SUPPLEMENTARY BENEFIT

Resources—treatment of a repayable loan made to a student by a local authority.

The claimant, who was a student attending a full-time course, claimed supplementary benefit in the Christmas vacation during an academic year for which he had received a discretionary payment of £2,229.60 from his local education authority by way of a repayable loan. The amount had been assessed on the same basis as a student grant, the local authority having assumed a parental contribution of £397. The supplementary benefit officer decided that the amounts fell to be treated as income by virtue of regulations 11(2)(l) and 4(5) respectively of the Supplementary Benefit (Resources) Regulations 1980, the payment by the local education authority being treated in the same way as a grant or award. On appeal, the tribunal upheld the supplementary benefit officer's decision. The claimant appealed to a Social Security Commissioner.

Held that:—

1. there being no statutory definition of the words "grant" or "award", they must be given their ordinary, everyday meanings in the relevant contexts of the Resources Regulations (paragraph 5(2));

2. given its ordinary everyday meaning a loan cannot constitute a "grant" because it contemplates an outright disposition without liability for recoupment (paragraph 6);

3. the £2,229.60 was a "payment awarded", being clearly a payment and also being made in exercise of a discretion which involves a decision after deliberation (paragraph 8);

4. on the proper construction of regulation 11(1) and (2) in conjunction there is no permissible scope for regarding any moneys accruing to a student which are properly described as consisting of a grant or award by an education authority as other than "income" of that student (paragraph 9(7));

5. a discretionary payment made by a local authority to a student of an amount arrived at on the same basis as a student *grant,* but by way of *repayable loan,* constitutes an "award" for the purposes of regulation 11(2)(l) of the Resources Regulations 1980 (paragraph 10(3)).

The appeal was dismissed.

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1. (1) My decision on this appeal follows an oral hearing on 8 December 1982 at which the claimant conducted his own appeal and the benefit officer was represented by Miss L. Shuker of the Solicitor's Office, Department of Health and Social Security.

I am indebted to both for their helpful submissions.

(2) The appeal does not succeed. Though for reasons not identical with those expressed by the supplementary benefit appeal tribunal ("the tribunal") from whose decision dated 16 April 1981 the appeal has been brought by my leave, I uphold the tribunal's decision, which confirmed a benefit officer's decision dated 21 January 1981 that the claimant was not entitled to supplementary allowance during his 1980 Christmas vacation.

2. (1) The claimant was in the academic year 1980/81, in which fell a Christmas vacation period in respect of which he claimed supplementary allowance, a full-time student at a College of Law.

(2) In respect of such academic year the claimant applied for and received a payment of the sum of £2,229.60 from a local education authority, such payment being made, it is common ground, in the exercise of a discretion vested in such authority to make (or refrain from making) such payment.

(3) It is common ground that this sum of £2,229.60 had been determined by the authority by reference to a scale of theirs which for that year took the sum of £2,626.60 as the maximum which they would pay in any individual case, having arrived at that figure by an assessment of requirements which included in respect of maintenance over the periods of Christmas and Easter vacations sums at least equivalent to weekly supplementary benefit at the single non-householder rate, and took by way of off-set in arriving at the amount actually to be paid in an individual case an amount representing their assessment of the sum—in the claimant's case it was £397—which the particular applicant's parents could contribute towards the determined maximum.

(4) The procedure described in sub-paragraph (3) above will be one familiar to all who have as parents or students been concerned with claiming or receiving "student grants" (mandatory or discretionary) made by local education authorities in respect of the expenses of higher education.

But there was a particular feature of their application in the claimant's case which is the crux of the present appeal.

The local authority were in the claimant's case paying the £2,229.60 not by way of irrecoverable outlay on their part, but by way of a loan to the claimant upon terms of specific obligation of the claimant to repay it within four years.

3. (1) The benefit officer originally concerned took the view, which the tribunal upheld, that regulation 11(2)(l) of the Supplementary Benefit (Resources) Regulations 1980 [S.I. 1980 No 1300] ("the Resources Regulations") applied in the circumstances, with the results that (in conjunction with the operation of regulation 9(2) of those Regulations as amended, whereby a weekly equivalent over the period to which the payment was referable was produced):

(i) the £2,229.60 fell to be treated as income of the claimant,

(ii) so also did the £397 which had been taken into its computation

—and that on that footing supplementary allowance was not payable (I infer because it then followed that the claimant's weekly resources exceeded his weekly requirements when duly assessed—it being common ground that he fell to be assessed as a single non-householder).

