FAMILY INCOME SUPPLEMENT

Normally engaged in remunerative full-time work—claimant working as a temporary porter.

The claimant was at the date of his claim for family income supplement (FIS) employed for 37½ hours per week as a temporary porter and had been so engaged for the previous 3 weeks. For 3 years preceding the employment as a porter, the claimant had been a mature student at a university. He had, at the date of claim, an offer of a place to read for a further degree but had not then decided to take it up. On appeal, the tribunal found that the claimant was not normally engaged in remunerative full-time work but was normally a full-time student. (Reg 5(2), Family Income Supplements (General) Regulations 1980).

Held that:

1. in determining under reg 5(2) whether a person is normally engaged in remunerative full-time work, one has to look to see whether at the time of claim it was normal for the person to be so engaged. One does not look to see if the way in which a person was engaged in the particular work was the way in which people in general normally engage in that kind of work, or if it is normal for persons in a similar position to engage in such work (paragraph 7);

2. the tribunal was entitled to look at the fact that, for 3 years preceding employment, the claimant had not been engaged in remunerative full-time employment but had been a student (paragraph 9);

3. regulation 3(1) of the Family Income Supplements (General) Regulations, under which an award can be made for a period shorter than 52 weeks, is intended for application where the only uncertainty concerns the appropriate rate; it is not intended to alter the time-scale for judging whether a person is normally engaged (paragraph 11);

4. the provisions that, in general, FIS is to be awarded for 52 weeks from the date of claim and is not to be affected by any change of circumstances during that period indicate the time-scale by which normality is to be judged; the supplement was intended for cases where it might be expected that the prevailing situation or something like it could persist for 52 weeks (paragraphs 11 and 12);

5. in that time-scale it is clear that the appeal tribunal had evidence on which they could conclude that the situation prevailing at the time of claim was not the normal situation of the claimant. The appeal accordingly fails (paragraph 12).

1. My decision is that the decision of the appeal tribunal dated 13 September 1982 was not erroneous in point of law.

2. The claimant made a claim for family income supplement (FIS) dated 25 July 1982 which bears a rubber stamp indicating that it was received in

an office of the Department of Health and Social Security on 28 July 1982. At that time the claimant was employed by a branch of Boots, the chemists, as what he described in the claim form as a temporary porter working 37½ hours per week. The appeal tribunal had evidence that he was so employed from 5 July to 25 September 1982. In his notice of appeal to the Commissioner the claimant has cited the employers' letter offering the employment for that period; but I do not think that this letter was before the tribunal. The claim was rejected by the supplement officer broadly on the ground that the claimant was not normally engaged in remunerative work for not less than the minimum weekly hours. This decision was confirmed on appeal by the appeal tribunal, which gave as their reasons that the claimant was not normally engaged in remunerative full-time work but was normally a full-time student. The claimant with my leave now appeals to the Commissioner.

3. Section 1(1) of the Family Income Supplements Act 1970 (the Act) provides that a family for purposes of FIS shall consist of (among other things) one man or a single woman engaged and normally engaged in remunerative full-time work and in the case of a man his wife (if any) and his children. The claimant was married and had two children living with him and his wife and there can be no doubt that they constituted a family for purposes of FIS provided that the claimant was at the relevant time engaged and normally engaged in remunerative full-time work. Some of the words and phrases used above are defined in regulations made under power conferred by the Act. Others, including notably the word "normally" are not defined at all and have their ordinary meaning.

4. It is first necessary to note that the person in question (here the claimant) must not only be engaged in remunerative full-time work, but he must also be normally so engaged; (see Decision R(FIS) 3/82, where it was argued that the claimant though normally engaged in full-time work was not at the relevant time then actually so engaged). In the present case on the other hand it has never been in dispute that the claimant was at the relevant time actually engaged in remunerative full-time work and the contest has been over whether he was normally so engaged.

5. The circumstances in which a person is to be treated as engaged in remunerative full-time work and normally so engaged are set out in regulation 5 of the Family Income Supplements (General) Regulations 1980 (the General Regulations). Regulation 5(2) provides as follows:—

> "5.—(2) A person shall be treated as being normally engaged in remunerative full-time work if he is normally engaged in such work for not less than the minimum weekly hours but not otherwise."

This does not add much to what might have been inferred from the words "normally engaged in remunerative full-time work". The minimum weekly hours were, in the claimant's case under regulation 5(3), 30 hours per week, and the claimant was engaged for more than this minimum. Was he normally so engaged? The appeal tribunal found that he was not and I can disturb their conclusion only if they erred in law. The word "normally" is an ordinary English word and its meaning is not a question of law. I can find an error of law in their conclusion only if the approach adopted to the interpretation of the word was wrong.

6. Section 6(2) of the Act provides that, unless regulations otherwise provide any question as to the right to or the amount of FIS shall be determined as at the date when the claim for the supplement is made. There being no relevant regulation to the contrary, the question whether the claimant was normally engaged in remunerative full-time employment fell

to be determined as at the date that his claim was made, which was on or about 28 July 1982; the precise date is in this case immaterial. I do not consider that the tribunal in stating in the reasons for their decision: "The appellant is not normally engaged in remunerative full-time work", should be regarded as showing how they decided that question as at the date of their decision. They upheld the decision of the supplement officer which specifically referred to the point that on the date of the claim the family did not include a man or a single woman who is normally engaged in remunerative full-time work.

