Resources—treatment of a student's maintenance allowance.

The claimant lived with her 2 dependent children and had been in receipt of supplementary benefit since 1981. In August 1983 she was awarded a minor grant by the local education authority in connection with a full-time course of business studies. The grant comprised her tuition fees, the fee for one examination and a maintenance allowance of £381 payable in 3 equal instalments at the beginning of each academic term. The terms occupied 38 weeks of the

year. According to the Chief Education Officer the grant of £381 was deemed to include £105 for meals, the remainder covering sundry costs of equipment, books, travel etc. The benefit officer first determined the grant was equivalent to £10.02 a week during term-time and that it attracted a disregard of £9.50 under regulation 11(4)(e) of the Supplementary Benefit (Resources) Regulations. Later, on review, the benefit officer decided that a disregard of £2 a week, and not £9.50, was appropriate under regulation 11(2)(l) of the Supplementary Benefit (Resources) Regulations. He further considered that, of the total maintenance allowance of £381, there should be disregarded, under regulation 11(4)(j), £85.65 representing the actual cost of books and equipment and £114 representing travelling expenses. This meant that £2.77 of the minor grant, instead of £0.52 as previously, was accounted as weekly income. The outcome of the review was a decision effective from the pay day in week commencing 27 February 1984 that the claimant was entitled to supplementary benefit of £35.39 weekly. On appeal the tribunal confirmed that decision and the claimant appealed to a Social Security Commissioner.

Held that:

1. where a maintenance allowance included a payment for the provision of equipment, books and travelling expenses essential to a course, it was not necessary for the purpose of regulation 11(4)(j) to have a specific breakdown of those various costs (para 8);

2. a claimant must demonstrate to the satisfaction of the benefit (adjudication) officer the expenditure actually incurred (para 8);

3. only a person who had not attained the age of 19 could ever be actually in receipt of "relevant education" in accordance with section 6(2) of the Supplementary Benefits Act 1976 (para 14).

The appeal was dismissed.

---

1. This is a claimant's appeal, brought by my leave, against a decision of the social security appeal tribunal dated 29 June 1984 which confirmed a review decision issued by the benefit officer (now the adjudication officer) on 26 March 1984.

2. This is yet another in the long string of appeals which have been generated by that part of the supplementary benefit legislation which relates to school-children and students. The intention underlying that legislation is clear enough. *Broadly* speaking (there are numerous exceptions) school-children and students are not to be entitled to supplementary benefit in their own right. That is not unreasonable. School-children are normally the responsibility of their parents or guardians. Students will normally be in receipt of a grant or have access to adequate funds, either of their own or of their parents. Unfortunately, however, that reasonable intention has been effected by legislation so complex—indeed labyrinthine—as to pose endless problems for the adjudicating authorities and to be beyond the comprehension of the great majority of claimants. Since the "new" scheme of supplementary benefit was introduced in November 1980 amendments have been made—but they amount to little more than tinkering. Those seeking to thread a path through the labyrinth are driven from one Act to another and from one set of regulations to another. It is almost inevitable that from time to time the path will be lost—and yet another costly and time-consuming appeal will ensue.

3. I held an oral hearing of this appeal. The claimant was represented by Miss A Hepple, an officer in the Welfare Rights Service in the City of Manchester. The adjudication officer was represented by Mr C A M E d'Eca of the Solicitor's Office of the Department of Health and Social Security. To both I am indebted for assistance in this much-vexed field.

4. The relevant facts are much simpler than the relevant law. At the material time the claimant was aged 29. She lived with her two dependent children. She had been in receipt of supplementary benefit since November

1981. In August 1983 she learnt that she had been successful in her application to her local education authority for a minor award so that she might, in the academic year ending 31 August 1984, attend a course of business studies at a specified College of Further Education. (It is not in dispute that that was a full-time course.) The scope of the award appears clearly from the papers. Tuition fees and the fee for one examination essential to the course would be paid by the local education authority. In addition, that authority would pay to the claimant a maintenance allowance of £381, which would be paid in three equal instalments at the beginning of each of the academic terms. It is common ground that the maintenance allowance related only to the periods of those terms—and that those terms occupied 38 weeks of the year. By way of further particulars, I quote from a letter dated 23 January 1984 and written to the Regional Controller of the Department by the Chief Education Officer in the City of Manchester:

> "The policy of the Manchester Education Committee, in common with many other local authorities, is to consider granting minor awards to students who are attending full-time non-advanced courses. In the case of mature students, and dependent students estranged from their parents, the entitlement is usually the maximum grant of £381 for the year.
>
> This is deemed to include an amount of £105 for meals, the remainder covering sundry costs of equipment, books, travel etc."

5. On 1 September 1983 the claimant advised the local office of the aforesaid award. The benefit officer first determined that the grant was equivalent to £10.02 per week during term-time. He then applied regulation 11(4)(e) of the Supplementary Benefit (Resources) Regulations 1981 which provides as follows:

> "(4) The following income resources shall be disregarded:—
>
> .....
>
> (e) any payment made in respect of a person in relevant education under section 81 of the Education Act 1944 or section 2(1) of the Education Act 1962 or section 49 of the Education (Scotland) Act 1980 (payments by education authorities to persons over compulsory school age) to the extent only that it does not exceed in the case of a person attending a school £7.50 per week and in any other case £9.50 per week, the amount of any excess being taken into account in full..."