(2) The claimant strongly (and, if I may say so, with skill and charm) contends that neither the £2,229.60 nor the £397 falls to be taken into computation in determining his entitlement to supplementary allowance as claimed, whether by virtue of regulation 11(2)(l) or otherwise at all.

4. (1) Regulation 11(1) of the Resources Regulations provides that:

"(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 in accordance with the following paragraphs".

(2) Regulation 10 so referred to is concerned with "earnings", and has no bearing in the circumstances of the present case.

(3) Regulation 11(2) of the Resources Regulations materially provides:

"(2) There shall be treated as income and taken into account in full—

. . . . . .

(1) any income of a student which consists of a grant or award by an education authority and any contribution mentioned in regulation 4(5), 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, be taken into account only in so far as it exceeds the sum of £2;"

(4) "Student" is defined by regulation 2(1) of the Resources Regulations as meaning:

"a person under pensionable age who has left school and is attending a course of full-time education including any period when he is not in attendance but in respect of which he receives a grant or award from a Minister of the Crown or an education authority"

—and "disabled student" is also defined.

(5) It is not in dispute that the claimant had left school and was attending (during term-times) a course of full-time education; or that the material Christmas vacation was a period in which he was not so attending; or that he was not a disabled student, a single parent, or a partner (with or without a dependant).

(6) Regulation 4(5) of the Resources Regulations provides that:

"(5) 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 education authority takes into account in assessing the amount of the student's grant or award, notwithstanding that the contribution is not actually made, unless he is—

(a) a single parent;

(b) a partner; or

(c) a disabled student".

5. (1) Miss Shuker contended that under the combined effect of the regulations above cited the claimant's resources in the material Christmas vacation fell to be calculated inclusive of the weekly equivalent of the aggregate of the £2,229.60 and the £397 respectively above-mentioned.

And I am satisfied that this is so if—but only if—the £2,229.60 constitutes a "grant or award by an education authority".

(2) There is no relevant statutory definition of "grant" or "award" and I am further satisfied that those words fall, in the relevant contexts of the Resources Regulations, to be given their ordinary, everyday meanings.

6. The Shorter Oxford English Dictionary materially defines "grant" as meaning:

"a gift or assignment of money etc out of a fund"

—and Miss Shuker conceded (rightly in my view) that the £2,229.60

was not a "grant" because such definition contemplated an outright disposition without a liability for recoupment being imposed on the recipient.

But she contended that the £2,229.60 was, notwithstanding the obligation for repayment of it, an "award".

7. The Shorter Oxford English Dictionary materially defines the substantive "award" as meaning:

"That which is awarded, or assigned, as payment, penalty etc."

—and the verb "award" as "to decide after deliberation"

—and Miss Shuker submitted that the £2,229.60 was "a payment awarded" in that verbal sense, being clearly a "payment", and being also one made in exercise of a discretion which, she submitted, involved decision after deliberation.

8. (1) Miss Shuker further contended that if I rejected her contentions as to "award" I should nevertheless hold the £2,229.60 reckonable as an income resource (subject to the disregard below indicated) by the force of regulation 11(5)(d) which provides that:

"(5) There shall be taken into account—

(a) .....

(b) .....

(c) .....

(d) any other income not mentioned in the preceding paragraphs,

only to the extent that the aggregate of any income to which the preceding sub-paragraphs apply exceeds the sum of £4".

She relied in that behalf upon the circumstance (not itself in dispute) that the intended purpose of the loan to the claimant was to provide him with the wherewithal to meet his living and other expenses as a student over the 1980/81 academic year, and that it would have been made in contemplation that it would within that period be so applied to exhaustion, as itself giving the payment received by way of loan the character of "income".

(2) I am not, however, persuaded by that argument. I do not consider that an amount received by way of loan is "income" of the recipient in the context of regulation 11(5)(d) or that how the recipient of a loan is intended to or does in fact apply the loan can make it so.

9. (1) The claimant's first contention is that a loan cannot properly be reckoned as a person's "income" at all if the obligation for repayment is definite, certain and foreseeable (as was so in his case). In support of that contention he cites *Regina v Bolton Supplementary Benefits Appeal Tribunal ex parte Fordham* [1981] 1 All E.R. 50.

