

SUPPLEMENTARY BENEFIT

Resources—treatment of student grant paid by a body outside the United Kingdom.

The claimant was a full-time university student receiving a discretionary maintenance grant from the States of Jersey Education Authority. When he claimed Supplementary Benefit for the Easter vacation, the adjudication officer decided that his grant should be treated as if it had been paid by an “education authority” (in this case a government department) and in particular that a notional resource of £23.65 should be deducted from his requirements in respect of his weekly vacation maintenance. The decision was confirmed by an appeal tribunal. The claimant appealed to a Commissioner.

Held that:

1. the expression “government department” in Resources Regulation 2(1) cannot include any government department outside the United Kingdom (paragraph 11(1));
2. the concepts of parental contributions and mandatory grants in regulations 4(4) and 4(12) of the Resources Regulations relate to the British educational system (paragraphs 11(2) and (5)); and could not be intended to have been imported into foreign grants and awards;
3. where a grant is received from a body outside Great Britain the claimant’s weekly resources should be calculated by reference to regulation 11(2)(m) of the Resources Regulations (paragraph 12(4)).

The appeal was allowed.

Decision

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 18 July 1983 is erroneous in point of law. I set it aside and refer the case to a social security appeal tribunal for determination in accordance with my directions.

Representation

2. I held an oral hearing of this appeal. The claimant was represented by Miss S. Pontac, instructed by Bindman & Partners, Solicitors. The adjudication officer was represented by Mrs. A. M. Stockton of the Solicitors' Office, Department of Health and Social Security.

Nature of the appeal

- 3. (1) It is not in dispute that the decision of the supplementary benefit appeal tribunal is erroneous in point of law. The real question in this appeal, and that to which the oral argument before me was directed, is the meaning of the expression "education authority" in the Supplementary Benefit (Resources) Regulations 1981, as amended. The answer to this question is of particular concern in connection with students in receipt of a grant or award from some body outside Great Britain, since if that body is an "education authority" in terms of the regulations, a student to whom such an award or grant has been made may be deemed to be possessed of that part of the award which he has not in fact received (i.e. the parental contribution) under regulation 4(4) or (as in the present case) 4(12) of the regulations. I was informed that a great number of students in Jersey (the dominion to which the present appeal relates) are affected and the question is of equal importance in connection with any student in receipt of a grant or award from overseas.
- (2) "Education authority" is defined in regulation 2(1) of the Resources Regulations as meaning "a government department" and certain other specified bodies, and the essential point is whether "government department" extends to a government department anywhere in the world or whether it is limited to government departments in the United Kingdom or alternatively in Great Britain.

The relevant law

4. The Supplementary Benefit (Resources) Regulations 1981 as amended and in force in March and April 1983 (when the claim and benefit officer's decision were respectively made and given) provide:

"Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

.....

"education authority" means a government department, a local education authority as defined in section 114(1) of the Education Act 1944, an education authority as defined in section 135(1) of the Education (Scotland) Act 1980, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1972 and any body which is a research council for the purposes of the Science and Technology Act 1965;

.....

Notional resources

4.—.....

(4) Notwithstanding that it is not actually made, a student shall be treated as possessing any contribution in respect of the income of any other person which a Minister of the Crown or an education authority takes into account in assessing the amount of the student's grant or award unless the student is—

- (a) a single parent;
- (b) a partner; or
- (c) a disabled student.

(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 equal to the aggregate of the ordinary 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.

Calculation of other income

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—

- (l) 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) any payment made under the legislation of, or under any scheme operating in, any country outside Great Britain which is analogous to any income to which the preceding sub-paragraphs relate;

(3)

(4) The following income resources shall be disregarded—

- (d) that part of any grant or award paid by an education authority which is paid—
 - (i)
 - (ii) to a student in respect of any child or spouse outside the United Kingdom and dependent upon him pursuant to section 3 of the Education Act 1973 or sections 73(f) and 74(1) of the Education (Scotland) Act 1980”

The supplementary benefit officer’s decision

5. The claimant, a single man with no dependants, who was at the relevant time a full-time student at Reading University, claimed supplementary benefit on 21 March 1983 as he was on vacation for the Easter period. The decision on this claim was issued on 20 April 1983 but is nowhere set out in the case papers and neither the adjudication officer’s representative nor the claimant’s representative was able to produce any copy of the

decision of which the only particulars in box 1 of form LT205, which is headed "DECISION APPEALED AGAINST" are "Treatment of student grant during Easter vacation." However, on form LT206 there are particulars of an assessment for each week from 18 March 1983 which states under "RESOURCES" "Vacation Grant—£23.65" and shows that that amount was taken into account, for each week, in full as a resource.

