

SUPPLEMENTARY BENEFIT

Conditions of Entitlement—students.

The claimant was taking a one-year post-graduate course recognised by the educational establishment as “full-time”. He was refused supplementary benefit on the grounds that he was a full-time student within the meaning of regulations 2(1) and 8(1)(a) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981. On appeal, the tribunal confirmed the decision and the claimant appealed to a Social Security Commissioner.

Held that:

1. failure to notify a claimant of an adverse decision of a benefit officer does not invalidate the decision—R(U) 7/81 followed for supplementary benefit purposes (paragraph 5);

2. although the claimant's appeal to the tribunal was in respect of an earlier benefit officer's decision which had been reviewed and revised after the appeal was lodged, the tribunal's decision was valid because the effect of the revised decision was the same as the original one and all parties, by accepting and proceeding with the appeal as a valid appeal, waived strict compliance with the statutory rules of procedure (paragraph 5);
3. it is not material whether a claimant considers himself to be a full-time student or a part-time student. He is caught by regulation 8(1)(a) of the Conditions of Entitlement Regulations if he is a "student" within the terms of regulation 2(1) of those regulations (paragraph 11);
4. the express purpose of the Regulations is not to be circumvented by reliance upon the required hours of attendance or those which the student says that he in practice devotes to the course or by what he says are his intentions in regard to the course and his availability for other forms of employment (paragraph 11);
5. whether a person is a student attending a course of full-time education is a question of fact for determination having regard to the circumstances in each particular case. In so doing, account ought to be taken of the description of the course given by the education authorities. Such evidence is not conclusive but evidence adduced in rebuttal should be weighty in content (paragraph 12);
6. the normal period prescribed for completion of a course is an indication as to whether the student is attending a course of full-time education (paragraph 12).

The appeal was dismissed.

1. My decision is that the application for leave to appeal to the Commissioner on a point of law from the decision of the supplementary benefit appeal tribunal ("the appeal tribunal") dated 4 May 1982 is granted. The claimant and the benefit officer having consented to my treating the application as the appeal itself, I proceed to dismiss the appeal on the basis that the decision of the appeal tribunal was not erroneous in point of law; the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605] rules 9 and 10.

2. This is an application by the claimant for leave to appeal on a point of law from a decision of the appeal tribunal dated 4 May 1982, whereby the appeal tribunal upheld a decision of the benefit officer issued on 27 January 1982 disallowing supplementary allowance to the claimant from 22 January 1982. An oral hearing was heard before me on 9 December 1982 at which the supplementary benefit officer was represented by Mr D. M. James of the Solicitor's Office of the Department of Health and Social Security and the claimant was represented by Mr S. Foster. I am indebted to them both for their helpful submissions.

3. The claimant, a single man now aged 23, lived alone in rented accommodation. Until June 1981 he was a full-time student in receipt of a grant from the South Glamorgan Local Education Authority. In September 1981 he started at Bristol Polytechnic the post-graduate Diploma in Marketing course, which was of one year's duration and was recognised as a full-time academic course by the Polytechnic. The local education authority had advised the claimant that no grants were available for post-graduate courses.

4. The claimant claimed supplementary allowance from 22 January 1982, but the benefit officer disallowed the claim on the basis that the claimant failed to satisfy the conditions of entitlement as provided by regulation 7(2) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [S.I. 1981 No 1526] ("the Regulations"), which was applicable to a claimant following a course of part-time education which

lasted for less than 21 hours per week. In a letter dated 26 January 1982 the claimant appealed to the appeal tribunal against that decision. On 27 January 1982 the benefit officer reviewed his original decision because it was based on a mistake as to the law. His revised decision was that the claimant was not entitled to supplementary allowance because he was a full-time student within the terms of regulations 2(1) and 8(1)(a) of the Regulations. The revised decision was not communicated to the claimant as required by regulation 3(1) of the Supplementary Benefit (Determination of Questions) Regulations 1980 [S.I. 1980 No 1643]. However, both the claimant and the benefit officer assumed that a valid appeal was pending and the appeal was thereafter considered on the basis of the terms of the benefit officer's revised decision issued on 27 January 1982. The hearing of the appeal on 15 February 1982 was adjourned so that the claimant's submission that he had been paid unemployment benefit for the inclusive period from 5 January 1982 to 5 February 1982 could be investigated. At the reconvened hearing on 4 May 1982 the appeal tribunal dismissed the claimant's appeal against the benefit officer's revised decision. Both the claimant and his representative attended the adjourned and reconvened hearing of the appeal and all parties proceeded on the basis that the appeal was valid although no notice in writing of the kind contemplated by rule 4 of the Appeals Rules had been given in respect of the revised decision.

