## FAMILY INCOME SUPPLEMENT

**Whether engaged in remunerative full-time work—mature full-time student in receipt of a grant.**

The claimants made a renewal claim to family income supplement in respect of themselves and 4 children. Although the husband had previously been self-employed, and engaged in remunerative full-time work, at the date of the renewal claim he had become a mature student pursuing a full-time degree course at a University and was in receipt of a grant from the local education authority. His wife was not employed. The adjudication officer disallowed the claim on the ground that it did not include a man or woman engaged and normally engaged in remunerative full-time work within the terms of regulation 5 of the Family Income Supplements (General) Regulations 1980. On appeal the social security appeal tribunal upheld this decision.

*Held* that:

1. while undertaking his course of studies the claimant was, in a general sense, in full-time work but that work was not remunerative. The grant from the local authority was a contribution to his maintenance and that of his family and not a return for the claimant's work on the course (paragraph 9);

2. working for a degree is not analogous to being self-employed and working with the desire hope and intention of claiming a reward or profit (paragraph 10);

3. consequently the claimants had no entitlement to family income supplement because their family was not a "family" within the special definition in Section 1(1) of the 1970 Act (paragraph 11);

4. the claimant's appeal is dismissed.

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1. I dismiss the claimants' appeal against the decision of the social security appeal tribunal dated 30 April 1985 (relating to family income supplement), as that decision is not erroneous in law: Family Income Supplements Act 1970, section 6 and the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No. 451 as amended], regulation 27.

2. This is an appeal to the Commissioner, with the leave of the tribunal chairman, by two claimants, husband and wife, against the unanimous decision dated 30 April 1985 of the tribunal that family income supplement was not payable because the family in respect of whom the supplement was claimed did not include a man or woman normally engaged in remunerative full-time work. The tribunal stated in their decision, "Disallowed, with regret. To be read along with other, rejected claim, [this apparently referred to an appeal as to supplementary benefit on a claim by the wife] in their unfortunate repercussions". I appreciate the concern of the local tribunal and the reason why the chairman gave leave and I also appreciate the stringent financial circumstances in which the two claimants with their young family find themselves. Nevertheless, I conclude for the reasons set out below that the effect of the Family Income Supplements Act 1970 is such that, at the date of claim for family income supplement (30 January 1985), the claim could not be sustained.

3. The appeal to the Commissioner was, at the claimants' request, the subject of an oral hearing before me on 31 October 1985 at which the claimants were present and addressed me and were represented by Mrs. D. Marston, a welfare officer of the students union at the University at which the husband claimant is studying. The adjudication officer was represented by Mrs. A. Stockton of the Solicitor's Office of the Department of Health and Social Security. I am indebted to all these persons for their assistance to me at the hearing.

4. On 30 January 1985, the claimants made a written claim for family income supplement, their family consisting of themselves and their 4 children aged 6, 5, 3 and 1 at the relevant time. The wife claimant was not working or in receipt of any income or earnings. The husband had commenced at a University in October 1984 a full-time 3 years Honours B.A. Degree course in combined studies. The January 1985 claim was by way of a renewal claim, since the claimants had been in receipt of family income supplement for approximately a year before January 1985. That was because, before going up to University, the husband claimant had been self-employed but his income had been insufficient from his self-employment and had merited 'topping-up' by family income supplement. On starting his course at the University, however, the claimant ceased to be self-employed and his only income consisted of a grant made to him as a mature student by his local education authority to enable him to pursue his studies. That grant was some £600 per year more than would be given to an undergraduate student who was not a mature student. In addition there were allowances for the claimant's wife and children. Nevertheless, it was common ground between the parties that the amount of the grant was such that, if otherwise the claimants were entitled to family income supplement,

their total resources were low enough financially to enable them to be 'topped-up' by family income supplement.

5. The question, therefore, is whether the claimants' family at that time fulfilled the condition precedent for entitlement to family income supplement to be found in section 1(1)(a) of the Family Income Supplements Act 1970 (as substituted by section 7(1)(a) of the Social Security Act 1980) which reads as follows,

> "1.—(1) For the purposes of this Act a family shall consist of the following members of a household—
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> (a) a man or woman engaged and normally engaged in remunerative full-time work; and
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> (b) if the person mentioned in the preceding paragraph is one of a married or unmarried couple, the other member of the couple; and
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> (c) the child or children whose requirements are provided for, in whole or in part, by the person or either of the persons mentioned in the preceding paragraphs;
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> [proviso – not relevant]
>
> (2) A benefit, to be known as a family income supplement, shall be paid (on a claim duly made thereto) for any family in Great Britain if the weekly amount of its resources, so far as taken into account for the purposes of this Act, falls short of the prescribed amount."

6. The question, in short, therefore is whether the husband claimant can be regarded, while on his full-time degree course at University and in receipt of a grant from the local education authority, as being "engaged and normally engaged in remunerative full-time work". If he can be so regarded, then his family constitutes a "family" within the special definition in section 1(1) of the 1970 Act. Only if it is such a "family" can it come within section 1(2) of the Act and it is only at that stage that it is material to ask what is "the weekly amount of its resources" (section 1(2)). That answers a point made at the hearing by the husband claimant who drew attention to the use of the word "resources" in sections 1(2) and 4(1) of the 1970 Act and also to the word "income" in section 4(1). But those words, "resources" and "income", do not come into consideration until such time as it is established that a claimant's family comes within the special definition of "family" in section 1(1) of the 1970 Act, which involves showing that the family contains a man or a woman "engaged and normally engaged in remunerative full-time work".

