

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

Commissioner's File: CSB/1048/1988

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

[ORAL HEARING]

1. I disallow this appeal by the claimant. The decision of the social security appeal tribunal dated 25 April 1988 was not erroneous in law.

2. In June 1986 the claimant completed a degree course. In autumn 1986 he began a year's teacher's training course at Exeter University. He was awarded a bursary by the County Council and also a grant by the local education authority. That grant by the local education authority was to cover the year's teacher training course and was payable termly in advance. At the beginning of January 1987 he received payment of his grant for the spring term (including the Easter vacation) namely £734.91. On 27 January 1987 the claimant withdrew from the teacher's training course in order to take up employment with a Regional Health Authority. On 2 February 1987 he registered at the local unemployment benefit office as unemployed and available for full-time employment and made a claim for supplementary benefit. On 2 March 1987 he began employment with the Regional Health Authority. His claim for supplementary benefit related, therefore, to the four weeks from 2 February to 2 March 1987. By a decision dated 4 March 1987 the adjudication officer decided that the claimant was not entitled to a supplementary allowance, the reason for that decision at that time being that the claimant had not provided information required by the adjudication officer. It was subsequently ascertained, however, that the letter that had been written and sent to him had not been received by him because it had been sent to an address at which he was no longer living. By a letter dated 13 July 1987 the claimant stated that he would have to repay the education authority the amount of the grant as from the date when he had left the course. Accordingly, the adjudication officer reviewed the decision dated 4 March 1987 and by a further decision issued on 2 December 1987 the adjudication officer decided that the claimant was not entitled to a supplementary allowance because the claimant had not shown that his resources were insufficient to meet his requirements. The claimant appealed and on 25 April 1988 the social security appeal tribunal confirmed the adjudication officer's refusal of supplementary benefit from 2 February 1987. The claimant now appeals with leave of the tribunal chairman.

3. On 17 April 1989 I held an oral hearing. The claimant was present and was represented by Mr A King of the Citizens Advice Bureau. The adjudication officer was represented by Mrs Heather Wheatley of the Solicitor's Office, Departments of Health and Social Security.

4. The question to be determined is whether or not the grant which the claimant received

at the beginning of January 1987 for the spring term (and Easter vacation) was an income resource for the purposes of the Supplementary Benefit (Resources) Regulations 1981.

5. The law

At the date of the claim regulation 9(2) of the Resources Regulations provided that earnings and other income were to be calculated on a weekly basis and regulation 11 provided:

"11. (1) For the purposes of the calculation of the income resources of the claimant, all income other than that to which regulation 10 applies [earnings] shall be taken into account and calculated on a weekly basis in accordance with the following paragraphs and regulation 9(2) to (4).

(2) There shall be treated as income and taken into account in full -

(a)-(k) [not relevant];

(l) any income which consists of a grant or award by an education authority, ..."

6. In Form AT2 the adjudication officer set out the reasons for his decision. He stated in paragraph 24 that he had decided that the grant fell to be taken into account in full under regulation 11(2)(l) of the Resources Regulations. He then set out his calculations of the total grant with deductions for books and materials and five vacation weeks and concluded that the claimant had a weekly income of £49.24, and that that income exceeded the claimant's requirements for supplementary benefit purposes. In the result he decided that there was no entitlement to supplementary benefit.

7. It was and is the claimant's case that he was required to repay to the education authority the balance of the grant attributable to the period after he left the course and that, accordingly, when he made his claim for supplementary benefit the amount of the grant was not to be taken into account as an income resource.

8. The appeal tribunal in their findings of fact, in Form AT3, box 2 stated:

"1. The [claimant] was a postgraduate student at Exeter University and was working at a school for teaching training. Having received a terms grant amounting to £734.91 to cover the spring term of his course, he was offered a permanent job and he left his course and claimed supplementary benefit on 2 February 1987. At that time he realised that he was under obligation to repay a proportion of his grant.

2. The [claimant] agrees that had he continued as a student the grant on a weekly basis gave income of £49.24 per week, but he claims that he was no longer a student at the date of claim and the relevant regulations did not apply to him. His requirements at that time were £29.80.

3. He took up his new job at the beginning of March 1987 and his claim for supplementary benefit covered the period from 2 to the end of February.

4. He received a letter from Warwickshire County Council dated 2 April 1987 requiring him to repay £519.32 of his grant."

