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Absent from work because of customary holiday -
school secretary - not disentitled by virtue of
Reg 9(1)(a) CoE Regs.

RAS/1/LS

Commissioner's File: CSB/0180/1986

C A O File: AO 2043/SB/86

Region: South Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Wendy Roberta Redfern Williams (Mrs)

Social Security Appeal Tribunal: Swindon

Case No: 027/14

1. My decision is that
 - (a) the decision of the social security appeal tribunal dated 18 July 1985 is erroneous in point of law and I set it aside;
 - (b) the claimant is not disentitled to supplementary allowance by reason of regulation 9(1)(a) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981;
 - (c) subject to paragraph 4 below, I remit for rehearing by a differently constituted tribunal the question whether the claimant is otherwise entitled to a supplementary allowance and the amount pursuant to her claim of 23 March 1985.

2. The claimant is a single parent with two dependant children. She has been employed as a school secretary since 1981. As appears from the letter from the school dated 2 May 1985 she worked 32½ hours a week during term time but did not work and was not paid during school holidays. Nor were contributions paid for the holiday periods. She did not get any "retaining" fee but returned to her employment after each period of school holidays. According to the letter dated 14 August 1985 from her representatives, the National Council for One Parent Families, the claimant had received supplementary allowance during the weeks of each school holiday until and including the Christmas holiday in December 1984. She next claimed benefit on 23 March 1985 for the Easter holiday commencing on 29 March 1985 but the adjudication officer refused benefit apparently on the ground that the claimant's absence from remunerative full-time work during the school holidays was by reason of a recognised or customary holiday: regulation 9(1)(a) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981. The claimant appealed. Her appeal was disallowed. The reasons given by the tribunal for their decision were

"Dealing first with Regulation 9(1)(a)(2) we hold that during the 1985 Easter vacation [the claimant] was absent from work by reason of a customary or recognised holiday. It is settled in unemployment law that those are recognised holidays in schools. We have applied R(U) 1/62 particularly because of the continuity of the Appellant's employment and we can give no support to the proposition that the criteria in that case are different whether one is a teacher or ancillary staff. The Appellant in her capacity as a secretary works for the same period as the teaching staff and returns, like them, after the holidays.

Regulation 9(2)(c) is in our view more difficult. It is not clearly drafted and in our view might bear the interpretation put upon it by the Appellant's representative. We have come to the conclusion, with some hesitation, that it does not do so, since such a wide interpretation might well include housewives of all kinds who also have full time jobs and we do not think that that was the intention. We interpret the word "engaged" to mean "employed" and for this reason we must disallow the appeal on the grounds that the exemption contained in Regulation 9(2)(c) does not apply to the appellant."

The claimant appeals with leave of the tribunal chairman. There are two points. The first is whether during the Easter holiday in question, and during other school holidays the claimant was absent from her work "by reason of a recognised or customary holiday" within the meaning of regulation 9(1)(a) as above referred to. The tribunal decided the Easter holiday was for the claimant a recognised or customary holiday and that she was therefore not entitled to benefit. They said that they did not accept that it made any difference for the purposes of the regulation whether the claimant was employed as a teacher or as a secretary. The adjudication officer now concerned with this case does not agree with that. He refers to R(SB) 7/84 which confirmed that "recognised or customary holiday" in regulation 9(1)(a) has the same meaning as when used in the regulations relating to unemployment benefit and that the case law on the point applicable in unemployment benefit cases is equally applicable to supplementary benefit. He also refers to Commissioner's Decision CWU/8/48 where, for the purpose of applying the recognised or customary holiday rule, the distinction is made between the teaching and non-teaching staff. The following passage from the penultimate paragraph of that decision is relevant:-

"There is a number of decisions of the Umpire from 1920 onwards which recognise the distinction in this respect between the teaching staff and the non-teaching staff and recognise that holidays of a length appropriate to one class are inappropriate to the other; and in my view it is both reasonable and in accordance with the trend of these decisions to regard the periods of school holidays, other than the fortnight with pay already mentioned, as being, as regards these canteen employees, not holidays but periods of enforced suspension of employment during which they are normally available for employment elsewhere or otherwise".

I agree with the adjudication officer's submissions in respect of regulation 9(1)(a). The tribunal were wrong on this point and their decision must be set aside.

3. There was also raised before the tribunal by the claimant's representative the question whether regulation 9(1)(a) did not apply to the claimant because during the holiday periods she was a person "who is engaged in minding children in the home and performs normal household duties" within the meaning of regulation 9(2)(c). This is the second point that arises on this appeal. However, as I have already decided that, for the reasons indicated above, in any event the claimant is not within regulation 9(1)(a) I do not need to decide whether, additionally, that provision does not apply because of regulation 9(2).

4. My decision is as set out in paragraph 1. I have remitted to a differently constituted tribunal the question referred to in paragraph 1(c) because I agree with paragraph 11(4) of the adjudication officer's submission that I do not have evidence which would enable me to decide that question. I direct however that every effort should be made to resolve this aspect at an early date so as to avoid another hearing and the additional time and expense

which would be involved. Finally, I should say that it is not necessary for me to accede to the claimant's request for an oral hearing of her appeal as I am satisfied that I am able properly to determine it without a hearing.

(Signed) R A Sanders
Commissioner

Date: 24 September 1986