MJG/GJH

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is as follows:-

(i) The claimant is not entitled to supplementary benefit for the inclusive period from 26 January 1981 to 1 February 1981 because he had not attained the age of 19 years and was receiving relevant education:

(ii) Although under the age of 19 years and receiving full-time education, the claimant is entitled (if his requirements exceed his resources) to supplementary benefit from 2 February 1981 (the coming into operation of S.I.1981 No 99) onwards for such time as he was receiving relevant education by attending for not more than 21 hours a week a course of education for G.C.E. "O" levels at B. Technical College, and remained prepared to terminate the course immediately a suitable vacancy became available to him.

Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980), sections 5 and 6 and the Supplementary Benefit (Conditions of Entitlement) Regulations 1980, [S.I. 1980 No 1586] regulations 7, 11 and 12 as amended by the Supplementary Benefit (Conditions of Entitlement) Amendment Regulations 1981, [S.I. 1981 No 99]. The claimant's appeal against the decision of the supplementary benefit appeal tribunal is disallowed, so far as paragraph (i) above is concerned but allowed so far as paragraph (ii) is concerned.

2. This appeal by a claimant was the subject of an oral hearing on 2 August 1982 directed by me. At that hearing the claimant was represented by Mr N Warren, Solicitor and the Supplementary Benefit Officer was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security. I am indebted to Mr Warren and to Miss Shuker for their assistance to me at the hearing. Miss Shuker made it clear at the hearing that she continued to support the claimant's appeal so far as the period from 2 February 1981 was concerned, that

support having been first indicated in the supplementary benefit officer's submission dated 9 June 1982. Nevertheless, I had directed an oral hearing because I considered that the subject matter of the appeal was an important one. Moreover it was not at that stage clear to me how entitlement to supplementary benefit on the part of the claimant 'dovetailed' with entitlement to child benefit on the part of his mother and I wished to hear oral submissions on that subject.

3. The claimant is a young man born on 31 July 1963 with the result that his 19th birthday was on 31 July 1982. He left school in the Summer of 1980, having there passed 3 "O" level subjects. In September 1980 he started a course at B. technical college, studying 4 "O" levels, English language, Mathematics, Physics and Geography. That course involved him in 6 hours of class tuition for each subject i.e. 24 hours in all. In December 1980, he felt very dispirited by the results of internal college tests and was minded to give up all his "O" level studies. However, he in fact carried on with all those "O" level studies, except Geography. The result was his hours of class tuition dropped from 24 to 18 hours. He then continued with his "O" level studies until June 1981 when he took the 3 "O" level examinations and passed English language and Physics but failed in Mathematics. He started to sign the employment register on 26 January 1981 and thereafter attended the Job Centre actively seeking work. He claimed supplementary benefit from 26 January 1981 onwards but the local supplementary benefit officer decided that the claimant was not entitled to supplementary benefit. In so doing, the supplementary benefit officer and the supplementary benefit appeal tribunal (which dismissed the claimant's appeal) applied provisions which were introduced into the Conditions of Entitlement Regulations 1980 by the Supplementary Benefit (Conditions of Entitlement) Amendment Regulations 1981. Those Regulations did not come into operation until 2 February 1981, a few days after the beginning of the period for which the claimant first made his claim to supplementary benefit. Clearly, in that regard, the supplementary benefit appeal tribunal's decision was erroneous in law since the period of claim from 26 January to 1 February 1981 was governed by the law as it was prior to the 1981 Amendment Regulations. It is only by virtue of those Regulations that the claimant can establish title to supplementary benefit while under 19 and receiving relevant education. Consequently, I must disallow his claim so far as concerns the period prior to the coming into force of the 1981 Regulations (see paragraph 1(i) above), since the tribunal arrived at the correct conclusion, albeit by the wrong route.

4. Section 6(2) of the Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980) provides:

> "6(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."

