

Students - grant income - over
what period can various elements be attributed? 7/75/94

CPAG



JM/1/LM

Commissioner's File: CIS/033/94

SOCIAL SECURITY ACT 1986
SOCIAL SECURITY ADMINISTRATION ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an adjudication officer's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 11 October 1993 which reversed a decision issued by the adjudication officer on 25 June 1993. My own decision is as follows:

- (1) The aforesaid decision of the appeal tribunal is erroneous in point of law and is set aside.
- (2) Without making fresh or further findings of fact I can give the decision which I consider that the appeal tribunal should have given.
- (3) The single parent's allowance element of the claimant's mandatory award from the Cumbria Education Department falls within the scope of paragraph (3A) of regulation 62 of the Income Support (General) Regulations 1987 and is, accordingly, to be apportioned equally over the period of 52 weeks in respect of which it was payable, ie the period of 12 months which began on 1 September 1992.
- (4) In consequence, the claimant was not on 26 June 1993 entitled to income support because at that date her income exceeded her applicable amount.

2. The facts are simple and have never been in dispute. The claimant is aged about 35 and single. She lives with her son, Ian, who is now aged about 5. She enrolled for a course at Lancaster University, commencing with the academic year 1992/93. For that course she was awarded a grant by the Cumbria Education Department. That award was made under the Education (Mandatory Awards) Regulations 1992 [SI - 1992 - No 1270]. In the papers is a photocopy of the notification, dated 4 November 1992, of the final assessment of the award in respect of the first year of the course. That photocopy is not entirely easy to read; but the total award seems to have amounted to £4841.92. What is clear,

however, is that the award included these two elements:

Dependants' allowance	£1690.00
Single parent's allowance	£ 835.00

On the notification form "(52 wks)" was printed against each of those allowances.

3. The first year of the course ended on 25 June 1993. The claimant made a claim for income support as from 26 June 1993. (As a lone parent, she was not, of course, required to be available for employment.) At that time her income consisted of -

- (a) child benefit, including one parent benefit;
- (b) maintenance of £10.00 a week; and
- (c) the two allowances referred to in paragraph 2 above.

The local adjudication officer - for the purposes of determining the claimant's weekly income - divided by 52 the sums of £1690.00 and £835.00. The outcome was that the claimant's weekly income worked out at £74.61. Her applicable amount came to £73.60. Narrowly, accordingly, the claimant failed to qualify for any income support; and the adjudication officer so decided. The claimant appealed to the appeal tribunal. Her appeal was directed solely to the adjudication officer's treatment of the single parent's allowance of £835.00. She objected to its apportionment over the period of 52 weeks. In her written grounds of appeal she contended that it should have been apportioned over 41 weeks. Before the appeal tribunal the claimant amended that contention. I quote from Box 1 on the relevant form AT3:

"Appellant - Error in notice of appeal. I contend that the Single Parent's Allowance only be taken into account over 30 weeks 6 days - not 52 weeks - working from grant being made."

The issue is, in essence, one of attribution rather than of apportionment. What the claimant is contending is that no portion of her single parent's allowance fell to be attributed to any day after 25 June 1993, ie the final day of the third (and last) term of the first year of her course. That is an issue of law, turning upon the construction of the relevant legislation.

4. Part V of the General Regulations is headed "Income and Capital"; and Chapter VIII of that part is headed "Students". In point in this appeal is regulation 62, "Calculation of grant income". The basic principle is set out in paragraph (1):

"(1) The amount of a student's grant income to be taken into account shall, subject to paragraph (2), be the whole of his grant income."

Paragraph (2) opens -

"There shall be disregarded from the amount of a student's grant income any payment - ",

and under (a) to (h) are listed the disregards. They include such payments as those intended to meet tuition fees, those intended to meet the cost of books and those intended to meet travel expenses. With effect from 6 April 1992 paragraph (2A) was inserted. It provided for a further disregard in respect of the travel costs therein specified. None of the aforesaid disregards plays any part in this appeal. I have adverted to them, however, because they assist in demonstrating the general approach of the legislature to the relationship between a student's grant income and his income in the context of income support.

