

SOCIAL SECURITY ACT 1986
SOCIAL SECURITY ADMINISTRATION ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

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department*

[ORAL HEARING]

1. now in her early 20s, registered for a 3 year degree course in the School of Environmental Sciences at the University of East Anglia in October 1989. She had a major award from her local education authority and was entitled to apply for a loan under the student loan scheme. She completed the first two years of her course. At the end of her second year she decided that she did not wish to go back for her third year in October 1991. That it appears was because she wanted time to give thought to what she really wanted to do, to whether she was on a path she wished to continue. She had gone to university straight from school and needed a break. She applied to intercalate. That awkward word is apparently in common usage in universities to refer to students who have been allowed to take a year off, and the University of East Anglia has a standard form of rules which apply to intercalating. Ms Clarke in fact resumed her course in October 1992 and graduated. During her intercalating year she was no longer eligible for grant as she was not attending the course: regulation 26 of the Education (Mandatory Awards) Regulations 1991. Nor was she eligible to apply for a student loan because that again depended on attendance. So, having no source of income, she made a claim, on 1 July 1991, for income support. An adjudication officer then decided that she was entitled to a hardship allowance pursuant to regulation 8(3) of the Income Support (General) Regulations 1987. But he later took the view that that was a mistake because that provision does not apply to "students" as defined in the Regulations; on review, it was concluded that she had no entitlement to income support because, notwithstanding that she was not actually attending her degree course, she had not, in the adjudication officer's view, ceased to be a "student" as that term is defined in regulation 61 namely as "a person ... who is attending a full-time course of study at an educational institution ...". In reaching that decision the adjudication officer relied on paragraph (a) of the definition

to which I will refer below. ~- unsuccessfully appealed to a social security appeal tribunal and now appeals to the Commissioner. I held an oral hearing of her appeal. She attended and was represented by Mr M. Rowland of Counsel. The adjudication officer was represented by Ms I. Doyle of the Solicitor's Office, Departments of Health and Social Security.

2. It is a condition of entitlement to income support that, except in prescribed circumstances not relevant here, the claimant is available for and actually seeking employment: section 20(1)(d)(i) of the Social Security Act 1986 (now section 124(1)(d)(i) of the Social Security Contributions and Benefits Act 1992). Regulation 10 of the General Regulations prescribes circumstances in which claimants are held not to be available for employment. These circumstances include -

"(1)(h) he is a student during the period of study other than one to whom paragraphs 1, 2, 7, 11 or 20 of Schedule 1 applies ... "

"Student" is defined to mean (see regulations 2 and 61) -

"a person aged less than 19 who is attending a full-time course of advanced education or, as the case may be, a person aged 19 or over but under pensionable age 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 end of the course or such earlier date as he abandons it or is dismissed from it;

(b) ... " (not relevant)

"Period of study" is defined, in a somewhat complicated way, in regulation 2 but, as it seems to me nothing in this case turns on that definition. As from 1 September 1990 the paragraph references in regulation 10(1)(h) were amended to "1, 2, 7 to 7B, 11, 16 or 20" and the words "the end of" in paragraph (a) of the definition of "student" were amended to "the last day of".

The question is whether, on 1 July 1991 in the circumstances to which I have referred, the claimant continued to be a "student". Had she abandoned her course?

3. The tribunal concluded that ~- had not abandoned her course. They said -

"6. In the view of the Tribunal the word "abandoned" should be given its plain ordinary meaning and should be interpreted as meaning to give up unilaterally and completely and that is not what has happened in this case.

7. The fact that the claimant may not be entitled to a student loan or grant assistance during her period of intercalation does not mean that Parliament must have intended that a person in her position should be entitled to claim Income Support particularly in view of the fact that the terms of Regulation 61 are so clear and unambiguous."