7. Section 10(2)(a) of the 1970 Act provides that regulations can make provision "for determining the circumstances in which a person is to be treated as being, or as not being, engaged or normally engaged in remunerative full-time work" and, in pursuance of that power, regulation 5 of the Family Income Supplement (General) Regulations 1980 [S.I. 1980 No. 1437] deals with "circumstances in which a person is to be treated as being or as not being engaged and normally engaged in remunerative full-time work" but it deals principally with the number of hours per week worked and it does not assist in the definition of what is meant by "remunerative full-time work".

8. Nor is there any definition elsewhere in the regulations, or for that matter in the 1970 Act itself, of the words "remunerative full-time work". Moreover, neither the Supplementary Benefits Act 1976 nor the Social Security Act 1975 contain relevant definitions. Nevertheless the concept of "remunerative full-time work" has long been familiar in social security law

and in my judgment the learned Commissioner who decided reported case R(FIS)1/83 accurately described what is meant by "remunerative work" in paragraph 7 of that decision in which he stated,

> "In my judgment, remunerative work means work performed for an employer in return for wages, salary or some other quantifiable consideration, or, where the person concerned is self-employed, work carried out with the desire, hope and intention of claiming a reward or profit."

In that case, the learned Commissioner then went on to hold that a trainee taking part in a Youth Opportunity Scheme promoted by the Manpower Services Commission was not engaged in full-time remunerative work. I appreciate the facts of the case were different but the statement of principle is correct and is also applicable, in my view, to the present case. The learned Commissioner's statement also accords with the judgments in the Court of Appeal in the case of *Perrot v. Supplementary Benefit Commission* [1980] 1 WLR 1153 (also reported at page 271 of "Decisions of the Courts relating to Supplementary Benefits and Family Income Supplements Legislation"—HMSO) and of the Divisional Court in *R. v. Ebbw Vale and Merthyr Tydfil Supplementary Benefit Appeal Tribunal ex p. Lewis* [1981] 1 WLR 131 (Decisions of the Courts etc", page 285—reversed on another point not relevant to this appeal by the Court of Appeal at [1982] 1 WLR 420). Mrs. Stockton also cited to me reported Commissioner's decisions R(FIS)6/83 and R(FIS)1/84 but she was minded to agree with my suggestion that those cases merely assumed the point in issue in this case, which had not been argued before the learned Commissioners who decided those cases.

9. As I adopt the definition of the learned Commissioner at paragraph 7 of R(FIS)1/83 (see paragraph 8 above), it is clear that it cannot be said that, while the claimant was at University, he was "engaged in remunerative full-time work". I would accept, that while undertaking his full-time course of studies, both during term time and during vacations, the claimant works at least as hard as an employed or self-employed person and that in a general sense therefore he is in "full-time work". But in my judgment that work is not "remunerative". The word "remunerative" is defined by the Shorter Oxford English Dictionary as being "that remunerates or rewards" or "that brings remuneration; profitable". The word "remunerative" of course comes from the verb to "remunerate" which is given the following meanings by the OED, "to repay, requite, make some return for (services, etc)" and "to reward (a person); to pay (a person) for services rendered or work done". In relation to those definitions, the claimants asserted that the husband's grant from the local education authority constituted "remuneration" for the work that he was doing at University. Despite the breadth of the dictionary definitions I do not accept that contention. The grant from the local authority was intended as a contribution towards the maintenance costs of the claimant and his family while he was at University and in no sense constituted a "quid pro quo" for the claimant's work on his course, even though he had to comply with examination etc. requirements to continue to be entitled to the grant and had to submit medical certificates if he was away ill.

10. I fully appreciate the point, strongly made by the claimant, that section 1(1) of the Family Income Supplements Act 1970 does not use the word "employment"—but uses the word "work". However, that is probably only because there is clearly envisaged not only employment with an employer but also the position where a person is self-employed. At all events, I cannot consider that the work that the claimant did was "remunerative" in any sense. It would be too remote a concept to say that

working for a degree was self-employment being "work carried out with the desire, hope and intention of claiming a reward or profit" (paragraph 7 of R(FIS)1/83). There is in my view no analogy between working for a degree and setting up a business which for the time being is not profitable.

11. For all the above reasons I must conclude that at the date of claim, i.e. 30 January 1985, the claimants had no entitlement to family income supplement because their family was not a "family" within the special definition in section 1(1) of the 1970 Act. Consequently the appeal must be dismissed. The Commissioner is an independent judicial authority and must interpret the words of the legislation according to their literal and natural meaning. He cannot waive or vary them. If that interpretation, as the claimants contend, leads to grave financial hardship for them or a 'hole' in the social security 'safety net', that is not a matter with which I can deal. It is a matter for Parliament. Lastly, I would emphasise that my decision solely relates to family income supplement and does not relate to the possible position of the claimants as to other social security benefits e.g. supplementary benefit.

(Signed) M. J. Goodman
Commissioner