Conditions of entitlement—students.

The claimant was attending a post-graduate course which was described by the educational establishment as full-time. He was refused supplementary benefit in accordance with regulation 2(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 on the grounds that he was attending a course of full-time advanced education. On appeal, by a majority decision, the tribunal found the claimant to be a part-time student and entitled to supplementary benefit. The supplementary benefit officer appealed to a Social Security Commissioner.

Held that:

1. the tribunal had to decide whether the claimant fell within regulation 8(i)(a) of the Conditions of Entitlement Regulations, which in turn raises two points:—

   (i) whether the claimant is a "student" as defined in regulation 2(1) of the Conditions of Entitlement Regulations, which can only be answered by considering whether the course he was attending was "a full-time course", and

   (ii) whether regulation 6(a), (i) or (j) of the same regulations applies to him (paragraph 13);

2. the decision of the majority of the tribunal that the claimant was "a part-time student" indicates that they were addressing their minds to the wrong question. The term "full-time" relates to the *course* not the student (paragraph 14);

3. it is irrelevant to take account of a claimant's reasons for attending a course or of his readiness to abandon it in order to accept an offer of employment. Such matters do not affect the nature of the course and in particular whether it is full-time (paragraph 15);

4. the decision R(SB) 26/82 is distinguished as the principles in that decision are for determining the number of hours of "full-time education by attendance at an establishment . . . . ." for the purposes of section 6(3) of the Supplementary Benefits Act 1976. They do not apply to the meaning of "attending a course of full-time education" in the definition of a "student" in regulation 2(1) of the Conditions of Entitlement Regulations (paragraph 17);

5. whether a course is "a course of full-time education" is a question of fact for determination by the supplementary benefit officer or tribunal. Evidence from the educational establishment as to the nature of the course

is not necessarily conclusive. However, such evidence ought to be accepted as conclusive unless it is challenged by relevant evidence which at least raises the possibility that it should be rejected (paragraph 18).

The appeal was allowed.

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1. (a) For the reasons given below the decision of the Bristol Supplementary Benefit Appeal Tribunal ("the tribunal") dated 14 April 1982 is erroneous in law and I set it aside; and

(b) as I am satisfied that it is expedient for me to give the decision that the tribunal should have given, I further decide that the claimant was not entitled to supplementary benefit on 27 February 1982 because he was a student (as defined in regulation 2(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981) to whom regulation 8(1)(a) of the said regulations applied.

2. This is an appeal brought with my leave by the benefit officer from the above-mentioned decision of the tribunal which was a majority decision (the chairman dissenting) in effect allowing the claimant's appeal from the decision of the benefit officer issued on 4 March 1982 that the claimant was not entitled to supplementary benefit.

3. I heard the appeal at an oral hearing requested by the benefit officer who was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security. The claimant did not attend the hearing and was not represented.

4. At the relevant time the claimant, a single man then aged 23, was attending a post graduate course in Marketing at Bristol Polytechnic. He was not in receipt of a grant. On 25 November 1981 he registered as unemployed and claimed supplementary benefit which was paid from 27 November 1981 to 26 February 1982. Payment then ceased because it was decided on review that the earlier decision awarding benefit was wrong in law and that he did not satisfy the qualifying criteria for entitlement to supplementary benefit because he was "considered to be in full time advanced education at Bristol Polytechnic". Before I consider the decision of the tribunal which allowed his appeal it will be convenient to set out the relevant provisions of the Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980) and the regulations made thereunder.

5. At the date from which the benefit officer's decision was effective (27 February 1982) section 5 of the Act provided as follows:—

"5.—Except in prescribed cases the right of any person to a supplementary allowance shall be subject to the condition that he is registered for employment in such manner as may be prescribed and is available for employment; and regulations may make provision as to—

(a) what is and is not to be treated as employment for the purposes of this section; and

(b) the circumstances in which a person is or is not to be treated for those purposes as available for employment."

6. At the above date the relevant regulations were the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [S.I. 1981 No 1526] prior to their amendment by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1982 [S.I. 1982 No 907]. Regulation 7 of the aforesaid regulations provided as follows:—

"7.—(1) Subject to regulation 8, a claimant shall be treated as available for employment if he is available to be employed within the meaning of section 17(1)(a)(i) of the Social Security Act (available to be employed for purposes of unemployment benefit) or regulations made under it, or if he is a person to whom paragraph (2) applies.

