

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I allow the claimant's appeal. I do so for formal reasons only. I set aside the decision of the tribunal. But I replace it with my own decision that the claimant's appeal from the decision of the Secretary of State is dismissed. This is to the same effect as the decision of the tribunal.

2 My decision is:

The decision of the Secretary of State is confirmed. The appellant is not entitled to housing costs as part of his jobseeker's allowance entitlement from 28 March 2000, and he is not entitled to any backdated amount of housing costs as part of earlier entitlements to jobseeker's allowance.

3 The appellant is appealing with my permission from the decision of the Exeter appeal tribunal on 18 July 2001 under reference U 03 183 2000 00235. I granted permission to appeal because the appellant raised an issue of human rights before the tribunal and the tribunal did not deal with it. The claimant was also appealing against the substantive decision of the tribunal, and I must deal with that also.

4 This case concerns the amount of jobseeker's allowance to which the claimant was entitled following his claim with effect from 28 March 2000. As part of that claim he asked for housing costs with effect from 14 June 1999. This was because "I have been homeless because of your neglect" since that date. He added elsewhere in the form that he was made homeless on that date and he made it clear that he regarded the DSS as responsible for that fact. He also claimed sums for his student daughter. After some false starts, he was awarded jobseeker's allowance at £51.40 a week with effect from 28 March 2000, the date of claim. When he objected to the refusal to pay housing costs, and appealed, he was told that this was because the house had been repossessed by the mortgagees before the date of claim.

5 While corresponding with the Department after the appeal, the claimant also claimed that his human rights under articles 6 and 8 had been breached, in particular in connection with his right to "legal representation in advocacy". In a letter received by the Appeals Service on 1 May 2001, he again claimed his rights of advocacy. He stated that he would attend the tribunal hearing on 3 May but formally objected that he was not being provided with legal representation and that this violated his human rights under the Human Rights Act 1998. The claimant did appear before the tribunal on 3 May and his letter was in front of the tribunal. But the tribunal did not deal with the matter. It dealt with the substantive grounds of appeal of the claimant fully.

The right to legal representation

6 The claimant submitted lengthy grounds of appeal and supporting observations with his application for leave to appeal to the Commissioner. In reply to the usual question on the OSSC1 whether he wanted an oral hearing of the application, he stated "await legal representation under the 1999 Access to Justice Act Section II". In granting leave, I commented that the tribunal failed to deal with the applicant's demand that he be accorded his rights under the Human Rights Act 1998 as he saw

them. The tribunal should have considered the point, even if it concluded that there was no substance to it. I directed a submission from the secretary of state's representative on the point of legal representation. The submission did not support the appeal. The submission was that a Commissioner has no jurisdiction to appoint a legal representative on the basis of Article 6(1) of the European Convention on Human Rights. In civil, as against criminal, proceedings, the right to a fair hearing under the European Convention on Human Rights give no guarantee of legal assistance or representation. The secretary of state's representative, in particular, drew attention to the decision of the European Court of Human Rights in *Airey v Ireland*.

7 The European Court in *Airey* affirmed that the obligations on a state under Article 6 paragraph 1 of the Convention:

"does not therefore imply that the state must provide free legal aid for every dispute relating to a "civil right" ... To hold that so far-reaching an obligation exists would, the Court agrees, sit ill with the fact that the Convention contains no provision on legal aid for those disputes, Article 6 paragraph 3(c) dealing only with criminal proceedings. However, despite the absence of a similar clause for civil litigation, article 6 paragraph 1 may sometimes compel the state to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory ... or by reason of the complexity of the procedure or of the case."

8 I issued a direction to the claimant drawing attention to this case, and inviting a submission. I indicated that I agreed with the submission of the secretary of state's representative that I had no power to order legal representation under British law and that, following this decision, it could not be argued that the Human Rights Act 1998 and the European Convention on Human Rights gave me that power. It was not an inherent part of the right to a fair hearing in every social security case. I also indicated that if and in so far as I had power to recommend to others that legal aid be granted, or an appeal to a higher court invited, it was my view that there were no grounds for this in this case. The submission of the claimant in reply reverted mainly to the substantive issues in the appeal.

9 I confirm the view I stated provisionally in my direction, and the reasons given. The claimant has no right to legal representation under British law in a social security case, and the European Convention on Human Rights does not give him that right. I have no power under British law to grant him legal representation and the European Convention on Human Rights, again, does not give me that power. On that basis, I deal with the substantive issues in the appeal on the papers without an oral hearing.

The claim for housing costs

10 The claimant makes clear in his full submissions to the Commissioner that he has a long running dispute with the DSS (now Department for Work and Pensions) about the way in which his former home came to be repossessed and sold by those repossessing it. The repossession has understandably caused him deep concern and has clearly left him with a strong sense of injustice. There are also a number of disputed issues remaining about the proceedings that ended in the repossession. There is also an issue, in the view of the claimant, about whether he should be receiving

jobseeker's allowance or income support. But the question for the tribunal and for me is whether any of that contentious history is directly relevant to the current claim and award.

11 The papers contain a claim form dated 27 April 2000. This was backdated to 27 March 2000 on receipt. There is a separate form about housing costs also dated 27 April 2000, and a backdating form dated 12 May 2000. The decision on the claim was issued dated 16 May 2000. That set the jobseeker's allowance at £51.40 from 28 March 2000. The reason that the claimant claimed jobseeker's allowance from and including 28 March 2000 was said to be (the details are not in the papers) that his previous claim for jobseeker's allowance was stopped with effect from 27 March for non-attendance to sign on. That does not appear to have been disputed.

12 The tribunal held an oral hearing, as noted above, at which the claimant made his case for housing costs. In a lengthy statement the tribunal explained why the claimant was not entitled to housing costs from and including 28 March 2000, or any backdating. The tribunal looked in some detail at the claimant's then current housing arrangements and also at whether those arrangements incurred any costs that came within the Jobseeker's Allowance Regulations 1996. It concluded that they did not.

13 The claimant has made lengthy submissions about that decision. He has, as already noted, also set out the history to his then current housing arrangements extensively. But he has shown nothing that indicates that the tribunal failed properly to consider the evidence or the rules about housing costs in the Jobseeker's Allowance Regulations 1996.

14 While I find the tribunal to have erred in law in not dealing at all with the claim for legal representation, I see no error in the way the tribunal dealt with the substance of the appeal. I therefore adopt the tribunal's findings and reasons as my own in dismissing the claimant's appeal.

David Williams
Commissioner

24 September 2002

[Signed on the original on the date shown]