5. But paragraphs (3) and (3A) of regulation 62 do bear directly upon our discussion. I set them out:

"(3) A student's grant income, except any amount intended for the maintenance of dependants under Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 1991 or intended for an older student under Part 4 of that Schedule, shall be apportioned -

- (a) subject to paragraph 4 [which relates to sandwich courses], in a case where it is attributable to the period of study, equally between the weeks in that period;
- (b) in any other case, equally between the weeks in the period in respect of which it is payable.

(3A) Any amount intended for the maintenance of dependants or for an older student under the provisions referred to in paragraph (3) shall be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53."

Paragraph (3A) is, of course, an insertion; but it has been in effect from 11 April 1988, the date upon which income support came into force. But on that date the reference in paragraph (3) was to the Education (Mandatory Awards) Regulations 1987. Those Regulations are revoked and re-enacted annually. There is a substantial element of up-rating in that exercise - but changes of substance are also to be found. Nevertheless, the reference to the 1987 version of the Mandatory Awards Regulations remained in regulation 62(3) of the General Regulations until that reference was replaced, with effect from 6 April 1992, by the reference to the 1991 version (see the Income Support (General) Amendment Regulations 1992 [SI - 1992 - No 468]). The reference is still to the 1991 version; although I notice that in Volume 6 of the current "Blue Book", Annex 2 to the print of the General Regulations sets out extracts from the 1993 version of the Mandatory Awards Regulations [SI - 1993 - No 1850].

6. It is manifest that a measure of detailed reference will have to be made to the provisions of the Mandatory Awards Regulations. Rather than interrupt by quotations the flow of what is bound to be - at best - a somewhat indigestible analysis, I have consigned my quotations to the Annexure of this decision. Those quotations are from the 1991 version of the Mandatory Awards Regulations [SI - 1991 - No 1838]. For ease of cross-reference, I have assigned to each quotation a Roman numeral in brackets.

7. From a perusal of the Annexure there can be drawn the following generalisations in respect of the Mandatory Awards Regulations:

- (a) Each annual version of the Regulations is in effect from 1 September in the year in which that version is made until 31 August in the following year. (See, eg, quotation (iv).)
- (b) The two basic elements of an award are, respectively, fees and maintenance. (See quotations (i), (iv) and (v).)
- (c) The basic unit of time for the calculation of an award is the period of twelve months; and the relevant starting date of that period is precisely prescribed, although it may be any one of four dates, according to the academic year appropriate to the student in question. (See quotations (iii), (v), (vi), (viii) and (x).)
- (d) The payment of fees to the relevant educational establishment is provided for in paragraph (2) of regulation 24. I have not set out that paragraph in the Annexure. But I have set out paragraph (1) (quotation (vii)), which gives to the local education authority, in respect of the maintenance element, a substantial discretion as to both the timing of payments and the size of the instalments thereof.

8. Regulation 18 provides for the calculation of the maintenance element "in respect of any year"; and that regulation sends us to Schedule 2 in respect of requirements and to Schedule 3 in respect of resources (see quotation vi)). This appeal is not concerned with resources; nor is it concerned with either ordinary maintenance or supplementary maintenance, which are, respectively, dealt with in Parts I and II of Schedule 2. But the appeal is concerned with the maintenance of a dependant; and that takes us to Part III of Schedule 2. In quotation (viii) I have set out the opening paragraph of Part III (ie paragraph 12). Sub-paragraph (1) refers explicitly to "the students's requirements for the maintenance of dependants during the year". The words which I have emphasised simply reflect commonsense. If a student has a dependant to maintain, the financial burden of such maintenance will subsist regardless of whether the student is actually attending his course or is on

vacation. Paragraph 14 sets out the criteria and the various specific sums of money relevant to quantification. (See quotation (ix).) No specific periods of time are referred to in paragraph 14. But the "commonsense" to which I have alluded above is reflected by paragraph 20 of Schedule 2:

"20. 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."

