

Education grant - element for dependant. - Reg 12 of Resources Regs - "payable to a dependant" includes "payable in respect of a dependant" & shld be considered in working out disregarded amount of the element for the dependant.

RFMH/SH/9/MD

Commissioner's File: CWSB/40/86 X

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Region: Wales & South Western

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: Roger Paul Jones

Social Security Appeal Tribunal: Aberystwyth

Case No: 4/5

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 23 January 1986 is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal in accordance with the directions in this decision.

2. This is the claimant's appeal against the unanimous decision of a social security appeal tribunal dated 23 January 1986, confirming the adjudication officer's decision issued on 29 July 1985. At the oral hearing held before me, the claimant attended and the adjudication officer was represented by Mr C J P Gratwicke, of Counsel, instructed by the Solicitors' Office of the Department of Health & Social Security. I am grateful to them both for their helpful and detailed submissions.

3. At the material time the claimant lived with Mrs A- and his dependant daughter in local authority accommodation. Mrs A- was in receipt of Family Income Supplement and the claimant was in receipt of child benefit in respect of his daughter.

4. On 29 July 1985 the adjudication officer decided that the claimant was entitled to a supplementary allowance at the weekly rate of £12.85 for the inclusive period from 1 July 1985 to 1 September 1985. This decision was based on the grounds that the total grant paid to the claimant by the Education Department included a dependant's allowance of £1,165 per annum, this element covering a period of 52 weeks. Thereupon the claimant appealed against the decision to the tribunal.

5. On 23 January 1986 the tribunal dismissed the appeal. The findings on questions of fact material to decision read:-

"1. Student grants received showing a dependant's allowance of £2,165 per year ending 1984/85.

2. Regulation 11(2)(1) of the Resources Regulations applies on the facts of the case.

3. Regulation 4(4) of the Resources Regulations does not apply to the claimant on the facts.

4. The grant should be taken into account for a period of 52 weeks."

The reasons for decision read:-

"Regulations 4 and 11 of the Supplementary Benefit (Resources) Regulations."

The claimant now appeals to the Commissioner on a point of law, leave having been granted by the tribunal chairman.

6. Regulation 19(2) of the Social Security (Adjudication) Regulations 1984 provide that every tribunal chairman shall record a statement of the reasons for the tribunal's determination and of their findings on material questions of fact. In the present case the tribunal chairman failed to comply with the statutory requirements in that it is incomprehensible to apply regulations to "the facts of the case" without specifying what these are. Manifestly the decision is erroneous in law. I have no alternative but to set it aside and I direct that the matter be reheard by a differently constituted tribunal. I should put on record that Mr Gratwicke supported the appeal on this ground.

7. The claimant confirmed that the education grant covered him for the academic year from October 1984 to the end of June 1985 and that in addition he received a dependant's allowance of £1,165 for a period of 52 weeks. Accordingly the issue for determination is the treatment of the dependant's element of the education grant.

8. The new tribunal should first have regard to regulation 11 of the Supplementary Benefit (Resources) Regulations 1981, as amended. I do not propose to set it out in full in this decision as the claimant conceded that child benefit payable in respect of his daughter and the dependant's element of the education grant fell to be treated as income and taken into account in full under regulation 11(2)(b) and (1) respectively. Mr Gratwicke conceded that as the claimant was a partner with a dependant, the £2 disregard applied.

9. The new tribunal should next consider regulation 12 of the Resources Regulations which provide as follows:-

"12. - (1) Where -

- (a) any income resource to which regulation 10 or 11 applies but to which regulation 13 [not applicable in the present case] does not apply is payable to a dependant; and
- (b) after the application of regulation 10(3), (4) and (5) or, as the case may be, regulation 11(4) and (5) that resource, or if more than one is payable the aggregate of those income resources, exceeds the aggregate of the weekly requirements applicable to that dependant under Parts II and III of the Requirements Regulations (normal and additional requirements),

the amount of the excess mentioned in sub-paragraph (b) shall be disregarded.

(2) ...

10. Mr Gratwicke rightly submitted in my view, that the expression "payable to a dependant" in regulation 12(1)(a) should be construed to mean "payable to or in respect of a

dependant" (R(SB)51/83 see paragraph 14). Accordingly the claimant satisfied the conditions of regulation 12(1)(a). Further after the adjudication officer had applied regulation 11(4) of the Resources Regulations in considering whether any of the claimant's income resources fell to be disregarded, the claimant was entitled to an additional income resource disregard if "the aggregate of those income resources, exceeds the aggregate of the weekly requirements applicable to that dependant under Part II and Part III of the Requirements Regulations (normal and additional requirements)". Mr Gratwicke helpfully illustrated the complicated application of regulation 12(1)(b) taking as an example the amounts of the income resources and requirements attributable to the claimant's dependant daughter as set out on form AT2A. The weekly income resources totalled £27.25 being £6.85 for child benefit, £22.40 for dependant's grant less £2 disregard. As the dependant's weekly requirements were shown as £14.35, the claimant was entitled to a further weekly £12.90 disregard, being £27.25 less £14.35.

