

SUPPLEMENTARY BENEFIT

Resources—treatment of mandatory education grant—meaning and duration of Christmas and Easter vacations.

The claimant was a full-time student at an institute of higher education. During her course she was required to undertake a period of unpaid practical training away from the institute. She received a mandatory grant from her local education authority. She claimed supplementary benefit on 11 January 1983, while staying with her parents, but this was refused by the benefit officer on the grounds that the claimant was on her Christmas vacation and that under regulation 4(12) of the Supplementary Benefit (Resources) Regulations 1981 she was to be treated as being in receipt of the weekly sum of £23.65 in respect of her student grant. Her resources therefore exceeded her requirements. This decision was confirmed by the appeal tribunal. The claimant appealed to a Social Security Commissioner and contended that because of difficulties in organising her practical training she was obliged to take part of her summer vacation entitlement during the period from 10 January to 13 February, that there was no provision in her grant for this "summer vacation", and that her resources were therefore nil.

Held that:

1. for the purposes of Regulation 4(12) of the Resources Regulations the term "Christmas vacation" should be interpreted to mean the whole period of vacation during which Christmas Day falls and similarly the term "Easter vacation" should be interpreted to mean the whole period of vacation during which Easter Day falls (paragraph 17);
2. the duration of the Christmas or Easter vacations is a question of fact to be determined by reference to the particular course and year of study under consideration (paragraphs 17 and 18).

The appeal was dismissed.

1. My decision is that the decision of the supplementary benefit appeal tribunal given on 18 February 1983 was not erroneous in point of law, and accordingly this appeal fails.

2. The claimant was a full-time student at an institute of higher education in Cardiff on a 4 year course leading to a degree in dietetics. During the third year of the course the claimant was required to undertake a period of unpaid practical training away from the Institute. She was in receipt of a mandatory grant from her local education authority. The award notification indicates that the period of outside placement was treated as term-time for the purposes of assessing the amount of grant payable. During the academic year 1982/83 the award notification shows that the term dates including the dates of placement were from 20 September 1982 to 17 December 1982, from 14 February 1983 to 25 March 1983 and from 11 April 1983 to 28 August 1983 which resulted in a total of 38 weeks and 3 days. The education authority awarded the standard maintenance award for 30 weeks and 3 days of £1,595 plus an additional payment of £234.40 in respect of the 8 additional term weeks. Accordingly the total grant awarded was £1,829.40, of which £589.50 was paid by the education authority and £1,240 by parental contribution.

3. On 11 January 1983, the claimant claimed supplementary benefit. She was then aged 21, single with no dependants and living with her parents in Leeds. She claimed to be retaining the rented flat in Cardiff which she occupied in term-time. The benefit (now adjudication) officer decided that she was not entitled to benefit on the basis that there should be included in the claimant's income resources the sum of £23.65 in respect of her student's grant, this being the aggregate of the entitlement of a single person who was a non-householder and the standard amount of £3.10 representing housing requirements.

4. On 20 January 1983 the claimant appealed to the tribunal against the decision. On 18 February 1983 the tribunal dismissed the appeal and upheld the decision. Amongst their findings the tribunal found as a fact that:—

“She receives a grant. It is assessed at £1,829.40 for 38 weeks and 3 days. She spends her Christmas and Easter vacations at home with her parents.”

The tribunal gave as the reasons for their decision the following:

- “(1) During the Christmas and Easter vacations the appellant must be treated as being in receipt of resources which equal her supplementary benefit requirements. Regulations 11(2)(1) and 4(12) S.B., (Resources) Regulations, 1980.
- (2) Where a student is absent during a vacation from her term-time accommodation no amount can be allowed in respect of that accommodation. Regulation 14(4) S.B. (Requirements) Regulations 1980.”

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

6. It is not in dispute that at the relevant time the claimant was attending a full-time course and that she was a student within regulation 2(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [SI 1981 No 1526], which provide 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”.

