Relevant education — has to be full-time & to satisfy one of the conditions in reg 10(1)(a)(i)-(iii) that is it confirms CSB/761/1986.

TOC/2/SH/LM

Commissioner's File: CSB/511/1987

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name: Karen Weightman

Social Security Appeal Tribunal: Manchester

Case No: 230/11

1. Our decision is that the decision of the social security appeal tribunal is erroneous in point of law because although they reached the correct conclusion, it was based on erroneous reasoning. Accordingly we set it aside and give our own decision which is to the same effect as their decision, namely that the claimant's appeal against the adjudication officer's decision is allowed but for the reasons hereinafter appearing.

2. This is an appeal by the adjudication officer, brought with leave of the chairman of the tribunal, against the decision of the Manchester social security appeal tribunal of 11 December 1986. The Chief Commissioner directed it to be heard by a Tribunal of Commissioners and it was the subject of an oral hearing before us on 4 May 1988 at which the adjudication officer was represented by Mrs Heather Wheatley of the Solicitors Office of the Department of Health and Social Security and Mr R Higgs of Counsel instructed by Messrs. Rimmers Solicitors of Alyesbury appeared for the claimant.

3. The adjudication officer in his grounds of appeal challenged the jurisdiction of the tribunal to determine the vires of regulations. However in view of the decision of a Tribunal of Commissioners in CSB/241/1987 (to be reported as R(SB)10/88) he withdrew this ground of appeal and it was commoncase that the statutory authorities have jurisdiction to decide the question of vires and that in the present case the tribunal had jurisdiction to consider the validity of regulation 10 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981. The adjudication officer was then left with one ground of appeal, namely that the tribunal had wholly misdirected themselves in law as to the power conferred by section 6(3) of the Supplementary Benefits Act 1976 and the ambit and purport of regulation 10 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981; the section and regulation being the provisions upon which the question of vires was decided by the tribunal.

4. Section 6 of the Supplementary Benefit Act 1976 deals with the exclusion from supplementary benefit of certain employed persons and pupils and we must set it out in full:

> "6. - (1) A person who is engaged in remunerative full-time work shall not be entitled to supplementary benefit; and regulations may make provision as to the circumstances in which a person is or is not to be treated for the purposes of this subsection as so engaged.
>
> (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."

The regulations made under this section are the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 (S.I. 1981 No. 15/26.) These regulations have been extensively amended over the years and we set out regulation 10(1) in the form in which it stood at the material time:

"10. - (1) For the purposes of section 6(2) (persons under 19 receiving relevant education not to be entitled to supplementary benefit) a person shall only be treated as receiving relevant education -

(a) for any period during which he is -

(i) receiving primary or secondary education in England or Wales otherwise than at school, under special arrangements made under section 56 of the Education Act 1944; or

(ii) receiving education in Scotland elsewhere than at an educational establishment, under special arrangements made under section 14 of the Education (Scotland) Act 1962; or

(iii) attending a course of education other than a course of advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations 1976 at a recognised educational establishment as defined in section 24(1) of the Child Benefit Act 1975, and in the pursuit of that course, the time spent in receiving instruction of 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 the course, exceeds 12 hours per week, so however that in calculating the time spent in pursuit of the course, no account shall be taken of the time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the educational establishment; or

(iv) to be treated as receiving full-time education, not being advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations 1976, by virtue of the provisions of regulation 6 of those latter regulations."

5. The claimant was born on 23 March 1968. She left school on 12 June 1986. She lives in her parents household. She registered unemployed and claimed supplementary benefit for

herself on 5 September 1986. She attended Fielden Park College from 9 September 1986 on a City and Guilds Photography Course and the time spent in instruction was 21 hours a week. The claimant was paid supplementary benefit from 6 September up to and including 8 September 1986. The adjudication officer in a decision, issued on 18 September 1986, decided that she was not entitled to supplementary benefit from 9 September because she was in relevant education and did not satisfy any of the exclusioned categories. The claimant appealed to the tribunal who by a majority decision allowed the appeal. In their findings of fact the members accepted the facts stated by the adjudication officer in his submission to them which were agreed by the claimant's representative and which are the facts set out in this paragraph. The chairman further recorded the following:

> "In particular the tribunal accepted and found as facts that the appellant's course was 21 hours per week, on Tuesdays, Wednesdays and Thursdays each week which was not full-time in the normally accepted meaning of such phrase."

The majority of the tribunal accepted the argument of the appellant's representative that regulation 10 was ultra vires "because [the Secretary of State] in making the regulation had purported to define 'relevant education' as being that on which more than 12 hours per week was spent, whereas section 6 of the [Supplementary Benefits Act] the enabling act under which such regulation had been made) clearly defined it as meaning full-time education" and in their opinion it could not be said that the appellant was attending a full-time course. The dissenting member was of the view that the Secretary of State did have power to make regulations defining "relevant education" and had properly done so in the regulation which was the subject of challenge.

6. In CSB/761/86 the Commissioner dealt with the legislative history of regulation 10 and made a most detailed and careful analysis of both section 6 and that regulation and the interplay between them. Initially and without sight of that decision Mr Higgs developed an argument on similar lines and when we referred him to CSB/761/86 he adopted by way of argument the reasoning and conclusion of the Commissioner. We have taken the somewhat unusual course of setting out that decision, which was not reported, in an Appendix to this decision. In some minor particulars the text of the decision is corrupt but such does not detract from either the analysis of the legislation or the reasoning for the decision. We have done so because we think that it accurately set out the law on the topic and we feel that we cannot do better than to adopt both the process of reasoning contained therein and the conclusion to which it led, indeed inevitably led. The process of reasoning is necessarily complex, involving as it does consideration of the interaction of intricate legislative provisions. The principle of law which has to be applied is succinctly stated in paragraph 15 of that decision where the Commissioner said:

> "15. Regulation 10(1) uses the word "where" rather than "if" but the principles are the same. In my judgment when the regulation was amended in 1984 and the word "only" was inserted before "where" and a different set of sub-paragraphs was introduced the new sub-paragraphs were alternative necessary, but not sufficient, conditions, whereas the old sub-paragraph alternative sufficient, but not necessary conditions. The effect in my judgment is that a person is not in relevant education unless as well as receiving full-time education he satisfies one of the conditions in the sub-paragraphs of regulation 10(1)(a), the sub-paragraph under consideration requires that there is a minimum level of actual attendance. And as the claimant was not receiving full-time education it matters not that he happens to have satisfied that minimum level. He was not therefore receiving relevant education. This conclusion is supported by the possibility that the definition of relevant education is section 6(3) limits the scope of what can be provided for in regulations made under it."

It is to be borne in mind that the tribunal in the instant case found as a fact that the claimant was not in full-time education and such a finding supports the conclusion which the members reached though some of the actual reasoning in the decision was not sound.

7. In accordance with our jurisdiction our decision is as set out in paragraph 1 of this decision. We find it expedient to give the decision that they themselves should have given as the tribunal found as a fact that the claimant was not in full-time education. Such a finding disposes of the appeal in favour of the claimant. In the light of our decision above no question of ultra vires calls for consideration.

8. Accordingly the adjudication officer's appeal is dismissed and the claimant succeeds.

(Signed) J N B Penny
Commissioner

(Signed) J B Morcom
Commissioner

(Signed) J J Skinner
Commissioner

Date: 13 June 1988