

**IDENTIFIABLE DECISION
NOT MADE OUT OF
THE DEPARTMENT**

RAS/18/LM

Commissioner's File: CIS/7/1988

Region: London South

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 22 August 1988 is not erroneous in law. The adjudication officer's appeal accordingly does not succeed.

2. The claimant, a married man living with his wife and their two children, attended a full-time pre-university course at Highbury College of Technology from September 1987 to 4 July 1988. He received from his local education authority a grant amounting to £5,138.00 which was the ordinary or standard maintenance grant plus additions because the claimant was a mature student with dependants. The claimant registered as unemployed on 4 July 1988 and made a claim for income support. An adjudication officer decided that income support was payable from 4 July 1988 but it was subsequently realised that that was the last day of the claimant's course and that payment of income support should have commenced on 5 July 1988. Then, in relation to the question whether and how the grant should be taken into account in assessing the amount of income support, it appears from his submissions to the tribunal that the adjudication officer decided that whereas the ordinary maintenance element of the grant was not to be brought into account at all the other elements namely the mature student's element and the element for dependants were because, in the adjudication officer's view, they were paid in respect of a period of fifty two weeks commencing on 9 September 1987. That was the matter with which the tribunal were concerned; they allowed the claimant's appeal and decided that no part of the grant was to be brought into account for income support purposes as from 5 July 1988 because "... His grants expired when his course finished in July 1988 ... By July 1988 the claimant was no longer a student". The adjudication officer now appeals to the Commissioner against that decision. At the oral hearing which I directed he was represented by Mr R. Buckley of the Office of the Chief Adjudication Officer and the claimant by Ms S. Venn of Hampshire Citizens Advice Bureau, Welfare Rights Project. After Mr Buckley and Ms Venn had made their submissions the hearing was adjourned for further written submissions which have now been made.

3. The tribunal's reasons for their decision are not very clear. However as, for the reasons I give below, they reached the right conclusion I do not set aside their decision.

4. The calculation of earnings for the purpose of assessing entitlement to income support is dealt with, in relation to other than self-employed earners, in regulation 29 of the Income Support (General) Regulations 1987. Under that provision, income which does not consist of earnings is to be taken into account and the period for which it is taken into account is, in a

case where the income is payable in respect of a period, the length of that period: regulation 29(2)(a). The income of students is dealt with in regulations 26 and 61 to 69. In general, regulation 29 applies to them, subject to the modifications provided by regulations 61 to 69: regulation 26. Now in this case the student provisions do not apply because by the time the claimant became entitled to income support he had ceased to be a student as defined in regulation 61. Accordingly regulation 29 applies, and that part if any of the grant which was payable for a period which included any part of the period for which the claim was made has to be brought into account in making the assessment. So for what period was the grant or its constituent elements payable? To answer that question one must look at the terms on which the grant was awarded and paid.

5. Mandatory grants for the academic year 1987 to 1988 were awarded and paid pursuant to the Education (Mandatory Awards) Regulations 1987. The grant in question in this case was however a discretionary grant and those Regulations do not directly apply. Nevertheless it is plain from the booklet "Student Grants 1988" published by the Hampshire City Council Education Department that discretionary grants were in general dealt with by the education authority in the same way as they dealt with mandatory grants. Both parties agreed that was so and neither sought to suggest the position was different under the 1987 version of the booklet. So it is appropriate to consider the matter by reference to the Mandatory Awards Regulations. The method of those Regulations is that the amount of the maintenance grant is the amount by which the student's resources fall short of his requirements: regulation 18. And a student's requirements are determined by reference to Schedule 2 which deals among other things with the calculation of the amount of the ordinary maintenance grant and additions to which mature students and students with dependants are entitled. In relation to the requirements for ordinary maintenance paragraph 1 of Schedule 2 makes it clear that those requirements are for ordinary maintenance during the period of attendance on the course and the Christmas and Easter vacations. And as it has never been contended that the ordinary maintenance part of the grant in this case is payable in respect of any other period it does not come into account in relation to the assessment for income support purposes after the end of the claimant's course. However Schedule 2, in relation to mature students and maintenance of dependants, does not stipulate a period in respect of which those requirements are to be taken. And that has prompted the adjudication officer to invoke paragraph 24 of the Schedule which provides that except where the context otherwise requires any reference to a requirement in respect of which no period of time is specified is to be construed as a reference to a requirement "for the year". The consequence, contended Mr Buckley, was that those two elements of the grant were payable for fifty two weeks and, in accordance with regulation 29(2)(a), should be brought into account for that period.

6. The same problem was encountered in the now abolished supplementary benefit scheme the relevant provisions being essentially to the like effect as those to which I have referred above. And in relation to that scheme the Commissioners have produced different results. In CSB/909/86 I decided that the additional amount paid for maintenance of dependants and the further sum paid under Schedule 4 of the 1984 version of the Mandatory Awards Regulations because the claimant was a widow were to be treated, for the purpose of assessing entitlement to supplementary benefit, in the same way as the amount paid for ordinary maintenance. That was principally because, in my view, the method of the relevant provisions of the Mandatory Awards Regulations was that there was one indivisible grant (calculated or determined by aggregating the appropriate requirements dealt with in the Schedules) and paid pursuant to regulation 17 which allowed the authority to treat so much of the grant as appeared to the authority to be appropriate as being in respect of the Easter and Christmas vacations. That seemed to me then, and it still does, to indicate plainly that primarily the grant (including its constituent elements) was payable in respect of the period of the actual attendance by the student on his course and for the Easter and Christmas vacations if the authority so decided but not for any longer period. The Commissioner in CWSB/11/86 took the view that that did not give sufficient weight to paragraph 24 of Schedule 2 to which I have referred above. And in CSB/1394/85 the Commissioner who was

there dealing only with the mature student's element of the grant took the view that the period in respect of which that element was payable should not be taken to cover any period not covered by the ordinary maintenance grant which was payable only in respect of the period of the academic terms and possibly the Christmas and Easter vacations. So, although they may have got there by somewhat different routes CSB/909/86 and CSB/1394/1985 are, as it seems to me, to the same effect. In this present case I propose to follow those two decisions and not follow CWSB/11/86. That is because paragraph 24 of Schedule 2 on which the Commissioner in that case placed such reliance does not in my view really assist - it seems to me that it is regulation 17 and not Schedule 2 which determines the period in respect of which the total grant is payable. Furthermore the facts in CWSB/11/86 are not recited in the decision.

7. In CSB/909/86 I made the point that it seemed unsatisfactory to have to determine entitlement to supplementary benefit by reference to provisions in the Mandatory Awards Regulations. Those provisions seem to me, in relation at any rate to the point in issue in this case, to be remarkably complicated and to some extent inconsistent. That is no doubt because they were not intended to deal with supplementary benefit (now income support) problems. In this connection it is interesting to note that, in cases to which regulation 62 of the Income Support (General) Regulations applies, it is now expressly provided that "Any amount intended for the maintenance of dependants or for an older student under Part III of Schedule 2 to the Education (Mandatory Awards) Regulations 1987 or intended for an older student under Part IV of that Schedule shall be apportioned equally over a period of fifty two weeks ...". That is the new paragraph 3A. If that is the effect the Department wishes to achieve in a case such as this one - as I have said the provisions relating to students do not apply - one might have thought they would have said so equally simply.

(Signed) R A Sanders
Commissioner

Date: 27 October 1989