CHB — Attendance at Recognised CPAG
Educ. Establishment 40/95

JJS/TB/2

Commissioner's file: CF/012/1994

CHILD BENEFIT ACT 1975

SOCIAL SECURITY ADMINISTRATION ACT 1992

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal is not erroneous in point of law and accordingly this appeal fails.

2. This is an appeal by the claimant against the decision of the Hornchurch social security appeal tribunal, given on 15 June 1994, which decided she was not entitled to child benefit in respect of her daughter for any date after 12 September 1993, but they also held that the Secretary of State was not entitled to recover any of the overpaid benefit.

3. I held an oral hearing of the appeal. The claimant was present. The argument in support of her appeal was presented by her husband. Mr A Prosser of Counsel, instructed by the Solicitor to the Department of Social Security, appeared for the adjudication officer.

4. The claimant in this case was in receipt of child benefit in respect of her daughter. The daughter was born on 17 April 1977. She attained the age of 16 years on 17 April 1993. On 24 July 1993 she left school. The family were members of the religious body known as The Brethren. The local school, which the girl had attended up to 24 July 1993, did not have a sixth form. For religious reasons the parents did not feel the Sixth Form College, which was some five miles away, was a suitable place to send their daughter. On 15 August 1993 she commenced work for her A levels by way of a correspondence course with the Rapid Results College. She did not physically attend at the college, but they supplied a correspondence course to her. She studied at home for about 32 hours a week. The adjudication officer decided that the claimant was not entitled to child benefit for her daughter from and including 13 September 1993 because the girl was over the age of 16 and was not receiving full time education by attendance at a recognised education establishment. He further decided that there had been an overpayment of benefit and that this amount was recoverable under the provisions of section 71 of the Social Security Administration Act 1992. I should say at the outset that it is

accepted that the amount is not recoverable. On 8 February 1994 the claimant appealed to the tribunal against that decision. The appeal was argued by the husband. He contended that the course with the Rapid Results College constituted full time education by attendance at an establishment recognised by the Secretary of State. He produced a guide and prospectus of the the College which stated that it was "accredited by the Council for the Accreditation of Correspondence Colleges – an independent body set up in 1969 with the approval of the Secretary of State for Education and the Secretary of State for Scotland". He also brought to the attention of the tribunal a decision in another case made by Chelmsford social security appeal tribunal which, on facts similar to those in the present case, decided that a claimant was entitled to child benefit. He in particular relied on the construction by that tribunal of section 142(1)(c) of the Social Security Contributions and Benefits Act 1992. I set out what they said:

> "The tribunal appreciate that the particular section does refer to the student being 'in attendance at a'. It is equally appreciated that physically the appellant's son does not walk into the specific building for his education. However the tribunal find that to be 'in attendance at' need not necessary mean to be physically present at. The appellant's son is clearly in constant written contact and is also in telephone contact with his tutors as and when necessary. It is clear that educational tuition flows from the college to the appellant's son and his normal written work goes in the reverse direction in very much the same way as would happen were he physically present in a building. This, coupled with the fact that clearly the appellant's son is doing no other work other than his full time course with the college, leads the tribunal to a decision that the appellant's son falls within the requirements of section 142(1)(c) of the 1992 Act.".

The tribunal in the present case did not find themselves able to apply the reasoning of the Chelmsford tribunal and, not surprisingly so, they did not accept the argument advanced by the claimant's husband. They found that the claimant was not entitled to child benefit for her daughter for any date after 12 September 1993.

5. Section 141 of the Social Security Contributions and Benefits Act 1992 (the Act) provides that a person who is responsible for a child shall be entitled to benefit in respect of the child for whom he is responsible. It is not in dispute that the claimant in this case is responsible for the girl and that she has the priority of title to child benefit. The question is whether the child was one in respect of whom benefit was payable. Section 142 provides the definition of a child which is to be used when dealing with that question. I set out the material part of the section.

