

"Relevant education" - CSB 224/84
claimant over 19

DGR/BC

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal (now the social security appeal tribunal) given on 1 December 1983 is erroneous in point of law, and accordingly I set it aside. However, as it is expedient that I give the decision the tribunal should have given, I further decide that the original decision of the benefit officer (now the adjudication officer) as to the amount of supplementary benefit payable to the claimant be confirmed.

2. This is an appeal by the benefit officer, brought with the leave of a Commissioner, against the decision of the supplementary benefit appeal tribunal of 1 December 1983. The Commissioner who gave leave directed that there be an oral hearing of the appeal, and at that hearing the claimant argued his own case. The benefit officer was represented by Mrs L Conlon of the Solicitor's Office of the Department of Health and Social Security. I am indebted to both the claimant and Mrs Conlon for their submissions.

3. During the academic year 1982/1983 the claimant was a post-graduate student at the University of Manchester Institute of Science and Technology. He received a grant from the Bolton Education Authority under paragraph 2(1) of Schedule 5 to the Education Act 1980. This provision reads as follows:

"2 (1) A local education authority shall have power to bestow awards on persons over compulsory school age (including persons undergoing training as teachers) in respect of their attendance at courses to which this section applies and to make such payments as are payable in pursuance of such awards."

This provision replaces section 2(1) of the Education Act 1962 (see section 19 of the Education Act 1980). For the purposes of this appeal there is no material difference between these two statutory provisions. It is not in dispute that the Bolton Education Authority, which had a discretion as to the grant it should award, made a grant composed of three different elements, namely:

(a) an amount for the claimant's personal maintenance and course materials amounting to £2,356 for the period from 20 September 1982 to 8 July 1983 only,

(b) an amount for the maintenance of his wife - £1,070, and

(c) an amount for the maintenance of his three children - £220 each.

The amounts for the claimant's wife and children were for the period from 1 September 1982 to 31 August 1983, ie for the whole of the academic year.

4. The claimant claimed supplementary benefit for the period of his summer vacation. The benefit officer made a computation of his entitlement on the basis that the amounts paid for the maintenance of the claimant's wife and children should be taken into account less the £2 disregard provided for by regulation 11(2)(1) of the Supplementary Benefit (Resources) Regulations 1981 [SI 1981 No 1527] ("the Resources Regulations"). However, the claimant contended that regulation 11(4)(e) of the aforesaid regulations applied to him, and that the effect of its provisions was to require the benefit officer to disregard the amounts payable in respect of those two of his children who were then of school age.

5. The benefit officer rejected this contention and in due course the claimant appealed to the local tribunal. In the event, the tribunal by a majority upheld the claimant's contention that regulation 11(4)(e) applied to him, and accordingly directed that the sum of £4.23 per week should be disregarded in respect of each of the appellant's school-age children. Furthermore, they directed that pursuant to regulation 11(2)(1) £2 per week be also disregarded in respect of the total allowance payable in respect of the claimant's wife and children. Mrs Conlon contended that the tribunal had in effect directed that £2 per week be deducted in respect of each member of the assessment unit ie £10 per week in all. However, I do not think that this is what the tribunal did decide. Be that as it may, it is quite clear from the wording of the relevant provision that the total disregard in respect of the claimant and his family is a single amount of £2 per week.

6. Regulation 11(4)(e) provides as follows:

"The following income resources shall be disregarded:-

.....

(e) any payment made in respect of a person in relevant education under section 81(c) of the Education Act 1944 or section 2(1) of the Education Act 1962 or section 49 of the Education (Scotland) Act 1980 (payments by education authorities to persons over compulsory school age) to the extent only that it does not exceed in the case of a person attending a school £7.50 per week and in any other case £9.50 per week, the amount of any excess being taken into account in full".

7. Now, the claimant contended that two of his children were at school and therefore in relevant education. An award had been made to him, pursuant to paragraph 2(1) of Schedule 5 to the Education Act 1980 (which replaced section 2(1) of the Education Act 1962), in respect of them, and accordingly the relevant payments, being less than £7.50 per week in each case, should be disregarded. Mrs Conlon, on the other hand, argued that regulation 11(4)(e) contemplated only claims made in respect of a person on whom an award had been bestowed pursuant to the statutory provision now replacing section 2(1) of the Education Act 1962. The regulation did not embrace the partners or dependants of that person. In so far as the words "in respect of" were used in place of the word "to", this was explicable on the ground that there might be occasions when the payment could more conveniently be made to the parents of the person in receipt of an award.

