

Students - period of study CAAy

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PLH/1/LM

Commissioner's File: CIS/179/94

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. For the reasons given below I allow this appeal and set aside the decision of the social security appeal tribunal dated 7 September 1993 as erroneous in law. In exercise of the power under section 23(7)(a) Social Security Administration Act 1992, I make the finding set out in paragraph 23 below and give the decision I consider appropriate, namely that

- (i) the claimant was entitled to income support for the period 14 August to 15 November 1992;
- (ii) in calculating his income support for the period 14 August to 23 September 1992 no deduction should have been made in respect of his education maintenance grant;
- (iii) the claimant is not entitled to income support for the period before 14 August 1992 as he has not shown good cause for his failure to make an effective claim before that date.

2. The claimant is 32 and wants to be an architect. He is a married man with two dependant children. According to the application for income support he filled out in July/August 1992, neither he nor his wife then had any savings or income whatever beyond the child benefit she was receiving for the two children, and the maintenance award of £4,848.95 he had been receiving from the Surrey County Council as a BA Honours student in architectural studies at what was then Huddersfield Polytechnic.

3. By July 1992, the claimant had successfully completed the three year course to qualify for his 3 year BA Honours degree in architecture. The next stage in his architectural training if he chose to go on with it was for him to obtain a year's practical experience working for an outside architectural firm. This was not part of his academic studies, and had to be arranged separately by him. Completion of such a year was however required before he could enrol for a further two years' studies at postgraduate level leading to a Diploma in Architecture: see the letter from the University of Huddersfield dated

7 October 1993, page 82 in the case papers. A final year's practical experience would then be required before his eventual qualification as an architect.

4. In common with many other architecture students during the recession the claimant had difficulty in obtaining a placement with a suitable firm to gain his outside experience. After finishing his studies for his three year degree course, and being without a job or a placement, he attended at the Huddersfield employment office on 8 July 1992 in order to sign on and claim benefit. He was given a form to claim income support which, had it been returned promptly, would have been accepted by the Secretary of State as effective from 8 July. However the claimant did not in fact return it until 14 August so that his claim has to be treated for benefit purposes as made on that day and no earlier: see regulations 6(1)(a), 19(3)(a) Social Security (Claims and Payments) Regulations 1987 S.I. No. 1968. The reason for not making the claim earlier was that the claimant was hoping for employment with a firm in Huddersfield, and was not going to make a claim if that materialised: see his letter of 7 February 1993, page T53.

5. In fact the claimant did not succeed in obtaining a placement until 16 November 1992, and he claimed, and was paid, income support down to that date from 14 August, the date his claim was received. He also sought income support from the date of his original attendance at the Huddersfield employment office, but this was rejected on the ground that his claim had only been received on 14 August and good cause had not been shown for the delay in claiming. In addition, for the period 14 August to 23 September 1992 the calculation of the claimant's income support included a weekly deduction of £45.94 for "education maintenance grant" computed as $\frac{1}{53}$ rd (i.e. the weekly equivalent spread over a whole year) of the "dependants" and "mature student" additions included in his maintenance grant for the academic year 1991-92. The adjudication officer's decision on these two points were notified to the claimant by letter dated 9 March 1993.

6. The claimant appealed to the tribunal. The adjudication officer dealing with the appeal advanced a new argument in his submissions to the tribunal, that because the claimant had started and not completed or abandoned a continuing "course" of studies and work experience to lead to his eventual qualification as an architect, he remained a "student during the period of study" for the purposes of regulation 10(1)(h) Income Support (General) Regulations 1987 S.I. No. 1967. He was thus prevented from qualifying for income support because under that regulation he was not to be treated as available for employment during any of the period for which he claimed.

7. The tribunal accepted this argument after hearing submissions on it from the claimant. They recorded a finding that the year-out placement in work after completion of his first three years at Huddersfield was "part of the 6 year course at Huddersfield which ran from September 1989

to June 1995", and held that in consequence he was to be treated as a student attending a full-time course of study by virtue of the definition of "student" in regulation 61 of the Income Support Regulations which includes a person on a "sandwich course". As such a person, he was precluded from receiving income support by regulation 10(1)(h).

8. The claimant appealed against the tribunal's decision of 7 September 1993 on the ground that it involved a misinterpretation of the law on what a sandwich course is. In particular he pointed to the absurdity that would result if his status as a student after finishing his first degree course were to depend on his subjective intention whether or not to go on with his studies, at a time when it was quite uncertain when (or even whether) he could obtain the necessary "year-out" placement: see his letter of 20 October 1993, page T80. Leave to appeal was granted by the tribunal chairman on 12 November 1993.