There is no doubt in this case that the claimant was, by attending the local technical college for his "O" level course, receiving relevant education (see paragraph 12 below) and the question therefore is whether there are circumstances prescribed by regulations which would remove from him the disentitlement to supplementary benefit imposed by section 6(2) of the 1976 Act. Regulation 12 of the original Conditions of Entitlement Regulations 1980 [S.I. 1980 No 1586] contained four sets

of circumstances in which a person under 19 receiving relevant education could nevertheless be entitled to supplementary benefit, e.g. that he had no parent or was living away from and estranged from his parent. None of those circumstances applied to the claimant.

5. However from 2 February 1981 onwards the Conditions of Entitlement Amendment Regulations 1981 added a new category to regulation 12 of the original Regulations as follows:

> "12. A claimant to whom regulation 11 applies [ie 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 applies:-
>
> (a) - (d) .....
>
> (e) he is attending a course of education to which, and in circumstances in which, paragraph (2) of regulation 7 (part-time courses) applies and he satisfies the conditions in that paragraph."

6. Regulation 7(2) thus incorporated into regulation 12(e) was itself the product of substitution by the 1981 Amendment Regulations. It deals primarily with availability for work and reads:

> "7(2) A claimant who is attending for not more than 21 hours a week a course of education at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school or a course of training or instruction analogous to a course for which a training allowance would be payable shall be treated as available for work if -
>
> (a) he is prepared to terminate the course immediately a suitable vacancy becomes available to him;
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> (b) he has not terminated an employment or a course of education which was for more than 21 hours a week for the purpose of attending the course; and
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> (c) ... he is aged less than 21 ....."

[The reference to age 21 is because regulation 7 is concerned primarily with availability for work].

It was properly conceded by Miss Shuker that one could infer from the findings of fact by the supplementary benefit appeal tribunal that they held the claimant to have complied with sub-paragraphs (a) and (c) of regulation 7(2). The question therefore turned on whether the claimant could also show compliance with regulation 7(2)(b) i.e. could show that he had "not terminated ... a course of education which was for more than 21 hours a week for the purpose of attending the course".

7. The supplementary benefit appeal tribunal held that "the appellant had terminated a course of study which was for more than 21 hours per week for the purpose of attending the course". They made the following finding of fact, "He commenced a course of 'O' level studies in excess of 21 hours per week at B. Technical College in September 1980. He gave up one subject, Geography, which in effect reduced his hours of attendance at College to 18 per week".

8. On those reasons and finding the benefit officer now concerned in his written submission dated 9 June 1982 submits, "The phrase 'terminated ... a course of education' is not defined in regulations, but I submit that it carries the normal meaning of ending or ceasing entirely a complete course or curriculum, and doing so before the scheduled or specified duration of that course or curriculum has expired. I submit that the 'course' is the sum of all the studies which it includes; that to be said to have terminated the course a person must have ceased all those studies; and that in ceasing only part of those studies a person may be said to have terminated a part of the course but not the course itself. I concede ... the claimant's ... contention that 'A reduction in hours consequent upon the dropping of one subject cannot amount to a termination of the whole course'. I submit that no tribunal acting reasonably or judicially could conclude that reducing the hours of study by ceasing part of a course could constitute terminating a course ... that in so concluding the Tribunal in this case erred in point of law".

9. I accept that submission, supporting as it does the claimant's appeal, as being a correct statement of the law. However, in my judgment it is essentially a question of fact in any particular case as to whether a claimant has terminated one course for the purpose of attending another course. The word "course" is not defined either in the Act or Regulations. I note that in a Decision on Commissioner's file CSB/68/1982 (to be reported) a Tribunal of Commissioners, construing the expression "attending for not more than 21 hours per week a course of education" in regulation 7(2) defined "attending course" in such a way as to indicate that they viewed "course of education" as being comprised of classroom or laboratory instruction/ supervision as well as compulsory external work (eg field work) and compulsory private study on the premises of the educational establishment (see paragraph 24 of their Decision).