8. I accept Mrs Conlon's submission. The persons referred to in regulation 11(4)(e) are, in my judgment, limited to those in receipt of awards under the relevant legislation, and although the extent of such awards might be increased to allow for partners or dependants the awards are still in each case confined to the grantee. The relationship is between the local education authority on the one hand and the person on whom the award is bestowed on the other. The existence of partners or dependants does not affect that relationship, but merely increases the amount of the grant.

9. The claimant endeavoured to meet this difficulty by submitting that, on the basis that he alone was the person in respect of whom the relevant payments were made, he was nevertheless himself "a person in relevant education". He drew my attention to the definition of "relevant education" in section 6(3) of the Supplementary Benefits Act 1976 ("the Act"). That section provides as follows:

"6 (3) Regulations may make provision as to the circumstances in which a person is or is not to be treated for the purposes of the preceding sub-section as receiving relevant education; and in this section 'relevant education' means full-time education by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school."

The preceding sub-section is in the following terms:

"(2) A person who has not attained the age of 19 and is receiving relevant education shall not be entitled to supplementary benefit except in prescribed circumstances."

The claimant contended that he satisfied the definition in section 6(3) in that he was at the relevant time undergoing "full-time education by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school". However, at the date of the claim the claimant was no longer engaged in full-time education, his course having terminated.

10. Irrespective of the foregoing, however, the claimant was not "in relevant education" for wholly different reasons. Although section 6(3) defines "relevant education" for the purposes of section 6(2), it enables regulations to be made defining the circumstances in which a person is or is not to be treated as receiving relevant education. The only regulation having any bearing on this issue is regulation 10 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [SI 1981 No 1526] (the "Conditions of Entitlement Regulations"), and this provision, like section 6(3) itself, is subject to the restriction that it is for the purposes of section 6(2) only. It read at the relevant time as follows:

"10. (1) For the purposes of section 6(2) (persons under 19 receiving relevant education not to be entitled to supplementary benefit) a person shall be treated as receiving relevant education -

(a) for any period during which he is, for the purposes of section 2(1)(b) of the Child Benefit Act 1975, receiving full-time education, not being advanced education, by attendance at a recognised educational establishment; or

(b) in the case of a person who has ceased to receive full-time education, not being advanced education, for the purposes of that section 2(1)(b) and who -

(i) is under the age of 16 when he so ceases and attains that age on or before the terminal date, or

(ii) is aged 16 or over when he so ceases,

for the period beginning with the starting date and ending with the said terminal date."

Regulation 10(2) defines "starting date" and "terminal date". Now, at the relevant time the claimant was receiving advanced education, and accordingly, on no footing could he be treated as receiving relevant education within regulation 10(1). Moreover, section 6(2) and (3) and regulation 10(1) seem to proceed on the basis that a definition of "relevant education" is only called for when the person concerned is under 19. Further, this approach is implicit in the definition of student under regulation 2(1) of the Conditions of Entitlement Regulations as it was before it was amended with effect from 6 August 1984. For the reference to a student as being a person under pensionable age who has ceased relevant education suggests the attainment of a specific age. In the present case it is not in dispute that the claimant was at the relevant time over 19 years old.

11. It follows from what has been said above that the claimant cannot take advantage of regulation 11(4)(e), and accordingly in computing his supplementary benefit entitlement there shall be no disregard pursuant to that provision. Indeed, the only disregard will be the £2 provided for by regulation 11(2)(1). In other words, the original computation by the benefit officer is accurate, and in so far as the tribunal deviated therefrom, they erred in point of law. I must, therefore, set aside their decision. However, as all the relevant facts have been found and as it is expedient that I should determine the matter finally myself, I substitute my own decision for that of the tribunal in the terms set out in paragraph 1.

12. I allow this appeal.

Signed D G Rice
Commissioner

Date: 10 January 1985

Commissioner's File: CSB/222/1984
C SBO File: 315/84
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