Bulletin 7
164 [SHORT]

SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Commissioner's File No.: CJSA/1457/1999

Starred Decision No: 45/01

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Any **comments** by interested organisations or individuals on the suitability of this decision for reporting should be sent to:

Mr Damien Abbott,
Office of the Social Security and Child Support Commissioners,
5th Floor, Newspaper House, 8-16 Great New Street, London EC4A 3BN.

so as to arrive by 17th July 2001

Comments on Northern Ireland Commissioners' decisions will be forwarded to the Northern Ireland Chief Commissioner.

Commissioners' case no: CJSA 1457 1999

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I allow the appeal.

2 The appellant is appealing, with leave of the chairman, against the decision of the Brighton appeal tribunal on 30 June 1997. The decision of the tribunal was that the appellant was not entitled to jobseeker's allowance from and including 5 December 1996.

3 For the reasons below, the decision of the tribunal was erroneous in law. I therefore set it aside. I refer the case to a freshly constituted tribunal to determine the appeal in accordance with this decision.

Background to the appeal

4 The appellant was a student at Brighton University (the University). He claimed jobseeker's allowance on 5 December 1996 and signed on at the Jobcentre on 9 January 1997, stating that he had been a student. He was then 41. He had been attending a full-time course provided by the University relating to the examinations of the Chartered Institute of Certified Accountants (the Institute). He had failed some examinations of the Institute and was intending to resit the examinations the following November. He stopped attending the University on 13 December 1996. An adjudication officer decided in the light of this information that the appellant was still a student and therefore not entitled to jobseeker's allowance. That decision was based on regulation 15 of the Jobseeker's Allowance Regulations 1996. It was confirmed by the tribunal.

Grounds of appeal

5 The appellant appealed by reference to the modular structure of the qualification he was seeking. He set out in detail the discussion that took place at the tribunal and the events that both preceded it and followed it. He drew attention to the then recent decision of the Court of Appeal in *Secretary of State v Webber* (1 July 1997, now in the papers). The appellant also stated that he made a later claim for jobseeker's allowance in February 1997 with effect from 14 December 1996, which was also refused, and that he started full time work on 25 March 1997. He also stated in his appeal form, received on 21 February 1997, that he was not returning to the University.

6 The submission of the Secretary of State's representative was not made until July 1999. It does not support the appeal. That submission drew attention to the further decision of the Court of Appeal in *O'Connor v Chief Adjudication Officer* (3 March 1999, also now in the papers).

The regulations

7 The relevant regulation is regulation 15 of the Jobseeker's Allowance Regulations 1996, and this provides:

"A person shall not be regarded as available for employment in the following circumstances-

(a) if he is a full-time student during the period of study ..."

The definitions are in regulation 1 and, as relevant to the appellant, are:

"full-time student" means a person ... who is -

(b) aged 19 or over but under pensionable age and -
(i) attending a full-time course of study which is not funded by the FEFC ...
(ii) undertaking a course of study which is funded in whole or in part by the FEFC if it involves more than 16 guided learning hours per week for the student, according to the number of guided learning hours per week for that student set out, in the case of a course funded by the FEFC for England, in his learning agreement signed on behalf of the establishment which is funded by the FEFC for the delivery of that course ...

[I omit the separate provisions for Scotland and Wales and for those under 19.]

"the FEFC" means the Further Education Council for England

The definition of "period of study" is in regulation 4 and is:
"the period beginning with the start of the course of study and ending with the last day of that 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, or any period of study undertaken by the student, in connection with the course which occurs before or after the period of the course shall be treated as part of the course".

8 The definition of "full time student" relevant in this case in somewhat different form to the forms of regulation 61 of the Income Support (General) Regulations 1987 (on which the decision of the Court of Appeal in *O'Connor* is based) but contains many of the same phrases as, and is clearly to be interpreted consistently with, the wording on which the Court of Appeal reached its decision in that case. I also now have the advantage of the subsequent decision of the Court of Appeal in Northern Ireland in *McComb v Department of Social Development*. This takes the analysis of these troublesome rules somewhat further in looking at courses that are modular or mixed-mode. In his judgment in *McComb*, Carswell LCJ stated for the court that:

"We agree with the contention that a modular course is not readily distinguishable from one avowedly designed as mixed-mode. A student may take a varying number of modules in each year, and the number which he takes in any given year determines whether he is classed under the Study Regulations as a full-time or part-time student. The critical matter, however, is whether he started out on a course of full-time study, even if he had the option of converting at a later stage to part-time by reducing the number of modules. It is therefore necessary for the tribunal to classify him as one or the other as at the commencement of his course .... Once it was determined that he had commenced a full-time course of study, then on the plain meaning of the regulations he is to be treated as attending "it", ie a full-time course of study, until the last day of the

course or such earlier date as he abandoned it or was dismissed from it .... The result is not one that conflicts with the Government's policy - indeed it is quite clear that the result was intended - so that one does not have to seek a different interpretation of the regulations in order to obtain some coherence of policy."

