



DGR/SH/3

Commissioner's File: CSB/1010/1989

SUPPLEMENTARY BENEFITS ACT 1976

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 8 December 1988 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 8 December 1988. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant was present, but unrepresented, whilst the adjudication officer appeared by Miss P Bradshaw of the Chief Adjudication Officer's Office.

3. The question for determination by the tribunal was whether the claimant was entitled to supplementary benefit from 4 November 1983. This in turn depended upon whether from that date he was a student within regulation 8(1)(a) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [S.I. 1981 No.1526]. If he was a student within that regulation, there could be no question of entitlement to supplementary benefit (see regulation 5 of the Supplementary Benefits Act 1976). But whether the claimant was a student within the regulation depended upon whether he fell within the definition contained in regulation 2(1). That definition provided, as far as is relevant to this appeal, as follows:-

"'Student' means ... a person aged 19 or over but under pensionable age who is attending a course of full-

time education; and for the purposes of this definition the person shall be treated as attending a course of ... full-time education -

- (a) during the period for which his maintenance grant or award is, or if he were in receipt of such a grant or award would be, payable under
 - (i) Part 2 of Schedule 2 to the Education (Mandatory Awards) Regulations 1985; or
 - (ii) the Students' Allowances (Scotland) Regulations 1971; and
- (b) during the Christmas, Easter or any other vacation, other than the normal summer vacation as recognised in relation to him by the institution at which he is attending his course, falling within the period of that course."

4. The facts of this case are not in dispute. In September 1982 the claimant commenced at Brunel Technical College, Bristol a two year 'A' Level course. During the first year he studied pure mathematics, statistics, and computer science. The hours per week that he was required to attend at the college in respect of each of those subjects were respectively, 8, 4, and 7 making a total of 19 hours in all. In addition to those "contact hours" he was expected to spend some 13¹/₂ hours per week in private study. Accordingly, the total hours expected of him amounted to 32¹/₂ per week. However, in the second year the claimant dropped pure mathematics and substituted for it a "one year very intensive course" on English literature. The weekly "contact hours" were less for the second year, and amounted to 7 hours in respect of computer science, 4 hours in respect of statistics and 2¹/₂ hours in respect of English literature, making a total of 13¹/₂ hours. The claimant considered that, as these hours amounted to less than 21 hours, - incidentally, the number of hours of private study had conveniently been disregarded -, he was only engaged in a part-time course, and therefore fell outside the definition of a student contained in regulation 2(1). The significance of 21 hours a week is that a part-time course of education was defined in regulation 7(4)(a) of the Conditions of Entitlement Regulations as meaning "a course in the pursuit of which the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of a course, does not exceed 21 hours a week, so however that in calculating the time spent in pursuit of the course no account shall be taken of time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the educational establishment or place of instruction or training".

5. It is to be noted that regulation 7(4)(a) excluded "unsupervised study". However, unsupervised study must not be

confused with study done in the absence of the physical presence of a supervisor. Study can perfectly well be supervised if work is set by a supervisor and is to be done privately by the student in his own time. Most University degree courses proceed on this basis. The "contact hours" will be few, but the number of hours spent in private study will be considerable. However, that study, because it is done in private, does not become unsupervised. Accordingly, it is not surprising to find that it has been held that the starting point in determining whether or not a claimant is engaged in a full-time, as distinct from a part-time, course is the opinion of the college at which the course is undertaken. In Decision R(SB) 41/83 at paragraph 12 the Commissioner stated as follows:-

Whether or not a person is a student attending a course of full-time education is a question of fact for determination by the tribunal having regard to the circumstances in each particular case. In so doing, the tribunal ought to take into account the description of the course given by the education authorities (i.e. the university or college) and the examining bodies. Such evidence is not conclusive (see paragraph 8 of the unreported Decision CSB/15/82) but in my view any other evidence adduced in rebuttal should be weighty in content. All education authorities or examining bodies prescribe the period within which a course of education is to be completed. Their assessment is based upon the amount of time (whether compulsory or voluntary) required to achieve the standard demanded. Part-time students are accordingly given such extensions as are deemed to be appropriate. Therefore, the normal period prescribed for completion of a course is a clear indication as to whether or not the student is attending a course of full-time education."

