

**SUPPLEMENTARY BENEFIT****Resources—treatment of a discretionary award from a local education authority.**

The claimant, who resided with his wife and children, was a student on a full-time course and claimed supplementary benefit at the start of his Christmas vacation. He was in receipt of a discretionary award from his local education authority. In computing the claimant's income resources, the supplementary benefit officer included £23.65 a week in respect of the grant, equivalent to the entitlement of a single person who was a non-householder. On appeal to the tribunal, the majority upheld the supplementary benefit officer's decision on the grounds that regulation 4(12) of the Supplementary Benefit (Resources) Regulations 1981 applied. The claimant appealed to a Social Security Commissioner.

*Held that:*

1. regulation 4(12) of the Resources Regulations was only relevant where a student was in receipt of "a mandatory grant or award by an education authority" (paragraph 7);
2. regulation 11(2)(l) of the Resources Regulations required a grant or an award made to a student as defined in regulation 2(1) of those Regulations to be taken into account as part of his income resources, subject to a £2 disregard in certain circumstances. It was immaterial whether the grant was mandatory or discretionary (paragraph 9);
3. the claimant, being "a partner with a dependant", was entitled to a £2 disregard under regulation 11(2)(l)(ii) (paragraph 9);
4. in identifying how much of the discretionary grant was applicable to the vacation period, it was necessary to have regard to the provisions of regulation 9 of the Resources Regulations (paragraph 10).

The appeal was allowed.

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1. I grant the claimant leave to appeal against the decision of the supplementary benefit appeal tribunal given on 22 March 1983. I further decide that, for the reasons set out below, the tribunal's decision is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal.

2. The claimant sought leave to appeal against the decision of the supplementary benefit appeal tribunal of 22 March 1983, and asked for an oral hearing of his application. I acceded to that request, and at the hearing the claimant appeared in person and the benefit officer was represented by Mrs. G. M. V. Leslie of the Solicitor's Office of the Department of Health and Social Security. It soon became apparent during the course of that hearing that this was a proper case for my giving the leave sought, and as both the claimant and Mrs. Leslie on behalf of the benefit officer consented to my treating the application as the appeal, I went on to determine the actual appeal.

3. On 4 October 1982 the claimant, a married man residing with his wife and 2 young daughters at his home in Liverpool, started a 2 year full-time residential course at Ruskin College, Oxford. He was in receipt of a grant from his local education authority of £1,890 annually. However, on 13 December 1982, the commencement of his Christmas vacation, the claimant claimed supplementary benefit from the Liverpool (Kirkby) local office. The benefit officer decided that he was entitled to benefit at the rate of £10.85 per week with effect from 15 December 1982. This figure was arrived at on the basis that there should be included in the claimant's income resources the sum of £23.65 per week in respect of his student's grant, this being the equivalent of the entitlement of a single person who was a non-householder.

4. On 30 December 1982 the claimant appealed to the tribunal who in the event by a majority upheld the benefit officer. The majority gave as the reasons for their decision the following:—

“The majority of the tribunal considered that notwithstanding that the grant was a restricted discretionary grant by an LEA [the claimant] must be treated as in receipt of an income resource as specified in Regulation 4(12) of the Resources Regulations”.

It should also be mentioned that amongst their findings the tribunal found as a fact that:—

“[The claimant] was in receipt of a discretionary restricted (by the Local Education Authority) grant of £1,890 per annum which did not include any payment in respect of his wife and children.”

5. It is not in dispute that at the relevant time the claimant was on a full-time course and that he was a student within regulation 2(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [SI 1981 No 1526], which provides as follows:—

“2.—(1) ‘student’ means 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”.

