

Resources - mature student's grant not attributable to summer vacation.

Supplementary grant does not cover summer vac

JNBP/9/LS

Commissioner's File: CSB/1394/1985

C A O File: AO 3023/85

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 ("the tribunal") dated 25 June 1985 is erroneous in law and is set aside. I remit the case for re-determination by a differently constituted tribunal in accordance with this decision.
2. This is an appeal brought by the claimant with the leave of the tribunal chairman against the above-mentioned decision of the tribunal which confirmed the decision of the adjudication officer issued on 3 May 1985 that the claimant was not entitled to supplementary benefit from 23 March 1985 for the period of the Easter vacation.
3. I heard the appeal at an oral hearing requested by the claimant who was not present but was represented by Mrs J. Peck, the Welfare Officer of the University of East Anglia. The adjudication officer was represented by Mr C. A. M. E. d'Eca of the Solicitor's Office, Department of Health and Social Security. I am indebted to both representatives for their helpful submissions.
4. There is no dispute about the facts of the case. The claimant was a full time mature student at the University of East Anglia and claimed supplementary benefit for the Easter vacation 1985. He and his wife and daughter, who was 16 on 23 May 1985, lived in their own house on which there was a mortgage outstanding. The water rates were £109.12 per annum and mortgage interest was payable at 13.5% on £7,000 and at 13% on £2,500. The house had nine rooms and was centrally heated. The family had no health problems.
5. An essential condition of entitlement to supplementary benefit is that the claimant's requirements, calculated in accordance with the Supplementary Benefit (Requirements) Regulations 1983 exceed his resources, calculated in accordance with the Supplementary Benefit (Resources) Regulations 1981. In the present case the adjudication officer's assessment of the claimant's requirements is not challenged and appears to me to be correct. However, her attribution of the claimant's resources to the period in issue is disputed. It is therefore necessary to consider the relevant Resources Regulations and the regulations relating to the particular resources concerned.
6. Regulation 11 of the Resources Regulations, so far as relevant for the present purpose provides 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 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)

...

(1) subject to paragraph (4)(d), any income of a student which consists of a grant or award by an education authority, including any part which is paid in respect of a partner or a dependant pursuant to section 3 of the Education Act 1973 or sections 73(f) and 74(1) of the Education (Scotland) Act 1980, and any contribution mentioned in regulation 4(4), 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, subject to that regulation 4(4), be taken into account only in so far as it exceeds the sum of £2.

(m)"

In the present case nothing turns on the references in the above to regulation 10 or regulation 4(d). "Student" is defined in regulation 2 of the Resources Regulations as meaning -

"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;"

and "partner" is defined as meaning "one of a married or unmarried couple".

7. Regulation 4 of the same regulations deals with notional resources and paragraph (12) provides:-

"(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 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."

8. Regulation 9 of the same regulations, so far as relevant provides:-

"9.(1) Except in so far as regulations 10, 11 and 12 provide that certain payments shall be deducted and certain payments shall be disregarded, the amount of a claimant's income resources to be taken into account shall be -

(a) [this relates to earnings];

(b) the whole of any other income of the assessment unit, calculated in accordance with regulations 11, 12 and 13.

(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;

(b) a payment of income shall be treated as paid on -

(i) in the case of a payment which falls to be taken into account but which is payable before the first benefit week pursuant to the claim, the date on which it is payable,

(ii) in any other case, the first day of the benefit week in which it is payable or the earliest succeeding benefit week in which, having regard to the method by which pension or allowance is payable in the particular case, it would be practicable to take it into account;

so however [what follows is irrelevant to the present case]

(c) where a payment of income is payable in respect of a period which exceeds one week, it shall be attributable at a weekly rate.....beginning with the appropriate date ascertained in accordance with sub-paragraph (b).

[what follows is irrelevant to the present case].

9. The present claimant was at the relevant date a student in receipt of a mandatory grant from an education authority, partly in respect of his wife and dependent daughter. By force of regulation 11 above his grant had to be taken into account and calculated as provided in that regulation. Also, as it was a mandatory grant, regulation 4(12) applied.

10. It follows that it was incumbent on the tribunal to make findings as to the amounts of payments of grant made to the claimant, as to the periods in respect of which such payments were made and as to the dates on which such payments were to be treated as made. The tribunal were also required to make the like findings in respect of payments of unemployment benefit. Appropriate findings were not made by the tribunal and it is accepted on behalf of both the claimant and the adjudication officer that the decision of the tribunal was on that account erroneous in law and must be set aside. As it would not be possible for me to make the necessary findings the case must therefore be remitted to a differently constituted tribunal for re-determination.

11. For the assistance of the new tribunal I must resolve the dispute - which was the only substantial dispute at the hearing - as regards the periods in respect of which payments of "mature student's grant" should be treated as made. I shall have more to say later about the

expression "mature student's grant" but before I do so I must consider the regulations pursuant to which the claimant's grant was awarded, that is, the Education (Mandatory Awards) Regulations ("the Awards Regulations") but only in order to ascertain the periods in respect of which it was awarded. Whether or not the amount awarded was correct is irrelevant for supplementary benefit purposes.

12. The claimant's grant must, I think, have been bestowed under the 1983 Awards Regulations but by force of regulation 6(2) of the 1984 Awards Regulations it is to be treated, to the extent that it could have been bestowed under the latter regulations, as having been bestowed thereunder. The duty of an education authority to bestow awards in circumstances such as those in the present case is imposed by regulation 7 of the 1984 Awards Regulations. Then regulation 17 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 [what follows is not relevant to the present case.]
- (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 these 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."

