

Rusaros — Student grant — dependants' + single parent allowances not attributable to summer or vacation.

RAS/4/LS/SH

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Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 27 June 1986 is erroneous in point of law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. In the 1984/1985 academic year the claimant was a student at Oxford Polytechnic. She received a grant from her local education authority amounting to £4,113. By a decision issued on 6 August 1985 an adjudication officer decided that the claimant was entitled to a supplementary allowance from the prescribed payday 18 July 1985 at the weekly rate of £8.71. In making his assessment the adjudication officer took into account as an income resource the part of the grant which was calculated by reference to Part III of Schedule 2 (Maintenance of Dependants) and Schedule 4 (Widows, Widowers, Divorced and Separated Persons) to the Education (Mandatory Awards) Regulations 1984. The claimant appealed. After making enquiries of the education authority regarding the amount of the grant the weekly rate of the claimant's supplementary allowance was revised downwards to £8.22. The appeal tribunal then upheld the adjudication officer's decision. This present appeal is with leave granted by the tribunal chairman. The claimant attended the oral hearing which was granted at her request. She was represented by her son. The adjudication officer was represented by Mrs A. E. Saxon of the Solicitor's Office of the Department of Health and Social Security.

3. There is no doubt that the grant money is an income resource and must be taken into account for supplementary benefit purposes: regulation 11(2)(1) of the Supplementary Benefit (Resources) Regulations 1981. Regulation 9(2) of those Regulations provides, so far as relevant that -

"(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 provide otherwise, payments 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;"

And the issue in this case is whether the grant money is to be taken into account for the period of the claimant's summer vacation. To answer that it is necessary, as regulation 9(2) requires, to decide whether it is payable in respect of the period of the summer vacation or is fairly attributable to that period. That requires consideration of the legislation pursuant to which the grant is paid. I should say that before getting to that one would need to consider regulation 9(2)(b) of the Resources Regulations which determines the date from which a payment is to be taken into account. That is, in general, the date on which it is payable which may very often be the date on which it is paid. Now it is I think common knowledge that educational grants for an academic year are paid in instalments probably of unequal amounts at the beginning of each of the three terms. However the tribunal in this case apparently had no evidence, and made no findings concerning when instalments were paid. I must therefore remit the case on this aspect to another tribunal to make the necessary findings. I will return to this aspect later.

4. Section 1 of the Education Act 1962 as substituted by Schedule 5 to the Education Act 1980 puts a duty on education authorities, subject to and in accordance with regulations made under the Act, "to bestow on persons who are ordinarily resident in the area of the Authority awards in respect of their attendance at courses" to which the section applies. Regulation 7 of the 1984 Regulations asserts that in pursuance of section 1(1) of the 1962 Act it is the duty of education authorities, subject to the prescribed conditions and exceptions of the Regulations, to bestow an award in respect of a person's attendance at a designated course during an academic year beginning after 31 August 1984. At this point I should mention that the claimant in this case started her course (which is a designated course) at Oxford Polytechnic in 1983. And her award was, as I understand it, bestowed under the Education (Mandatory Awards) Regulations 1983, which are revoked by the 1984 Regulations. But the effect of regulation 6(2) of the 1984 Regulations is that an award bestowed under the 1983 Regulations is, to the extent that it could have been bestowed under the 1984 Regulations, to be treated as if it had been bestowed under those Regulations. So it is the 1984 Regulations which determine the claimant's entitlement to her grant for the 1984/1985 academic year. Part II of the 1984 Regulations which includes regulation 7 to which I have referred deals with a number of matters concerning the persons who are entitled to an award, the courses which are designated courses, conditions of claiming and various other things which, so far as I can see, do not bear on the issue in this case. The relevant provisions appear to be in Part III relating to payments, Schedule 2 relating to ordinary maintenance requirements, supplementary maintenance, maintenance of dependants and the requirements of older students, and Schedule 4 relating to what is known as the single parent grant. The scheme of these provisions, so far as relevant, is that regulation 17 requires the authority to pay in pursuance of the award the course fees and a maintenance grant. Regulation 18 provides for the method of calculating the amount payable. And that amount is to be discovered by ascertaining the difference between the student's resources and his requirements as those are specified or identified in Schedule 2 (requirements), Schedule 3 (resources) and Schedule 4 (additional requirements for single parents).

5. Regulation 17 in Part III (Payments) appears to be of particular importance. It provides -

"17. Subject to Regulations 16, 23, 26 and 27, the authority shall in respect of each year pay in pursuance of the award -

- (a) in respect of fees, a sum equal to the aggregate of any such fees payable in respect of the student as are described in Schedule 1;
- (b) in respect of maintenance -

- (i) except in a case in which Regulations 20, 21, 22 or 24 applies, either the sum of £205 (in these Regulations called "the minimum maintenance payment") or a grant calculated in accordance with Regulation 18 (in these Regulations called "the maintenance grant" or "the full maintenance grant"), whichever is the greater;
- (ii) in a case in which one of those Regulations applies (subject to Regulation 20(2)) a sum or grant determined in accordance with the Regulation in question;

and so much of the sum or grant referred to in sub-paragraph (b) as appears to the authority to be appropriate shall be treated as being in respect of the Easter and Christmas vacations."

