

SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Starred Decision No: *16/00

(Commissioner's File No.: CSDLA/536/99)

Commissioners' decisions are identified by case references only, to preserve the privacy of individual claimants and other parties.

Starring denotes only that the case is considered to be of general interest or importance. It does not confer any additional status over an unstarred decision.

Reported decisions in the official series published by HMSO and CAS are generally to be followed in preference to others, as selection for reporting implies that a decision carries the assent of at least a majority of Commissioners in Great Britain or in Northern Ireland as the case may be.

The practice about official reporting of Commissioners' decisions in Great Britain (which is currently under review) is explained in reported case R(I) 12/75 and a Practice Memorandum issued by the Chief Commissioner on 31 March 1987, which can be found in the official report volumes and on the Internet. As noted in the memorandum there is a general standing invitation to comment on the report-worthiness of any decision, whether or not starred for general circulation. However, a decision will not be selected for reporting if it is known that there is an appeal pending against it.

The practice in Northern Ireland (also under review) is similar, decisions being selected for reporting by the Northern Ireland Chief Commissioner. Northern Ireland Commissioners' decisions are published as a separate series.

Any **comments** by interested organisations or individuals on the suitability of this decision for reporting should be sent to:

*Mrs M Alayande
Office of the Social Security and Child Support Commissioners
5th Floor, Newspaper House, 8-16 Great New Street, London EC4A 3BN.*

so as to arrive by _____ 2000

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY ACT 1998

APPLICATION FOR LEAVE TO APPEAL ON A QUESTION OF LAW FROM A
DECISION OF AN APPEAL TRIBUNAL

DETERMINATION BY SOCIAL SECURITY COMMISSIONER

Name:

Appeal Tribunal of : 17 November 1998 at Stirling

Case No: D/05/113/1998/00484

ORAL HEARING

1. This is an application to a Commissioner by the claimant for leave to appeal on a question of law from the decision of the disability appeal tribunal given at Stirling on 17 November 1998.
2. This application is not accompanied by a copy of a written statement of the appeal tribunal's reasons for their decision as required by regulation 10(2)(b) of the Social Security Commissioners (Procedure) Regulations 1999. The explanation offered for that does not justify me in waiving the irregularity under regulation 27 of the said regulations. Accordingly the application for leave to appeal is dismissed.
3. This case came before me for an oral hearing on 21 March 2000 along with four other cases. The claimant was represented by Mr Oliver a Welfare Rights Officer of the Inverclyde Council. The Secretary of State was represented by Mr Armstrong, Advocate instructed by Miss Miller of the office of the solicitor to the Advocate General.
4. In this case at a paper hearing on 11 November 1998 the claimant unsuccessfully appealed against a decision of an adjudication officer in respect of his claim for disability living allowance. It was conceded by Mr Oliver that there was nothing in the papers to demonstrate that the claimant thereafter ever asked for a full statement of facts and reasons for the tribunal's decision. Further the claimant has never told Mr Oliver in terms that he asked for a full statement of facts and reasons. The decision notice prepared by the tribunal chairman is recorded at page 98 of the bundle.

5. The claimant did however make an application for leave to appeal which is recorded at page 99 and is dated 28 January 1999. The grounds of appeal are stated as follows:-

“I wish to appeal on the following point of law: of natural justice and reasons not forwarded in writing despite previous Commissioners advice for a more favourable decision and failure to advise me in writing of tribunals decision.”

6. This application was placed before the tribunal chairman by the clerk in a letter recorded at page 101, the chairman issued the following decision:-

“Leave to appeal against the tribunal’s decision given on 11/11/98 is refused.”

That is dated 24 May 1999.

7. It was Mr Armstrong’s position that this refusal of leave must be regarded as a rejection of the application upon the basis that no full statement of facts and reasons was provided. Mr Oliver did not seek to contradict that submission and I accept it upon the basis that this is properly what the refusal of leave was.

8. The claimant thereafter on 5 July 1999 made an application for leave to appeal to the Commissioner. That application was not accompanied by a full statement of the tribunal’s facts and reasons for the simple reason that one had never been asked for nor had it been provided.