6. By virtue of the combined effect of section 5(1)(a) of the Supplementary Benefit Act 1976 and of regulation 8(1)(a) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981, a student as above defined, unless regulation 6(a), (i) or (j) applies to him, is not entitled to supplementary benefit. However, he ceases to be within the definition “during periods when he is not attending his course and is not engaged in a programme of studies”. Normally, the Christmas, Easter and Summer vacations are such periods and the bar on claiming is lifted at this time. (It should perhaps be mentioned, however, that a claimant who is engaged in a programme of studies during the vacations will find himself still caught by the definition of “student” and disentitled to benefit). In the

present case, the claimant would appear to have ceased to be a student within the above definition during the period of the claim, which corresponded with the Christmas vacation. In any event, the tribunal proceeded on the basis that he satisfied all the relevant provisions for entitlement to benefit, and merely confined their attention to the extent of his entitlement. In computing his resources for this purpose they applied regulation 4(12) of the Supplementary Benefit (Resources) Regulations 1981 [SI 1981 No 1527] as amended by [SI 1982 No 1125]. That provision reads as follows:—

“4.—(12) Where the claimant is a student in receipt of a mandatory grant or award by an education authority he shall, for the duration of the Christmas and Easter vacations, be treated as being in receipt of an income resource at a weekly rate equal to the aggregate of the ordinary rate specified in column (2) of paragraph 1 of Schedule I to the Requirements Regulations and the sum specified in Regulation 23(1)(a) of those regulations”.

7. In applying to the case the above regulation the tribunal clearly erred in point of law. For it is quite clear that this particular provision is only relevant where a student is in receipt of “a mandatory [my underlining] grant or award by an education authority”. Manifestly, the adjective “mandatory” qualifies both the words “grant” and “award”, and it is quite clear on the evidence, and the tribunal so found, that the claimant was in receipt, not of a mandatory, but a *discretionary* grant or award. The tribunal were not entitled to include among the claimant’s income resources the sum of £23.65 provided for by regulation 4(12). I must therefore set aside their decision, and direct that the matter be reheard by a differently constituted tribunal.

8. For the purposes of the Resources Regulations “student” is defined in a somewhat different way from that adopted in the Conditions of Entitlement Regulations. Regulation 2(1) of the former regulations reads as follows:—

“2.—(1) ‘Student’ means a person under pensionable age who has ceased relevant education and is attending a course of full-time education, including any period when he is not in attendance but in respect of which he receives a grant or award from a Minister of the Crown or an Education Authority. . . .”

In that definition the words “grant or award”, are not qualified by the adjective “mandatory”, and clearly embrace discretionary grants or awards.

9. Regulation 11(2)(l) of the Resources Regulations requires a grant or an award made to a student as above defined to be taken into account as part of his income resources, albeit in certain circumstances there is a disregard of £2. Moreover, it is immaterial whether such grant or award is mandatory or discretionary. Both types of award are included. The relevant provision reads as follows:—

“11.—(2) There shall be treated as income and taken into account in full—

. . . . .

(1) Subject to paragraph 4(d), any income of a student which consists of a grant or award by an education authority, . . . . so however that if the student is—

- (i) a single parent,
- (ii) a partner with a dependant or
- (iii) a disabled student,

such income shall, . . . be taken into account only insofar as it exceeds the sum of £2.”

Regulation 11(4)(d)(iii) may possibly be of assistance to the claimant depending upon the evidence adduced in this regard. In any event, the claimant in the present case is “a partner” with a “dependant”, so he is entitled to the £2 disregard.

10. The really difficult matter in this case, which will be for the new tribunal to resolve, is how to calculate the income resources of the claimant during the relevant period in the light of regulation 11(2)(l). They will have to identify how much of the discretionary grant is attributable to that period. They will have to have regard to the provisions of regulation 9, and in this connection evidence from the local education authority, which made the award, as to the period to which such authority intended the award to relate and as to how much thereof it was intended would be attributable to each week, would be of inestimable help. However, it is for the tribunal to determine on the basis of whatever evidence is before them how much, if any, of the grant is applicable to the period in issue, and of course to give appropriate reasons therefor. It may be—I express no view whatsoever—that the tribunal reach the conclusion that the sum applicable to the period in question in accordance with the principles enunciated above is in fact higher than the £23.65 per week included in the claimant’s income resources by the tribunal of 22 March 1983. However, this is not a matter for me.

11. My decision is as set out in paragraph 1.

(Signed) D. G. Rice  
Commissioner

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