Accordingly, the benefit officer calculated the claimant's supplementary benefit on the basis that £9.50 of the £10.02 should be disregarded as a resource.

6. Matters then proceeded upon that basis until 21 February 1984 when, whilst reviewing the claimant's entitlement to supplementary allowance, the benefit officer took the view that the appropriate disregard should be £2.00 a week and not £9.50. He considered that the case did not fall, and never had fallen, under regulation 11(4)(e) of the Resources Regulations but fell under regulation 11(2)(l):

> "(2) There shall be treated as income and taken into account in full—
>
> .....
>
> (1) subject to paragraph (4)(d) [which has no bearing upon this case], 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..."

(Regulation 4(4) has no bearing upon this case.)

7. The reviewing benefit officer, accordingly, reduced the disregard from £9.50 to £2. However, he also turned his attention to regulation 11(4)(j):

"(4) The following income resources shall be disregarded:—

.....

(j) any payment, other than one to which regulation 13 applies [regulation 13 does not apply in this case], which is intended and used for—

(i) the provision of a leisure or amenity item, or

(ii) the provision of an item for which provision is not made in the amount applicable for normal requirements, for which housing benefit is not payable to the claimant or his partner and in respect of which, in the determination of the claimant's additional or housing requirements either no amount is applicable or an amount is applicable but the payment is for an item of which the cost is in excess of that amount, so however that in the latter case only the amount of the difference between the amount applicable and the cost shall be disregarded under this sub-paragraph,

and head (ii) shall apply in respect of a payment used to meet any amount regarded as excessive under regulation 21 of the Requirements Regulations or regulation 17 of the Housing Benefits Regulations..."

In consequence of enquiries, the benefit officer was satisfied that, of the total maintenance allowance of £381.00, there should be disregarded the sum of £85.65, representing the cost of books and equipment, and the further sum of £114.00, representing travelling expenses. The overall result was that of the claimant's maintenance allowance the sum of £2.77 was accounted as weekly income, as against the sum of £0.52 of which account had been taken by virtue of—

(a) the application of regulation 11(4)(d); and

(b) the non-application of regulation 11(4)(j).

The outcome of those reviews and revisions was a decision issued on 26 March 1984 to the effect that from the prescribed pay day in the week commencing 27 February 1984 the claimant was entitled to supplementary benefit at the weekly rate of £35.39—and it is that decision which lies at the root of this appeal.

8. For convenience, I turn first to the application of regulation 11(4)(j). In a very temperate submission, Mr d'Eca invited me to consider the opening words of sub-paragraph (j):

(a) "any payment...which is intended and used for...".

How specific and particular must be the necessary "intention"? I do not think it desirable to lay down any general rule—and I do not propose so to

do. In paragraph 4 above I have quoted from the letter dated 23 January 1984 and written by the Chief Education Officer of the Education Department of the City of Manchester. In my view that makes it perfectly plain that the maintenance allowance included a payment which was intended for the provision of equipment, books and travelling expenses which were necessarily incidental to the claimant's attendance of the relevant course. I do not consider that any specific breakdown of those various costs was required from the local education authority. The claimant must, of course, demonstrate the expenditure actually incurred; and this has been done, to the satisfaction of the benefit/adjudication officer, by the claimant in this case. Moreover, it is manifest that the relevant items were not items for which provision is made by way of normal requirements, housing benefit, additional requirements or housing requirements.

9. It follows that I consider that regulation 11(4)(j) has been properly applied to the facts of the claimant's case.

10. But the real issue in this appeal is whether the correct disregard should be £9.50 (as is contended on behalf of the claimant) or £2 (as is contended on behalf of the adjudication officer). And that, of course, depends upon whether it is regulation 11(4)(e) or regulation 11(2)(l) of the Resources Regulations which falls to be applied as appropriate to the claimant's circumstances. That, in turn, effectively narrows down to the question: Was the claimant, at the material time, receiving "relevant education" or was she a "student"?

11. The phrase "relevant education" is peculiar to the supplementary benefit legislation. (It does not even appear in the child benefit legislation.) Miss Hepple referred me to section 2 of the Education Act 1962. But I am not assisted thereby. I am bound to seek the true construction of "relevant education" within the four corners of the supplementary benefit legislation.

12. The starting point is section 6 of the Supplementary Benefits Act 1976, subsections (2) and (3) of which provide as follows:

> "(2) A person who has not attained the age of 19 and is receiving relevant education shall not be entitled to supplementary benefit except in prescribed circumstances.
>
> (3) Regulations may make provision as to the circumstances in which a person is or is not to be treated for the purposes of the preceding subsection as receiving relevant education; and in this section "relevant education" means full-time education by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school."

