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Commissioner's File: CFC/021/1990



FAMILY CREDIT (GENERAL) REGULATIONS 1987

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

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. I held an oral hearing of the appeal. The claimant was represented by Mr K.P. Bradley and Mr M. Jenking-Rees from the Solicitor's Office in the Department of Social Security appeared for the adjudication officer.

3. This is a claimant's appeal, brought with leave of the chairman of the tribunal, against the decision of the Nottingham social security appeal tribunal which confirmed a decision of the adjudication officer not to award family credit to the claimant.

4. There is no dispute concerning the facts and there never was. On 16 August 1989 the claimant made a claim for family credit. She is a single parent and at that time was living in a household with her son who had been born on 4 March 1971. He left school in June 1989 and the claimant informed the Department on 18 August 1989 that he was not returning to full-time non advanced education after the school holidays.

5. Section 20(5) of the Social Security Act 1986 provides the general conditions of entitlement to family credit; paragraph (c) of the sub-section specifies that the claimant is to be responsible for a child or a "person of prescribed description". Regulation 6(1) of the Family Credit (General) Regulations 1987 prescribed the category of person referred to in section 20(5)(c). At the material time, and in its unamended form, regulation 6 was as follows:

"6.-(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 20(5)(c) (entitlement) and section 20(11) of the Act (definition of

the family) as it applies to family credit is a person aged 16 or over but under 19 who is receiving full-time education within section 2(1)(b) of the Child Benefit Act 1975 (meaning of child), and in these Regulations such a person is referred to as "a young person."

(2) Paragraph (1) shall not apply to a person who is entitled to income support or would, but for section 20(9) of the Act (provision against dual entitlement of members of family), be so entitled."

Regulation 6 was amended by the Family Credit (General) Amendment Regulations 1990 (SI 1990 No. 574) with effect from 10 April 1990. The new paragraph 2 read as follows:

"(2) Paragraph (1) shall not apply to a person -

- (a) who is entitled to income support or would, but for section 20(9) of the Act (provision against dual entitlement of members of family), be so entitled;
- (b) who is receiving advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations 1976; or
- (c) who has ceased to receive full-time education but is to continue to be treated as a child by virtue of regulation 7 of the Child Benefit (General) Regulations 1976."

Section 2 of the Child Benefit Act 1975 provides the definition of a "child" which is to be applied in the interpretation of that Act; first a person under the age of 16 comes within the definition; but in addition a person is to be treated as a child in any week in which "(b) he is under the age of nineteen 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". It is section 2(1)(b) which is of importance in the instant case. Section 2(3) provides for the making of regulations which treat persons as children notwithstanding that they have ceased to be in full-time education. Regulation 7 of the Child Benefit (General) Regulations has been made under this power. That regulation deals with the circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child; I set out regulation 7(1)

"7.-(1) Subject to paragraphs (1A) and (3) [neither of which has any relevance to the present case] a person who has ceased to receive full-time education not being advanced education shall, if:-

- a. he is under the age of 16 when he so ceases, from the date on which he attains that age; or

b. he is 16 or over when he ceases, from the date on which he so ceases,

continue to be treated as a child within section 2(1) of the Act up to and including the week including the terminal date or if he attains the age of 19 on or before that date up to and including the last Monday before he attains that age."

5. The claimant's case before the tribunal was that she was entitled to family credit because her son qualified for child benefit until 4 September 1989 by virtue of the provisions of regulation 7 of the Child Benefit (General) Regulations and thereby satisfied section 2 of the Child Benefit Act 1975, and as a result thereof was a person of a prescribed description as specified in regulation 6 of the Family Credit (General) Regulations 1987. The case for the adjudication officer was that because the son was not in full-time non advanced education at the date of the claim, it had to fail. He submitted that the receipt or otherwise of child benefit was not the point at issue; the point was that non advanced education had ceased and the claimant could not be classified as a young person for the purpose of family credit because he did not satisfy regulation 6(1) of the Family Credit (General) Regulations in that he was not receiving full-time education within section 2(1)(b) of the Child Benefit Act 1975 at the time of the claim. The claimant's appeal was disallowed by the tribunal and they stated the reasons for their decision in the following passage