9. I have in the Annexure set out the whole of Schedule 4 to the Mandatory Awards Regulations. That Schedule is entitled "Single Students with Dependants"; and it was from that Schedule that there was derived the sum of £835.00 which was included in the claimant's award by way of "Single parent's allowance" (cf my paragraph 2 above). There has been a Schedule 4 to the Mandatory Awards Regulations ever since their original version - ie since the Education (Mandatory Awards) Regulations 1980 [SI 1980 - No 974]. (Those Regulations were themselves a consolidation, with amendments, of the Local Education Authority Awards Regulations 1979; and, although I have not checked, I imagine that the provisions of Schedule 4 were by no means novel.) In its earlier days, Schedule 4 bore the title "Widows, Widowers, Divorced Persons, Etc". By 1986 that had become "Widows, Widowers, Divorced and Separated Persons". The current title - "Single Students with Dependants" - came upon the scene in the 1987 version. The change was one of more than style. For the first time, the provisions of Schedule 4 were extended to single students (with dependants) who had never been married.

10. In the context of the appeal before me, it is important to appreciate that Schedule 4 is in no way "self-contained". Standing by itself it confers nothing. That is manifest, not only from its own wording, but from the regulation which brings it upon the scene, namely regulation 18(2):

"(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)" (Cf quotation (vi).)

Schedule 4 is a gloss upon Schedules 2 and 3. It provides that - in the prescribed circumstances - certain increases shall be made in certain of the disregards specified in Schedule 3 and certain of the requirements specified in Schedule 2. In the case before me, the increase was to the requirements set out under paragraph 14 of Part III of Schedule 2. (See quotation (ix).) To put it simply: but for paragraph 14, nothing whatever could have been awarded to this claimant in respect of her son Ian.

11. As I indicated in my paragraph 3 above, the claimant attended the appeal tribunal hearing. She was represented thereat by Miss Ann Shaw, a welfare rights officer from the Welfare Rights Service of the Lancashire County Council. Miss Shaw deployed an argument of beguiling simplicity. She directed the appeal tribunal's attention to the precise wording of paragraphs (3) and (3A) of regulation 62 of the General Regulations (cf the quotation in my paragraph 5 above). I trust that I do not do her an injustice by summarising her contentions thus:

- (a) The basic principle is to be found in these words:

"A student's grant income shall be apportioned equally between the weeks in the period in respect of which it is payable."

- (b) Those words (from the full-out words of paragraph (3) and from sub-paragraph (b)) are subject to express exceptions and express qualifications. The exception material to this appeal is in the full-out words of paragraph (3):

" except any amount intended for the maintenance of dependants under Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 1991"

- (c) Incontrovertibly, any amount falling within that exception must - by virtue of paragraph (3A) - "be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53".

- (d) But the claimant's single parent's allowance did not fall within that exception. It was not awarded under Part III of Schedule 2. (In referring to the numbers of the Parts, I myself have preferred the Roman numerals used by the draftsman of the Mandatory Awards Regulations to the Arabic numerals used by the draftsman of regulation 62.) The single parent's allowance was awarded under Schedule 4; and Schedule 4 does not feature among the express exceptions to the basic principle (set out in (a) above).

- (e) If the basic principle applies, it is then necessary to ascertain "the period in respect of which [the single parent's allowance] [was] payable".

- (f) That period consisted of the three terms of the relevant academic year. It did not include the vacations.

12. Miss Shaw's contentions summarised in sub-paragraph (f) immediately above must be amplified. It is clear that someone (possibly the chairman of the tribunal) adverted to the fact that

the notification of the award specified 52 weeks in respect of the single parent's allowance (cf the final sentence of my paragraph 2 above); for the adjudication officer is - on the relevant form AT3 - recorded as interjecting, in the course of Miss Shaw's submissions, the following comment:

"Award notification states 52 weeks but I rang Education Department and they could not say why."

