

SUPPLEMENTARY BENEFIT

Relevant Education—meaning of “person” for the purposes of regulation 11(c) and (d) of the Conditions of Entitlement Regulations.

The claimant was living away from and estranged from his parents and in the care of a local authority. He was refused supplementary benefit on the grounds that he was treated as receiving relevant education and did not satisfy any of the conditions of regulation 11 of the Conditions of Entitlement Regulations under which persons so treated are entitled to benefit. On appeal the tribunal concluded that the word ‘person’ in regulation 11(d) of those regulations means

an individual and not a local authority or similar organisation and decided the application of that regulation by reference only to the arrangements between the claimant and his natural parents. The appeal was allowed. The adjudication officer appealed to a Social Security Commissioner.

Held that:

the word "person" in regulation 11(c) and (d) of the Supplementary Benefit (Conditions of Entitlement) Regulations refers only to a *natural* person and not a corporate or unincorporate body such as a local authority (paragraph 8).

The appeal was dismissed.

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 5 July 1985 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the adjudication officer, brought with my leave, against the decision of the social security appeal tribunal of 5 July 1985.

3. On 30 May 1985 the adjudication officer decided that the claimant was not entitled to supplementary benefit because he fell to be treated as receiving "relevant" education and did not satisfy any of the conditions whereby he might escape disqualification by reason of that status. On 11 June 1985 the claimant appealed to the tribunal, who in the event allowed the appeal. The tribunal made the following findings of fact:—

"1. Appellant agreed facts at paras 1 and 2 of AT2.

2. He was in full time relevant education until 12/5/85.

3. The terminal date within the regulation is the first Monday in September 1985.

4. Appellant is estranged from his parents and there is no other person acting in their place."

The tribunal gave as the reasons for their decision the following:—

"Reg 11 of the Conditions of Entitlement considered.

The reference in 11(c) and (d) is to a *person* and not to any body or other authority (e.g. local authority). Although there is a voluntary care order in respect of the appellant, the tribunal have interpreted 11(c) and (d) strictly i.e. *person* means an individual not a local authority, or similar organisation."

4. Section 6 of the Supplementary Benefits Act 1976 provides, so far as material, as follows:—

"(1) ...

(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."

It is not in dispute in this case that the claimant was to be treated as receiving "relevant education" up to and including 2 September 1985 by virtue of the provisions of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [SI 1981 No 1526]. Accordingly, the question at issue is whether or not the claimant can escape the disqualifying provisions

of section 6(2) by resort to any prescribed circumstances. The relevant regulation on which he relies is regulation 11 of the Conditions of Entitlement Regulations, which, so far as is relevant to the present issue, provides as follows:—

“11. A claimant who is treated as receiving relevant education whose resources are insufficient to meet his requirements shall be entitled to supplementary benefit if he is a person to whom one or more of the following paragraphs apply:—

- (a) ...
- (b) ...
- (c) he has no parent and there is no person acting in the place of his parent;
- (d) he is living away from and is estranged from his parents and any person acting in the place of his parents
- (e) ...”

5. It is not in dispute that the claimant has parents, and accordingly on any footing regulation 11(c) can have no application. It is accepted that the claimant was at the relevant time “living away from” his parents, and the tribunal made a specific finding that he was *estranged* from them.

6. But, in order to satisfy the provisions of regulation 11(d) the claimant also had to establish that he was living away from and was estranged from “any person acting in the place of his parents”. Now, in the present case, the claimant was at the relevant time the subject of a voluntary care order. In other words, the local authority stood *in loco parentis* in relation to him. However, the tribunal interpreted the word “person” where it appears in regulation 11(d) (and for that matter in regulation 11(c)) as referring to an individual (i.e. a natural person), and not to a body corporate or unincorporate, such as a local authority.

7. Under the Interpretation Act 1978, Schedule 1 the word “person” is defined as including “a body of persons corporate or unincorporate”. And section 5 of the Act provides as follows:—

“In any Act, *unless the contrary intention appears* [my italicising], words and expressions listed in Schedule 1 to this Act are to be construed according to that Schedule.”

Section 23(1) stipulates that:

“The provisions of this Act. . . apply, so far as applicable and unless the contrary intention appears, to subordinate legislation made after the commencement of this Act. . .”,

and section 21 defines “subordinate legislation” as meaning “Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act.”

Accordingly, *prima facie* the word “person”, where it appears in the regulation, is to be construed as including a body corporate or unincorporate, which manifestly takes in a local authority.

8. It follows that the question that has to be determined is whether the word “person” in regulation 11(d), or, for that matter, in regulation 11(c), is to have its *prima facie* meaning, so as to include a local authority or whether the context dictates that it shall be more narrowly construed as meaning simply an individual or natural person, with the necessary consequence that a local authority is excluded. Now, a body of persons, corporate or unincorporate, is a metaphysical concept; it cannot be seen or touched. It has no physical identity. In contrast a natural person i.e., a

human being, *has* a physical existence. He must be geographically located somewhere and is able to establish human relationships, cordial or antagonistic, as the case may be, with other natural persons. In my judgment, it would be wholly artificial to attribute to a body corporate or unincorporate any physical presence or any ability to respond to or act as the focus of human emotion. Accordingly, where regulation 11(d) speaks of the claimant "living away from and being estranged from his parents" and also "any person acting in the place of his parents" the legislature had in mind a natural person, and not a body corporate or unincorporate. In the present case, there is no sensible way in which the claimant could be regarded as living away from or, for that matter, with the local authority. The local authority, being a metaphysical concept, cannot live anywhere. Nor is it a proper use of language to regard a local authority as being capable of being the object or instrument of estrangement, with its connotation of emotional disharmony. Accordingly, the tribunal were right, in my judgment, to confine the word person to an individual. What the tribunal had to consider, then, was whether the claimant was living away from and estranged from his parents, *simpliciter*. As explained above, it was accepted that the claimant was living away from his parents; the only thing that remained for the tribunal was to determine whether he was also estranged from them, and they made a positive finding that he was.

9. It follows from this that the tribunal did not err in point of law, and I therefore dismiss this appeal.

(Signed) D. G. Rice
Commissioner
