

Resources - allowable disregards from student grants.
Legitimate to deduct actual expenditure on books etc under reg 11(4)(j) Resources Regs.
Student grant - amount attributable to books etc.

MJG/SH/15/MD

Commissioner's File: CSB/0687/1986

C A O File: AO 2816/SB/86

Region: London South

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 allow the adjudication officer's appeal against the decision of the social security appeal tribunal dated 24 March 1986, as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision to a differently constituted social security appeal tribunal: Supplementary Benefits Act 1976, section 2 and the Social Security (Adjudication) Regulations 1984 [S.I.1984 No.451 as amended], regulation 27.
2. This is an appeal to the Commissioner by the adjudication officer against the unanimous decision of the social security appeal tribunal dated 24 March 1986, which held that the claimant, a man aged 26 at the relevant time, was entitled to supplementary benefit at the rate of 93p per week as at the date of his claim for that benefit on 7 October 1985. The appeal was the subject of an oral hearing before me on 4 March 1987 at which the adjudication officer was represented by Mr C.A.M.E.d'Eca and the claimant was represented by Mr M.Rodger. I am indebted to Mr D'Eca and to Mr Rodger for their assistance to me at the hearing.
3. At the date of claim on 7 October 1985 the claimant was living with a Miss P W, a 24 year old student at a College, where she had commenced studying for the BTEC Diploma in Art and Design. That was a course which attracted a mandatory award from the local education authority (see below), being an advanced course for a period of two years commencing in September 1985. It was conceded before the original tribunal that the claimant and Miss P W were living together "as husband and wife" within the meaning of section 34(1) of the Supplementary Benefits Act 1976 (definition of "unmarried couple") with the result that under paragraph 3(1) of Schedule 1 to the 1976 Act the requirements and resources of the claimant and Miss P W had to be aggregated together.
4. That meant that the student grant ie mandatory award payable to Miss P.W. by the local education authority was regarded also as a resource of the claimant, under regulation 11(2)(1) of the Supplementary Benefit (Resources) Regulations 1981. As the grant was of course made by the education authority to Miss P W for her own personal 'use' and no

addition was made to the grant for the claimant as a 'dependant'; this might at first sight seem strange. But it was rightly conceded before the local tribunal and before me that that is undoubtedly the effect of the legislative provisions set out above. Regulation 12 of the Resources Regulations would give no relief against this since that applies only to "income resources of dependants" and for this purpose Miss P W would not be regarded as a "dependant" of the claimant (see Resources Regulation 2(1) - definition of "dependant"). On the other side of the balance, of course, is the fact that in the assessment of the claimant's requirements for supplementary benefit purposes he was treated in exactly the same way as a married man would be and his normal weekly requirement was ascertained accordingly.

5. The problem in this case is solely concerned with the ascertainment of how much of Miss P W's grant was to be taken into account as a resource of the claimant. The relevant provisions of regulation 11 are as follows,

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

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

(a)-(k)

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

(4) The following income resources shall be disregarded:-

(a)-(i)

(j) any payment... which intended and used for -

(i) the provision of a leisure or amenity item, or

(ii) the provision of an item for which provision is not made in the amount applicable for normal requirements, for which housing benefit is not payable to the claimant or his partner, and in respect of which, in the determination of the claimant's additional or housing requirements, either no amount is applicable or an amount is applicable but the payment is for an item of which the cost is in excess of that amount, so however that in the latter case only the amount of the difference between the amount applicable and the cost shall be disregarded under this sub-paragraph,

and head (ii) shall apply in respect of the payment used to meet any amount regarded as excessive under regulation 21 of the Requirements Regulations or regulation 17 of the Housing Benefits Regulations;"

6. The result is therefore that the whole of Miss P W's grant has to be taken into account as a resource of the claimant unless any parts of it are to be disregarded under regulation 11(4)(j). The original tribunal that heard this case applied regulation 11(4)(j) by accepting the following items of expenditure for the Autumn term 1985 put forward by Miss P W as follows,

"Materials	£95.00
Books	£30.00
Travel	£ 5.50 x 13 (£71.50)
Exhibition visits	£10.00"

7. The tribunal then deducted the weekly equivalent of those expenses from the weekly gross amount of the claimant's grant, thus arriving at a figure for the net weekly grant to be taken into account as a resource of the claimant. That figure when set off against his supplementary benefit requirements meant, according to the tribunal's calculations, that he was entitled to supplementary benefit of 93p per week as at the date of claim. At this point I should say that both the claimant and the adjudication officer were agreed in submitting to me that the tribunal erred in its actual mode of calculation in making a 'global' calculation when in fact an element of the claimant's grant was additional payment for extra weeks of attendance at the College over and above the normal 'term'. I accept the submissions of Mr d'Eca and Mr Rodger to me on this point and for that reason alone I have set the original tribunal's decision aside, since clearly a distinction has to be made between the amounts payable for the standard term and for extra weeks (see paragraph 6 of Schedule 2 to the Education (Mandatory) Awards Regulations 1985 [SI 1985 No. 1126]). I have also set the tribunal's decision aside because it is clear that no account at all was taken of those 1985 Regulations, for the simple reason that it appears that they were not drawn to the attention of the tribunal. As to the extent of their relevance, I deal with that matter in my directions to the new tribunal (below).