6. The benefit officer stated that the facts before him were that a grant of £1,595 per annum was paid by the States of Jersey Education Authority excluding travelling costs of £150 per annum. He had decided, under regulation 11(2)(m) and regulation 11(2)(l) that the claimant's grant should be treated in the same way as if it had been paid by an Education Authority within Great Britain. He also decided that the grant from the States of Jersey Education Authority should be taken into account in the assessment of the claimant's entitlement as the equivalent of the supplementary benefit single non-householder's entitlement during the period of the Christmas and Easter vacations. After referring to Schedule 1, paragraph 1, to the Supplementary Benefit (Requirements) Regulations and regulation 23 of the Requirements Regulations, the supplementary benefit officer decided that a weekly amount of £23.65 should be taken into account for the claimant's vacation grant.

7. The figure in force at the date of claim under regulation 23 of and Schedule 1, paragraph 1, to the above-mentioned regulations for non-householders aged not less than 18, or less than 18 with a dependant, is the sum of £23.65 a week.

The supplementary benefit appeal tribunal's decision

8. The findings of the tribunal on questions of fact material to their decision were:

"Mr. C was unable to attend and appointed representatives. His representatives cited Regulation 4(12) of the Resources Regulations 1981 as they stated that the grant was not mandatory.

There was no contention that the grant contained a vacation element, but the point was made that the grant is payable in three equal amounts, whereas grants payable in Great Britain are paid in 35%, 35% and 30% proportions; therefore the representative argued that the full £23.65 was not available at the time of the claim."

The unanimous decision of the Tribunal was:

"To confirm the decision."

The tribunal's recorded reasons for decision were:

"The Tribunal then considered Regulation 11(2)(m) of the Resources Regulations 1981 and decided that this was analogous to an income received in Great Britain, and the only possible means of claiming would be a recoverable Urgent Cases payment under Regulation 11 of the Urgent Cases Regulations 1981."

Was the decision of the supplementary benefit appeal tribunal erroneous in law?

9. The decision of the supplementary benefit appeal tribunal was clearly erroneous in law. It is not clear if there was a contention that the grant did not contain a vacation element? If so did the tribunal accept that contention? They do not say. If the tribunal did accept this contention, the tribunal could not have found, as they did (see their reasons) that regulation 11 (which relates to actual—not notional—resources) applied to the period

in dispute, which was the Easter vacation. If, on the other hand, the tribunal rejected this contention, what *was* the vacation element and how was it made up? There are no findings on the point at all. If the tribunal thought, notwithstanding their citation of regulation 11 in their reasons for decision, that the £23.65 was a notional sum to be included among the claimant's resources pursuant to regulation 4 they have not said so nor have they given any reason for so holding. If they did intend to so find, they were wrong in law because on the only evidence before them the grant was from the Jersey Education Authority and that authority is not an education authority within the sense in which that expression is used in regulation 4(12). See paragraph 11 below on this point. In addition they had evidence that the grant was not mandatory as required by regulation 4(12), although they failed to make a finding on that point.

Is it expedient to give the decision that the tribunal should have given?

10. It is neither expedient nor possible to give the decision that the tribunal should have given since the necessary facts have not been found. The case must accordingly be referred to a social security appeal tribunal, which should be entirely differently constituted and should determine the appeal in accordance with my directions set out in paragraph 12 below.