7. The right of any person to supplementary benefit is subject except in prescribed cases, to the condition that she is available for employment (section 5(1)(a) of the Supplementary Benefits Act 1976). In normal circumstances, a student, as above defined, is not entitled to supplementary benefit because she is not available for employment and cannot be treated as such (regulation 8(1)(a) of the Conditions of Entitlement Regulations). However, she ceases to be within the definition of a “student” during periods “when [s]he is not attending his[her] course and is not engaged in a programme of studies”. Normally, the Christmas, Easter and Summer vacations are such periods when the bar on claiming is lifted. In the present case, the claimant would appear to have ceased to be a student within the terms of regulation 2(1) during the period of the claim, which corresponded with the “extended Christmas vacation”.

8. Paragraph 1(1) and (2) of Schedule 1 to the Supplementary Benefits Act 1976, as amended, provides that the amount of supplementary benefit to which a person is entitled shall be the amount by which her resources fall short of her requirements and that her resources are to be calculated in the prescribed manner. In respect of the period in issue, the prescribed manner

is set out in the Supplementary Benefit (Resources) Regulations 1981 [SI 1981 No 1527] ("the Resources Regulations").

9. Regulation 11(2) of the Resources Regulations sets out specific items of income which are to be taken into account in full as resources. Regulation 11(2)(16) provides, as far as relevant, that "any income of a student which consists of a grant or award by an educational authority, including any contribution mentioned in regulation (4)(4) shall be taken into account only in so far as it exceeds the sum of £2."

10. Regulation 4 of the Resources Regulations concerns the notional resources of the claimant for purposes of calculating the extent of entitlement. Regulation 4(4) provides that "Notwithstanding that it is not actually made, a student shall be treated as possessing any contribution in respect of the income of any other person which a Minister of the Crown or an education authority takes into account in assessing the amount of the student's grant or award."

11. Regulation 4(12) provides:—

"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 1 to the Requirements Regulations and the sum specified in regulation 23(1)(a) of those regulations."

From 22 November 1982 the scale rate appropriate to a single non-householder aged 18 or over plus standard "rent" was £20.55 plus £3.10.

12. Regulations 17 to 20 of the Education (Mandatory Awards) Regulations 1982 [SI 1982 No 954] ("the Awards Regulations") provide that a mandatory grant comprises a sum in respect of fees and a sum in respect of maintenance, which is calculated by setting off the student's resources against her requirements. The requirements include an amount for normal maintenance when a student has attended her course for a period of 30 weeks and 3 days in the academic year (paragraph 6(1)(b) of Part 2 to Schedule 2 of the Awards Regulations) and an amount in respect of supplementary requirement in respect of any further period ("the excess period"). The student's resources are taken to be her own income and, where appropriate, a contribution based on her parents or spouse's income. The excess of requirements over resources is the amount payable by the education authority. Where there is no excess, the authority still makes a minimum award for maintenance—£410 for the academic year 1982/83.

13. Under Part 1 of Schedule 2 to the Awards Regulations the requirements for ordinary maintenance are standardised at 4 rates, the rate payable in a particular case being determined by whether the student lives in the parental home or in lodgings, in London or in lodgings elsewhere, or gets free board and lodgings. The period which ordinary maintenance requirements cover is laid down in paragraph 1(1) of Part 1 of Schedule 2 to the Awards Regulations as:

- "(a) any period while [s]he is attending the course, and
- (b) the Christmas and Easter vacations;"

However, if the required attendance exceeds 30 weeks and 3 days in the academic year, as in the present case, supplementary maintenance requirement in respect of each week and any part of a week comprised in the excess period is standardised at 3 different rates than for ordinary maintenance under regulation 6(1) and (2) of Part 2 of Schedule 2 to the Awards Regulations in the present case the appropriate weekly rate being £29.30.

14. The claimant's award notification shows that the claimant's ordinary maintenance requirements and her supplementary maintenance requirements were calculated to be £1,829.40, her resources consisting solely of assumed parental contribution amounting to £1,240. As her requirements exceeded her resources the amount payable by the education authority by means of maintenance was £589.40, the difference between the two.