Regulation 18 provides:-

"Calculation of maintenance grant

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."

Regulation 19 provides that the requirements and resources of a student are to be assessed by the authority.

Regulation 25 authorises the authority to make any payment due under the Regulations in such instalments (if any) and at such times as they consider appropriate.

13. Schedule 2 of the regulations relates to requirements and Part 1 thereof relates to ordinary maintenance. Paragraph 1(1) provides:-

"1.-(1) The requirements of the student referred to in Regulation 18(1)(a) shall include his requirement for ordinary maintenance during -

(a) any period while he is attending the course, and

(b) the Christmas and Easter vacations;

and the amount of such requirement ("ordinary maintenance requirement") shall be determined in accordance with this Part of this Schedule."

14. Part 3 of Schedule 2 to the regulations relates to maintenance of dependants and paragraph 16(1) provides:-

"16.-(1) The requirements referred to in Regulation 18(1)(a) shall include the student's requirements for the maintenance of dependants during the year and the amount of any such requirement ("dependants requirement") shall be determined in accordance with this Part of this Schedule."

15. Part 4 of Schedule 2 of the regulations relates to older students. Paragraph 21 specifies the conditions that have to be satisfied by a student in order to make Part 4 applicable to him. Paragraph 22 provides:-

"22. The requirements referred to in Regulation 18(1)(a) shall, in the case of such a student, [that is, a student to whom Part 4 applies] include -

(a) where at the beginning of the first year of his course he was aged 26 years, the sum of £165;

(b) where he was so aged 27 years, the sum is £330;

(c) where he was so aged 28 years, the sum of £505;

(d) where he was so aged 29 or more years, the sum of £665."

16. Part 5 of Schedule 2 to the regulations relates to the construction of Parts 1 to 4 and paragraph 24 thereof provides:-

"24. In this Schedule, except where the context otherwise requires, any reference to a requirement, expenditure or attendance in respect of which no period of time is specified shall be construed as a reference to a requirement, expenditure or attendance for the year."

17. The grant in the present case has so far been referred to throughout by all concerned as consisting of three separate grants as follows:-

Maintenance Grant £1775

Mature Student's Grant £ 665

Dependants Grant £1635.

And each of these three grants has been treated separately when considering the periods in respect of which payments of grant have been made. But Regulation 18 of the Awards Regulations provides that the grant is to be the amount by which the student's resources fall short of his requirements and the grant is therefore, strictly speaking, simply a single sum of money and not three separate sums of money each derived from one of the requirements concerned. However, in the present case, there being no resources to take into account, the grant is actually the sum of the three relevant requirements, namely, the claimant's requirement for his own ordinary maintenance, his own requirement as an older student and his requirement for the maintenance of his dependants. That being so, it is easy and convenient to regard the grant as three separate grants each attributable to the period or periods to which the corresponding requirement was attributable. There would, of course, be no justification for regarding the grant in that way if it appeared that such an approach would not be possible, or would lead to great difficulty, in cases where resources have to be taken into account. However, I have not found anything in the Awards Regulations which indicates that resources could not be dealt with on a pro rata basis and accordingly I consider it appropriate to treat the grant as three grants as mentioned above. I shall also use the description "mature student's grant" for convenience.

18. As I have indicated above the only dispute relates to the period or periods to which the mature student's grant should be attributed. No period is mentioned in Part 4 of Schedule 2 and Mr d'Eca argued that paragraph 24 of the Schedule should be applied so as to make the older student's requirement, and hence the mature student's grant, payable in respect of the whole year. Mrs Peck, on the other hand argued that it should be treated as payable only in respect of the three terms of the academic year. Paragraph 1(1) of Schedule 2 expressly provides that the requirement for ordinary maintenance includes the student's requirements during the three academic terms and also the Christmas and Easter vacations, although it does not provide for how it is to be allocated between these periods, and I do not think that the paragraph could possibly be construed as providing that the requirement covers the Summer vacation. I shall turn later to the question of allocation. Now the ordinary maintenance grant is clearly designed to cover the student's personal needs and is payable whether or not the student has any dependants and the same is true of the mature student's grant. That being so, it would be strange indeed if the needs of an older student as such were met for the whole year when his needs for ordinary maintenance were met only for the academic terms and the Christmas and Easter vacations and I therefore consider that the context of the Awards Regulations as a whole requires that the mature student's grant should be taken not to cover any period not covered by the ordinary maintenance grant.

19. Were it not for the full-out words at the end of regulation 17 (see paragraph 12 above) I would assume that the mature student's grant should be payable at a uniform rate over the three academic terms and the Christmas and Easter vacations. However, those words seem to me to give the authority a discretion to, in effect, attribute the grant at different rates during the terms and vacations and even, subject to proper exercise of the discretion, to attribute no part of the grant to the vacation period. The discretion appears to apply equally to the ordinary maintenance grant but having regard to the express terms of paragraph 1(1) I do not think that it would be correct to interpret the full-out words as having the effect that, if the authority said nothing about allocation of the grant to the vacations, nothing would be allocated thereto. I prefer the view that if the authority says nothing the grant will be attributable uniformly over terms and vacations and that an express statement by the authority is required to alter that attribution. In the present case the claimant has produced a letter from Norfolk County Council indicating an intention that no part of the mature student's grant should be treated as in respect of the vacations. That letter was not before the tribunal but will have to be considered by the new tribunal.

20. For the foregoing reasons the appeal is allowed and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 14 May 1987