It was Mr d'Eca's submission that no person who has attained the age of 19 can ever be in receipt of relevant education. It was Miss Hepple's submission that such a person could be in receipt of relevant education; and she stressed that if Mr d'Eca's submission was correct the words "has not attained the age of 19 and" (see subsection (2)) were otiose. That argument is not without its attractions. However, as Mr d'Eca pointed out, it is somewhat undermined by regulation 3(4) and (5) of the Supplementary Benefit (Aggregation) Regulations 1981, as it stood at the time material to this appeal:

> "(4) Where a household includes both—
>
> (a) a person to whom paragraph (5) applies; and
>
> (b) a person who would be the claimant for a pension or allowance—
>
> (i) if a claim were made, and

(ii) if the person mentioned in sub-paragraph (a) were a pupil,

the person to whom sub-paragraph (b) applies shall be treated as responsible for the person mentioned in sub-paragraph (a).

(5) A person to whom this paragraph applies is a person who—

(a) is aged 19, but less than 20;

(b) is attending a course which would, if he were aged less than 19, be relevant education;

(c) attained the age of 19 on or after the first day of the autumn term of the college or school year applicable to his course;

(d) during the whole of the 2 years immediately preceding the beginning of his course was neither in remunerative full-time work within the meaning of section 6 of the Act nor available for employment within the meaning of section 5 of the Act, but was receiving relevant education, and

(e) is not in circumstances to which regulation 11 of the Conditions of Entitlement Regulations (circumstances in which persons receiving relevant education are to be entitled to supplementary benefit) would apply were he aged less than 19."

If, of course, a person aged 19 or over can be in receipt of relevant education, one would expect that paragraph (5)(b) of the aforesaid regulation 3 would simply have read: "is attending a course of relevant education".

13. At the material times so much of regulation 10 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 as is material to this appeal provided as follows:

"10. For the purposes of section 6(2) (persons under 19 receiving relevant education not to be entitled to supplementary benefit) a person shall be treated as receiving relevant education—

(a) for any period during which he is, for the purposes of section 2(1)(b) of the Child Benefit Act 1975, receiving full-time education, not being advanced education, by attendance at a recognised educational establishment..."

Section 2(1)(b) of the Child Benefit Act 1975 provides as follows:

"2. (1) For the purposes of this Part of this Act a person shall be treated as a child for any week in which—

(a) he is under the age of sixteen; or

(b) he is under the age of nineteen and receiving full-time education by attendance at a recognised educational establishment."

14. It is clear, accordingly, that the claimant cannot avail herself of the only potentially relevant "deeming" provision in regulation 10 of the Conditions of Entitlement Regulations. If she is to succeed on this limb of the case she must show that she was at the material time *actually* in receipt of relevant education. I have come to the conclusion that she cannot so show. I am satisfied that, in spite of the infelicitous drafting of section 6(2) of the Supplementary Benefits Act 1976, the overall tenor of the relevant provisions drives one inexorably to the conclusion that only a person who has not attained the age of 19 can ever be actually in receipt of "relevant education". That phrase never appears in the legislation otherwise than in the context of persons who have not attained the age of 19 or of persons who are affected by the "deeming" provisions of regulations made

pursuant to section 6(3). By virtue of that subsection such deeming is expressly "for the purposes of the preceding subsection"—and the preceding subsection (subsection (2)) is specifically directed to persons who have not attained the age of 19. To put it another way, "relevant education" is a concept which, deeming provisions apart, has no function in the legislation beyond the context of persons who have not attained the age of 19.

15. Was the claimant, then, a "student" within the meaning to be given to that term where it appears in regulation 11(2)(l) of the Resources Regulations? In regulation 2(1) of those Regulations "student" is defined as—

> "a person under pensionable age who has ceased relevant education 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..."

(The definition goes on to define "disabled student"—but that, of course, is not relevant to this case.) Miss Hepple stressed that the course which the claimant attended was not a course of "advanced education" within the meaning which is given to that term in regulation 1(2) of the Child Benefit (General) Regulations 1976. But that is of no avail to the claimant. The definition which I have just quoted makes no reference to "advanced education".

16. I have found in paragraph 14 above that the claimant's attendance of the aforesaid course did not constitute the receipt of relevant education—either in actuality or notionally. It follows, accordingly, that at the material time the claimant had ceased relevant education. It is beyond doubt that she was under pensionable age. And it is beyond doubt that the course was one of full-time education. So she fell foursquare within the definition of "student"—and was, therefore, plainly within the scope of regulation 11(2)(l) of the Resources Regulations. The appeal tribunal came to the correct decision. It was contended upon behalf of the claimant that the tribunal did not set out a detailed explanation of the reason why it considered that a person over the age of 19 could not be in relevant education. That may well be true. I have myself endeavoured to supply the deficiency—and anyone seeing the length and complexity of this decision will feel some sympathy for the tribunal!

17. As I have indicated where appropriate, I have cited the relevant legislation as it stood at the material time. With effect from 6 August 1984 various amendments and substitutions were made thereto by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1984. Nothing in this decision is to be taken as bearing upon either the construction or effect of any of those amendments or substitutions.

18. In spite of the forceful and attractive submissions of Miss Hepple, I have no alternative but to disallow this appeal.

(Signed) J Mitchell
Commissioner