I should first of all say that there appears to be nothing in regulations 16, 23, 26 and 27 (to which regulation 17 is expressly made subject) which has any bearing on the point in issue. Next I should mention the words "shall in respect of each year" in order to dismiss them as having any bearing on the periods for which the grant is payable. "Year" is defined in regulation 2 as meaning ("in relation to a course") twelve months beginning on either 1 January, 1 April or 1 September depending on when the academic year begins. Now it seems to me that "year" in regulation 17 is first of all not used "in relation to a course" so the definition does not apply. And "in respect of each year" in my view merely serves to make clear that fees and maintenance required to be paid by the authority in pursuance of the award are to be paid in respect of each year of the award and not for example for just one year. So those words do not in my view assist with regard to the period for which the grant in respect of any year is payable. Neither the claimant's representative nor the adjudication officer contended to the contrary. What regulation 17 does is to provide that in each year of the award fees and a maintenance grant are to be paid and the maintenance grant is to be calculated in accordance with regulation 18. Before turning to that provision it is to be noted that the last three lines of regulation 17 allow the education authority to treat so much of the grant as appears to them appropriate as being in respect of the Easter and Christmas vacations. It may be of significance that those three lines were not in regulation 17 of the 1980 version of the Regulations. They were added by amendment to the 1981 version. Otherwise regulation 17 in the 1980 and 1981 Regulations was, except for the amount of the minimum grant in regulation 17(b)(i), in the same terms as regulation 17 of the 1984 Regulations.

6. Regulation 18 provides -

"18(1) The maintenance grant in respect of any year shall be the amount by which the student's resources fall short of his requirements and for the purpose of ascertaining that amount -

- (a) the requirements of the student shall be taken to be the aggregate of such of the amounts specified in Schedule 2 as are applicable in his case;
- (b) the resources of the student shall be taken to be the aggregate of his income for the year calculated in accordance with Part 1 of Schedule 3 and any contribution applicable in his case by virtue of Part 2 or 3 of that Schedule.

"(2) This Regulation and Schedules 2 and 3 shall have effect -

- (a) in the case of such a student as is mentioned in Schedule 4, subject to the provisions thereof;

(b) where Regulation 20 applies, subject as therein provided."

One then goes to Schedule 2 to ascertain a student's requirements under various headings. There are his requirements for ordinary maintenance which are dealt with in Part 1. Paragraph 1(1) requires that they should include his requirement for ordinary maintenance while he is attending the course and during the Christmas and Easter vacations. Part 2 deals with supplementary maintenance, and various amounts are added to the student's requirements (with the purpose of course of establishing the final amount of the maintenance grant by ascertaining the difference between the student's requirements and his resources) by reference to various different periods. So that, for example, in paragraph 6 and 7 cases so much is added for each extra week of the course. In paragraph 8 cases so much a day is added for each day of vacation study. And in paragraph 14 cases so much is added for each week in the case of a student who, in any week during a vacation, in the opinion of the education authority suffers undue hardship. Part 3 deals with the maintenance of dependants. Paragraph 16(1) provides that the requirements referred to in regulation 18(1)(a) are to include the student's requirements "for the maintenance of dependants during the year" and subsequent paragraphs stipulate the amounts which are to be added to the student's ordinary maintenance requirements. Part 4 deals with older students. It provides for sums determined by reference to the age of the student to be added to the student's requirements. There is no reference to any period; in fact the amount of the payment is determined simply by reference to age. Finally, in connection with Schedule 2 I should mention that paragraph 24 provides that, except where the context otherwise requires, references in Schedule 2 to a requirement, expenditure or attendance in respect of which no period of time is specified are to be construed as a reference to a requirement etc. for the year. Before coming to the contentions on behalf of the parties I need I think mention only one other provision or set of provisions. They are in Schedule 4 relating to students who are in effect single parents. In such a case the effect of paragraph 2(b) is that the amount stipulated in paragraph 18 of Schedule 2 for the maintenance of dependants is to be increased by a stipulated sum.

7. In the present case the grant of £4,113 for the year in question was made up as follows -

"Ordinary maintenance	£1,775.00
Extra weeks	£ 113.00
Dependants	£1,635.00
Single parent	£ 590.00

It has never been contended that the £1,775 for ordinary maintenance is to be taken into account as income under regulation 9(2) of the Resources Regulations for the period of the summer vacation. I think that is also the case with regard to the £113.00. But it is contended on behalf of the adjudication officer that the £1,635 and the £590 are to be taken into account as income for the summer vacation with a consequent effect on the rate of the claimant's supplementary allowance during that period. And the basis for that contention is that paragraph 16(1) of Part 3 of Schedule 2 dealing with dependants' requirements expressly provides that those requirements are to include the student's requirements for the maintenance of dependants "during the year". That is also true of the £590 because the method of Schedule 4 is to tack that on to the requirements for dependants. On the other hand the £1,775 is to be treated differently because paragraph 1 of Schedule 2 expressly provides that those requirements shall include the student's requirement for ordinary maintenance during any period he is attending the course and the Christmas and Easter vacations. So the case for the adjudication officer is that you look to the requirements Schedule to see the period to which the relevant requirements are said to relate and that

tells you the period for which the sum payable in respect of any particular requirement is to be taken into account.

