

RAS/CW/1

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CJSA/836/1998

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER R A SANDERS

Claimant :

Tribunal :

Tribunal Case No :

1. This is an appeal by the claimant against the decision of the Luton social security appeal tribunal given on 18 June 1997. The tribunal dismissed the claimant's appeal against the decision of an adjudication officer that "Mr Wallace is not entitled to jobseeker's allowance from 9 December 1996 as he is a full-time student during a period of study".

2. Section 1 of the Jobseeker's Act 1995 requires among other things that, for entitlement to jobseeker's allowance, the claimant must be available for employment. Regulation 15(a) of the Jobseeker's Allowance Regulations 1996 stipulates that a person is not to be regarded as available for employment "if he is a full-time student during the period of study...". There is a definition of "full-time student" in regulation 1(3) which is complicated in its detail but, in that part of it which, as I understand it, is relevant to this claimant, it means a person aged 19 or over who is "attending a full-time course of study...". "Course of study" is defined in regulation 1(3) as meaning -

"any course of study, including a course of advanced education and an employment-related course, whether or not it is a sandwich course and whether or not a grant is made for attending it or undertaking it and for the purposes of this definition a person who has started a course of study shall be treated as attending or undertaking it, as the case may be, until the last date of the course or such earlier date as he abandoned it or is dismissed from it;"

"Period of study" is also defined, at some length, in regulation 1(3) but that definition does not, I think, assist with the issue in this case namely whether the claimant, at the material time, was a full-time student.

3. The claimant at the material time was a student at the University of Luton reading for an LLB. In the adjudication officer's written submissions to the tribunal it is stated that -

"On his claim form, Mr Wallace states that the law degree he was undertaking at Luton University ended on 7.6.97.

On 16.12.96 information was received from Luton University that the course Mr Wallace was attending was a full-time course. The adjudication officer decided that Mr Wallace was not entitled to jobseeker's allowance as he was a full-time student.

Following an interview with Mr Wallace on 18.12.96, clarification was sought from Luton University regarding the nature of the course. The information provided by the Student Administration was that Mr Wallace had failed 2 modules of his full-time law course and had returned in the 1996/7 academic year to retake these modules. The adjudication officer decided that there were no grounds to review Mr Wallace's claim.

In his letter of appeal, Mr Wallace contends that he is a part-time student. The adjudication officer considers that even if he were a part-time student, Mr Wallace would still not be entitled to jobseeker's allowance as he does not fulfil the requirements necessary as provided by regulation 11 to be accepted as available for employment and neither does he fall within the provisions of transitional protection.

Having regard to all the evidence provided, the adjudication officer still considers Mr Wallace to be a full-time student and as such is not entitled to jobseeker's allowance."

4. The information referred to in those submissions was apparently obtained by telephone. A subsequent letter in the papers before me, dated 6 March 1997, from the University to the claimant records that the claimant was -

"...registered as a full-time student at this University until 15 June 1996, following the LLB course. You then ceased full-time study and registered again on 30 September 1996 as a part-time student."

Another, dated 7 April 1997, from the University to the Benefits Agency stated that -

"According to our records Mr Wallace completed the academic year 1995/96 as a full-time student; last day of Summer Term being 5th July 1996.

Students are required to re-register annually, that is, they are only ever committed for one academic year. On the 30th September 1995 Mr Wallace re-registered as a part-time student."

The adjudication officer concluded that the claimant was, at the material time, a full-time student by reference to the

provisions to which I have referred and apparently on the basis that as the first year of the course was full-time and as the claimant had neither abandoned it nor been dismissed from it, it continued as a full-time course notwithstanding that the claimant had re-registered as a part-time student.

5. The tribunal, as I have said, confirmed the adjudication officer's decision. Mr Griffith for the claimant and Ms Bergmann for the adjudication officer both submitted to me at the oral hearing that the tribunal's decision was erroneous in law principally because, by their reference to whether or not the claimant could actually have taken any employment, it was not clear what the tribunal had decided with regard to whether or not, at the material time, the claimant was a full-time student. I agree that the tribunal's decision is, for that reason, erroneous in law. I therefore allow this appeal and set aside the tribunal's decision.