9. The adjudication officer now concerned, in a submission dated 14 February 1994 which is a model of clear and well expressed thinking, supports the appeal on the ground that the crucial question was what constituted a "course", and on this the tribunal had erred in treating the claimant's intended programme of training as a single course of studies when in fact it comprised several distinct elements. Consequently, the claimant was not to be treated as a student when he made his claim for income support, as his full-time course of studies for his first degree had by then ended and he had not embarked on another. Nor had the tribunal addressed the meaning of a "sandwich course" for which reference had to be made to the Education (Mandatory Awards) Regulations 1987 S.I. No. 1261. Thus their decision had to be set aside as erroneous in law.

The main question

10. On the basis of the information supplied in his application, the claimant was plainly in need of income support when he claimed it. Under section 124(1) Social Security Contributions and Benefits Act 1992, he was entitled to it as a person in Great Britain over 18 with no income, and as one of a married couple neither of whom was in remunerative work, on condition that he was available for and actively seeking employment: see section 124(1)(d)(i). Regulations 9 and 10 of the Income Support Regulations (made in exercise of powers which now appear at section 137(2)(d) of the Act) prescribe when a person is or is not to be treated as available for employment. Under regulation 10(1)(h), a claimant is not to be treated as available for employment (and so cannot qualify for income support) if he is "a student during the period of study", with two exceptions not here material.

11. Was the claimant therefore "a student during the period of study" after he had finished his three-year first degree course and while signed on as unemployed and looking for a placement with an architectural firm to gain practical working experience?

12. The answer to this apparently simple question involves considering a cat's cradle of interacting or partly interacting definitions in the income support and education grant regulations. I am not surprised that the adjudicating authorities have found the process difficult. I can sympathise with the claimant's exasperation even if not with the way he sometimes expresses it; but the fault lies with those who make such complex regulations rather than those who have to try and administer or interpret them. Doing the best I can to set out the material provisions shortly, the relevant definitions are as set out in the next two paragraphs.

13. Was the claimant a student?

- (1) regulation 2(1) of the Income Support Regulations provides that "student" in the regulations has the meaning prescribed in regulation 61.
- (2) regulation 61, which sets out a separate set of definitions applying to regulations 61 to 69 (Chapter VIII, headed "Students") provides that "student" means:

"a person, ... aged 19 or over but under pensionable age who is attending a full-time course of study at an educational establishment; and for the purposes of this definition -

- (a) a person who has started on such a course shall be treated as attending it throughout any period of term or vacation within it, until the last day of the course or such earlier date as he abandons it or is dismissed from it;
- (b) a person on a sandwich course shall be treated as attending a full-time course ... of study;"

[emphasis added to show expressions which have their own definitions: "educational establishment" appears to be left undefined].

- (3) regulation 2(1) defines a "course of study" as meaning "any full-time course of study or sandwich course whether or not a grant is made for attending it".
- (4) regulation 61 defines "last day of the course" as meaning "the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled".
- (5) by the same regulation "sandwich course" has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1987.

- (6) by regulation 2 of the Mandatory Awards Regulations the expressions "course", "designated course", "sandwich course" and other qualified references to courses in those regulations have the meanings respectively assigned to them by regulation 4.
- (7) by regulation 4(1) of the Mandatory Awards Regulations any reference to a designated course is to be construed as a reference to a course designated by or under regulation 10 and, in relation to any designated course, any reference to a course shall be construed as a reference to either a course of full-time study or a sandwich course. By regulation 4(3) any reference to a sandwich course shall be construed as a reference to such a course within the meaning of paragraph 1 of Schedule 5.

[For intelligibility, it may be noted that under regulation 10 "designated courses" are various types of first degree or comparable courses for which mandatory awards are to be bestowed by education authorities, mostly described by reference to the first degree or other qualification "for" (i.e. towards) which the course is provided by a university or other establishment of further education. Under regulations 17-20 the authority is required in pursuance of an award to make payments for fees and maintenance in respect of each academic year, with the maintenance payments reduced in respect of the working periods of a sandwich course and eliminated altogether in any year of such a course when there are no periods of full-time study.]