11. It should be noted that the above is calculated by reference to the amounts shown on form AT2A. These are questions of fact and it will be for the new tribunal to confirm or vary them in accordance with the evidence before them. The new tribunal should record findings of fact on the following:- the total amount of the education grant awarded to the claimant, showing the amount awarded for his own maintenance and that part awarded for the maintenance of his dependant; the period which each element of the grant was intended to cover and the date on which each payment was due. The claimant told me that the grant was payable by three instalments that he should submit in evidence precise details of the breakdown of his grant together with the particulars of payment.

12. If the new tribunal conclude that any part of the grant was properly attributable to the period in issue, they should refer to regulation 9(2) of the Resources Regulations to establish how the grant fell to be treated in the calculation of the claimant's weekly entitlement to supplementary benefit. This provides:-

"(2) Earnings and other income shall be calculated on a weekly basis, and, except in so far as regulations 3(2)(d)(i) and 13 [not applicable in the present case] provide otherwise, payment shall be attributable as follows:-

(a) subject to the following sub-paragraphs, a payment of income shall be taken into account -

- (i) where it is payable in respect of a period, for a period equal to the length of that period, and
- (ii) in any other case, for the period to which it is fairly attributable.

(b) A payment of income shall be treated as paid on -

- (i) in the case of a payment which falls to be taken into account but which is payable before the first benefit week pursuant to the claim, the date on which it is payable;
- (ii) in any other case, the first day of the benefit week in which it is payable or the earliest succeeding benefit week in which, having regard to the method by which pension or allowance is payable in the particular case it would be practicable to take into account;

....."

The crucial word is "payable". In Decision R(SB)11/85 the Commissioner held that "the

payable date" of a payment was the date on which it first became due to be paid, which was not necessarily the date it was received although the two dates might coincide. Accordingly the new tribunal will have to refer to the terms of the education grant and record as fact the dates on which each instalment was due to be paid.

13. In his grounds of appeal the claimant contended, and still contends, that as he had spent the whole amount of his education grant by 1 July 1985 on living expenses, regulation 11 of the Resources Regulations was irrelevant as its effect was overruled by regulation 4(1) which provides that "any resource of which a member of the assessment unit has deprived himself for the purpose of securing supplementary benefit, or increasing the amount of any such benefit, may be treated as if still possessed by him". He argued that as he had not used the money "for the purpose of securing supplementary benefit or increasing the amount of any such benefit" any income derived from the grant and attributable to the period in issue should be disregarded. This argument is completely fallacious and has no bearing on the facts of the present case. The adjudication officer's decision was not based on regulation 4(1) and there is no evidence to suggest that the claimant gave away or deprived himself of the income intentionally. Further there is no support in law for the argument that regulation 4(1) overrules the effect of all the other relevant regulations.

14. I agree with Mr Gratwicke that it was not enough for the tribunal merely to consider the amount of the claimant's entitlement to a supplementary allowance. It was also incumbent upon them to consider in the circumstances of the case the Supplementary Benefit (Urgent Cases) Regulations 1981. There is no record of the tribunal having done so. In my view the claimant's entitlement under the Urgent Cases Regulations was not dependent upon the claimant making a fresh claim (see decision on Commissioner's file CSB/1193/1985). The new tribunal should have particular regard to regulation 9(b) and regulations 10-23 which specifies the restricted circumstances in which an allowance is payable to meet living expenses. On the evidence before me it is doubtful that the claimant would satisfy any of the conditions imposed. Further as he told me that he did not rely on regulation 24 where an award may be made if the payment of such amount "is the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented", it is doubtful that an award could be made, but the new tribunal should nevertheless consider the possibility.

15. The claimant's appeal is allowed and I give the decision set out in paragraph 1. The hearing before the new tribunal will of course constitute a complete rehearing and the claimant should submit in evidence all relevant documents in support of his claim. The record of the new tribunal's decision should ensure that the material facts and the reasons for decision are recorded by the chairman in accordance with regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984.

(Signed) R.F.M. Heggs
Commissioner

Date: 8th December 1986