8. For the claimant it was contended that that is to approach the matter the wrong way round. It is regulation 17 under which the duty to make payments in pursuance of the award arises. And regulation 18 and the requirements Schedules which are introduced by that provision merely provide the method of calculation of the amount to be paid. As regulation 17 makes clear, there is one indivisible grant to be determined by aggregating the student's requirements as they arise under the relevant Schedules: regulation 18(1)(a). And those Schedules do not determine the period in respect of which the grant is payable. In support of that the claimant's representative points in particular to the last three lines of regulation 17 pursuant to which the authority may determine what if any part of the grant is to be treated as being in respect of the Easter and Christmas vacations. Those words, as I have mentioned, were introduced into regulation 17 by the 1981 Regulations. The implication is that without those words no part of the grant is payable in respect of any of the vacations. And the fact that the summer vacation is not mentioned makes it clear that the grant is not and may not be treated as payable in respect of the period of that vacation. I find that argument persuasive. The problem with it is that it would seem to deprive for example the first four lines of paragraph 1 of Schedule 2 of any function. Paragraph 1(1) provides that the regulation 18(1)(a) requirements are to include the student's requirement for ordinary maintenance during any period he is attending the course and the Christmas and Easter vacations. Yet nothing seems to turn on that because the sum payable is stipulated, in paragraph 2, by reference to where the student resides and not by reference to any period. Again, paragraph 16(1) of Part 3 of Schedule 2 dealing with maintenance of dependants stipulates that the student's requirements under this heading are to include his requirements for the maintenance of dependants during the year. And nothing seems to turn on that so far as the calculation of the amount payable is concerned because that is ascertained by reference to the matters referred to in paragraphs 18 and 19. I might perhaps be more ready to accept Mrs Saxon's approach if the amount payable by virtue of the requirements provisions depended in some way on the period to which the requirements were said to relate. But, as I have said, that does not seem to be the case. Further, if Mrs Saxon is correct as to the effect of paragraphs 1(1) and 16(1) the amendment to regulation 17 to add the last three lines might seem to have had no purpose. Those words would appear to be otiose in the case of the ordinary grant because on Mrs Saxon's argument paragraph 1(1) produces the same result. And they would seem to be somewhat contradictory of paragraph 16(1) because, according to Mrs Saxon, the effect of that is that that part of the grant is payable in respect of the whole year including the Christmas, Easter and summer vacations.

9. It does seem to be unsatisfactory to have to decide entitlement to supplementary benefit by reference to the effect of complicated provisions in the Education (Mandatory Awards) Regulations. One might have expected that the point in issue would be dealt with in the supplementary benefit legislation. In fact the definition of "student" in the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 was amended (see S.I. 1986/1293) so as to provide in effect that a person is a student (and therefore not entitled to supplementary benefit) during the period for which his maintenance grant or award is "payable under Part 2 of Schedule 2 to the Education (Mandatory Awards) Regulations 1985...and during the Christmas Easter or any other vacation, other than the normal summer vacation..." So in this way periods for which a grant is payable under the Awards Regulations are, I think for the first time, brought into the supplementary benefit legislation not for the purpose of establishing the periods to which income resources are attributable but for the purpose of ruling out entitlement to supplementary benefit altogether for those periods. It is just possible that this provides some assistance to the claimant's case. There may be an implication that had it been intended that the supplementary benefit legislation prior to 1986 was to take account of the periods referred to in the Schedules to the Awards Regulations then it would have said so. I should mention that regulation 4(12) of the Resources Regulations provides that where a claimant for

supplementary benefit is in receipt of a mandatory grant or award by an education authority he is "for the duration of the Christmas and Easter vacations" to be treated as being in receipt of an income resource at a particular weekly rate. The summer vacation is excluded from the operation of this deeming provision. That also would seem to me to provide some assistance to the contentions made on behalf of the claimant.

10. On balance - it seems to me to be by no means clear - I take the view, for the reasons I have indicated, that in principle no part of the claimant's grant for the 1984/1985 academic year is to be taken into account as an income resource from the prescribed pay day 18 July 1985. The period for which the grant for the summer term is attributable for the purpose of regulation 9(2)(a) of the Resources Regulations is thus the period of the summer term. However, as I have said, the tribunal made no findings as to payability date so as to enable the commencement date of the period to be determined in accordance with regulation 9(2)(b), and that is an error of law. The new tribunal must make the necessary findings and decide when the period commences. If, as I would guess, it commences with the summer term the claimant's supplementary benefit which is payable from 18 July 1985 is to be calculated without taking any part of the grant into account. In fact I would hope the parties will be able to agree as to the payability date in which case effect can be given to this decision without the need to go back to another tribunal.

(Signed) R A Sanders
Commissioner

Date: 15 May 1987