- (8) Schedule 5 to the Mandatory Awards Regulations is headed "Sandwich Courses" and contains the provisions modifying maintenance grants for such courses. "Sandwich course" is defined by paragraph 1(1) as:

"a course consisting of alternate periods of full-time study in an establishment and periods of experience so organised that, taking the course as a whole, the student attends the periods of full-time study for an average of not less than 19 weeks in each year; and for the purpose of calculating his attendance the course shall be treated as beginning with the first period of full-time study and ending with the last such period;"

- (9) "periods of experience" for this purpose means, by paragraph 1(1) of Schedule 5, for students other than language students:

"periods of industrial, professional or commercial experience associated with full-time study at the establishment but at a place outside

the establishment, ... "

with certain exceptions not here material.

- (10) "establishment" means by regulation 2 of the Mandatory Awards Regulations a university or establishment of further education in the United Kingdom.

[There is no further definition of "a course" beyond what appears in regulations 2 and 4(1), nor is there any definition of "full-time study", but it is apparent from the apportionment provisions in paragraphs 1 and 2 of Schedule 5 that a full-time course of study is considered to be one involving the student attending his educational establishment for not less than 30 weeks in the year, except at Oxford and Cambridge where 25 weeks are thought to suffice.]

14. Was he in the period of study?

- (1) by regulation 2 of the Income Support Regulations "period of study" means:

"the period beginning with the start of the course of study and ending with the last day of the course or such earlier date as the student abandons it or is dismissed from it; but any period of attendance by the student at his educational establishment in connection with the course which is outside the period of the course shall be treated as part of the period of study."

["period of the course" is left undefined].

- (2) "course of study" and "student" are defined by regulations 2(1) and 61 as in paragraphs 13(2) and (3) above.
- (3) "last day of the course" is stated by regulation 2(1) to have the meaning prescribed in regulation 61 for the purposes of the definition of "period of study". That meaning is set out at paragraph 13(4) above although to make confusion worse, the definition in regulation 61 of "period of study" thus signposted is a separate definition giving a completely different meaning from that of the "period of study" whose final day has to be ascertained for the present purpose under regulation 2(1). In this quest, the separate meaning of "period of study" in regulation 61 is so far as I can see irrelevant, and the reference to it should be ignored.

15. In essence what all this boils down to is that a claimant over the age of 19 is not disqualified from receiving income support as a student under regulation 10(1)(h) unless he is

attending or taking part in a course, either a course of full-time study or a sandwich course as defined; and he is not disqualified as being in a "period of study" on any day after the last day of the course in which he is enrolled.

16. On the basic question of what is "a course" for this purpose, the definitions, which in many instances cross-refer or even self-refer, offer only limited assistance. Resort has to be had in my view to the ordinary meaning of the word in the context and the apparent purpose of the legislation so far as this can be discerned.

17. As a matter of ordinary language "a course" in the context of a person spending the whole or a substantial part of his time undergoing advanced education or professional training (and thus not to be regarded as normally available for work so as to qualify for income support) is in my view to be understood in a similar sense to that contemplated in regulation 10 of the Mandatory Awards Regulations: namely a unified sequence of study, tuition and/or practical training, undertaken at or by arrangement with an education or training establishment, and intended to lead to one or more qualifications obtained on its completion. (In this I would include modular courses leading to a single degree even though the different units making them up are taken, and the relevant course credits obtained, separately and sequentially). By this test, a person who aspires to practice in a profession that requires more than one separately obtained qualification for which educational establishments do not provide a single sequence of tuition and/or experience, starts and completes one "course" and then moves on to another, rather than being engaged on one continuous "course" gaining intermediate qualifications and experience along the way.

18. It is apparent from the letter dated 7 October 1993 from the University of Huddersfield that the claimant and other aspiring architects who complete their studies for a first degree at the university have come to the end of a "course" as I have sought to define it in paragraph 17 above. The letter confirms specifically that the BA Architecture course is a three year full-time qualification after which new graduates are required to gain outside work experience for a year prior to enrolling in the Dip Arch course. During that year, former students from the degree course are not enrolled on a course and are not considered by the university to be students. The claimant's County^{ward} is in error in referring to the BA Honours Architectural studies course as lasting from September 1989 to June 1995, as it is clear from the university's letter that students complete their course and obtain that qualification at the end of their third year. They then cease to be enrolled as students even though they may intend to re-enrol in the further post-graduate course later, either in the next academic year or after one or more years' experience in the outside world.