In their reasons for their decision, in Form AT3, box 4, they stated:

"The [claimant] received an education grant of £734.91 to cover the spring term of his course, but left his course and claimed benefit on 2 February 1987. Were he properly treated as a student under the Regulations the grant on a weekly basis would give

income well in excess of requirements, in spite of the expected demand to repay the grant. The amount to be repaid was £519.32, and split over the relevant supplementary benefit period of 4 weeks this provided resources well in excess of requirements, whether strictly speaking he was a student or not. The principle is set out in the Court of Appeal decision, The Queen v Bolton Supplementary Benefits Appeal Tribunal Ex parte Fordham [1981] 1 All ER 50."

9. In R v. Bolton Supplementary Benefits Appeal Tribunal, Ex parte Fordham [1981] 1 All ER 50, the claimant was a fireman employed by the Greater Manchester Council. The Council paid their firemen monthly on the 15th day of each month; each month's wages, therefore, related to the first fortnight which had been worked and for the next fortnight which was to be worked. On 15 November 1977 the claimant received his month's salary. That month's salary represented payment for the first fortnight of November during which he had already worked, and the next fortnight in November during which he would be working. The payment on 15 November was to carry him on to 15 December. On 15 December the same pattern would have ensued. However, on 14 November the claimant, together with all the other firemen, came out on strike. That meant that half of his month's wages had been paid for the first fortnight in November when he had been working, and half for the second fortnight when he was on strike. The claimant and his colleagues remained out on strike until 16 January 1978. The claimant made a claim for supplementary benefit. On 30 November 1977 the County Treasurer wrote to all the firemen involved in the dispute, including the claimant, stating that those firemen who were paid on 15 November in advance to 30 November under the calendar monthly pay arrangements were notified that any overpayment would be recovered from salary at some future date. The question to be decided in that case was whether or not the wages paid in advance for the fortnight 15 to 30 November were to be taken into account as part of the claimant's resources. The Supplementary Benefits Commission held that the payment of £261 on 15 November should be taken as the claimant's resources for the period up to 15 December and that being so the claimant had sufficient resources to meet his requirements and he was not entitled to supplementary benefit. The claimant contended that since he would be required to repay £125 of the total payment of £261, that £125 ought not to be taken into account in assessing his resources. Lord Denning, MR, said [1981] 1 All ER at page 52:

"Reading through the Supplementary Benefits Act 1976, it seems to me that the answer is to be found by remembering that the [claimant's] position has to be assessed on a weekly basis. Under para 1(2)(a) of Sch. 1 to the Act, his weekly requirements are calculated taking into account his weekly earnings. Payment of supplementary benefit is made on a weekly basis. The whole system is run on a weekly basis. When one takes that into account, it goes a long way towards solving the question in this case: because for the 4 weeks from 15 November 1977 until 15 December 1977 [the claimant's] weekly resources were £61 a week. That sum exceeded his weekly requirements. So he did not qualify for supplementary benefit over that period.

It is true that in due course [the claimant] would have to repay £125 of the £261 ... At the time when the tribunal heard the case there was no evidence of any repayment having been made by [the claimant] at all. But we have been told what happened. When the firemen went back to work on 16 January 1978 they were entitled to be paid for the second fortnight of January. But they received no pay for that fortnight at all. The Council said that they had already been paid for the second fortnight in November, when they were on strike ...

The point is whether those repayments should be set against the £125 he received in November 1977. It seems to me that they are not relevant to the weekly position. When the weekly requirements and resources were being assessed in November 1977 no one knew what was going to happen in the future. No one knew how long the strike would last; whether [the claimant] would remain in the employment of the Council or not; or on what date or to what extent the refund would be made. It was so uncertain

that no one could properly take that into account in considering what the weekly resources and requirements were ...

So it seems to me that the payment to Mr Fordham on 15 November 1977 of £261 was a payment which was to last him for the next 4 weeks. It could be calculated in his resources for the next 4 weeks until 15 December. Those being his resources, they covered his requirements. Therefore he was not entitled to supplementary benefit for his wife and children during that time."

Waller LJ at page 54 said:

"In my view, it can properly be said that, when the payment was made on 15 November, it was a resource for each of the next 4 weeks, that is until the next payment was made on 15 December. It remained income, albeit that there was an obligation to repay at some future date when the strike was over. It remained as a resource for each of the next four weeks. It started as a resource for each of those 4 weeks, and the fact of a strike with a consequential obligation to repay at some future date did not alter the fact that it was a resource for each of the 4 weeks."

Dunn LJ in his judgment, also at page 54, quoted with approval the words of the supplementary benefit officer which were as follows:

"Mr Fordham receives his earnings from his employer 2 weeks in arrears and 2 weeks in advance. Although he did not subsequently work for the money paid for the period 15 November to 30 November, he nevertheless received it under the terms of his employment. Therefore it is regarded as available to him, together with the two weeks earned, for living expenses. Since the total amount received is the equivalent of one month's wages he is not entitled to benefit until 15 December 1977."