Immediately thereafter Miss Shaw is recorded as having submitted thus:

"No period given in regulations for these grants. Indicate period for which attend course - extra payment for any further period."

There then follow in the record the dates of the terms in the academic year 1993/94. Miss Shaw's contribution is recorded as concluding thus:

"Grant quoted on annual basis but paid for 3 terms. Three separate periods here. (NOTE: only the Education (Mandatory Awards) Regulations 1993 were produced.)"

The final entry in Box 1 of the form AT3 reads thus:

"Chairman - It appears from Income Support (General) Regulations Regulation 62 and the references to the Education (Mandatory Awards) Regulations that a distinction must be made between Schedule 2 dependants (eg spouses and children) and Schedule 4 (ie children of single students). But the 1991 Regulations may differ from the 1993 Regulations? It appears from studying the notes that the Regulations are changed yearly." (That quotation departs slightly from the typed-up version of the AT3. I have sought to reflect the manuscript original.)

13. The tribunal pursued to the end the line of thinking suggested by the chairman in my last quotation in paragraph 12 above. The recorded findings of fact conclude thus:

"The award form states that [the single parent's allowance] is over 52 weeks but the Council cannot produce any authority for this. Appellant claimed benefit from 26.6.93 and this allowance was taken into account, having been apportioned over 52 weeks."

The unanimous decision of the tribunal was set out thus:

"Appellant's income support entitlement is to be re-assessed on the basis that her Single Parent's Allowance for 1992/93 is not to be apportioned to any period after 25.6.93, with a further right of appeal."

(I am not clear as to the significance of those last six words. No doubt they were - in the light of observations made in the

course of the hearing - clear to the respective parties.)

And I set out the recorded reasons in full:

"The only question in this appeal is the period over which the Single Parent's Allowance should be apportioned ie is any part of it to be taken into account after the date of claim. This depends upon interpretation of regulations.

The allowance is paid under Schedule 4 to the Education (Mandatory Awards) Regulations 1991 (these regulations being updated every year). Thus it does not fall to be considered under Income Support (General) Regulations 1987 (as amended) Regulation 62(3A) as contended by the Department, but under Regulation 62(3)(b) which provides for apportionment over 'the period in respect of which it is payable'. The statement on the award that this is 52 weeks is not binding on this Tribunal and has not been justified by Cumbria County Council. The grant is quoted as a yearly amount but paid on a termly basis so is to be treated as being apportioned to the terms only ie not after 25.6.93. If this were not so Regulation 3A would not be needed in respect of the other allowances."

14. What I have set out in paragraphs 11 to 13 above calls for the following comments:

- (a) I regard as wholly untenable the contention that the single parent's allowance was not an "amount intended for the maintenance of dependants under Part 3 of Schedule 2". I refer to what I said in paragraph 10 above. And I endorse what is written in paragraph 10 of the submission dated 5 January 1994 made by the adjudication officer now concerned. The effect of Schedule 4 is to increase - in the relevant circumstances - the amount awarded under paragraph 14 in Part III of Schedule 2. The role of Schedule 4 is entirely ancillary. An "amount intended for the maintenance of dependants under Part 3 of Schedule 2" does not cease to be such an amount either because it is increased pursuant to Schedule 4 or to the extent that it is increased. Any other conclusion would violate the plain language used by Parliament.
- (b) Miss Shaw's submission that "No period [is] given in regulations for these grants" (cf paragraph 12 above) is simply wrong. Perhaps she confined her attention to paragraph 14 and overlooked paragraph 20 (cf my own paragraph 8 above). A similar oversight seems to have been made by -
 - (i) the officer of the Education Department to whom the adjudication officer spoke by telephone (cf paragraph 12 above), and
 - (ii) the appeal tribunal itself (cf the recorded

reasons quoted by me in paragraph 13 above).

