college for 15 hours a week (9 hours in respect of her sociology studies and 6 hours in respect of her law studies) made up of 2 morning attendances of 3 hours on Tuesday and Thursday and 3 afternoon attendances of 3 hours on Monday, Thursday and Friday. As from 10 November 1982 she was only required to attend for $1\frac{1}{2}$ hours on a Friday. In addition, she was required to write one essay during the period with which I am concerned, namely up to her 19th birthday on 15 November 1982. She also voluntarily undertook 4 to 5 hours private study each week, of which 4 hours would be undertaken on a Sunday and the remainder after any lecture on a subject which she had found difficult. The local authority with which she was involved regarded her as being engaged on a course involving part-time day attendance. The college authorities treated the course she followed from 6 October 1982 as a part-time course, at least in so far as the fees payable were concerned. (In fact, the claimant was not required to pay the full fee for a part-time course as she was entitled to the reduction given to those who were unemployed). The local tribunal had found that she had initially enrolled for a full-time course, which involved attendance at the college for 18 hours a week and concluded, in relation to the reduction of her hours of attendance from 18 to 15 and then to $13\frac{1}{2}$, that "It was the hours of attendance which were changed and not the course itself." However, in her evidence before me the claimant asserted that the reduction in the hours from 18 to 15 had involved an adjustment in the scope of the course and that the further reduction of $1\frac{1}{2}$ hours was a concession granted to her. I accept these assertions.

4. I received most helpful submissions from Miss Miffen and Mr. James as to whether the claimant should or should not be regarded, for the purposes of regulation 10, as having been a person receiving full-time education by attendance at a recognised educational establishment during the period 6 October 1982 to 14 November 1982. Miss Miffen submitted that (a) the phrase "full-time instruction" should be given "its natural and ordinary meaning" (see paragraph 5 of Decision R(F) 4/62); (b) in view of the guidance provided by Decision R(SB) 26/82 and by the Decision of the Northern Ireland Commissioner in Appeal No. 2/83 (CB), the time spent on private study, whether compulsory or voluntary, should be ignored when determining whether the claimant was receiving full-time education; and that (c) in view of the fact that "a part-time course" for the purposes of the Conditions of Entitlement Regulations 1981 is defined as one which does not exceed 21 hours a week, it was appropriate to regard the claimant as undergoing part-time and not full-time education as from 6 October 1982. Mr. James pointed out that what I had to determine was whether the claimant was a person "receiving full-time education, not being advanced education, by attendance at a recognised educational establishment". There is no dispute, and I accept, that the college she attended was one and that the education she received was not advanced education. He asserted that while some physical attendance was essential, what had to be determined was not whether the attendance was full-time but whether the education was full-time and that in determining whether it was the time taken in private study, whether compulsory or voluntary, should be taken into account in addition to the actual hours of attendance at the establishment concerned.

5. I have come to the conclusion that the approach which Mr. James has

invited me to adopt is well founded. It is true that it is laid down in Decision R(SB) 26/82 that in calculating the hours involved in attending a course of education for the purposes of regulation 7(2) of the Conditions of Entitlement Regulations 1980 (cf Regulation 7(2) of the 1981 and the 1982 Regulations) the time spent on private study, whether compulsory or voluntary, should be ignored. This was laid down in relation to the interpretation of the phrase "attending a course of education" (my underlining) in regulation 7(2), whereas I am concerned with the interpretation of the phrase "receiving full-time education by attendance at" - in section 2(1)(b) of the Child Benefit Act 1975. I appreciate that the learned Commissioner for Northern Ireland thought fit to apply what was laid down in relation to the interpretation of "attending a course at" to the interpretation of "receiving full-time education by attendance at" in so far as the ignoring of time spent on private study was concerned. With respect, I do not consider that it is appropriate to do so. I consider that when determining whether a claimant is to be regarded as receiving full-time education by attendance at a recognised educational establishment, one has to be satisfied that he attends at such an establishment. If he does, it is then necessary to determine whether the education he receives by such an attendance is full-time education, not being advanced education. In determining whether it is full-time education regard should be had, in particular, to (a) the time he devotes to this educational activity and (b) whether the studies undertaken by him are regarded by the educational establishment as being full-time or part-time. When considering (a), I am satisfied that it is necessary to take into account (i) the hours spent receiving instruction at the establishment; and (ii) the hours spent on private study, whether at the establishment or elsewhere, for example at home. I am also satisfied that in considering (i) and (ii), one should have regard to the time spent voluntarily, for example on home studies, as well as the time spent compulsorily, for example on compulsory attendance at the establishment to receive instruction, or the carrying out of work set by the instructors, for example the writing of essays. I do not consider that it would be right to attempt to lay down a firm dividing line in terms of hours. However, I consider that it might be of help if I suggested some general guidelines. It would appear to me that, in the absence of abnormal features, if the time devoted to the relevant educational activity was less than 15 hours a week then the claimant concerned should not be regarded as being in receipt of full-time education and that if it amounted to 21 hours a week, or more, he should be regarded as being in receipt of full-time education. When the hours concerned are in the range of 15 to 21, then I consider that factors such as the views of the establishment concerned should be given considerable weight in determining whether the education is full-time or part-time. In many cases it might well be thought fit to attach greater significance to the hours of actual attendance at the establishment concerned and less to the hours spent in voluntary studies at home. In any event, regard should only be had to those hours spent in voluntary studies at home which can properly be regarded as appropriate in relation to the educational activities undertaken by the claimant. I readily accept that this was so as far as the present claimant is concerned.

6. Mr. James described the present case as being "border line". I agree with him. I am satisfied that the hours spent by the claimant in pursuing the relevant educational activity were within the 15 to 21 hours range, albeit closer to 21 hours than 15 hours, particularly before 10 November 1982. I accept that the educational activities pursued by her from and

including 6 October 1982 were regarded by the establishment concerned and by the local authority as being part-time. In all the circumstances, I have come to the conclusion that she was not receiving full-time education, not being advanced education, by attendance at a recognised educational establishment during the period 6 October 1982 to 14 November 1982 (both dates included) for the purposes of section 2(1)(b) of the Child Benefit Act 1975. Accordingly, my decision is that set out in paragraph 1.

7. The claimant's appeal is allowed save in so far as the contrary is indicated.

(Signed) E. Roderic Bowen
Commissioner
Date: 30 December 1983

Commissioner's File: C.F.38/83
C.I.O. File: I.O. 21/CHB/83
C.B.B. File: CBC Washington