



DGR/SH/4

Commissioner's File: CF/28/1985

C A O File: AO 6120/CHB/85

Region: Child Benefit Centre, Washington

**CHILD BENEFIT ACT 1975**

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: Hilary Blower (Mrs)

Appeal Tribunal: Bolton and District

Case No: 23/4

**[ORAL HEARING]**

1. My decision is as follows:-

- (i) that the original decision of the adjudication officer awarding child benefit in respect of Jason should be reviewed and revised, so that no such benefit is payable in respect of the inclusive period from 13 June 1983 to 21 August 1983 or the inclusive period from 5 September 1983 to 11 September 1983, but
- (ii) that repayment of the benefit overpaid is not required, the claimant having throughout used due care and diligence to avoid such overpayment.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the appeal tribunal confirming the adjudication officer's decision shown in Box 1 of Form AT2. The claimant asked for an oral hearing, a request to which I acceded. She appeared at that hearing but was not represented, whilst the adjudication officer was represented by Mr Osman of the Chief Adjudication Officer's Office.

3. The facts of this case are simple and straightforward. Jason was born on 16 February 1967. He left school on 27 May 1983 and, in a highly commendable way, found employment quickly, starting on 8 June 1983. Unfortunately for Jason, the factory closed down on 4 July 1983 for the 2 weeks' annual holiday. I say "unfortunately" because Jason was not entitled to any holiday pay, and as a result was without remuneration for that period. Not surprisingly, he applied for supplementary benefit, but was told that he was ineligible by virtue of section 6(2) of the Supplementary Benefits Act 1976 because being under the age of 19 he was deemed to be receiving relevant education until the end of the week that included the "terminal date", that is until the end of the week that included the first Monday in September 1983. Although he appealed against the benefit officer's (now the adjudication officer's) decision to that effect, in the event that decision was upheld. Moreover, although it is not a matter for me, I do not see how it could be said that refusal of supplementary benefit was otherwise than correct. Furthermore, presumably the claimant would also have failed under section 6(1) by reason of his being (for the reasons hereinafter set out) in remunerative full-time work within regulation 9 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [SI 1981 No. 1526].

4. By virtue of Jason's having started work the award of child benefit had been informally terminated on 13 June 1983. However, in view of Jason's failure to obtain supplementary benefit during the 2 weeks of the close-down - benefit was also refused under the Supplementary Benefit (Urgent Cases) Regulations 1981 [SI 1981 No. 1529] - his mother, the claimant in the present appeal, applied for the payment of 2 weeks' child benefit for the period from 4 July 1983 to 17 July 1983. Thereupon the adjudication officer gave a formal decision disallowing child benefit for Jason from 13 June 1983, because he was engaged in full-time gainful employment. On appeal this decision was upheld by the tribunal and it is against the tribunal's decision that the appeal to the Commissioner now lies.

5. At the hearing before me the claimant contended that it was inequitable in the extreme that Jason should, on the one hand be regarded as receiving full-time education so as to be without title to supplementary benefit, whilst on the other hand he was to be treated as being in full-time employment during the holiday shut-down period with the result that not even child benefit was payable for that period. However, I am afraid I cannot consider the equity of the matter. I have to apply the regulations as enacted. If it is thought that an injustice is done, it is for the legislature, and the legislature alone, to make the necessary amendments to the relevant statutory provisions.

6. Unfortunately for the claimant, although Jason was to be regarded as a child within section 2(1) of the Child Benefit Act 1975, notwithstanding that he had left school, up to and including the week which included the first Monday in September, ie. for the period up to and including 11 September 1983, and although as a result under regulation 7(1) and (2) of the Child Benefit (General) Regulations 1976 [SI 1976 No. 965], the claimant was entitled to child benefit for that period nevertheless paragraph (3) of that regulation has a circumscribing effect. For it stipulates:-

"Benefit shall not be payable to any person entitled to benefit in respect of a child by virtue of this regulation for any week in which the child is engaged full-time in gainful employment."

The effect of paragraph (3) was to remove entitlement to child benefit as from the week following the time when Jason commenced full-time employment. Although Jason did not receive any money during the fortnight shut-down, he was still a party to a contract of service, and as such in full-time gainful employment (see R(U)4/60 paragraph 10). One of the terms of that contract was that there should be a compulsory 2 weeks' shut-down, and it was immaterial that Jason had not worked long enough to have become entitled to holiday pay.

7. It follows that the claimant is not entitled to child benefit for the 2 weeks in question or, for that matter, for any time during the inclusive period from 13 June 1983 to 21 August 1983. The expiry date arises by reason of Jason's having from the week commencing 22 August 1983 ceased to be in employment, and in consequence regulation 7(3) no longer applied. From and including 22 August 1983 Jason could be treated as a child for child benefit purposes by virtue of regulation 7(1), the "terminal date" of the first Monday in September not having as yet been reached.

8. Accordingly, by virtue of Jason's having obtained full-time employment on 8 June 1983 the adjudication officer was fully entitled to review his original award (there having been a relevant change of circumstances), and to revise it to take account of the period when Jason was in full-time gainful employment. Moreover, the revised decision should also take into account the further period from the time when Jason commenced participation in a Youth Training Scheme. By virtue of regulation 7B of the Child Benefit (General) Regulations 1976 [SI 1976 No. 965] the claimant was again disentitled to child benefit in respect of Jason from and including the Monday following the commencement of his participation in the scheme, ie. from and including 5 September 1983. It should also be mentioned for completeness that with effect from the following week, namely from 12 September 1983, Jason was in any event no longer eligible to be treated as a child for child benefit purposes since the terminal date of the first Monday in September had by then passed.

9. It follows from what has been said above that the claimant was entitled to child benefit for the 2 weeks commencing 22 August 1983 and 29 August 1983, but not for the 2 weeks of the compulsory shut-down. For completeness, it should also be mentioned that the claimant received an overpayment covering the 2 weeks' period from 13 June 1983 to 26 June 1983, amounting to £11.70. It is not in dispute that the claimant exercised due care and diligence to avoid that overpayment, and the question of repayment does not arise.

10. Subject to my allowing child benefit in respect of the 2 weeks commencing 22 and 29 August 1983, I dismiss this appeal.

(Signed) D G Rice  
Commissioner

Date: 26th February 1986