Dunn LJ stated that that seemed to him to be "a clear and entirely accurate statement of the position" and he agreed that the appeal tribunal were right in holding that those sums paid as wages should be treated as a resource.

10. That decision of the Court of Appeal was referred to in R(SB) 20/83. In that case the claimant was a student attending a full-time course. He had received a discretionary payment of £2,229.60 from his local education authority by way of a repayable loan. The claimant made a claim for supplementary benefit for the Christmas vacation. The benefit officer (now called the adjudication officer) took the view that the payment of £2,229.60 fell to be treated as income of the claimant within regulation 11(2)(1) of the Resources Regulations and that supplementary benefit was not payable. The claimant contended that a loan could not properly be reckoned as a person's "income" at all if the obligation for repayment was definite, certain and foreseeable and relied on the passage in the judgment of Lord Denning MR [1981] 1 All ER at page 53:

"I take a different view from the judge. He seemed to think that Mr Fordham's obligation to repay meant that he had not earned anything during the relevant period, and that he had not had any payment in advance, and the like. I take a different view because of the indefinite, uncertain and almost unforeseeable obligation to refund the money. It was so far ahead that it would not affect the immediate resources available to Mr Fordham."

The Commissioner in R(SB) 20/83 having cited that passage continued in paragraph 9(4) of his decision:

"On that foundation the claimant argues that Lord Denning would have reached a different conclusion had the repayment obligation been definite, certain and foreseeable.

Reading the judgment as a whole I am not convinced that this is a correct conclusion. But even if it were, the reasons for decision expressed by the other two members of that Court of Appeal to my mind clearly stand in the way of the claimant's proposition representing the law."

The Commissioner then referred to the judgments of Waller LJ and of Dunn LJ and continued in paragraph 9(7) and (8) of his decision:

"(7). Whilst I recognise that what, to use a neutral phrase, I will call 'an accrual of money to a student under obligation to repay' would not in general be regarded as 'income' of that student, I further consider that on the proper construction of regulation 11(1) and (2) in conjunction there was no permissible scope for regarding any moneys accruing to a student which are properly described as consisting of a grant or award by an education authority as other than 'income' of that student, since specifically so characterised by regulation 11(2)(1).

(8). Accordingly I am unable to accept the claimant's contentions as to a loan not being capable of constituting 'income' in the relevant context."

11. The claimant in R(SB) 20/83 also contended that a loan -

"is a well-recognised form of financial accommodation in its own right and as such something different from an 'award' in the relevant context of a 'grant or award by an education authority'. One does not, he says, 'award' a loan, one 'makes' it - and, he says, one cannot properly stretch the ordinary meaning of 'award' so as to embrace a loan."

The Commissioner considered that point and concluded in paragraph 10(3):

"But, at the end of the day, I am persuaded that what the claimant received was no less an 'award' by reason of his liability to repay the moneys he received. What he obtained was a financial accommodation enabling him - on a 'cash flow' basis - to meet wants the satisfaction of which required expenditure. And in my judgment he obtained it in the form of a payment made pursuant to the exercise of the education authority's discretion, decided upon after deliberation, so that it falls within the definition indicated [the definition of 'award' in the Shorter Oxford English Dictionary, namely that which is awarded, or assigned, as payment, penalty etc.]."

12. Mr King referred me to the Education (Mandatory Awards) Regulations 1987 and in particular to regulations 25 and 27. Regulation 25 provides:

"25. (1) The authority [i.e. the education authority] shall make any payment due under these Regulations in such instalments (if any) and at such times as they consider appropriate: and in the exercise of their functions under this paragraph the authority may in particular make provisional payments pending the final calculation of the award.

(2) Any payment in respect of such fees as are described in Schedule 1 may be made to the academic authority but subject thereto all payments shall be made to the student.

(3) Where, in pursuance of this regulation, a payment in respect of any period is made in advance or is provisional then, without prejudice to regulation 27 or the recovery of an over-payment by way of a deduction from a subsequent payment, any over-payment or under-payment shall be adjusted by payment between the student or, as the case may be, the academic authority and the authority."

Regulation 27 provides:

"27. (1) [Not relevant].

(2) In respect of any period -

(a) after the termination of an award;

(b) during which a student is excluded from attendance at the course by the academic authority; or

(c) during which a student is absent from his course without leave,

any payment otherwise due in pursuance of the award shall be reduced by the aggregate sum mentioned in paragraph (4).