The plain fact is that the "52 weeks" printed upon the award notification form was the only period which could - consistently with the legislation - be specified in respect of the single parent's allowance.

- (c) Understandably enough, the chairman was concerned that the only Mandatory Awards Regulations of which copies were before the tribunal were those made in 1993. Facilities available to the Commissioner are somewhat more extensive. I have been at some pains to ensure that recent annual amendments have had no material bearing upon the conclusions of law to which I have come.

15. I have only this to add (to a rather long decision). I have sought to demonstrate that the single parent's allowance does, indeed, fall within the first of the exceptions specified in paragraph (3) of regulation 62 of the General Regulations. But I cannot see how - even if it does not so fall - the claimant can be advantaged. Her case would then fall under the "basic principle" set out in my paragraph 11(a) above. Accordingly, the single parent's allowance would fall to be "apportioned equally between the weeks in the period in respect of which it is payable". That period was 52 weeks (see my paragraph 14(b) above). So what practical difference does that make to the claimant?

16. The adjudication officer's appeal is allowed.

(Signed) J Mitchell
Commissioner

Date: 15 July 1994

ANNEXURE

Extracts from the Education (Mandatory Awards)
Regulations 1991

From regulation 2:

- (i) "'full award' means an award bestowed in respect of both fees described in Schedule 1 and a maintenance grant;"
- (ii) "'maintenance grant' has the meaning assigned to it by regulation 17;"
- (iii) "'year', in relation to a course, means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according as the academic year of the course in question begins in the winter, the spring, the summer or the autumn respectively; and references to the first year of a designated course shall be construed accordingly."

("1st July" and "the winter" were fresh insertions designed to cope with the four terms a year observed by the University of Buckingham.)

From regulation 7:

- (iv) "Duty to bestow an award

7. In pursuance of section 1(1) of the Education Act 1962 it shall be the duty of an authority, subject to the conditions and exceptions hereinafter provided, to bestow -

(1) a full award in respect of a person's attendance at a designated course within the meaning of these Regulations during an academic year beginning after 31st August 1991 if the person concerned is ordinarily resident in the authority's area within the meaning of section 1 of the said Act of 1962 and Schedule 1 thereto, read with these Regulations;"

(Paragraph (2) went on to deal with cases where "a fees only award" was bestowable.)

- (v) Regulation 17:

"Payments

17. Subject to regulations 16, 22, 23, 25 and 26, 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 regulation 20, 21 or 22 applies, a grant calculated in accordance with regulation 18 (in these Regulations called 'the maintenance grant');

(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."

(Regulations 16, 20, 21, 22, 23, 25 and 26 deal with a variety of special circumstances and special categories of students. None has any bearing upon the case now before me.)

(vi) Regulation 18:

"Calculation of maintenance grant

18.-(1) The maintenance grant in respect of any year [my emphasis] shall be the amount by which the student's resources fall short of his requirements and for the purposes 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 [my emphasis] calculated in accordance with Part I of Schedule 3 and any contribution applicable in his case by virtue of Part II or III 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 20 deals with sandwich courses.)

From regulation 24:

(viii) "Method of payment

24.-(1) Subject to paragraph (2) [which is concerned with fees], the authority shall make any payment due under these Regulations in such instalments (if any) and at such times as they consider appropriate: and in the exercise of their functions under this paragraph the authority may in particular make provisional payments pending the final calculation of the award."

Schedule 1 is entitled "Fees". Schedule 2 is entitled "Requirements". Part I of Schedule 2 is entitled "Ordinary maintenance". Part II is entitled "Supplementary maintenance etc". Neither Part I nor Part II has any bearing upon the case now before me. But Part III ("Maintenance of dependants") is much in point. It embraces paragraphs 12 to 16 of Schedule 2.