5. Mr James submitted that the first question for determination was whether the decision of the appeal tribunal was a nullity because an application for leave to appeal on a point of law could only be entertained by me in respect of a valid decision. The claimant's appeal dated 26 January 1982 appertained to the benefit officer's decision dated 22 January 1982. The revised decision dated 27 January 1982 had not been communicated to the claimant and in consequence he had not appealed against that decision. Regulation 3(1) of the Supplementary Benefit (Determination of Questions) Regulations 1980 provides that the Secretary of State shall give or send to the claimant written notice of any determination made by a benefit officer on a claim for supplementary benefit or on review. I accept Mr James' contention that the duty was restricted to the Secretary of State but I am not convinced by his argument that the benefit officer was absolved from complying with the statutory requirements. Regulation 3(1) is analogous to section 100(2) of the Social Security Act 1975 and in Decision R(U) 7/81 a Tribunal of Commissioners held that the failure to notify a claimant of an adverse decision in accordance with the statutory requirements did not invalidate the decision. Accordingly, in the present case I do not consider that the benefit officer's revised decision issued on 27 January 1982 was invalid because of failure to communicate it to the claimant. The next question which arises is whether the claimant's appeal dated 26 January 1982 can be considered valid in respect of the revised decision. Both the original decision and the revised decision of the benefit officer were adverse to the claimant although for different reasons. The benefit officer accepted that a valid appeal was pending and the claimant and his representative proceeded with the appeal, whether consciously or not, in the terms of the revised decision. Having taken this course, all parties in my judgment waived strict compliance with the statutory rules of procedure and accordingly the decision of the appeal tribunal upholding the benefit officer's revised decision dated 27 January 1982 was valid. (See reported Decision R(SB) 19/83 para 7). It follows that it is within my jurisdiction to consider the application for leave to appeal on a point of law from the decision of the supplementary benefit appeal tribunal dated 4 May 1982, which leave I now grant. The necessary consents having been obtained, I proceed to deal with the grounds in the application treated as the appeal itself.

6. Section 5 of Supplementary Benefits Act 1976 (as amended) provides as follows:

“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.”

7. Regulation 7(1) of the Conditions of Entitlement Regulations, insofar as it is relevant, provides as follows:

“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,”

8. Regulation 8 of the above cited Regulations, insofar as it is relevant, provides as follows:

“(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”.

For this purpose, a student is defined in regulation 2(1) as

“a person under pensionable age who has ceased relevant education and is attending a course of full-time education”.

9. The question for decision is whether the claimant’s entitlement to supplementary allowance falls to be considered in accordance with regulation 8(1)(a) of the Regulations. If it does not, then the claimant’s entitlement to supplementary benefit will depend upon his availability for employment for purposes of unemployment benefit within the terms of regulation 7(1) and section 17(1)(a)(i) of the Social Security Act 1975.

10. Mr Foster contended on behalf of the claimant that he was a part-time student who was not required to attend the course of education for more than 21 hours a week and that he had registered and was available for employment. Accordingly the tribunal’s decision that the claimant was caught by regulation 8(1)(a) was erroneous in point of law.

11. Mr James argued that it was not material whether the claimant considered himself to be a full-time student or a part-time student. He was caught by regulation 8(1)(a) if he was a “student” within the terms of regulation 2(1). In the present case the operative words for consideration in the definition are “a person . . . attending a course of full-time education . . .”. I agree with Mr James’ submission. It is a well known fact that the required hours of attendance for lectures and tutorial purposes in a full-time course of higher education are limited and that the student is expected to devote the greater part of his time to research projects and private study. Once a student has been accepted for enrolment upon a course and has paid the fees (which in this instance were substantial) he is expected to devote such time to his studies as the University or College of Higher Education considers necessary for successful completion of the course. How he in fact expends his time and whether or not he intends to complete the course and what use he proposes to make of the knowledge or

qualification upon completion of the course is a matter for him. He is no less attending a course of full-time education whether or not he devotes to it the number of hours considered necessary for successful completion of the course. The express purpose of the Regulations is not to be circumvented by reliance upon the required hours of attendance or those which the student says that he in practice devotes to the course or by what he says are his intentions in regard to the course and his availability for other forms of employment; otherwise many full-time students in higher education would look to supplementary benefit for financial and educational support when that is the province of the local education authority.

12. Whether or not a person is a student attending a course of full-time education is a question of fact for determination by the tribunal having regard to the circumstances in each particular case. In so doing, the tribunal ought to take into account the description of the course given by the education authorities (i.e. the University or College) and the examining bodies. Such evidence is not conclusive (see paragraph 8 of the unreported Decision C.S.B. 15/82) but in my view any other evidence adduced in rebuttal should be weighty in content. All education authorities or examining bodies prescribe the period within which a course of education is to be completed. Their assessment is based upon the amount of time (whether compulsory or voluntary) required to achieve the standard demanded. Part-time students are accordingly given such extensions as are deemed to be appropriate. Therefore, the normal period prescribed for completion of a course is a clear indication as to whether or not the student is attending a course of full-time education.

13. In the present case there can be no doubt that if the claimant was, during the relevant period, attending a course of full-time education he is caught by regulation 8(1)(a) and there can be no question of his having title to supplementary benefit. Whether or not a person is a student, as defined in regulation 2(1), is essentially a question of fact. I am only concerned with matters of law. The appeal tribunal decided as a matter of fact that the claimant was "undertaking a full-time academic course". Mr Foster argued that the tribunal had insufficient evidence on which to come to that conclusion. I do not agree. The tribunal had before them in evidence a letter from the Bristol Polytechnic dated 30 March 1982 which stated "I confirm that the Postgraduate Diploma in Marketing course (CNAА) is recognised by CNAА, [Council for National Academic Awards] DES [Department of Education and Science] and the Polytechnic as a full-time academic course...". In my judgment, it is not possible to say that the appeal tribunal could not reasonably have come to the conclusion that they did. It follows for the reasons stated, that the unanimous decision of the appeal tribunal was not erroneous in point of law.

14. Accordingly I dismiss the appeal.

(Signed) R. F. M. Heggс
Commissioner