10. It is clear on the facts of the present case that the claimant had not transferred from one course to another course. The claimant told me at the oral hearing (though I do not lose sight of the fact that an appeal in a supplementary benefit case to a Commissioner is on a question of law only and does not constitute a re-hearing on fact) that he had merely continued in the same classes for the "O" level subjects he kept up, was taught by the same teachers and was subject to the same administration within the technical college. All that happened (as indeed can be inferred from the finding of fact and decision of the tribunal) is that he merely ceased to attend one particular set of classes, namely those on Geography.

11. I emphasize however that my decision is a decision on its own facts. It is possible within a given school, college or university for a "course" to consist of a predetermined subject or subjects from

which there can be no departure either in number or in nature. If a student wishes to drop a subject or one of a number of subjects or to change from one subject to another it may well be that under the internal regulations of the educational establishment or the external rules of an examining body he does have to cease a "course" (which may well bear a name e.g. "Science O Level" or "Joint Honours Degree" or be related to the syllabus of a particular examination). Then there is transfer to another "course" which may or may not have the same teachers, tutors, administrators etc but nevertheless is a different "course". It would then have to be asked, under regulation 7(2) of the Conditions of Entitlement Regulations, whether the first "course" had been terminated "for the purpose of" attending the second "course". No such question arises as to the claimant's purpose in this case because he did not transfer from one course to another but merely ceased to take one component subject.

12. I have indicated above that there is no dispute in this case that the claimant was "receiving relevant education" within section 6(2) of the Supplementary Benefits Act 1976 (as amended - see paragraph 4 above). Section 6(3) of the Act provides,

> "6(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 sub-section 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."

In pursuance of that provision, regulation 11 of the Conditions of Entitlement Regulations 1980 provides,

> "11. For the purposes of section 6(2) (persons under 19 receiving relevant education not to be entitled to supplementary benefit) a person shall be treated as receiving relevant education for any period during which child benefit is or would, if a claim were made for it, be payable in respect of him under Part I of the Child Benefit Act 1975, or would, but for the failure to satisfy conditions as to residence and presence pursuant to section 13(2) and (3) of that Act, be so payable"

It is only persons thus treated as receiving relevant education who are in need of the exceptions in regulation 12 (which specifically refers to claimants to whom regulation 11 applies) from disentitlement to supplementary benefit.

13. It appears that child benefit has in fact been paid to the claimant's mother in respect of the claimant for the periods with which I am concerned. As the parties agreed, for the purposes of this appeal, that for those periods regulation 11 applied to the claimant there was no need for me to have the question of entitlement to child

benefit referred to an insurance officer to determine (see regulation 5(1)(d) and 5(3) of the Supplementary Benefit (Determination of Questions) Regulations 1980). However, the effect of my decision is that the claimant will (if his requirements exceed his resources) be entitled to payment of supplementary benefit for a considerable period for which his mother has also been receiving child benefit for him. There is no legislative provision enabling me to direct that child benefit paid to the claimant's mother shall be treated as paid in satisfaction of the supplementary benefit now awarded (compare section 12 of the Supplementary Benefits Act 1976 as amended and regulation 3(1) of the Supplementary Benefit (Duplication and Overpayment) Regulations 1980 /S.I. 1980 No 1580/). Nevertheless it appears that an insurance officer should consider the effect of my decision on the decisions awarding child benefit to the claimant's mother with a view to possible review and revision of those decisions.

14. The Conditions of Entitlement Regulations 1980 and the Amendment Regulations 1981, referred to in this decision, were those in force at the material times. As subsequently amended (by S.I.'s 1981 Nos 815 and 1197) they have now been consolidated in the Supplementary Benefit (Conditions of Entitlement) Regulations 1981, /S.I. 1981 No 1526/. The subsequent amendments and consolidation do not however affect the law as set out in my decision, which applies equally to the current regulations.

(Signed) M J Goodman
Commissioner

Date: 15 September 1982

Commissioner's File: C.S.B. 383/1981
CSBO File: 450/81