15. I accept that the assumed parental contribution and the education authority's payment relate to the same period, which is the period which ordinary and supplementary maintenance cover. Paragraph 1(1) of Part 1 of Schedule 2 to the Awards Regulations provides for a payment of ordinary maintenance to include the requirements during any period while the student is attending the course and "the Christmas and Easter vacations". Paragraphs 5 and 6 of Part 2 to Schedule 2 provide for a payment of supplementary maintenance in the case of a student who is required to attend her course for a period in excess of 30 weeks 3 days as stated above in paragraph 12. Accordingly in the present case the claimant's academic year commenced in September 1982 and her ordinary maintenance requirements were assessed by reference to the period from 20 September 1982 to 3 July 1983. The supplementary maintenance requirement was assessed by reference to the period from 4 July 1983 to 28 August 1983.

16. In her grounds of appeal to the Commissioner the claimant contends that she was obliged to take part of her summer vacation entitlement during the inclusive period from 10 January 1983 to 13 February 1983 because of difficulties in organising placements. She submits that there was no provision in her grant for this "summer vacation" and that her resources were nil during that period. Accordingly she contends that she was entitled to supplementary benefit for the inclusive period from 10 January 1983 to 13 February 1983, being a period of vacation given *in lieu* of the normal summer vacation. She argues that in reality the period formed part of the summer vacation and fell to be regarded as such when determining her entitlement to supplementary benefit. In support of her contention she submitted a letter dated 12 May 1983 from her course tutor, who stated:—

"Third year students undertaking the B.Sc. Dietetics course do not take the normal Summer vacation, as they are required to undertake clinical training from mid April to mid November, with only three weeks holiday during that time. Vacation is taken in the spring to compensate for this."

17. The legislature has furnished no definitions of either "Christmas" or "Easter" vacations. The terms fall accordingly to be given their normal everyday meaning and their application by the determining authorities is primarily a matter of fact. (*Cozens v Brutus* [1973] A.C. 854, per Lord Reid at page 861.). Terms and vacations vary in duration from one educational establishment to another and even from one course of study to another within the same educational establishment. As a result the dates of the terms and vacations may vary from course to course during an academic year. It would be unrealistic and administratively impossible if it were otherwise. The question in issue in the present case is the meaning to be given to the expression "Christmas vacation" when considering the combined effect of regulation 4(12) of the Resources Regulations and regulations 17 to 20 of, and paragraph 1(1) of Part 1 of Schedule 2 to the Awards Regulations. In my view the term "Christmas vacation" should be interpreted to mean the whole period of vacation during which Christmas Day falls and similarly the term "Easter vacation" should be interpreted to mean the whole period of vacation during which Easter Day falls. The extent of the respective normal periods of vacation are a question of fact to be determined by reference to the particular course and year of study under consideration. I find

added support for this interpretation in paragraph 14 of Schedule 2 of the Awards Regulations whereby an education authority has discretionary powers to pay up to a maximum of £38 a week during vacations if a student would otherwise suffer undue hardship. Such a provision is inconsistent with the claimant's interpretation, which would result in the provision applying during the whole of the summer vacation but not during the whole of the periods between the autumn term and spring term and between the latter and the summer term. Accordingly in the present case the Christmas vacation was from 17 December 1982 to 14 February 1983 and the ordinary maintenance grant made provision for this whole period. The tribunal's decision was not erroneous in law.

18. It appears from the claimant's application for leave to appeal and her grounds of appeal to the Commissioner that she does not contest the tribunal's decision on entitlement to an amount in respect of her flat in Cardiff. Regulation 14(4) of the Social Security (Requirements) Regulations 1983 [SI 1983 No 1399] (in the same form in SI 1980 No 1299) provides that "where a student and any other members of the assessment unit are absent during a normal vacation from his, or their, term-time accommodation, no amount shall be allowed in respect of that accommodation". For completeness I should add that the tribunal's decision was not erroneous in law. The words "normal vacation" are a question of fact to be determined by reference to the particular course the claimant attended. For the reasons above mentioned the claimant's "Christmas vacation" included the whole period in issue and the claimant as a result was not entitled to any amount in respect of her flat in Cardiff.

19. The claimant's appeal is dismissed.

(Signed) R. F. M. Heggs
Commissioner