Mr Rowland submitted that for a student to "abandon" her course she did not, contrary to what the tribunal appear to have thought, have to have given it up for evermore. A course could be temporarily abandoned. He put the point plainly and clearly in his written submissions as follows -

"2. The issue in this case is whether can be said to have "abandoned" her course. It is submitted that, as a matter of ordinary English, a person can, in many contexts, be said to "abandon" something temporarily, so that it is possible to "abandon" something notwithstanding that one has an intention to retrieve or resume it at a later date. The context of income support legislation suggests that a temporary abandonment of a course of study is quite possible, because there is no conceivable reason why a person who abandons a course for a whole year or for so much of a year that that year must be retaken, should not be entitled to benefit on the same basis as claimants who are not students. No grant or loan could be payable to that person, even under discretionary powers, and there can be no ground for considering that the student might not be available for work because she was studying. The fact that the course may be restarted is no more relevant than the fact that a student who has completed one course may be intending to start another.

3. There is no significance in the fact that the University treats as still being a member of the University and "intercalates" the leave of absence. That merely means that the University "inserts" or "interposes" extra days into the period when she is regarded as a member of the University but it does not mean that she continues to be a student during that period. In particular, it does not mean that extra days are inserted into the period of the course of study. On the contrary, the course of study is interrupted by the extra days. It is terminated and must be restarted. Such an interruption is clearly distinguishable from a period of vacation which is a recognised or customary break which is a normal incident of a course."

Ms Doyle submitted that "abandons" meant to give up permanently and a student who, like took a year off with the intention to return and with arrangements with the University to enable her to do so, could never be said to have abandoned her course.

4. I have referred above to the University of East Anglia's

intercalating rules which applied to during her year of absence. It is I think worth setting out these rules which explain in detail the status of the intercalating student. These are the rules -

- "1. When the University gives permission to a student to intercalate, its intention is that the student should leave the University; you will be expected to stay off the campus.
2. During your absence you will remain a member of the University, i.e. your name will be included in the official register of students, but your status as "a student in attendance at the University" is in abeyance.
3. Your privileged access to University facilities is in abeyance and specifically:-
 - (1) You will not be given a place in University residences or allowed to continue in occupancy of a room in University residences, since intercalation is deemed to invalidate the licence to occupy. If you want advice on your eligibility for accommodation in University residences at the end of your period of intercalation or advice on accommodation outside the University, you should contact the Accommodation Centre early in the term preceding your return.
 - (2) You will not be allowed Library borrowing facilities and will be expected to return your borrower badge before you leave. It will be reissued on application any time after the start of the vacation immediately preceding your return to the University.
 - (3) You will not be allowed to attend classes or to receive tuition of any kind.
4. You should remain in touch with your adviser but he or she will only be able to provide assistance which is consistent with the policies stated in 3 above.
5. You may if you wish consult members of staff in the Student Counselling Service, the Dean of Students' Office or the Careers Centre.
6. You should provide your School administrator with an address to which important mail can be sent throughout your period of intercalation.
7. Before leaving the University you should make sure that you have cleared all outstanding debts to the University. This includes returning books to the

Library and returning any other equipment or materials you may have borrowed. During your period of intercalation the University will seek to recover any sums of money owed to it, if necessary by legal action. If there are any debts still outstanding at the end of your period of intercalation, they may prevent your being readmitted to the University to resume your course.

8. On your return to the University you will be subject to the regulations then in force, should there have been any changes in the meantime."

So the intercalating student is not allowed on the campus, must give up her accommodation and clear all outstanding debts etc.. He or she has lost the status of "student" so far as the University is concerned.

5. I was referred at the hearing to four decisions of Commissioners. In C7/89 (IS), a decision of the Northern Ireland Chief Commissioner, the claimant who had commenced a four year degree course at Liverpool University had not attained the necessary standard during her first or second year and had been required to repeat one subject but without attendance at lectures or classes. She then decided to take a year out I think, although the facts are not entirely clear, to prepare that subject and sit the examination and then to return to the University if she passed. In those circumstances a tribunal majority had concluded that the claimant had not abandoned her course and her appeal to the Commissioner was dismissed. The Commissioner attached much importance to the letter that had been sent by the University to the claimant which told her that if she did not pass the examination in the repeat subject " ... it is unlikely that the Committee will be prepared to recommend that you continue your studies ... ". He said that the reference to the continuation of the claimant's course " ... afford[ed] the clearest possible proof that she had not abandoned her course or been dismissed from it". The decision does not otherwise consider the meaning of "abandon" and it would appear to be the case that on the facts the claimant was, during her year off, actually continuing with her course to the full extent required by the University.