" 142.(1) For the purposes of this Part of this Act a person shall be treated as a child for any week in which-

(a) he is under the age of 16; or

(b) he is under the age of 18 and not receiving full-time education and prescribed conditions are satisfied in relation to him; or

(c) he is under the age of 19 and receiving full-time education either by attendance at a recognised educational establishment or, if the education is recognised by the Secretary of State, elsewhere.

" (2) The Secretary of State may recognise education provided otherwise than at a recognised educational establishment for a person who, in the opinion of the Secretary of State, could reasonably be expected to attend such an establishment only if the Secretary of State is satisfied that education was being so provided for that person immediately before he attained the age of 16.".

Section 147 of the same Act provides a definition of "recognised education establishment" as meaning an establishment recognised by the Secretary of State as being, or as comparable to a university, college or school. The case for the claimant, which was made before the tribunal and again which was argued before me, is that the child was receiving full-time education by attendance at the Rapid Results College and reliance was placed on the reasoning of the Chelmsford tribunal in the other case. In my judgment that reasoning was erroneous. The words used in section 142(1)(c) were misquoted. The section does not refer to a person being "in attendance at", the words are "by attending at". Nothing much turns on that. But whichever form of words is relied on the requirement is that the child must be physically present for instruction at the recognised education establishment. "Attendance at" a place has a clear meaning of being present at that place, and nothing in the context in which the words are used alters that meaning, indeed it reinforces it. I considered whether reg.5(2) of the CB General Regs could throw any light on the meaning of "attendance at" - what is being decided by reg.5(2) is whether education is full time and the phrase used is slightly different "by a person attending a course of Education to a recognised Educational establishment". However even if it could be argued that the claimant's daughter was attending a course of Education at the Rapid Results the College that could not effect meaning of the expression "by attendance at " in s.142(1)(C).

6. The second limb of the argument related to whether the Rapid Results College was a recognised educational establishment as envisaged by section 142(1)(c). It is argued that the establishment was recognised by the Secretary of State as one comparable to a university, college or school, because the Council for the Accreditation of Correspondence Colleges had recognised it and that body had the approval of the Secretary of State for Education. I consider that contention obviously to be unarguable. In my judgment "the Secretary of State", referred to in the section, can only mean the Secretary of State for

Social Security. It is the Secretary of State for Social Security who is responsible for the Act and it is clear in the context that the functions of the section are to be exercised by him. I have considered whether functions under the section may have been intended to be conferred on the Secretary of State for Education; but if that had been so reference would be made to the Secretary of State for Education. I am satisfied that the function is restricted to the Secretary of State for Social Security and that it is neither conferred jointly upon nor divided between the Secretary of State for Social Security and the Secretary of State for Education.

7. Section 142(1)(c) also allows of cases where the child is not attending at a recognised educational establishment, if the full-time education is recognised by the Secretary of State. But in the instant case there was a certificate from the Secretary of State that the education was not to be accepted as recognised education. The circumstances of the case are that the child was not attending at a recognised educational establishment nor was her education recognised by the Secretary of State. Consequently she did not come within the definition provided for in section 142 of the Act 1992. The tribunal so held. In my judgment the tribunal rightly dismissed the claimant's appeal and gave adequate reasons for so doing.

8. The point has also been taken that the tribunal breached the rules of natural justice. I have looked at the record of proceedings with care and I am satisfied that there is nothing to suggest bias on the part of the members. Again it is clear that the claimant was given a fair hearing, the argument advanced on her behalf was heard and ruled upon. The claimant's real complaint is that the legislation operates to her detriment.

9. I was concerned whether the typing course might have been such as to bring the claimant within the section. It has been accepted by the parties before me that the claimant's daughter did not attend that college either.

10. Before I part with the case I should emphasise that the principle of law enunciated by the Chelmsford tribunal is erroneous and should not be applied by other tribunals. That tribunal misconstrued section 142(1)(c).

11. As set out in paragraph 1, my decision is that the social security appeal tribunal is not erroneous in point of law and accordingly this appeal fails.

(Signed) J.J. Skinner
Commissioner

(Date) 16 May 1995