I do not consider the claimant's grounds of appeal are arguable in the light of that decision but I do have concerns about another aspect of the tribunal decision.

9 The facts of this case do not fit neatly into the analysis in *McComb* or indeed into the other cases considered by the Court of Appeal in England and Wales. Each of those cases is about attendance by a student at a course run by a University for a qualification issued by that University. In other words, the "course of study" consisted of both a course of examinations and a course of education or training for those examinations. Further, it is common form for universities in creating courses of study for academic qualifications to impose required periods of residence. The problem in cases like *O'Connor* arises because the University removes, for a time, the requirement of residence and the student status. But the student, to obtain the qualification, must resume the course of study and complete it. That is not what happened in this case, because the various aspects of a "course of study" have become separated. In this case, as already noted, the University was acting as the service provider of a *course of training* to assist the appellant pass a *course of examinations* set and marked by an entirely different and unconnected body, the Institute. There is the additional complication that part-way through the events covered in this appeal, the Institute decided to restructure its course of examinations, and as a result the University was forced to change its course of training as well.

10 Those considerations raise the issue of how "course of study" is to be interpreted in this case, and when the "last day" of the course occurred. Is the "course of study" the course of training (or education) or the course of examinations? The tribunal found that the course of study was full-time because that is what the course of training was, but had not ended because the appellant had not abandoned the course of examinations. In so doing, it conflated the course of training with the course of examinations. Thus, it found that the appellant did not abandon "the course". This is because he intended to complete the course of examinations. There is clear evidence, as he argues, that he did abandon the course of training. Further, the tribunal has not made any detailed attempt to establish what "the course" consisted of or when it ended (compare the detailed consideration given by the Commissioner in the decision quoted in *McComb*).

11 For the purpose of these regulations, I take the "course of study" to mean the course of training not the course of examinations, nor some sort of amalgam of both. I take that view for several reasons. There can only be one course of study. But, as is evidenced in this case, a course of training and the linked course of examinations may not be coterminous. They may start at different stages of training, and finish at different stages. In particular, they may have different last days. That was not possible in cases like *O'Connor*. Again, as evidenced in this case, it is possible to abandon, or be dismissed from, the course of training without abandoning or being dismissed from the course of examinations. Attempting to solve this by some form of amalgam of the course of training with the course of examinations would produce a "course" that could at the same time be both full-time and not full-time, which a student could both have abandoned, and yet not have abandoned, and which has ended but yet has not ended. That would create uncertainty.

Reading "course of study" as meaning "course of training" is more consistent with the regulations set out above, and in particular the full definition of "period of study".

12 The tribunal did not distinguish in this way between the course at the University and the course set by the Institute, and it therefore erred in law. I must accordingly set aside the decision and send it to a new tribunal. I am unable to take the decision that the tribunal should have taken, because there are not enough facts found in the case. The new tribunal should consider afresh how regulation 15 applies to the appellant in the light of this decision. It should ensure that it makes proper enquiries about when "the course of study", that is, the course of training at the University, ended or was abandoned, and in so doing should leave out of account the fact that the appellant could pursue the course of examinations at the Institute either at some other educational institute or by private study.

13 There is a suggestion in the papers that the course of study did end on 13 December 1996 when the appellant stated that it ended, and that any other course he then proposed to attend at the University was not part of that course, but was a different course of study (caused at least in part by the change of examination syllabus). That is a question of fact not so far investigated in this case, and I refer it to the new tribunal for investigation. There is at present only vague information in the papers about the course that the appellant was undertaking at the University. The appellant may wish to provide the new tribunal with specific further information about the course of study he was undertaking, including any relevant regulations issued by the University about the course, the formal course attendance requirements, any course literature or outlines of the course structure, and any other material dealing with the length of the period of study that the appellant was undertaking on that course of study at the University. If so, the appellant should ensure that the further evidence is sent to the appeal service in good time for the new hearing.

David Williams
Commissioner

22 March 2001

DW/ f