6. There are similar statutory provisions to those to which I have referred in relation to entitlement to income support; a full-time student as defined in the Income Support (General) Regulations 1987 is not entitled to income support. However, the method of ruling out full-time students from entitlement to income support is somewhat different. Regulation 2(1) defines "student" as having the meaning prescribed in regulation 61. In that provision "student", so far as relevant to the facts of this case, is defined as meaning -

"a person...aged 19 or over...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 last day of the course or such earlier date as he abandons it or is dismissed from it;"

The Court of Appeal has considered the meaning and application of that deeming provision in several cases. First, in CAO v. Clarke and Faul [1995] ELR 259, which concerned students who had taken a period out from their respective university courses, the Court of Appeal construed "abandons" as meaning finally abandons and also concluded that, because the period out did not come within the words "throughout any period of term or vacation within it" those students were not caught by the deeming provision. Those words were then removed, by amendment, from the provision. Second, in CAO v. Webber

[1997] 4 All ER 274, the Court of Appeal decided that a student attending a so-called modular course at a university was not, when he changed from full-time to part-time, deemed to be continuing his course on a full-time basis. Then in O'Connor v. CAO and Secretary of State for Social Security (3 March 1999) the Court of Appeal considered again much the same issue as had arisen in Webber.

7. At the oral hearing of this appeal Mr Griffith contended that this case was indistinguishable from Webber and that the outcome should be the same. Ms Bergmann contended that the course in question was significantly different from that dealt with in Webber. Neither of them took the point that, as it seems to me, the jobseeker's allowance provisions are significantly different from the income support provisions, the Court of Appeal in the cases to which I have referred having been concerned only with the latter.

8. In the Jobseeker's Allowance Regulations a "full-time student" is, as I have shown, and as relevant to this case, defined as meaning a person who is "aged 19 or over...and attending a full-time course of study...". The deeming provision, which is in the definition of "course of study" requires that "a person who has started a course of study" is to be "treated as attending...it..." until one of the several events happens. Those events are the same as apply in the deeming provision in relation to income support but whereas in the Income Support (General) Regulations a person attending a full-time course of study is to be treated as continuing to attend such a course until one of the events happens, in the Jobseeker's Allowance Regulations, as I read them, a person attending a course of study is treated only as continuing to attend it; there seems to be nothing linking the deeming provision to a full-time course.

9. It follows that in the present case there is nothing which requires that the claimant, who had started full-time and changed to part-time, is to be treated as continuing full-time; his course continued but whether on a full-time or part-time basis is, in my view, to be determined by events at the material time. And as, at the material time, the claimant in this case was part-time he was not, at that time, a full-time student.

10. If I am wrong about that I would take the view that the course attended by the claimant in this case is not materially different from that considered in Webber and O'Connor. In the

Student Modular Handbook of the University of Luton it is stated that -

"The Modular Credit Scheme gives you flexibility to build your own programme of study from the range of modules within the scheme. Each module carries credit points which you accumulate while you study. You progress through the scheme by accumulating module credits and by gaining awards when enough credits have been gained".

Later on it says that -

"Regardless of which programme you have been offered, to get an Honours Degree you must normally study and pass 24 modules over 3 years (8 per year) of full-time study or the equivalent by part-time study, with at least 18 of the total of 24 modules chosen from the subject[s] named in your offer letter".

And the university confirmed, in the letter to which I have referred, that students are required to re-register annually and are only ever committed for one academic year. It seems to me that the Handbook and the letter show that the courses provided by the University of Luton are so flexible that a student can from one year to the next change from full-time to part-time and back again; they are not, at the outset, to be characterised as necessarily full-time. In Webber Hobhouse LJ said that (281d) -

"In my judgment, the argument of Mr Rabinder Singh encounters serious difficulties when applied to a course which leaves open the degree of flexibility which is permitted by the university for this course. The course does not have a fixed and determined character at its outset. It has an uncertain length and composition. A student can start as a part-time student, convert to a full-time student and, maybe, convert back to part-time. Mr Rabinder Singh would have to accept that at its outset such a course could not be characterised as full-time because, at its outset, it was part-time and whether it ever became full-time, and if so for how long, would depend upon a decision by the student as to how he wished to complete the course, how many modules he wished to take at any one time, and what attendance he wished to make".

He sent on to say that (281j) -

"...a course which does not require full-time attendance cannot be described as a full-time course".

In O'Connor Auld LJ endorsed that view. He said (pages 15 to 16 of the transcript) -

"The scheme of the Regulation is that the status of student is determined by the nature of the course he starts. If it is full-time then he is treated as continuing to attend it until its last day or his earlier abandonment of or dismissal from it. If, at its start it may be followed full-time or part-time according to the student's preference as the course proceeds, the position is different".

11. The course in question at the University of Luton could, at its start, be followed full-time or part-time and the student could change from one to the other from one year to the next. I conclude that that course could not be described as a full-time course. So even if the deeming provision in relation to jobseeker's allowance were to be given the same effect as that for income support I would take the view that the course was not a full-time course for the purposes of that provision.

12. There is no reason for me to send this case to another tribunal. My decision is that the claimant was not at the material time a full-time student. He has, as I understand it, already been held to have been at that time available for employment. Entitlement to jobseeker's allowance should be determined by the adjudication officer accordingly.

(Signed) R A Sanders
Commissioner

(Date) 7 June 1999