(viii) Paragraph 12 in Part III of Schedule 2

"12.-(1) The requirements referred to in regulation 18(1)(a) [cf quotation (vi) above] shall include the student's requirements for the maintenance of dependants during the year [my emphasis] and the amount of any such requirement ("dependants requirement") shall be determined in accordance with this Part of this Schedule.

(2) Where a student's requirements for the maintenance of dependants are different in respect of different parts of a year, his dependants requirement for that year shall be the aggregate of the proportionate parts of those differing requirements."

(ix) Paragraph 14 in Part III of Schedule 2

"14.-(1) This paragraph shall apply in the case of a student with dependants.

(2) The dependants requirement of the student shall, subject to paragraphs 15 and 16, be -

(a) if the student's spouse holds a statutory award and in calculating payments under it account is taken of the spouse's dependants requirement, one half of the amount determined in accordance with sub-paragraphs (3) and (4);

(b) in any other case, the whole of the amount so determined.

(3) the amount referred to in sub-paragraph (2) shall be the amount which is $X - (Y - Z)$ where -

(a) X is the aggregate of the relevant sums specified in sub-paragraph (4);

(b) Y is the aggregate of the income of the student's dependants;

(c) Z is so much of the sum ascertained by multiplying £675 by the number of his dependants as does not exceed Y.

(4) The relevant sums referred to in sub-paragraph (3) are -

(a) except where the student has a spouse who is the holder of a relevant award, £1,615; and

(b) in respect of each dependent child -

(i) under the age of 11 immediately before the beginning of the academic year, or born during that year, £340;

(ii) then aged 11 or over, but under 16, £680;

(iii) then aged 16 or over, but under 18, £895;

(iv) then aged 18 or over, £1,290;

except that the only or eldest dependent child shall be disregarded for the purposes hereof if the student has neither an adult dependant nor a spouse who is, or but for paragraph 13(2) would be, a dependant."

(Neither paragraph 13(2), paragraph 15 nor paragraph 16 bears upon the case now before me. The sums specified in sub-paragraph (4) above are typical of the sums the subject of the annual up-rating effected by the Mandatory Awards Regulations.)

Part IV of Schedule 2 is entitled "Older students". It sets out circumstances in which, on an age-related basis, a student is entitled to have specified sums included in the requirements referred to in regulation 18(1)(a) [cf quotation (vi) above].

Part V of Schedule 2 is entitled "Construction of Parts I to IV". Part V embraces paragraphs 19 to 21 of Schedule 2. I quote only paragraph 20.

(x) Paragraph 20 in Part V of Schedule 2

"20. 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."

Schedule 3 is entitled "Resources". It does not bear upon

the appeal now before me. That, too, applies to Schedule 5, "Sandwich Courses". But Schedule 4 ("Single Students with Dependants") is in point. I set it out in full.

(xi) Schedule 4 - Single Students with Dependants

"1. This Schedule shall apply in the case of a student who does not ordinarily live with a spouse or with another person as a spouse.

2.-(1) This paragraph shall apply where the student has dependants within the meaning of Part III of Schedule 2.

(2) In the case of such a student -

(a) the sum to be disregarded under paragraph 1(1)(a) of Schedule 3 shall be £1,475 instead of £675; or

(b) his requirements under paragraph 14 of Part III of Schedule 2 shall be treated as increased by the sum of £800; or

(c) in the case of a student to whom Part IV of Schedule 2 applies, his requirements shall be treated as including the sum specified in paragraph 18 thereof,

whichever is the most favourable to him (disregarding sub-paragraph (b) where, in pursuance of the following paragraph, he elects as there mentioned).

3.-(1) This paragraph shall apply in the case of a student with one or more child dependants under the age of 19 years and for the purpose of this paragraph 'child' shall have the same meaning as in Part III of Schedule 2.

(2) Such a student may elect that the sum specified as his requirements in Part III of Schedule 2 shall be disregarded and that instead there shall in calculating his income be disregarded £1,780 in respect of his only or eldest such child and £560 in respect of every other such child.