6. In the present, case the Brunel Technical College expressed the view that the claimant was at the material time engaged on a part-time course. In their letter dated 16 January 1987 they wrote as follows:-

"Course Fees for GCE A-Levels 1983/1984

With the County of Avon a full-time A-Level course is defined as one having in excess of 15 hours per week tuition per academic year. The fee for such a full-time course in 1983/84 was £294.00.

Course of 15 hours tuition per week or less are classified as part-time. During 1983/84 the fee for a course requiring between 8 to 12 hours tuition per week for the academic year was £88.20. Unemployed persons could claim a 75% reduction in part-time fees which reduced the £88.20 to £22.05."

In a later letter dated 30 September 1988, concerned with the claimant specifically, the college wrote as follows:-

".....

I am pleased to confirm that [the claimant] did indeed attend Brunel Technical College from September 1982 until the end of term 1984. During his last year he followed an Advance Level course for Computer Science (7 hours), Statistics (4 hours) and English literature (2¹/₂ hours per week). The total fee for his 13¹/₂ per week tuition was £119.80 but as [the claimant] was registered unemployed he paid only 25% of this fee i.e. £29.65. His course was regarded as part-time.

....."

7. Now although the college categorically stated that the course on which the claimant was engaged was a part-time one, it is clear from their two letters that the purpose of the definition being adopted by them was to determine the fees payable. Moreover, it is not surprising to see that in this context the sole criterion was the number of "contact hours". Clearly, the cost to the college was directly related to the hours of teaching provided, and was not affected by the hours of private study carried out by each student. It was because of the possibility, which has arisen in this case, of the college concerned adopting a yardstick, which was not directed to the totality of hours spent in supervised study, that caused the Commissioner in R(SB) 41/83 to point out that the evidence of the educational authorities was not necessarily conclusive.

8. The tribunal, who in the event upheld the adjudication officer and dismissed the appeal, correctly identified the criterion on which the college relied for its classification of the course and considered that in the circumstances they were not bound by the opinion of the college, but were under a duty to form their own view. In the course of the very elaborate reasons given by them for their decision they said as follows:-

"In the present case, the college has described the course as part-time, but the reality seems to be that the claimant was engaged on a combination of courses in preparation for 3 'A' Levels. The number of hours given by the college relate to "contact hours" and do not take into account the fact that part of the course was pursued by means of private study. They accept the submission of the adjudication officer that the fact that the appellant changed from one 'A' Level subject (mathematics, which involved an attendance of 8 hours) to another 'A' Level course (English literature) which only required an attendance of 2¹/₂ hours should not necessarily be taken as affecting the overall description of the course on which he was engaged. We think that the fact that the college was concerned only with the number of hours of attendance at college in reaching its determination as to whether the course was to be regarded as full-time or part-time, and that this led it to make different statements about the claimant's status in the academic year 1983/83 and that for the academic year 1983/84 does entitle us to form our own view. The question is

whether there is sufficient evidence 'weighty in content' (to use the words of R(SB) 41/83, paragraph 12) as to require us to treat the course as being full-time.

We accept that the relevant question is whether the course was full-time, and (albeit by a rather narrow balance) have come to the conclusion that the claimant in this case was following courses which taken in their totality ought properly to be regarded as a full-time set of courses; See the Commissioner's decision 3 August 1987, paragraph 8."

9. I see nothing wrong with the tribunal's decision. Although the number of "contact hours" was reduced during the second year of the course, the tribunal took the view that the total number of hours, i.e. inclusive of private study, was still sufficient to render the course full-time. Indeed, I should have thought it very surprising if after attending lectures of 13¹/₂ hours per week, the claimant was not expected to spend more than an equivalent time in private study. In the case of English literature, I would imagine that very many hours would be expended in reading a variety of different literary works. But in any event, it was a matter of fact which fell entirely within the province of the tribunal. They had to make a judgment as to whether or not the claimant was engaged in a full-time course or a part-time course. They opted for the former alternative, and on the evidence they were entitled to reach that conclusion. I see no grounds for my interfering with their decision, and accordingly have no hesitation in dismissing this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 3 May 1990