(3) [Not relevant].

(4) The sum referred to in paragraphs (2) and (3) is the aggregate of -

(a) fees otherwise due that are not payable by reason of the student's non-attendance; and

(b) the appropriate proportion of the balance of any payments in respect of maintenance payable in pursuance of regulation 17(b)."

13. There is no dispute in the present case that from the date when he left the course, the claimant was liable to repay the balance of the sum paid to him by the education authority in January 1987, namely the balance of £519.32. The letter dated 31 March 1989 from the County Council makes it clear that on leaving the course that sum "became immediately repayable" and that owing to a slight delay in receiving information from the university, an invoice for that sum was not issued until 2 April 1987; that it was agreed that payment should be made in instalments which commenced in July 1987 and that the account had been paid in full. I was told that the account was paid in full by August 1988.

14. At the oral hearing before me Mr King contended:

(i) that at the date of the claim the claimant was no longer a student and no longer, therefore, entitled to a student grant;

(ii) that the balance of the grant, namely the sum of £519.32 became immediately repayable when the claimant left the course;

(iii) that "payable" in regulation 9(2)(a)(i) means "due to be paid", as had been held in CSB/342/1982 and R(SB) 11/85; that no sum was due to be paid by way of grant after the claimant had left the course on 27 January 1987; and accordingly no grant was thereafter "payable" within the meaning of regulation 9(2)(a)(i); and it followed that any sums already paid by way of grant in respect of that period was not to be taken into account as an income resource; and

(iv) that when a loan is made for a specific purpose, the borrower may be a trustee of the money, and if the purpose cannot be achieved, the loan becomes repayable and accordingly, since the grant had been made to enable the claimant to pursue his teachers' training course, that purpose not having been achieved, the claimant had become, if I understood the

argument correctly, a trustee of the balance, namely £519.32: it was not, therefore, the claimant's money and was not to be taken into account as a resource; and Mr King referred to Quistclose Investments v. Ro. & Razor Ltd [1970] AC 567, and CSB/975/1985.

15. There is no dispute that as from the date when he left the course, 27 January 1987, the claimant was under an obligation to repay the balance of the spring term grant, namely £519.32. It does not seem to me to matter whether that obligation arose, as was I think conceded by Mrs Wheatley, under and by virtue of regulation 27(2)(c) of the Education (Mandatory Awards) Regulations 1987 or because the claimant held that money under a resulting trust in accordance with the Quistclose principle. It is clear from R(SB) 20/83 that a student grant in the form of a repayable loan is capable of constituting a "grant or award" within the meaning of regulation 11(2)(1) of the Resources Regulations. The sum of £519.32 was part of the spring term grant or award of £734.91 which had been paid in January 1987. It continued to be a grant or award, even though it had in February become repayable. To paraphrase the words of Lord Denning in the Fordham case [1981] 1 All ER at page 52, when the payment was made in January 1987, it was a resource for each of the next ensuing weeks of the spring term (including the Easter vacation) until the next payment of the grant was made at the beginning of the summer term; and the termination of the course with a consequential obligation to repay did not alter the fact that it was a resource for each of those weeks. It did not change its character. It is true that in the Fordham case the obligation to repay was "at some future date". But the obligation to repay had, in the Fordham case, arisen when the strike began. Likewise, in the present case the obligation to repay arose when the claimant left the course. In the Fordham case when the tribunal heard the case there had been no repayment; the repayment did not occur until the second fortnight in January 1987 when the firemen received no wages for the fortnight's work then performed. In the present case, the demand for repayment was not made until the letter from the County Council dated 2 April 1987 enclosing the invoice of the same date and the repayment did not begin until July 1987 and was, I was told, concluded in August 1988.

16. It seems to me that the principles enunciated by Lord Denning and by Waller LJ and Dunn LJ in the Fordham case and by the Commissioner in R(SB) 20/83 are applicable to the present case. It follows that, in my judgment, the claimant had in each week in February 1987 the proportionate sum of his grant, namely £49.24 per week, and that that sum was income within the meaning of regulation 11(2)(1) of the Resources Regulations. In my judgment, that sum was in respect of each week properly taken into account as an income resource. It is, as I understand it, not disputed that in that event the claimant accepts that he was not entitled to supplementary benefit for those weeks.

17. In those circumstances, the decision of the appeal tribunal which confirmed the decision of the adjudication officer was not, in my judgment, erroneous in law. Accordingly, I must disallow this appeal.

(Signed) A. T. Hoolahan

Commissioner

Date: 13 June 1989