8. The adjudication officer's appeal is in fact summarised in his application for leave to appeal, dated 1 July 1986, as follows,

"I submit that the tribunal erred in law by disregarding the financial limit for books, equipment and travelling expenses within the student grant payable to Miss P W by the local education authority when considering the application of Resources Regulations 11(4)(j). I submit that for an income payment to be disregarded under regulation 11(4)(j) it not only has to be used for a leisure or amenity item or an item not included in normal requirements, it also has to be intended for that purpose. I submit that in consequence the maximum amount that could be disregarded from Miss P W's grant for books, equipment and travelling expenses is the sum intended and paid for that purpose under the Education (Mandatory Awards) Regulations 1985 (SI 1985 No.1126)."

9. That ground of appeal was elaborated in written submissions to me on behalf of the adjudication officer dated 28 October 1986 and by the able oral submissions of Mr d'Eca at the oral hearing before me. I quote paragraphs 8-10 of the written submission dated 28 October 1986 as follows,

"There is no contention in this case that Miss P W did actually spend £125 on books and materials, £71.50 on travel and £10.00 on exhibition visits during the Autumn term of 1985" [i.e. it was not disputed that she had spent those sums]. . "However there is dispute whether her grant was intended to provide these sums for such expenses not covered by normal requirements. I submit that the tribunal erred in law by failing to consider what amount of her student grant was intended to cover such expenses. In paragraph 8 of decision CSB/1024/1984 [now reported as R(SB)8/86] the Commissioner held that it was not desirable to lay down any general rule about how specific and particular must be the necessary 'intention'. In that case, which also concerned the treatment of a student grant, the Commissioner allowed the amount stated by the Education Department to be intended for the provision of equipment, books and travelling expenses which were necessarily incidental to the claimant's attendance at the relevant course. I submit that in accordance with paragraph 4 of Schedule 2 to the Education (Mandatory Awards) Regulations 1985 the maximum amount payable within Miss P W's grant for travel costs was £105 per annum plus £21 for her six additional

weeks of attendance. I submit, that in consequence the maximum amount allowable for travel costs by virtue of regulation 11(4)(j) was £126 per annum. With regard to the sums intended to be used for books, materials and equipment I submit that no mandatory amounts are provided in the regulations. However I submit that the Department of Education and Science had designated that the element within the grant intended to be used for books, materials and equipment was £181.00 for the 1985/86 academic year" [here is given a reference to Appendix 15 to the Departmental 'S' Manual where this figure is stated - the 'S' Manual is not of itself of course law]. "I submit that the tribunal erred in law by failing to address themselves to the amount within the student grant intended to cover such costs, and their decision to allow the expenses actually incurred in full was erroneous in law."

The figures given in that submission for travel, books etc. are of course less than those put forward by the claimant and Miss P.W.

10. That submission raises a major point of principle. Mr. d'Eca asserted that it is relevant only to academic 'years' prior to the year beginning in September/October 1986 since, as from 3 November 1986, regulation 3(8)(d) of the Supplementary Benefit (Requirements and Resources) Miscellaneous Amendment Regulations 1986 (SI 1986 No. 1293) has expressly 'tied' the amounts deductible from a student grant when assessing it as a supplementary benefit resource to the amounts allowed in the Mandatory Awards Regulations 1985 etc. In essence what I am being asked to do by the adjudication officer is to hold that such 'tying' was equally applicable under regulation 11(4)(j) of the Resources Regulations 1981 to periods prior to 3 November 1986. Before I deal with that point, I should perhaps observe that regulation 3(8)(d) of the 1986 Regulations does not amend regulation 11(4)(j) of the 1981 Regulations at all and consequently my decision would appear to be relevant even after 3 November 1986.