6. In CIS/122/1992 the claimant had left her three year degree course for health reasons two or three months after the beginning of the third year. She intended to resume the following year. The Commissioner took the view that the claimant had "... merely, through force of circumstances suspended her studies for a temporary period, rather than give them up altogether". He took that view because, he said, of C7/89/(IS) which he felt constrained to follow and he dismissed the claimant's appeal. Oddly, in that case, the claimant's representative appears to have conceded that he could not win on "abandons" and did not put forward the argument that that word in its context did not mean to give up for all time. Furthermore, unlike the student in C7/89/(IS), the claimant was not in any sense actually on her

course during the period in question and the case was for that reason, I should have thought, readily distinguishable from the Irish case.

7. In CSIS/41/92 the claimant had asked for and obtained from his college a year's leave of absence on the basis that if he wished to return to the course he would have to have carried out certain work and then submit to re-examination before re-entry. His intention was to seek employment with the probability that if employment with prospects became available he would not return to his college. The Commissioner, referring to C7/89 (IS) and CIS/122/92, said (paragraphs 10 and 11) -

"10. I would be disposed to agree with the conclusions reached in the above cases on their facts, illustrating, as they do, that the temporary dislocation of a course of study caused by force of circumstances would not ordinarily fall within the general concept of abandonment. However they do not in my judgment establish as a matter of law that a student who gives up his course cannot be held to have abandoned it if there is a possibility, or even a likelihood, of his being permitted to re-enter it at a later date. Of course the facts must be such as to warrant the conclusion of abandonment in the sense of giving up or leaving the course. In the present case the claimant informed the College authorities that he did not intend to return to the course for the second year, removed his possessions, withdrew his grant application and gave up his student lodgings.

11. I similarly do not find anything in the more general context of the regulation as part of the income support code which necessarily requires the giving of an irrevocable connotation to the word "abandons". In this sphere of law there are so many artificial assumptions that it would not of course be enough to say that it was repugnant to common sense to treat as a student continuing a course of study someone who was plainly doing nothing of the sort. But the consequence of accepting the circumstances of this case as terminating the claimant's status as a student would be that he would cease to be treated as not available for employment under regulation 10(1) of the Income Support (General) Regulations 1987. Insofar as he was unsuccessful in obtaining the employment he sought and required to claim income support he would still have to satisfy the ordinary condition of being actually available for employment. Were he to re-enter the course the definition of "student" would of course again apply."

The adjudication officer's appeal was disallowed. While it must be, as the Commissioner made clear, a question of fact as to whether a course had been abandoned, the Commissioner did not explain why, notwithstanding that he agreed with the outcome in the two cases to which he referred, he also agreed that, in the case before him the claimant was to be treated as having

abandoned his course.

8. In CIS/595/92 the claimant left her course because she was pregnant. She intended to seek re-admission the following year after she had had the baby; the college was apparently sympathetic but gave no guarantee that she would be re-admitted. The Deputy Commissioner said (paragraph 7) -

" ... I am quite satisfied that the definition of the word "abandon" does not necessarily preclude an ultimate return to the object of abandonment ... the adjudication officer now concerned with this case relied ... upon C7/89 (IS) ... which is of persuasive authority. In that case the claimant was held to be a student within the definition of regulation 61 as aforesaid, when she was required by her university to repeat an academic year without any attendance at lectures or classes but with ongoing contact with her tutors and provided that she re-sat one examination at the end of the academic year and before re-joining her course. In my view that case is clearly distinguishable from the instant appeal. Ms B had no guarantee that she could return to her course upon certain conditions; moreover there was no requirement upon her to continue her studies in the meantime ... "

The student in that case was held to have abandoned her course and to be entitled to income support.