9. Mr Armstrong submitted that in accordance with regulation 3 of the Social Security Commissioners (Procedure) Regulations 1999 it was these regulations that fell to be applied. I accept that. He further submitted that this was not a case which fell under the transitional provision contained in regulation 3(2)(f), I accept that. It was also an application which by virtue of regulation 3(2)(e) was in time, notwithstanding the provisions contained in regulation 9(2).

10. Regulation 9(1) of the regulations provides:-

“An application to a Commissioner for leave to appeal against the decision of an appeal tribunal may be made only where the applicant has sought to obtain leave from the chairman and leave has been refused or the application has been rejected.”

Paragraph 2 of the same regulation provides:-

“Subject to paragraph (3) an application to a Commissioner shall be made within one month of notice of the refusal or rejection being sent to the applicant by the appeal tribunal.”

11. Mr Armstrong submitted that whilst the failure to obtain and produce a full statement of facts and reasons constituted a failure to comply with the adjudication regulations and resulted in an application being premature. On that basis he submitted that my own decision in CSIB/257/99 and that of Mr Commissioner Mitchell QC in CSI/591/98 were correctly decided and that the decisions of Mr Commissioner Rowland in CIS/3299/97 and

Mr Commissioner Powell in CIB/4833/98 were wrongly decided. The issue of competency ceases to arise he submitted because of the right of appeal being given to the Commissioner where an applicant has sought leave to appeal from the chairman and the application has been rejected. The concept of rejection by the chairman was innovative upon the regulations as they previously stood. The effect of this is to render an application which has been rejected as incompetent by the chairman one which can be sought to be advanced before the Commissioner. As there is no full statement of facts and reasons produced as required by Regulation 10(2)(b) of the Commissioners Procedure Regulations regulation 27 in respect of the waiving of irregularities can be entertained. This is because what is sought to be waived is a requirement which falls squarely within regulation 10(2)(b) of the Commissioners regulation, the application being competently before the Commissioner by virtue of the innovation in respect of rejection by the chairman of an application for leave to appeal as opposed to simply a refusal which was the import of the previous regulations. Mr Oliver accepted Mr Armstrong's arguments in respect of the operation of regulations 9 and 10. I am satisfied that they are correct and that accordingly unlike the position in CSIB/257/99 the application can be entertained.

12. The next question that I require to determine is whether or not the failure to produce a full statement of facts and reasons as required by regulation 10(2)(b) is one which ought to be waived.

13. Mr Oliver has failed to persuade me that I ought to waive the failure. It was Mr Oliver's submission that the claimant had made it clear prior to the tribunal hearing in a letter dated 1 November 1998 at page 96 that if his appeal to the tribunal failed he wished to appeal to the Commissioner. It was also submitted that it was not clear when the decision notice was issued to the claimant and that it is further not clear when the 21 day period for seeking a full statement of facts and reasons commenced. He also referred me to what is said in the ground of appeal. In his application for leave to the Commissioner the claimant makes a complaint that a full decision had not been forwarded to him. He also says:-

"As at todays date 1/7/99, the tribunal have failed to furnish me with a statement of fact. I am sick and tired of the total inadiquacies [sic] of the tribunal service. At a previous Commissioners hearing I was advised that I would receive a more favourable response by another application.

I am still waiting another 2yrs further on.

Please help alleviate my distress a.s.a.p.

P.S. I received this form returned to me 9/6/99 with no covering letter on what I was supposed to do with.

I have decided to forward this to you to show up the inadaquacies [sic] of the tribunal service."

14. Mr Armstrong submitted that it was not established that the claimant had ever requested a full statement. It was further his submission that the claimant had not indicated any error in law in the tribunal's decision.

15. I am satisfied in the exercise of my discretion that a waiver should not be granted upon the basis that as has been submitted by Mr Armstrong and conceded there is no evidence in the papers to demonstrate that the claimant ever asked for a full statement of facts and reasons and that he never told his representative in terms he had asked for a full statement. Further this is not a link to any asserted error in law on the part of the tribunal and that is a matter which also falls to be considered when exercising my discretion. Thus I am satisfied that the irregularity should not be waived.

16. Even if I had been disposed to grant such a waiver I would not have been prepared to grant leave to appeal as I am not satisfied that any error in law relating to the merits of the case has been demonstrated.

(Signed)
D J MAY QC
Commissioner
Date: 24 March 2000