19. The position of such former students is thus different from that of a language student who while remaining enrolled on a single degree course at a university, takes up an option to

spend a year away from formal university tuition while working abroad in order to improve his or her language skills. Such a student was held by the Commissioner in decision CIS/368/1992 to remain a "student" for the purposes of regulation 61 of the Income Support Regulations during the year she spent away from the university. By contrast in the present case, the claimant's year of practical experience was to be undertaken by him after he had completed the course for his BA degree, and quite separately from it.

20. The interpretation I have outlined above is in my view the more consistent with the actual language used in the regulations and definitions. In the first place the claimant was not in August 1992 attending or undergoing a full-time course of study at Huddersfield University or any other educational establishment. He was not within any period of term or vacation within the full-time course of study for which he had enrolled at Huddersfield, having completed the BA Honours Degree course. The last day of that course so far as he was concerned had no doubt been the last day of the Summer term 1992 when he had completed his studies and done his final examinations. He cannot therefore count as a "student" under part (a) of the definition in regulation 61 of the Income Support Regulations.

21. In so holding I have taken into account that in R v Immigration Officer ex parte Kharrazi [1980] 1 WLR 1396 the Court of Appeal gave the expression "full-time course of study" in the immigration rules an extended meaning to include later courses beyond the one on which a student intended to start when admitted to the country. But as is clear (e.g. from the judgment of Dunn LJ at page 1408A-C) the Court of Appeal were there departing from the prima facie meaning of the words in order to avoid a result they considered contrary to the purpose of those rules. There are no such special reasons here, as there is nothing inconsistent with the apparent purpose of the income support rules in a person who has finished a degree course and not started another one, and is actually looking for a job, being considered available for work and so entitled to income support.

22. That leaves the second possibility which persuaded the tribunal, that the claimant should be treated as a person on a sandwich course and so within (b). However under the definition in Schedule 5 of the Mandatory Grants Regulations, to which regulation 61 of the Income Support Regulations sends its readers, a "sandwich course" means a course consisting of alternate periods of full-time study in an establishment and periods of outside industrial, professional or commercial experience associated with full-time study at that establishment. The letter from the University of Huddersfield makes it quite clear that the claimant was not in fact enrolled on a course of that type. Nor would any periods of experience that he hoped to obtain during his year-out be "associated" with any full-time study at that University, except in the very loosest sense that they would follow a completed course of such study and were themselves required to have been completed before enrolment on a further separate course would be permitted. In my view that

is nothing like sufficient to constitute the claimant as a "person on a sandwich course" after finishing his BA and before, or during, his separate architectural placement; and I hold that the definition of "sandwich course" in the Mandatory Awards Regulations (which as pointed out by the adjudication officer the tribunal appear not to have considered at all) does not cover this situation.

23. The tribunal's decision on the question posed in paragraph 11 above was therefore in my judgment erroneous in law, and their finding of fact (number 6) that "the year out placement in work after completion of the first 3 years of the course at Huddersfield was part of the 6 year course at Huddersfield which ran from September 1989 to June 1995" cannot be sustained having regard to the evidence. It is expedient that I exercise the power under section 23(7)(a)(ii) of the Administration Act to substitute my own finding that the course in which the claimant was enrolled at Huddersfield came to an end at the end of the Summer term 1992 and that his intended "year out" placement to obtain practical experience after completion of that course was not part of it, even though it was a pre-requisite to a further enrolment later in a two year course to lead to the Dip Arch qualification. (In fact, the claimant having completed his work experience elected to enrol for his final two years academic studies at Liverpool rather than Huddersfield, but that does not make any difference to the legal position). On the basis of that finding and for the reasons set out in paragraphs 15-22 I give (on the main question) the decision set out at paragraph 1(i) above.

The subsidiary questions

24. This leaves the two subsidiary questions raised by the claimant in his appeal to the tribunal, namely that in calculating income support for 14 August to 23 August 1992 a deduction had been wrongly made for the notional weekly equivalent of the dependants and mature student elements of the maintenance grant he had received from the County Council for the year 1991/92, and that his income support should be backdated to 8 July 1992.

The deduction question

25. The justification for making any deduction at all from the claimant's income support for weeks in August or September 1992 must be found, if anywhere, in regulation 29 of the Income Support Regulations as modified by any other applicable provisions. Regulation 29 prescribes how earnings or other income are to be taken into account in assessing a claimant's resources for a week of claim, and there is no doubt that a grant counts as income. Under regulation 29(2)(a) an annual grant payment is to be taken into account, and a weekly equivalent calculated, over a period equal to that in respect of which the grant is payable. By virtue of regulation 2 of the Mandatory Awards Regulations, the "year" for which the claimant's 1991/2 award was made would have been the academic year starting on

1 September 1991 so that on any footing it is difficult to see how it should be brought into account for any period after 31 August 1992.

