
SUPPLEMENTARY BENEFIT

Resources—treatment of arrears of special hardship allowance paid in a lump sum.

The claimant was unable to work due to ill health when on 18.4.86 he was awarded special hardship allowance backdated to 6.6.84 payable at various weekly rates and paid to him in a lump sum of approximately £2,200. On 16.6.86 the adjudication officer reviewed and revised earlier decisions relating to a claim for supplementary benefit made on 4.6.84 and decided that the special hardship allowance fell to be taken into account as a weekly income resource in the weeks for which it was awarded subject only to the disregard of the first £4 of the rate from time to time applicable. On appeal the tribunal upheld the adjudication officer's decision. The claimant appealed to the Commissioner.

Held that:

1. the payment of special hardship allowance, though paid in a lump sum, was nevertheless a payment of income not capital (paragraph 8);
2. the payment comes within the words "any disablement benefit payable under the Social Security Act if paid periodically . . ." in regulation 11(5)(b) of the Supplementary Benefits (Resources) Regulations 1981 (paragraph 11),
3. the payment has to be treated as income for the period in which it would have been paid (paragraph 12).

The appeal was dismissed

1. I dismiss the claimant's appeal against the decision of the social security appeal tribunal dated 14 October 1986 as that decision is not erroneous in law: Social Security Act 1975, section 101.

2. This is an appeal to the Commissioner by the claimant, a divorced man living alone in owner occupied property and aged 54 at the date of his claim for supplementary benefit on 4 June 1984. The appeal is against the unanimous decision of the social security appeal tribunal dated 14 October 1986 which upheld the decision of the local adjudication officer issued on 18 June 1986 in the following terms,

"Supplementary allowance shall take into account the award of a special hardship allowance as a resource."

The tribunal's decision was to confirm that decision of the local adjudication officer and in my view that was correct for the reasons explained below.

3. At the claimant's request the appeal was the subject of an oral hearing before me on 29 April 1988 at which the claimant was present and gave evidence to me and was represented by Mr. Teddy Taylor his Member of Parliament. The adjudication officer was represented by Mr. N. J. Storey of the Office of the Solicitor to the Department of Health and Social Security. I am indebted to the claimant, to Mr. Taylor and to Mr. Storey for their assistance to me at the hearing. After the hearing I issued on 10 May 1988 a direction requiring further submissions on the case decided by the Court of Appeal of *McCorquodale v. Chief Adjudication Officer*, Times newspaper law report—3 May 1988. I have received those submissions and deal with that point below.

4. The issue of principle involved in this case is the correct treatment for supplementary benefit purposes of a payment of approximately £2,200 received by the claimant from the Department of Health and Social Security on 18 April 1986 and representing arrears of "special hardship allowance", in respect of the claimant's successful claim to have suffered an industrial disease (he was also awarded a disablement gratuity on 20 September 1985).

The actual award of “special hardship allowance” on 18 April 1986 was constituted as follows:—

6 June 1984 to 27 November 1984.	At £22.24 per week.
24 November 1984 to 26 November 1985.	At £23.36 per week.
27 November 1985 to 22 April 1986.	At £25.00 per week.
23 April 1986 onwards.	At £25.28 per week.

5. As a result of the receipt of the £2,200 arrears of special hardship allowance, the local adjudication officer reviewed the position and it was his decision issued on 18 June 1986 that the £2,200 should in effect be treated as an income resource for the weeks for which it would have originally been payable that has been the subject of the appeal in this case. The adjudication officer now concerned, in a written submission dated 26 November 1987, submits that the tribunal in this case erred in law in not particularising the dates and payments of special hardship allowance and making sufficient findings of fact to ascertain whether they were capital or income and if income for what period they were attributable. However on reflection I cannot accept this submission because it appears to me that the local tribunal, which clearly held a very careful hearing in this case and completed its record of decision on Form AT3 in exemplary detail, acted perfectly properly in giving a kind of “declaratory judgment” concerning the local adjudication officer’s decision, which was in the same form. The details of the arithmetic of the payments and the weeks to which they are attributable can easily be worked out as they can now be worked out by the local adjudication officer in implementation of my decision. When he does so, he can then consider such matters as whether or not the claimant should receive an increase of supplementary benefit for the period in question for his children (whom the claimant states he was maintaining at the rate of £110 a month) and how much of the invalidity benefit that the claimant was receiving during that period should be taken into account as a resource. I do not regard these matters as having been under appeal either to the local tribunal or to the Commissioner and they should now be dealt with by the local adjudication officer in the light of my having confirmed the local tribunal’s decision on the point of principle, relating to the correct treatment of the special hardship allowance.

6. As I understand the position what would normally have happened in a case like this is that if the claimant had been in fact receiving supplementary benefit for the period from 6 June 1984 to 22 April 1986 to which the arrears of special hardship allowance were referable, there would have been deducted from the payment of special hardship allowance by the Department the amount of supplementary benefit which would not have been payable to the claimant had he received the special hardship allowance timeously week by week in the weeks to which the payment of arrears related (see section 12 of the Supplementary Benefits Act 1976—in force for the period in question though subsequently repealed). That comparatively simple course however could not be pursued in this case because of the coincidence that although supplementary benefit was paid to the claimant up to 22 August 1984 it was not paid thereafter because it was thought that his resources, including the full amount of invalidity benefit of £59.12 per week, exceeded his requirements. It was not until the review decision of the local adjudication officer that is in issue in this case that it was considered by the local adjudication officer that in fact the full amount of the invalidity benefit should not have been taken into account because it contained an allowance

for the claimant’s two children. That again is not a matter that is before me on this appeal and I leave that matter now for consideration by the local adjudication officer.