Construction of the expression "government department"

11. (1) In my judgment, "government department", in the definition of "education authority" in regulation 2(1) of the Resources Regulations, must be construed in the context in which it occurs, and cannot have been intended to extend to the government departments of all countries, without restriction. The expression cannot, in my view, include any government department outside the United Kingdom.
- (2) The only Resources Regulations in which the expression "education authority" materially occurs are regulations 4(4), 4(12), 11(2)(1) and 11(4)(d). Regulation 4(4) treats a student as possessed of a contribution which the claimant has not in fact received (subject to exceptions) if that contribution is one which has been taken into account by a Minister of the Crown or an education authority when assessing the amount of the student's grant. Regulation 4(12) treats a student in receipt of a mandatory grant from an education authority as being in receipt of an income resource for the duration of the Christmas and Easter vacations at a weekly rate equal to the aggregate of the non-householder's ordinary 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, whether or not the claimant has in fact received such an income resource. Regulation 11(2)(l) provides (subject to exceptions) for income of a student which consists of a grant or award from an education authority, including any part paid in respect of a partner or dependant under two British Acts of Parliament and any contribution mentioned in regulation 4(4), to be taken into account in full and calculated on a weekly basis. Regulation 11(2)(m) provides for payments under the legislation of or under any scheme operating in any country outside Great Britain which is analogous to income dealt with in the preceding subparagraphs of that regulation to be treated as income and calculated on a weekly basis. The concepts of parental contributions (regulation 4(4) and mandatory—as opposed to discretionary—grants (regulation 4(12)) relate to the British

educational system. Further, regulation 11(2)(m) is drafted so as to apply to payments made under legislation or schemes operating in countries outside Great Britain and would be unnecessary, as regards paragraph (l) of regulation 11(2), if “education authority” included education authorities outside Great Britain. Regulation 11(4)(d)(ii) directs that part of any grant or award paid by an education authority “to a student in respect of any child or spouse outside the United Kingdom and dependent upon him pursuant to” an Education Act in force in England and Wales alone and another Education Act in force in Scotland alone is to be disregarded. Both Acts of Parliament are British.

- (3) In addition, the definition of “education authority” in regulation 2(1) refers to education authorities all of which are in the United Kingdom (Northern Ireland being in the United Kingdom but not in Great Britain); and the regulation refers to research councils by reference to a British Act of Parliament.
- (4) If the definition of “education authority” included government departments from any country in the world, which is the alternative to construing “government department” as limited to government departments in the United Kingdom or (it may be) Great Britain, it would be necessary, in the first place, to obtain evidence as to whether there were such bodies as government departments in the country concerned and, if so, whether the body which made the grant or award was such a department. Then it would be necessary to apply the concepts adopted by the British educational system in taking into account contributions (and in particular parental contributions) in grants or awards and of distinguishing between mandatory awards and discretionary awards.
- (5) Regulation 2(1) cannot have been intended to import these British educational concepts into foreign grants or awards or to have envisaged an investigation to see whether the foreign country concerned recognises government departments and whether the body making the grant or award is one of them. I am fortified in my conclusion by a consideration of the approach adopted by the Court of Appeal in *Nestle v Inland Revenue Commissioners* [1953] Ch 395 where that Court, in construing the meaning of the expression “company” in section 55 of the Finance Act 1927 adopted a similar approach, and gave that expression a limited and technical meaning, restricting it to a body incorporated under letters patent of Her Majesty or according to the laws general or special of England, Wales and Scotland.
- (6) It is not necessary for me, in order to give the directions in this case to reach any conclusion as to whether “education authority” in regulation 2(1) includes a government department outside Great Britain but within the United Kingdom and I express no opinion on this point. My conclusion is limited to holding that “government department” in regulation 2(1) does *not* include any government department outside the United Kingdom and accordingly does not include a government department in the States of Jersey.

Directions to the fresh tribunal

12. The tribunal which re-hears the case should

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- (1) Find the necessary facts as to the grant or award made to the claimant: see in particular paragraph 9 above.
- (2) Find as a fact what body made the grant or award.
- (3) If that body is found to be situated in Jersey then I direct the tribunal to disregard regulation 4(4) and 4(12) of the Resources Regulations because the body concerned, whether it is a government department in Jersey or an educational organisation in Jersey or any other type of body in Jersey cannot be an “education authority” in terms of those regulations: see paragraph 11 above.
- (4) If the awarding body is situated in Jersey or anywhere outside Great Britain, apply regulation 11(2)(m), calculating the claimant’s weekly resources by reference to that regulation and to their findings of fact.
- (5) Generally, find the material facts and give reasons, which the chairman should record as required by regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984, ensuring that the points discussed in this decision are taken into account.

(Signed) V. G. H. Hallett
Commissioner