26. Regulation 62 of the Income Support Regulations, dealing with students, provides by paragraph (3) that a student's grant income except for the additions for dependants and older students, is to be apportioned equally between the weeks in the period of study or other period in respect of which it is payable. For that purpose the "period of study" in the final year of the course comes to an end with the final academic term - see regulation 61. Regulation 62(3A) inserted in 1988, provides that any amount intended for the maintenance of dependants or for an older student under the Mandatory Awards provisions is to be apportioned equally over a period of 52 or 53 weeks according to the number of benefit weeks in the current academic year (of, in this case, 12 months from 1 September 1991: see regulation 61).

27. The calculation on page T40 of the case papers shows that the claimant's income has been treated as including the weekly equivalent of his dependants and mature student additions, apportioned on the basis of a 53 week year. Such a deduction from his income support is permissible if, but only if, during the relevant weeks he was covered by the express provision for an apportionment under regulation 62(3A), or apart from that provision the additions to his maintenance award had been made in respect of a period which was then still continuing.

28. Under the Mandatory Awards Regulations, which are not of course addressing the same problems as the Income Support Regulations and are concerned with payment of awards for academic years rather than the position of the student week by week, the primary obligation of an education authority is to pay maintenance in respect of each academic year during the currency of an award, but it is expressly provided by regulation 15(1) that an award shall terminate on the expiry of the period ordinarily required for the completion of the course. Under regulation 18(1) an amount is to be calculated for the maintenance grant "in respect of any year". Ordinary maintenance requirements under Schedule 2 are for periods of actual attendance on the student's course and the Christmas and Easter vacations, (but not the summer); while the same Schedule prescribes additional amounts for dependants "during the year" and for older students, without making it clear how these have been calculated, or whether they relate to the same period as the ordinary maintenance or something else.

29. It is not in my view at all clear from these various provisions what, if anything, ought to be deducted from income support on account of the dependants and mature student elements in a maintenance grant during a week which is still within the 12 months "year" in respect of which the grant was made but after the former student has completed his course. However both aspects of this question appear to me to have been decided in favour of the claimant, and against making any deduction, by the

Commissioner's decision in file CIS/7/1988 where it was held that since the claimant had ceased to be a student as defined in regulation 61 by the time he became entitled to income support, the apportionment provisions in regulation 62 had no application to him, and that for the purposes of regulation 29 of the Income Support Regulations the dependants and mature student elements, like the ordinary maintenance part of the grant, were at least in the final year to be treated as payable in respect of actual attendance by the student on his course and for the Easter and Christmas vacations but not for any longer period.

30. Although for my part I can see an argument on the wording of the regulations that the extra elements in academic awards are paid "in respect of" a 12 month academic year as defined by regulation 2 of the Mandatory Awards Regulations (cf. decision CIS 33/94, *75/94), it would not in my view be right to introduce any further uncertainty into this area of the law by re-opening the point. As noted above the awards regulations expressly provide by reg.15 that an award is to come to an end on the expiry of the period ordinarily required for completion of the course, and this supports the conclusion reached in CIS/7/88 so far as the final academic year is concerned. I therefore: (i) follow the decision of the Commissioner in that case, (ii) respectfully concur with his observation that the regulations are remarkably complicated and to some extent inconsistent; and (iii) hold that no deduction should be made from the claimant's income support on account of his education maintenance grant for the period 14 August to 23 September 1992.

The backdating question

31. The final point is whether the claimant can maintain any claim to income support for the period before 14 August 1992 when he made his claim. He can only do this by showing that there was good cause for his delay in claiming, down to the day when his claim was in fact made: see regulation 19(2) of the Claims and Payments Regulations. In my judgment there is no question of his being able to do this in view of his own evidence referred to in paragraph 4 above that he had deliberately refrained from claiming because he was hoping to obtain employment with a firm very shortly. It is well established that such facts do not amount to "good cause" so as to validate a late claim which has been deliberately delayed: see R(U) 34/51 and CU/71/93 (* 51/94), the principles of which in my view apply to the present case. This part of the appeal must therefore be rejected.

32. The appeal is accordingly allowed on the first two questions but rejected on the third, and I give the decision set out in paragraph 1 above.

(Signed) P L Howell
Commissioner

Date: 5 January 1995