

Conditions of Entitlement - period of Study -
summer vacation started in March so student able to
claim from then.

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SOCIAL SECURITY ACT 1986

APPEAL TO THE COMMISSIONER FROM DECISION OF SOCIAL
SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Steven Anthony KING

Social Security Appeal Tribunal: Edinburgh

Case No: 506 03885

ORAL HEARING

1. My decision is that the decision of the social security appeal tribunal dated 18 July 1989 is not erroneous in law.

2. This is an appeal by the adjudication officer with leave granted on a question of law against the above-mentioned tribunal decision. The appeal was dealt with at an oral hearing held before me at my direction. The adjudication officer was represented by Mr D Cassidy of the Office of the Solicitor to the Secretary of State for Scotland. The claimant, who attended in person, was represented by Mr K MacAskill, Solicitor, of Messrs Erskine MacAskill, Solicitors, Edinburgh. The hearing was also attended by Miss F McColm, a student adviser. I am indebted to the representatives for their assistance in this appeal.

3. This appeal arises from a claim for income support made by the claimant on 6 April 1989. The claimant was then aged 21 and was a second year student at Napier College, Edinburgh, where he was studying for a Higher National Diploma in electrical and electronic engineering. That was at the material time and in relation to the claimant a three year course, loosely called a "sandwich course", a term which however has a specific meaning for student grant and income support purposes. The course was so organised that there were in effect only two terms in the second year of the course, to allow for a period of five months during which it was expected or hoped that students would gain helpful work experience. However the College had for some time ceased to make any arrangements for the placement of students in such work, and did not prescribe any appropriate occupations or concern itself with such matters as whether or in what occupations any work was pursued or for how long or to what advantage. The student grant was payable only up to the end of the second term.

4. In this instance the claimant was unable to obtain employment and claimed income support. An adjudication officer refused the claim on the ground that the claimant was a student attending a full-time course of study and not available for employment. The claimant

appealed to a social security appeal tribunal. Section 20(3) of the Social Security Act 1986 contains the following material provisions:-

"20.--(3) A person in Great Britain is entitled to income support if -

- (a) he is of or over the age of 18 or, in prescribed circumstances and for a prescribed period, of or over the age of 16 or he is a person ... (inapplicable);
- (b) he has no income or his income does not exceed the applicable amount;
- (c) he is not engaged in remunerative work and, if he is a member of a married or unmarried couple, the other member is not so engaged; and
- (d) except in such circumstances as may be prescribed -
 - (i) he is available for employment;

..."

Section 20(12)(d) empowers the making of regulations as to circumstances in which a person is or is not to be treated as available for employment.

5. Regulation 10 of the Income Support (General) Regulations 1987 contains the following material provisions:-

"10.--(1) A claimant shall not be treated as available for employment if he is a person to whom any of the following sub-paragraphs applies -

...

- (h) he is student during the period of study other than .. (inapplicable)"

6. In terms of regulation 2(1) of the General Regulations "student" is as defined in regulation 61 of those Regulations and means:-

"a person aged less than 19 who is attending a full-time course of advanced education or, as the case may be, a person aged 19 or over but under pensionable age who is attending a full-time course of study at an educational establishment; and for the purposes of this definition -

- (a) a person who has started on such a course shall be treated as attending it throughout any period of term or vacation within it, until the end of the course or such earlier date as he abandons it or is dismissed from it;
- (b) a person on a sandwich course shall be treated as attending a full-time course of advanced education or, as the case may be, of study;"

7. A "period of study" in terms of regulation 2(1) of the Regulations means:-

- "(a) in the case of a course of study for one year or less, the period beginning with the start of the course to the end;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, the period beginning with the start of the course or, as the case may be, that year's start and ending with either -
 - (i) the day before the start of the next year of the course in a case where the student's grant is assessed at a rate appropriate to his studying throughout the year, or, if he does not have a grant, where it would have been assessed at such a rate had he had one; or
 - (ii) in any other case the day before the start of the normal summer vacation appropriate to his course,

and, for the purposes of this definition, any period of attendance at the educational establishment which is outside the period of the course shall be treated as part of the period of study;"

8. Evidence before the tribunal, obtained by the local office of the Department of Social Security from Napier College and the Scottish Education Department showed that the course in question was a full-time course. In 1988/9 the start date for all three years of the course was 20 September 1988. The end date for the first year was 2 June 1989, that for the second year was 23 March 1989 and that for the third year was 16 June 1989. In response to further enquiries the College confirmed that the summer vacation dates for the second year of the claimant's course were from 23 March 1989 to 20 September 1989.

9. The tribunal adopted the facts before the adjudication officer which were substantially to the effect indicated above and added:-

"Grant is not paid in the third term of the second year. Two terms Grant only were paid in the second year. In the second year of the HND Electrical and Electronic Engineering course the normal summer vacation starts on 23.3.89 until 20.9.89. The industrial placement is not a prerequisite for the HND."

The tribunal unanimously allowed the claimant's appeal against the disallowance of income support. Their reasons were stated in the following terms:-

"The word normal must be construed as normal for the course the student is following. Napier does not have formal uniform terms. Vacation is a period without work, and may be voluntary, or enforced while looking for employment as in [the claimant's] case.

The normal vacation is from 23.3.89, interrupted by a placement when found. The logic of the Regulations is that people should not receive benefit during periods of study and Grant Payment. The regulations and Statutes are correctly quoted in the Submission and we have applied them."

10. In the written appeal by the adjudication officer it is submitted that the tribunal erred in law:

".. because they have failed to give consideration to whether the claimant continued to be a "sandwich" student treated as attending his course when he was unable to obtain a period of "work experience"."

