

THE HIGH COURT

[2017 No. 91 MCA]

IN THE MATTER OF THE STUDENT SUPPORT ACT 2011 AND STATUTORY INSTRUMENT 153 OF 2016 (STUDENT GRANT SCHEME 2016)

AN APPEAL PURSUANT TO S. 21(6) OF THE STUDENT SUPPORT ACT 2011 AGAINST DETERMINATION BY THE STUDENT GRANTS APPEAL BOARD

BETWEEN:

SHANE CRONIN

APPELLANT

-AND-

STUDENT GRANTS APPEALS BOARD

RESPONDENT

JUDGMENT of Mr. Justice Twomey delivered on 10th day of October, 2017.

Introduction

1. This is a case concerning an individual, whose mother was in receipt of long term welfare benefits, who was deprived of a third level top-up grant because the welfare benefit his mother received on the relevant date was not on the list of eligible social welfare payments under the terms of the Student Grant Scheme. The student's mother was below the relevant income threshold for him to receive the grant, but was on the relevant date in receipt of Illness Benefit, rather than Jobseeker's Allowance or another eligible social welfare payment

2. The issue before this Court is whether the Student Grant Scheme should be interpreted in a manner that permits the student to receive the top-up grant, even though the strict wording of the Student Grant Scheme, as set down by the legislature, does not appear to permit such an interpretation.

Background facts

3. Mr. Cronin is a student in University College Dublin and he received a 100% maintenance rate of grant and a 100% student fees contribution from the Student Grant Scheme, referred to herein as the 'standard grant'.

4. As his mother was in receipt of long term social welfare, he also applied for a Special Rate grant which is referred to herein as a 'top up grant', which grant has as one of its aims, the provision of extra financial support for students who are children of long term social welfare recipients.

5. There are three conditions to be satisfied under the student grant scheme for an applicant to receive a top-up grant:

- the applicant must qualify for the standard grant,
- the reckonable income of the applicant (in this case, the applicant's mother) must not exceed a lower income threshold than applies for the standard grant, namely a figure of €22,703, and
- the applicant's mother must be in receipt of 'eligible' social welfare payments. For this purpose a list 40 eligible social welfare payments is set out in the relevant statutory instrument.

As Mr. Cronin applied for grant aid for the academic year 2016/2017, the relevant statutory instrument is SI No. 153 of 2016 and this statutory instrument is entitled the Student Grant Scheme.

6. It is common case that the first two conditions set out in the Student Grant Scheme were satisfied by Mr. Cronin, namely that he qualified for the standard grant and that his mother's income was below €22,703. It is also common case that Mr. Cronin's mother was in receipt of one of the eligible social welfare payments, namely Jobseeker's Allowance, on a long term basis for most of the relevant year (2015), although it is significant that towards the end of that year, she ceased to be in receipt of Jobseeker's Allowance and was instead in receipt of Illness Benefit from the Department of Social Protection.

7. Mr. Cronin was denied the top-up grant by the Student Grant Appeals Board. The Board held that, although his mother had been in receipt of Jobseeker's Allowance for most of 2015, on the 31st December, 2015, the relevant date under the Student Grant Scheme, his mother was not in fact on Jobseeker's Allowance, but was on Illness Benefit, which was not an eligible social welfare payment. On this basis, Mr. Cronin was denied the top-up grant even though receipt of this payment did not bring his mother above the threshold payment figure of €22,703 for receiving a top-up grant.

8. It should be noted that neither Mr. Cronin nor the Student Grant Appeals Board provided any evidence as to the public policy reasons why the receipt of Illness Benefit, rather than some other social welfare payments such as Jobseeker's Allowance, might deprive a student of the right to receive a top up grant, where he or she was still below the income threshold levels. For this reason, it did appear to this Court to be *prima facie* unfair that an individual on less than €22,703 whose parent was on Illness Benefit would not be entitled to a top-up grant, while an individual on less than €22,703 whose parent was on Jobseeker's Allowance, would be entitled to a top-up grant. However, this Court can only very tentatively reach such a conclusion, since no evidence was provided as to the policy reasons for this distinction.

9. It is also crucial to note that the application before this Court is not whether the statutory provision is fair or unfair but rather what it means, or more accurately the claim before this Court is that the Student Grant Appeals Board applied an incorrect interpretation to the Student Grant Scheme. This is because the matter appeared before this Court pursuant to s. 21(6) of the Student Support Act, 2011 by way of an appeal on a point of law of the decision of the Student Grant Appeals Board to refuse Mr. Cronin the top-up grant.

Interpretation by this Court of the Student Grant Scheme

10. In the proceedings before this Court, Mr. Cronin alleges that the Student Grant Appeals Board erred in law in its interpretation of

Article 19(7) of the Student Grant Scheme and that it erred in fact and in law in determining that he was not eligible for the top-up grant as a result of his mother being in receipt of Illness Benefit as at 31st December, 2015.

Section 19(7)(a) of the Student Grant Scheme states:

"It is a condition of receiving a special rate of maintenance grant that:

(a) an applicant's reckonable income must include, on the specified date, one of the eligible payments as provided for in Schedule 2."

That it is a condition of receiving the top-up grant that the applicant on the specified date be in receipt of an 'eligible payment' is also clear from s. 27(1) of the Student Grant Scheme, which states:

"The award of a maintenance grant shall be in accordance with the terms of this Scheme and the value of such grant shall be determined by the awarding authority having regard to the applicant's reckonable income, *whether the reckonable come includes an eligible payment* [emphasis added] for the special rate as specified in Schedule 2 and the income limits for each of the respective rates in Schedule 1".