11. I do not consider that there is automatic 'tying' of the allowances for travel etc. specified in the Mandatory Awards Regulations 1985 (or in Department of Education and Science figures) to amounts deductible from the gross student grant under regulation 11(4)(j) of the Resources Regulations. The 1985 Regulations prescribe fixed amounts of grant (and of the elements thereof) applicable to all students, whatever the nature of their courses, whether or not involving the purchase of expensive books or eg scientific or mathematical equipment. The amounts expressed in those Regulations as applicable to pure maintenance and to travelling expenses are in my judgment in essence arbitrary figures, much the same as figures for income tax allowances. They do not necessarily relate to the way in which the Department of Education and Science or the local education authorities intend (in so far as any intention is apparent) the students to use their grants. Reference may usefully be made, to demonstrate this point, to regulations 17-19 of, and paragraphs 1,2,5,6,10 and 13 of Schedule 2 to, the 1985 Regulations. Paragraph 10(4) of Schedule 2, for example, provides that certain purposes (e.g. whether an extra travel allowance is payable in special cases "the proportion of a student's maintenance requirements attributable to travel shall be deemed to be £105 of any requirement [of student residing in University, college etc. accommodation]" (my underlining). Moreover, the 1985 Regulations make no provision at all for how much of a mandatory grant is to be regarded as attributable to books, materials and equipment. That figure is merely the product of an agreement between the Department of Education and Science and the Department of Health and Social Security. Such an agreement cannot in my view be conclusive as to the construction of regulation 11(4)(j) of the Resources Regulations 1981.

12. I would have reached this conclusion from a general survey of the wording of and scheme of the Mandatory Awards Regulations 1985 on their own, but that conclusion is fortified by the citation to me by Mr Rodger of the First Report from the Education, Science and Arts Committee of the House of Commons for the Session 1986-87 on "Students Awards", from which it is clear that the elements within the maintenance awards for eg travel, books, equipment and materials are "notional", a word which is repeatedly used in

that Report. I note that, in a reply to the Committee from the Department of Education and Science, it is stated, "We would not now maintain that the maintenance element of the Mandatory Award is sufficient to meet all the essential expenditure of the average student".

13. Consequently, I reject the adjudication officer's submission that the amounts either to be found in the Mandatory Awards Regulations 1985 or agreed between the Departments of Education and Science and Health and Social Security for travel, books, equipment and materials are to be regarded as the maxima which can have been intended for the payment of either leisure or amenity items or non-normal requirements under regulation 11(4)(j) of the Resources Regulations. Moreover the fact that there is no provision in the 1985 Regulations for e.g. exhibition visits such as those incurred by the claimant in the present case does not necessarily mean that the cost of them cannot be taken into account under regulation 11(4)(j).

14. It is therefore a question for the independent adjudicating authority, adjudication officer, social security appeal tribunal or Commissioner, to ascertain in accordance with the wording of Resources Regulation 11(4)(j) how much of the student grant was "intended and used for" the items specified in sub-paragraph (i)(ii) of that regulation. It was submitted to me that the original tribunal did not pay any or sufficient attention to the word "intended" in that regulation. I am not altogether satisfied that that is so but in any event, as I have had to set the original tribunal's decision aside on other grounds (see above), I will not make a final decision on that point. However, in fulfilling the independent adjudication function, the adjudicating authority ought in my view to have some regard to the figures in the Mandatory Awards Regulations and in the statements of the Department of Education and Science, as made in their agreement with the Department of Health and Social Security. Mr d'Eca contended that those figures were "not absolutely conclusive but extremely strong evidence". I would not put the matter as highly as "extremely strong". In my view, there apply in this case the words of the learned Commissioner at paragraph 8 of R(SB)8/86 (though that case was concerned not with a mandatory award but with a discretionary award where the component amounts had actually been stated by the Education Authority making the discretionary award). The learned Commisisoner said,

"How specific and particular must be the necessary 'intention'? I do not think it desirable to lay down any general rule - and I do not propose so to do... in my view [a letter from the Chief Education Officer] makes it perfectly plain that the maintenance allowance included payment which was intended for the provision of equipment, books and travelling expenses which were necessarily incidental to the claimant's attendance of the relevant course. I do not consider that any specific breakdown of those various costs was required from the local education authority. The claimant must, of course, demonstrate the expenditure actually incurred; and this has been done... moreover, it is manifest that the relevant items were not items for which provision is made by way of normal requirements, housing benefit, additional requirements or housing requirements."

15. Consequently, I hold that the original tribunal's acceptance of the claimant's and Miss P.W's own figures for expenditure was perfectly in order but I have had to set their decision aside (a) for incorrect attribution of the grant for the Autumn term (see regulation 9 of the Resources Regulations and paragraph 7 above) and also because they clearly, through no fault of their own, did not consider the amounts specified in the Mandatory Awards Regulations 1985 at all. Where a question is as critical as this, the mere citation of extracts from the 'S' Manual will not suffice and the presenting officer must be prepared to put such original materials as the Mandatory Awards Regulations 1985 before the local tribunal. The new tribunal that hears this case has complete freedom therefore to come to what conclusion it wishes as to how much of Miss P W's grant was intended by the local education authority for and was used by the payee Miss P W for, items within Resources Regulation 11(4)(j) though it should have some regard to the figures in the Mandatory Awards Regulations 1985 and the figures put forward by the Department of Education and

Science, but only as a "rough guide" to enable the tribunal to avoid wholly disproportionate expenses allowances.

(Signed) M.J. Goodman
Commissioner

Date: 1st April 1987