"We have carefully considered on all that we have read and heard today. We understand the basic points made by Mr Bradley and we have taken account of the extracts from the Adjudication Officer's guidance which is, of course, non statutory. We have based our decision upon the relevant statutory provisions. In effect Regulation 6 of the Family Credit (General) Regulations defines a "child or person of a prescribed description" by reference to Section 2 (1)(b) of the Child Benefit Act 1975 and this latter provision refers to a person being treated as a child for any week in which he is under the age of 19 and receiving full time education. We understand that there are provisions in the Child Benefit Act and the Regulations made thereunder to the general effect that a child may be deemed still to be a child for Child Benefit purposes notwithstanding that he or she has ceased to be in receipt of full time education. Section 2 (1) (b) however, is clear in its reference to receiving full time education. Regulation 6 of the Family Credit (General) Regulations is specific in its reference to Section 2 (1) (b) and makes no reference to the deeming provisions. In our view, therefore, there is to some extent an anomaly in that normally [the claimant] would have continued to have received Child Benefit for Darren until the beginning of September until the time that he would have been able to claim Income Support. Our interpretation of the Family

Credit Regulations, however, is that he can only form part of the Family Credit Unit whilst he is under the age of 19 and receiving full time education. As that education had ceased at the date of [the claimant's] claim we disallow the appeal."

6. Mr Bradley argues before me that the tribunal misdirected themselves as to the legislation. He submits that section 2(1)(b) of the Child Benefit Act was satisfied because the claimant's son came within the provisions of regulation 7 of the Child Benefit (General) Regulations 1976, and consequently he was a person of a prescribed description as specified in regulation 6(1) of the Family Credit (General) Regulations. He refers to the amendment made to regulation 6 by the Family Credit (General) Amendment Regulations 1990. He argues that it would be unnecessary to provide that the regulation did not apply to persons who had ceased to receive full-time education but who were treated as a child by virtue of regulation 7 of the Child Benefit (General) Regulations unless prior to the amendment such a person came within the regulation. Initially the adjudication officer supported the claimant's appeal to the Commissioner. However in a later submission he withdrew his support and argued, for the purpose of the family credit legislation, a person does not have to continue to be treated as a child as defined in the child benefit legislation, but rather he must be receiving full-time education. Mr Jenking-Rees adopted that argument. He contrasted the wording of regulation 6(1) with that of regulation 14 of the Income Support (General) Regulations.

7. It seems to me that the case turns on the wording of regulation 7 of the Child Benefit (General) Regulations. A person who satisfies the regulation is to be treated as a child within section 2(1) of the parent Act. He is deemed to be a child but he is not deemed to be receiving full-time education. He has ceased his full-time education but he is to continue to be a child for the purpose of section 2. I now turn to regulation 6 of the Family Credit (General) Regulations 1987 the wording is unambiguous and the test which it lays down is clear. In order to be a person of a prescribed description for the purposes of section 20(5)(c) of the Social Security Act 1986, the person is to fall within the age bracket and also has to be receiving full-time education within section 2(1)(b) of the Child Benefit Act. It is not provided that he is to be a child as defined in section 2(1) of that Act. The wording is different from that of regulation 14(1) of the Income Support (General) Regulations 1987 where persons of a prescribed description are persons who satisfy the age bracket and who are treated as a child for the purpose of section 2 of the Child Benefit Act.

8. Mr Bradley seeks to rely as an aid to interpretation on the later amendment made to regulation 6 by the Family Credit (General) Amendment Regulations 1990; he says such amendment would have been unnecessary if the tribunal's construction of the Act was the correct one. I have found regulation 6(1) to be clear unambiguous. I bear in mind the words used by Lord Simonds in The Attorney-General v Prince Ernest Augustus of Hanover

(1957) AC 436 at 464:

"I ought to mention, because the Attorney-General attached a modest weight to it, an Act of the fourth year of George III, whereby the then Prince of Brunswick Luneburg was naturalized as a British subject. He was in fact a lineal descendant of the Princess Sophia and the Act was unnecessary if the respondent's construction of the Act of 4 Anne is right, for he was already a British subject. But I cannot allow this matter to weigh with me at all. I do not know why the Act was passed, whether because the earlier Act had, after 60 years, been forgotten, or because a doubt had been expressed and ex majore cautela it was desired to pass a special Act, or because Parliament flatly misinterpreted the earlier Act. I cannot regard it as a legislative interpretation of the earlier Act operating to give it a meaning which it would not otherwise bear."

Likewise in the instant case I cannot regard the amendment made by the Family Credit (General) Amendment Regulations 1990 as a legislative interpretation of regulation 6(1), as it stood at the time of the claim, operating to give it a meaning which it would not otherwise bear.

(Signed) J J Skinner
Commissioner

Date: 27 January 1992