9. In another case, CIS/733/92 (which was not referred to at the hearing) the same Deputy Commissioner was concerned with a claimant who had "withdrawn" from his degree course for health reasons after the second term of his second year with the intention of returning if his health permitted at the start of the next academic year. The University agreed that he could do so. The Deputy Commissioner said (paragraph 10) -

" ... In my judgment the Commissioner's decision on file number C7/89 (IS) is analogous to that of Mr C. The claimant there could not be said to have been dismissed from her course of study, nor had she abandoned it in the sense as set out in the submissions of the adjudication officer now concerned with the case. In my recent decision on file number CIS/595/92 I held that a claimant had "abandoned" her course of study when, at the end of her first year of a three year course, she decided to leave the course in order to have a baby. Although the college was sympathetic to her situation there was no guarantee that she would be re-admitted. There was no question of her continuing her studies during the academic year in which she intended to have her baby. I distinguish Mr C's case from CIS/595/92 in that Mr C has a place open to him at Sheffield University in order to continue his studies upon the same course, albeit joining the academic year below. The tenor of all his submissions clearly demonstrates that, at all material times, he would definitely (subject to his recovery) resume his studies in October 1992."

The claimant's appeal was dismissed.

10. Finally, in CIS/368/92, another case not referred to at the hearing, the Commissioner decided, not surprisingly, that a claimant during an optional year abroad which apparently was part of the degree course, had not, during that year, abandoned the course.

11. Those, as far as I am aware, are all the decisions concerning the meaning of "abandons" in regulation 61. From those decisions I derive the following -

- (i) "abandons" in regulation 61 is to be given its ordinary natural meaning having regard of course to the context in which it appears;
- (ii) whether a claimant has abandoned a course is a question of fact;
- (iii) it is not necessary that the course should have been given up for all time: even if it is given up only temporarily the student may be taken to have abandoned it;
- (iv) a firm intention to return to a course is not necessarily inconsistent with the contention that it has been abandoned;
- (v) if there is a continuation of the course in some, different, manner the course has not been abandoned;
- (vi) if the student has a guaranteed place on the course to return to after his time out he will not be taken to have abandoned the course.

The only one of the decisions which would appear to be inconsistent with those propositions is CIS/122/92 in which the Commissioner said that he was following C7/89/(IS). But the facts were clearly different and distinguishable and, furthermore, as I have said, the claimant's representative had apparently conceded that the claimant had not abandoned her course.

12. Where a student, as in the present case, has so detached herself from her course that she is no longer entitled to enter on the campus or attend lectures or classes and has been required to give up University accommodation and settle up all debts and is no longer entitled to grant or student loan and indeed, from the University's point of view, has lost the status of "student", it would seem to me remarkable that it could have been intended that she should still be treated as a student for income support purposes and thus ineligible for income support. It seems to me that "abandons" in regulation 61 ought, sensibly, to be given the same kind of meaning as is given to it where for example a person is said to have abandoned his car after an accident and continues

his journey by rail. The fact that the owner fully intends to get the car back at the first opportunity is not thought to make "abandon" incongruous in such a context. Nor, as it seems to me, should it be of consequence, in relation to "abandons" in regulation 61, that the student has the right to return to the course at some agreed future date. I agree with the first five of the propositions set out above but I take issue with those cases from which proposition (vi) is derived. In my view, once it is accepted that a student might temporarily abandon her course, the fact that she has the right to resume it at an agreed date is irrelevant. She still, in the interim, is deprived of all the attributes of being a student; the status and everything that goes with that status have just as much been lost in the meantime whether she has a right to return or a mere hope of doing so. Of course the student who unilaterally leaves before the end of term - straight after her exams - with the intention of resuming at the beginning of the next term has not lost anything; her status of student continues and such a case is on that account distinguishable. It may be of course that that is the sort of case to which the provision is directed and limited as the words "... throughout any period of the term or vacation within [the course] ..." might possibly be taken to indicate.

13. The tribunal, in the reasons they gave for dismissing the claimant's appeal said that "abandons" should be interpreted as meaning "to give up unilaterally and completely". That in my view, for the reasons indicated above, is too inflexible an approach and, to the extent that it is implied that a course cannot be given up completely for a limited period, the decision is erroneous in law and I set it aside.

14. There is no need for me to remit this case for rehearing. The facts are all known and are not in dispute. Therefore I will give my own decision in place of that of the tribunal which is that, in the period in question, Ms [redacted] was, applying the principles to which I have referred, no longer a "student" for the purposes of regulation 10(1)(h). It follows that she is eligible for income support and presumably entitled to it in respect of her claim said to have been made on 1 July 1991.

(Signed) R A Sanders
Commissioner

Date: 3 September 1993