11. As regards the specified date which is referred to in Article 19(7)(a), it is clear from Schedule 2 of the Student Grant Scheme that this date is 31st December, 2015, since it states:

"SCHEDULE 2

Eligible payments for the special rate a maintenance grant for the 2016/17 academic year

As at 31 December 2015, the reckonable income must include one of the eligible payments listed in this Schedule, or its equivalent from a Member State..."

12. Counsel for Mr. Cronin has argued that it is absurd that the receipt of an Illness Benefit on a particular day should disentitle an applicant from receiving a student top up grant where he otherwise satisfies the criteria for receiving it. For this reason he argues that the Statutory Instrument must be interpreted in a manner that does not exclude Mr. Cronin simply because on the 'snapshot day' (i.e. the day in the year when a snapshot is taken of his circumstances to determine his eligibility for the top-up grant), his mother is not on an eligible payment.

13. In support of this argument, he points out that two of the 40 eligible payments listed in Schedule 2 have asterisks, namely the "Jobseeker's Allowance (where held for 391 days or more)" and the "Jobseeker's Benefit" and the associated footnote provides that Jobseeker's Allowance and Jobseeker's Benefit can be combined for the purpose of determining whether an applicant meets the prescribed period of 391 days on welfare payments and so is a long-term recipient of social welfare. The footnote provides that:

"The Department of Social Protection Illness Benefit or Maternity Benefit can also be used to combine periods of Jobseeker's Allowance and Jobseeker's Benefit provided a period of Jobseeker's Allowance or Jobseeker's Benefit comes directly before and directly after the period of Illness Benefit or Maternity Benefit."

14. It is clear from this footnote therefore that Illness Benefit, although not itself an eligible payment under the Student Grant Scheme, can nonetheless be combined with other eligible payments to make up the 391 days required to determine if someone is a long term recipient of social welfare payments, provided that Jobseeker's Allowance/Jobseeker's Benefit comes before and after the Illness Benefit. While it may seem somewhat incongruous that Illness Benefit, which is after all a social welfare payment, would not therefore be listed as an eligible payment, the fact remains that for whatever reason the legislature chose not to list it.

15. It is also true to say that this facility, allowing the counting of the period of Illness Benefit in the middle of a period of Jobseeker's Allowance/Jobseeker's Benefit to be used in the calculation of whether there are 391 days of eligible payments, does not in any way alter the express wording of Article 19(7)(a) and Schedule 2 of the Student Grant Scheme. There is nothing untoward or unusual in a period of time of a form of payment being permitted to be included in determining whether a length of payment has been reached, without it being necessary for that form of payment to be an eligible payment. For this reason, this Court is not persuaded by the suggestion that this footnote should lead to an interpretation of Article 19(7)(a) which leads to the Illness Benefit being treated as if it was an eligible payment and leading to the express words of the statutory instrument being ignored.

Conclusion

16. It is important to note that this Court is not being asked to strike down the Statutory Instrument as unfair and unconstitutional or to find that the Minister acted *ultra vires* in signing the relevant statutory instrument. Rather all this Court is being asked to do is interpret the plain words of Article 19(7)(a). In this regard, and as already noted, this Court can only very tentatively conclude that it does *prima facie* appear to this Court to be unfair that a person such as Mr. Cronin is deprived of a top up grant, where his mother meets the income limits but is on Illness Benefit rather than on Jobseeker's Allowance.

17. However, even if there are no good policy reasons for this distinction between Illness Benefit and Jobseeker's Allowance (and this Court can form no definitive view on this issue for the reasons stated,) then it seems to this Court that the remedy for this alleged unfairness is a change in the law by the legislature (and in changing that law, decisions can be taken by the legislature regarding the appropriate resources to allocate to student grants as a whole). This is because policy matters such as the choice of which social welfare benefits are 'eligible' payments is not a matter for the courts.

18. Equally, while it does seem unfair that a student could be deprived of a top-up grant by virtue of the fact that although for the majority of a year his mother is in receipt of Jobseeker's Allowance, but she was on the 31st December, 2015, on Illness Benefit, this is how the legislature chose to word the Student Grant Scheme. It chose to have what might be termed a 'snapshot' of an applicant to determine whether he satisfies the condition of being in receipt of an eligible payment to be entitled to the top-up grant.

19. Even if this Court felt that this should not have been done and instead one should have looked at the year as a whole, this Court has no power in interpreting Article 19(7)(a) to interpret that Article in a fashion which would be contrary to its express terms and thereby effectively change the law. Any change of the law is the prerogative of the legislature.

20. Thus, while this Court might well agree or disagree with the approach taken by the legislature, the reality is that the Student Grant Scheme could not in this Court's view be clearer. The Scheme explicitly states that Mr. Cronin's reckonable income 'must

include on the *'specified date'* one of the eligible payments (and Illness Benefit is not an eligible payment) and further than *'as at 31 December, 2015, the reckonable income must include one of the eligible payments'*. If this wording is claimed to cause unfairness, the remedy is not for this Court to ignore the plain meaning of the statutory instrument and reach an interpretation which is completely contrary to that plain meaning. This is because an interpretation which ignores this clear and explicit wording of the Student Grant Scheme would involve this Court in law making, which is something it is not entitled to do, as this is the role of the elected lawmakers and not the role of unelected judges. Based on the foregoing, the appeal would be dismissed.