7. It did however mean that the claimant received no supplementary benefit from 22 August 1984 onwards and that meant that he was not able to claim ancillary benefits after that date. It is of that matter in particular that the claimant complains. His contention is that, if in fact the invalidity benefit should not have been taken into account in full, that would have meant that he should have been paid supplementary benefit during the period in question (and thus have been able to claim ancillary benefits). He further contends that that would not be affected by the award of £2,200 special hardship allowance because that should be treated as a capital sum and not as an income sum. That is how the question starkly arises on this appeal.

8. I have therefore to decide this issue of principle which was argued in some detail and with some considerable erudition by both Mr. Taylor and Mr. Storey at the hearing before me. In my judgment the payment of special hardship allowance, though paid in a lump sum of £2,200, was nevertheless essentially a payment of income and not of capital. I adopt the careful reasoning of the learned Commissioner in a decision on file CSB 74/1987 which led him to the same conclusion after an analysis of sections 57–61 of the Social Security Act 1975 (as then in force). “Special hardship allowance” is essentially a compensation for loss of earnings due to an industrial accident or industrial disease and being a compensation for loss of earnings it has, in my judgment, an income character whether it is paid in arrears or not.

9. It is not therefore within regulation 3(2)(a) of the Supplementary Benefit (Resources) Regulations 1981 which provides that,

“Any grant or gratuity paid under the Social Security Act [1975] shall be treated as a capital resource.”

I agree with Dr. Mesher’s annotation to this particular regulation, in his work on the Regulations, when he suggests that,

“Grants and gratuities are one-off payments, like maternity grant, death grant or disablement gratuity.”

They do not in my view include special hardship allowance, which is essentially a weekly benefit, even if it is paid in arrears as a lump sum.

10. As I have held the £2,200 payment on 18 April 1986 was an income resource and not a capital resource, the next question is under what head of regulation 11 (“Calculation of other income”) of the Resources Regulations, the payment comes. The relevant heads are to be found in regulation 11(5) of the Resources Regulations, which provides as follows,

- “11. (5) There shall be taken into account—
 - (a)
 - (b) any disablement or industrial death benefit payable under the Social Security Act [1975] if paid periodically or any analogous payment;
 - (c)–(d)
 - (e) 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 in any week the sum of £4.”

11. In my judgment, the £2,200 payment of special hardship allowance in this case comes within the words “any disablement . . . benefit payable under

the Social Security Act if paid periodically. . .” (regulation 11(5)(b)), with the result that I do not need to consider whether it could be described as “any analogous payment” or “any other income” (regulation 11(5)(e)). I ought in fairness to record that both Mr. Storey and Mr. Taylor submitted to me that this could not be so because of the use of the word “paid” in the phrase “if paid periodically” in regulation 11(5)(b). However, in my view, all that means is that the benefit must be of a nature by which it is normally “paid periodically”, as indeed special hardship allowance is, even if attached’ to a disablement gratuity. The word “paid” is merely used to distinguish a benefit such as this from one which is simply a one-off lump sum payment of the kinds mentioned above (paragraph 9). I do not consider that there is any relevant analogy to “a repayment of income tax” which under the provisions of regulation 11(5)(a) and regulation 3(2)(d)–(e) of the Resources Regulations 1981 may sometimes be treated as income and sometimes as capital. I mention that last point because Mr. Storey drew it to my attention.

12. Lastly I deal with my direction of 10 May 1988 in which I drew the attention of the parties to the decision of the Court of Appeal in *McCorquodale v. Chief Adjudication Officer* (Times newspaper law report—3 May 1988) and invited submissions on its relevance to this case. The *McCorquodale* case concerned a separate regulation, namely regulation 13 of the Resources Regulations dealing with “payments made by or derived from liable relatives”. In the *McCorquodale* case, a large sum by way of payment of arrears of maintenance due from a husband to a wife was in issue and the question was (among others) whether it should be taken as income for the periods in which it should have been paid or merely as a resource in the week in which it was in fact paid. Leaving aside the complication of the additional provisions of regulation 13, it is my view that the *McCorquodale* case supports (if support is needed) the reasons for my decision which I have given above, in that a payment of arrears in this case was treated by the Court of Appeal under regulation 9 of the Resources Regulations (the regulation dealing with attribution of income to a given period) as income for supplementary benefit purposes for the period in which it should have been paid, just as in my view the special hardship allowance in this case has to be treated as income for the period in which it would have been paid. I have read with care the written submission from Mr. Taylor dated 20 May 1988 (also embodying points made by the claimant himself) on the *McCorquodale* case but I am afraid that I cannot accept the argument that the *McCorquodale* case assists the claimant’s appeal.

Commissioner’s File No: CSB 731/87

(Signed) M. J. Goodman
Commissioner
