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Commissioner's File: CIS/447/1994

SOCIAL SECURITY ACT 1986

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A

QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: A S

Social Security Appeal Tribunal:

Case No:

1. This is an appeal by the claimant against the decision of the Worcester social security appeal tribunal, given on 2 February 1994, whereby the tribunal decided that the claimant was not entitled to income support from 21 October 1993. At the claimant's request I held an oral hearing of the appeal. Miss I. Findlay of Counsel represented the claimant. Mr A. Prosser also of Counsel represented the adjudication officer.

2. The facts are uncomplicated and not in dispute. The claimant was born on 13 April 1977. He had fallen out with his parents and went to live with his grandfather. The grandfather became ill and came to the attention of the local Social Services Department. It was apparent that the claimant could not go on living with his grandfather and a social worker from the local authority, who worked with adolescents whose family relationships were under strain, helped the claimant to find accommodation by giving him a list of approved accommodation held by the local authority. No doubt the local authority assisted the claimant in other ways but such assistance is not I think relevant to this case. In October 1993 the claimant went to lodge with Mr and Mrs D who were on the list; it appears that he was liable to them for the rent because he made a claim for and received housing benefit from the local authority. He also made a claim for income support. He was then 16 and studying for his GCSE at K. College.

3. Except in such circumstances as are prescribed persons receiving "relevant education" are not entitled to income support: see section 124(1)(d)(ii) of the Social Security Contributions and Benefits Act 1992. Regulation 12 of the Income

Support (General) Regulations 1987 prescribes the circumstances in which a child or young person is to be treated as receiving relevant education. It is not in dispute in this case that the claimant was at the material time receiving such education.

4. The circumstances in which persons in relevant education may be entitled to income support by way of exception to the main rule are set out in regulation 13 of the 1987 Regulations which, as relevant, provides -

" 13.- (1) Notwithstanding that a person is to be treated as receiving relevant education under regulation 12 (relevant education) he shall, if paragraph (2) applies to him and he satisfies the other conditions of entitlement to income support, be entitled to income support.

(2) This paragraph applies to a person aged 16 or over but under 19 (hereinafter referred to as an eligible person) who -

(a) - (c) not relevant

(d) of necessity has to live away from his parents and any person acting in the place of his parents because -

(i) he is estranged from his parents and that person; or

(ii)-(iii) not relevant
(dd)-(h) not relevant

(3) In this regulation -

(a) any reference to a person acting in the place of an eligible person's parents includes -

(i) for the purposes of paragraph (2)(c), (d) and (dd), a reference to a local authority or voluntary organisation where the eligible person is being looked after by them under a relevant enactment or where the eligible person is placed by the local authority or voluntary organisation with another person, that other person whether or not a payment is made to him; and

(ii) not relevant.

(b) not relevant."

It is paragraph (2)(d)(i) that is agreed as being relevant to this case and it is further agreed that the claimant was at all material times "estranged from his parents". The crucial issue in the case is whether, in the circumstances to which I have referred and having regard to paragraph 3(a)(i), there was "any person acting in the place of his parents". Mr Prosser submitted that, in the circumstances, Mr and Mrs D. were "acting in place of [the claimant's] parents" because the claimant was to be regarded as having been "placed by the local authority" with them. Miss Findlay principally submitted that "placed" had the meaning given in the Children Act 1989 and that, in that sense, the claimant had not been "placed" with Mr and Mrs D. It is not in dispute that if the claimant had been "placed" with them then, not being estranged from them, paragraph 2 of regulation 13 did not apply and he was not, as the tribunal held, entitled to income support.

5. Mr Prosser accepted, contrary to the current adjudication officer's written submissions, that "looked after by [a local authority]", which I can refer to as the first limb of paragraph 3(a)(i), was to be given the meaning ascribed to that phrase by section 22 of the Children Act 1989 (General duty of local authority in relation to children looked after by them). That provision was "a relevant enactment" as referred to in paragraph (3)(a)(i). It is not in issue that the claimant was not being looked after by the local authority in the section 22 sense. Mr Prosser then contended however that "placed" in the second limb was not a reference to "placing" under section 23 of the Children Act (Provision of accommodation and maintenance by local authority for children whom they are looking after). That was because a local authority could place a child under that provision only if they were "looking after him" which meant, he submitted, that the second limb would be redundant; he maintained that "under a relevant enactment" governed the first but not the second limb of the sub-paragraph.

6. Mr Prosser then submitted that if "placed" was not used in the Children Act sense then it had its ordinary non-technical meaning and the tribunal were right to conclude that in the circumstances the claimant had been "placed by the local authority" in that non-technical sense. Miss Findlay contended that even in that sense the claimant had not been "placed by the local authority ... with another person"; all that had happened is that the claimant had been given a list of approved accommodations.

7. The history of paragraph (3)(a)(i) is of relevance to the matter now in issue. Originally the paragraph read -

" (3) In this regulation -

(a) any reference to a person acting in the place of a young person's parents includes -

(i) for the purposes of paragraph (2)(c) and (d), a

reference to a local authority or voluntary organisation where the young person is in their care under a relevant enactment, or to a person with whom the young person is boarded out by a local authority or voluntary organisation whether or not any payment is made by them; "

At that time the relevant enactment was the Child Care Act 1980. It seems to me that there can be little doubt that in the original version of the paragraph "in their care under a relevant enactment" was a reference to "care" under section 2 of the 1980 Act and that "boarded out by a local authority" was a reference to boarding out under sections 21 and 22 of that Act and regulations thereunder; I doubt if it could be said that "boarded out" was to be given a general non-technical meaning. The Child Care Act was repealed by the Children Act and "boarded out" became "placed". Paragraph 21 of Schedule 14 to the 1989 Act provided that where a child was boarded out under the 1980 Act he was to be treated as "having been placed with a local authority foster parent" under the 1989 Act. Paragraph (3)(a)(1) of the 1987 Regulations was then amended, to its current wording, by paragraph 2 of the Schedule to S.I. 1992/468 the Schedule being introduced by regulation 12 which reads -

" 12. The Schedule to these Regulations, which makes changes to the General Regulations consequential upon the Children Act 1989, shall have effect."

Thus it is plain that the draftsman had in mind that both limbs of the original version of paragraph (3)(a)(1) were to be construed by reference to the Child Care Act and both limbs of the amended version by reference to the Children Act.

8. As to the point made by Mr Prosser that in that case the second limb would appear to be redundant I think Miss Findlay was right to point out that the words of the limb are "placed by the local authority .. with another person" so making clear that where the claimant has been placed by a local authority, the estrangement to be considered is estrangement from the person with whom the claimant is placed and not from the local authority.

9. In my view the second limb of paragraph (3)(a)(1) refers to placement under the Children Act. I should also say that if I am wrong about that I would agree with Miss Findlay that, even in a general sense, the claimant in the circumstances in question was not "placed by the local authority with another person". He chose accommodation from a list. I can see the point of disentitling an adolescent in relevant education from income support where he is in effect being maintained either by his local authority under the Children Act or by the person with whom he is placed. But when a claimant is living, as appears to be the case here, on a commercial basis albeit at an approved

address I can see no reason in principle why income support should be denied if the other conditions of entitlement are met.

10. I allow this appeal and set aside the tribunal's decision. I give my own decision in substitution for theirs which is that at the material time paragraph (2)(d)(i) of regulation 13 of the 1987 Regulations applied to the claimant. If all the other conditions of entitlement to income support were satisfied the claimant is entitled to income support for the period in question.

(Signed) R A Sanders
Commissioner

(Date) 31 May 1995