(2) The unanimous decision of the Court of Appeal in that case, reversing the court below's quashing of the Tribunal's decision, related to whether or not a payment of wages in advance was a reckonable income resource in calculating eligibility for supplementary benefit in the circumstances that subsequent to its receipt and during the period to which it was attributable the claimant was on strike and was in consequence notified of

liability to repay some or all of the advance payment at some unspecified date.

(3) The claimant relies on the passage in the judgment of Lord Denning M.R. at p.53d:

> "I take a different view from the judge. He seemed to think that Mr Fordham's obligation to repay meant that he had not earned anything during the relevant period, and that he had not had any payment in advance, and the like. I take a different view because of the indefinite, uncertain and almost unforeseeable obligation to refund the money. It was so far ahead that it would not affect the immediate resources available to Mr Fordham".

(4) On that foundation the claimant argues that Lord Denning would have reached a different conclusion had the repayment obligation been definite, certain and foreseeable.

Reading the judgment as a whole I am not convinced that this is a correct conclusion. But even if it were, the reasons for decision expressed by the other two members of that Court of Appeal to my mind clearly stand in the way of the claimant's proposition representing the law:

(A) Waller L.J. says at p.54d:

> "It remained income, albeit that there was an obligation to repay at some future date when the strike was over. It remained as a resource for each of the next four weeks. It started as a resource for each of those four weeks, and the fact of a strike with a consequential obligation to repay at some future date did not alter the fact that it was a resource for each of the four weeks;" and

(B) Dunn L.J. says at p.54 g-h:

> "The Supplementary Benefits Commission were dealing with the period from 1st to 15th December, and only with that period. Mr Fordham had received wages covering that period"—emphasis here supplied by me—"The fact that at some indeterminate future date those wages were to be repaid does not prevent them constituting resources available to Mr Fordham to meet his requirements during the relevant supplementary benefits period".

(5) The above passage from the judgment of Dunn L.J. is in my view no less indicative of his reasoning if one alters "indeterminate" to "determinate".

(6) In the same general context:

(A) I note that in the Tribunal Decision R(SB) 14/81 it is inherent in the reasons for decision that an investment of moneys borrowed constitutes a resource notwithstanding liability for repayment; and

(B) I respectfully adopt as the key to correct contemplation of regulation 11(2)(l) the passage in Lord Denning's judgment in *Fordham's* case at p.52d where he says:

> "Reading through the Supplementary Benefits Act 1976, it seems to me that the answer is to be found by remembering that the applicant's position has to be assessed on a weekly basis".

(7) Whilst I recognise that what, to use a neutral phrase, I will call "an accrual of money to a student under obligation to repay" would not in general be regarded as "income" of that student, I further consider that on the proper construction of regulation 11(1) and (2) in conjunction there is no permissible scope for regarding any moneys accruing to a student which are properly described as consisting of a grant or award by an education authority as other than "income" of that student, since specifically so characterised by regulation 11(2)(l).

(8) Accordingly I am unable to accept the claimant's contentions as to a loan not being capable of constituting "income" in the relevant contexts.

10. (1) As regards "award" the claimant relies on much the same approach, though it is fully entitled to and has received separate consideration in this different context.

He says that a loan is a well-recognised form of financial accommodation in its own right and as such something different from an "award" in the relevant context of a "grant or award by an education authority". One does not, he says, "award" a loan, one "makes" it—and, he says, one cannot properly stretch the ordinary meaning of "award" so as to embrace a loan.

(2) I have not found this an easy point to decide—not least because in the academic context "award" is constantly used in contexts of conferment of outright bounty—as, e.g., the award of a prize or scholarship.

(3) But, at the end of the day, I am persuaded that what the claimant received was no less an "award" by reason of his liability to repay the moneys he received.

What he obtained was a financial accommodation enabling him—on a "cash flow" basis—to meet wants the satisfaction of which required expenditure. And in my judgment he obtained it in the form of a payment made pursuant to the exercise of the education authority's discretion, decided upon after deliberation, so that it falls within the definition indicated in paragraph 7 above.

11. My decision is accordingly as indicated in paragraph 1(2) above.

(Signed) I. Edwards-Jones
Commissioner