(2) A claimant who is attending for not more than 21 hours a week a course of education at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school or a course of training or instruction analogous to a course for which a training allowance would be payable shall be treated as available for employment, notwithstanding the said section 17(1)(a)(i), if—

(a) he is prepared to terminate the course immediately a suitable vacancy becomes available to him;

(b) he has not terminated an employment or a course of education which was for more than 21 hours a week for the purpose of attending the course; and

(c) either he is aged less than 21 or, in the period immediately preceding the commencement of the course, he was in receipt of an allowance and had been registered and available for employment for not less than 12 months pursuant to section 5."

Regulation 8 of the aforesaid regulations, so far as relevant, provided as follows:—

"8.—(1) A claimant shall not be treated as available for employment if he is a person to whom one or more of the following sub-paragraphs apply:—

(a) he is a student and regulation 6(a), (i) or (j) does not apply to him;".

7. For the purposes of the aforesaid regulations "student" was defined by regulation 2(1) as:—

"a person under pensionable age who has ceased relevant education and is attending a course of full-time education, but he shall not be deemed to be a student during periods when he is not attending his course and is not engaged in a programme of studies."

8. The tribunal recorded their findings of fact material to their decision as follows:—

"(1) [the appellant] is a single man aged 23, attending a Post Graduate course in Marketing, and he does not receive a grant for this.

(2) Bristol Polytechnic have stated that the course the appellant is taking is a full time course".

9. The decision of the majority of the tribunal was:—

"that the appellant is a part time student and is entitled to supplementary benefit"

and it was recorded that:—

"The dissenting member's view was that the appellant was a student doing a full time course in full time education [the dissenting member was the chairman.]"

10. The reasons for the majority decision were stated as follows:—

"[The appellant] is a student not undergoing a course in full time education as he only attends 12 hours a week of lectures and seminars, which he says falls to 8 hours a week next term".

11. The benefit officer appeals on the grounds that the tribunal:—

" (a) misinterpreted, alternatively misapplied the provisions of regulation 2(1) and regulation 8(1)(a) of the Conditions of Entitlement Regulations in so far as those regulations respectively define the term 'student' and relate to the availability of the student for employment;

(b) took account of irrelevant information, namely the number of hours per week for which the claimant attended a course of full-time education."

12. At the hearing Miss Shuker explained and expanded the above grounds of appeal and also specifically invited me to consider, and submitted that I should reject, the approach to a similar case which had been adopted in the numbered but unreported Decision C.S.B. 15/82.

13. In the present case the first task which faced the tribunal was to decide whether the claimant fell within regulation 8(1)(a). That regulation raises two questions namely, whether a claimant is a student and if so, whether regulation 6(a), (i) or (j) applies to him. It was therefore necessary for the tribunal to consider whether the claimant was a "student" within the definition in regulation 2(1). As there was nothing to indicate that the claimant was receiving any education otherwise than by way of his post graduate course the question arising under the definition was simply whether he was attending a course of full-time education. That was a question of fact for decision by the tribunal on the evidence. The evidence from Bristol Polytechnic was that the course being attended by the claimant was a full-time course. The only other evidence relating to the course was that given by the claimant. He agreed that the college definition of the course was "full-time" and said that he attended 12 hours a week of lectures and seminars which would fall to 8 hours the following term. He also said that he was unemployed and was usefully employing his time and that he was not a student.

14. Miss Shuker argued that the tribunal should have confined their consideration to the question whether the *course* was full-time and erred in failing to do so and with that I agree. The decision of the majority of the tribunal that the claimant was "a part time student" indicates that they were addressing their minds to the wrong question. The expression "part-time student" is not used in the regulations and the words "full-time" relate to the course and not the student. Moreover, the reason given by the majority for their decision (see paragraph 10 above) is self-contradictory if the word "student" is given the meaning ascribed to it by regulation 2(1). It cannot be too strongly emphasized that it is essential to consider the precise words of an Act or regulation and that confusion inevitably results when a decision uses defined words otherwise than in the defined sense either alone or qualified by other words.

15. It was also argued by Miss Shuker that the only evidence relevant to the question whether the course was a full-time course was that from the Bristol Polytechnic, that the tribunal should have accepted that evidence as conclusive and that the only decision they could properly have reached was that the claimant was a student. I certainly agree that the fact that the claimant did not consider himself to be a student was quite irrelevant. Of course, I can well understand that the claimant did not consider that the word "student", as used in common parlance, adequately described his situation but the question the tribunal had to answer was whether he was a "student" as defined in regulation 2(1) and that question had to be answered by considering only whether the course he was attending was a full-time course. It is also, in my view, irrelevant to take account of a

claimant's reasons for attending a course, however good these reasons may be or of his readiness to abandon the course in order to accept an offer of employment. Such matters do not affect the nature of the course and in particular whether or not it is full-time and I must therefore respectfully disagree with the approach adopted in Decision C.S.B. 15/82 to the extent that it regarded these matters as relevant.