I have no hesitation in rejecting that submission. The tribunal did not suggest that the claimant ceased to be a student. Having regard to the definition of "student" referred to in paragraph 6 above there was no basis upon which that suggestion could be supported, whether the claimant was regarded as a student on a sandwich course or not. The tribunal correctly directed their attention to the question of "the period of study".

11. It was also submitted by the adjudication officer in his written appeal that the tribunal had failed to have proper regard to the question of what was the "normal summer vacation" in relation to the claimant's course. This point was developed by Mr Cassidy. He accepted that a student was only excluded by the treating provision of regulation 10(1)(h) during a "period of study" as defined in the regulations. Mr Cassidy acknowledged that there was evidence from the College indicating that the date of the start of the summer vacation appropriate to the claimant's course was 23 March 1989 and he did not dispute the applicability of decisions such as R(SB)40/83 and R(SB)41/83 indicating the considerable weight to be attached to such evidence in similar circumstances. Nevertheless he argued that the tribunal had erred in their conclusion because the period from 23 March 1989 to 20 September 1989 (which he did not dispute was "normal" in relation to the course) could not reasonably be accepted as the normal summer vacation appropriate to the claimant's course for the purposes of ascertaining his period of study as defined in the regulations.

12. Mr Cassidy submitted that the date of the start of the normal summer vacation appropriate to the claimant's course fell to be ascertained on the basis of the course and not the claimant's particular experience and that on the ordinary meaning of the words the period fixed by the tribunal was neither "summer" nor "vacation". As regards the first point I accept that the relevant date must be fixed on the basis of the course and cannot be dependent upon or

altered by the claimant's lack of success in obtaining employment. However the course clearly does not have uniform end dates for all three years. Furthermore the definition of "period of study" in regulation 2(1) quoted above is given in relation to each year of the course. Mr Cassidy was inclined to accept that the start of the normal summer vacation required to be ascertained in relation to the relevant year of the course. The evidence from the College and the Scottish Education Department accepted by the tribunal bore to relate to that year of the course and was general in character and unrelated to the claimant.

13. There is of course some force in Mr Cassidy's objection to a period commencing on 23 March 1989 being described as "summer". It is however instructive to note that regulation 61 of the Income Support General Regulations also contains a definition of the word "year" which is in the following terms:-

"year" in relation to a course, means the period of 12 months beginning on 1 January, 1 April or 1 September according to whether the academic year of the course in question begins in the spring, the summer or the autumn respectively."

Thus a course year beginning on 1 April is described as beginning in the "summer". Mr Cassidy was constrained to admit that this definition and the diversity of academic sessions gave some variability to the ordinary understanding of the calendar seasons in this context. Mr Cassidy however submitted in any event that it was inconsistent to treat as "vacation" a period which would otherwise be in term time and in which it was anticipated that the students would obtain work. He submitted that a student on a sandwich course fell to be treated as such at any period of the course whether in term or vacation. This last point however does not advance the argument in my opinion since in terms of the definition any student remains a student whether in term time or vacation during the period of subsistence of the course (subject always to abandonment or dismissal). Nor does it appear to me to be relevant to appeal to the concept of "term time" in relation to a period which, on the evidence, was outwith term time. Although I understand the suggestion that the expression "vacation" is ordinarily inconsistent with "work" I doubt the force of this argument in relation to students. It is a commonplace for students to work, and be referred to as working, in all or part of their summer vacation when their courses are not in session in the college concerned.

14. I am therefore not persuaded by any of the arguments on behalf of the adjudication officer that the decision of the tribunal accepting 23 March 1989 as the date of the start of the normal summer vacation is erroneous in law. They correctly addressed themselves to the concept of a "period of study" and on the evidence before them were in my judgment fully entitled to hold as they did. It is interesting to consider the suggested alternatives. The solution proposed by the adjudication officer in the written submission on the appeal was the adoption of the start of the summer vacation applicable to the first year of the course, which was selected in preference to the date for the third year because it was more favourable to the claimant. The weaknesses of this approach relative

to the concepts of "normal" and of the relevant year hardly need to be pointed out. Mr Cassidy for his part opted for a date (which he submitted would require to be fixed on further evidence) representing the end of a five month period from 23 March 1989, and being the start of the balance of vacation left after the assumed period of work experience. If there had been any evidence that the College organised and controlled the period of work experience on this course and treated its expiry in the second year as ushering in a limited summer vacation period in the way suggested, that would have been a tenable approach. There is however no such evidence and the actual evidence contradicts it.

15. The importance of what the evidence shows as regards the normal summer vacation in relation to the course in question in any case is well illustrated by the different outcome of the case on Commissioner's file CSIS/4/88, a copy of which is on the appeal file. In that case the third term of the second year of the particular course there in question would normally have been occupied by a period of commercial placement with a local company. On the first day of the third term however the College intimated that no placements would be available that year and the claimant's class were told not to attend the College again until the start of the following session. In those circumstances it was held by the Commissioner that the decision of the College to terminate the course that year on 31 March could not be held to represent the start of the "normal summer vacation".

16. In all the circumstances I have come to the conclusion that the tribunal were entitled to reach the decision which they did in this case. I consider that they correctly identified the logic of the regulation affecting students. The result reached is consistent with the grant period applicable in the claimant's case. A student engaged in remunerative work would be excluded from income support under section 20(3)(c) of the Social Security Act 1986 and a student claiming benefit would have to be, as the claimant was, "looking for work" and thus actually available for employment. In my judgment the decision of the tribunal is not erroneous in law.

17. The appeal of the adjudication officer is refused.

(signed) J G Mitchell
Commissioner
Date: 8 March 1990