7. Regulation 5(2) quoted in paragraph 5 above, though not very informative, does at least show that in determining whether a person is normally engaged in remunerative full-time work one has to look and see whether at the relevant time (the time of claim) it was normal for the person in question to be so engaged. One does not look to see if the way in which he was engaged in the particular work was the way in which people in general normally engage in that kind of work; or to see if it is normal for persons in a similar position to engage in such work. The claimant (who had just completed his last undergraduate year as a mature student at a university) submits that he thought it was perfectly normal for a person in such a position to take up paid vacation work. I do not doubt this but their was not the question that the tribunal had to consider. As I have indicated the question they had to consider was whether it was normal for the claimant to be in remunerative full time work. In their statement of reasons they said that he was not normally so engaged but was normally a full-time such a position to take up paid vacation work. I do not doubt this but this was not the question that the tribunal had to consider. As I have indicated the question they had to consider was whether it was normal for the claimant to be in remunerative full-time work. In their statement of reasons they said that he was not normally so engaged but was normally a full-time student. This shows that they correctly addressed their minds to the question whether it was normal for him to be engaged in remunerative full-time work.

8. Was there then an error of law in their answer to this correct question? The tribunal had before them uncontested evidence that the claimant had completed his last undergraduate year, that he had at the time of claim an offer of a place to read for a further (MA) degree but had not then decided to take it up. They knew that he was working as a temporary porter and, by the hearing, that employment had terminated after lasting about 12 weeks. I am not sure that they actually had evidence that he had at the date of claim been offered employment by the employers for precisely that period. They also knew by the date of the hearing that the claimant had in fact returned to take the further degree. The claimant says that at some time he applied for employment in the prison service, that he gave evidence of this but that his letter was lost by the supplement officer. It was on this evidence that the tribunal concluded that the claimant was not normally engaged in full-time employment.

9. The tribunal were clearly entitled to look at the fact that for three years preceding the employment as a porter the claimant had not been (unless for temporary periods in vacation) engaged in remunerative full-time employment but had been a student. I am prepared to accept that that which has not been normal may become normal almost overnight if a long-term contract or even a series of consecutive short-term contracts are entered into (cf Decision R(U) 1/72); but there was no evidence of any such thing in this case at the date of the claim and, unless the tribunal were looking at the matter on an erroneous time-scale, they were clearly entitled on the evidence to conclude that at the date of the claim the claimant was

not normally engaged in remunerative full-time work.

10. I come therefore to the question of the time-scale. If one takes the long vacation of 1982 in isolation one could hardly fail to reach the conclusion that it was during that vacation normal for the claimant to be in remunerative full-time work. But in my judgment it would not be right to take the long vacation in isolation. Section 6(3) of the Act, as amended, provides as follows:—

"6.—(3) Any family income supplement determined by a supplement officer to be payable shall be payable for a period of fifty-two weeks, or such other period as may be prescribed by regulations, beginning with the said date [viz the date on which the claim is made] or some other date so prescribed and, subject to any provision of regulations, the rate at which it is payable shall not by affected by any change of circumstances during that period."

11. This, despite the provision for prescribed exceptions, is a strong indication of the time-scale by which it was intended that the matter should be judged. The only exception to the 52-week rule made by subsisting regulations is for cases where the available evidence leaves the determining authority uncertain as to the rate at which benefit should be payable but satisfied that it should be payable at not less than a certain weekly rate (see regulation 3(1) of the General Regulations). This provision was considered by a Tribunal of Commissioners in Decision R(FIS) 1/82 at paragraph 24, where it was said that the purpose of the regulation is to enable awards to be made for a shorter period than 52 weeks because of doubt as to whether an award for a relatively long period of 52 weeks can properly be made at the rate which would be appropriate for the shorter period. In my judgment the regulation is intended for application where the only thing inhibiting an award for 52 weeks is uncertainty about the appropriate rate. It is not intended to alter the time-scale for judging whether a person is normally engaged or to justify an award for, say, 12 weeks to a person who has employment for 12 weeks without evidence of prospects of further employment at the end of those 12 weeks.

12. The view that the time-scale by which normality is to be judged is 52 weeks is re-inforced by the closing words of section 6(3) quoted above and of the fact that regulation 12 of the General Regulations (which relates to review of decisions) contains no provision (comparable to, for instance, section 104(1)(b) of the Social Security Act 1975 and regulation 4(1)(b) of the Supplementary Benefit (Determination of Questions) Regulations 1980) authorising the review of decisions on the ground that there has been a relevant change of circumstances. It is thus intended in general that an award once made shall last for a year, and the requirement that a person shall not merely be actually engaged in remunerative full-time work but also be normally so engaged is no doubt framed with that in mind. Of course it may happen that there is an unexpected change of circumstances, like the sudden loss of a job, that makes the long-term award inappropriate. In that event if the person concerned claimed a supplementary allowance his outstanding FIS would be treated as an income resource under regulation 11(2)(c) of the Supplementary Benefit (Resources) Regulations 1981. But it is clear in my judgment that the intention was that in general the supplement was intended for cases where it might be expected that the prevailing situation or something like it could persist for 52 weeks. In that time-scale it is clear that the appeal tribunal had evidence on which they could conclude that the situation prevailing at the time of the claim was not the normal situation of the claimant for present purposes and hold that he was not then normally engaged in remunerative full-time work in terms of the

section. Even if they had not the evidence to decide that he was at the time of claim a full-time student that finding was not necessary for their conclusion that he was not normally engaged in remunerative full-time work, and it can be disregarded. The appeal accordingly fails.

(Signed) J. G. Monroe
Commissioner