16. The question whether evidence as to the hours of compulsory attendance at lectures and seminars is relevant to whether or not a course is full-time calls for further consideration. In Decision R(SB) 26/82 it was held by a Tribunal of Commissioners that whether education is full-time must be determined by reference to the hours of compulsory attendance and that a person cannot be attending a course of education at an establishment during hours when he is not physically present there or participating in some compulsory activity directly controlled by it (see paragraph 18 of the decision). It was also held that in calculating the hours involved in attending a course of education account should be taken only of:—

(a) Time spent in a classroom (or laboratory or such like) under the instruction or supervision of a teacher.

(b) Time spent on compulsory field-work, outings, projects and the like which, although off the premises of the relevant establishment, are an integral part of the course which the claimant is following and are conducted or supervised by a teacher from the establishment.

(c) Time spent on compulsory and predetermined periods of private study on the premises of the establishment. (See paragraph 24 of the decision).

17. In the above case the Tribunal of Commissioners were considering the expression "full-time education by attendance at an establishment . . ." in section 6(3) of the Supplementary Benefits Act 1976 and not the meaning of the expression "attending a course of full-time education" as used in the definition of "student" in regulation 2(1), but at first sight the principles laid down in their decision may appear to be relevant to the question whether a course is full-time for the purposes of that definition. However, in my judgment closer consideration reveals that despite the generality with which the principles were expressed, they were not intended to apply to the latter expression in this context. In particular, the references to instruction or supervision by a teacher under heads (a) and (b) in the previous paragraph and the reference to "compulsory and pre-determined periods of private study on the premises of the establishment" under head (c) indicate the inapplicability of the principles to the question whether a claimant is attending a course of full-time education as it arises from the definition of "student" applicable for the purposes of regulation 8(1)(a). Further, it is common knowledge that (using "student" in its ordinary sense) university students (apart from science and medical students) are not normally required to attend lectures, seminars, tutorials and the like to an extent which could possibly be regarded as full-time if the principles laid down in Decision R(SB) 26/82 were applicable and it is inconceivable that such students were intended to be excluded from the operation of regulation 8(1)(a). My conclusion is, therefore, that those principles are not applicable. However, I am not prepared to go so far as to say that the number of hours of compulsory attendances would necessarily always be irrelevant in considering whether a course is "full-time" for the purposes of regulation 2(1).

18. It would, I think, be inappropriate to attempt to give a definition of "a course of full-time education" for the present purpose. As mentioned

above, whether a course is within the scope of the expression is a question of fact for determination by a benefit officer or tribunal in the light of the evidence in the particular case. I agree with the statement in paragraph 12 of Decision C.S.B. 15/82 to the effect that all the evidence has to be considered and I accept that evidence from the educational establishment concerned is not necessarily conclusive. However, in my judgment such evidence, unless on its face inconclusive, ought to be accepted as conclusive unless it is challenged by relevant evidence which at least raises the possibility that it should be rejected. In the present case the only relevant evidence that had to be considered was the claimant's statement as to the number of hours of his attendance at lectures and seminars and I do not consider that, having regard to the matters of common knowledge referred to in paragraph 17 above, that evidence was alone enough to raise any doubt about the acceptability of the evidence from Bristol Polytechnic. I therefore consider that the tribunal should have decided that the claimant was a student and that, as there was nothing to indicate that regulation 6(a), (i) or (j) applied to him, he was caught by regulation 8(1)(a) and was not to be treated as available for employment. Accordingly they should have gone on to decide that by force of section 5 of the Act he was not entitled to supplementary benefit.

19. As I have decided that the decision of the tribunal was erroneous in law I must set it aside. However, by virtue of rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, as amended by rule 6(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982, if I am satisfied that it is expedient in the circumstances to do so, I am at liberty to give the decision that the tribunal should have given. I am satisfied that it is expedient for me to do so.

20. For the foregoing reasons I allow the appeal and my decision is as set forth in paragraph 1 above.

(Signed) J.N.B. Penny
Commissioner