SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Starred Decision No: *17/00

(Commissioner's File No.: CSDLA/551/99)

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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

Comments on Northern Ireland Commissioners' decisions will be forwarded to the Northern Ireland Chief Commissioner.

DETERMINATION AND DECISION OF SOCIAL SECURITY COMMISSIONER

1. This is an application to a Commissioner by the claimant for leave to appeal on a question of law from the decision of a disability appeal tribunal given at Greenock on 26 January 1999.

2. Having considered the application I grant leave to appeal. Both parties to the appeal consent to me dealing with this application as a hearing on the appeal. This I do. My decision is that the decision of the disability appeal tribunal given at Greenock on 26 January 1999 is erroneous upon a point of law. I set it aside. I remit the case to a freshly constituted appeal tribunal for a rehearing.

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 a disability appeal tribunal on 26 January 1999 found that the claimant was not entitled to an award of disability living allowance. The summary of grounds given for their decision was as follows:-

> "1. Overall the evidence shows a level of physical disabilities inconsistent with her described limitations.
>
> 2. Neurologically there is no significant abnormality detected.
>
> 3. The appellant is not unable to walk or virtually unable to walk. She does not need guidance or supervision.
>
> 4. Her evidence was on occasions vague. The tribunal preferred the medical evidence.
>
> 5. She does not require frequent attention throughout the day or night. Physically she does not need this. Mentally it is not required. The tribunal felt the attention received is not required.
>
> 6. There is no physical reason for her not being able to cook herself a meal. the medical evidence is contrary to this. Her evidence of dropping things is exaggerated.
>
> 7. The appeal fails, this is a full decision."

5. It will be noted in paragraph 7 of the summary of grounds the chairman purported to state that this is a full decision.

6. Mr Oliver said that when he was handed the decision notice he did not notice what was said in paragraph 7. In these circumstances he requested a full statement of facts and reasons. That has never been forthcoming. Mr Armstrong submitted that what was provided by the tribunal was not a full statement of facts and reasons as envisaged by the Social

Security (Adjudication) Regulations 1995 which were applicable in this case. In these circumstances he submitted that the approach taken by Mr Commissioner Walker QC in paragraph 14 of CIS/4437/98 was correct. Mr Oliver did not dissent from that. I accept it.

7. Mr Armstrong however submitted that unlike the situation in CSI/591/98 and CSIB/257/99 the application made by the claimant was not incompetent. The basis for this submission are the effects of the application of regulations 3(1) and 3(2)(f) of the Social Security Commissioners (Procedure) Regulations 1999. These are in the following terms:-

> "3(1) Subject to paragraphs (2) to (3), these regulations shall apply to all proceedings before the Commissioners on or after June 1, 1999.
>
> (2) In relation to any appeal or application for leave to appeal from any social security (disability or medical) appeal tribunal constituted under part II of the Social Security Administration Act 1992 these regulations shall have effect with the modifications that -
>
> .....
>
> (f) under regulation 9, a Commissioner may (for special reasons) accept an application for leave to appeal even although the applicant has not sought to obtain leave to appeal from the chairman."

8. This is to be contrasted with the provisions of the 1987 Commissioners Procedure Regulations.

> "3(2) Where there has been a failure to apply to the chairman for leave within the specified time, an application for leave to appeal may be made to the Commissioner who may, if for special reasons he thinks fit, accept and proceed to consider and determine the application."

9. As I said in CSIB/596/99 which was one of the applications I heard along with this case:-

> "It will be noted that the alteration admits all reference to the specified time. The crucial importance of that is that in the 1987 regulations the specified time only commenced upon receipt of the full statement of facts and reasons whereas under the 1999 regulations so far as transitional cases are concerned of which this is one there are no such time restrictions. Thus I am able to consider the matter and determine whether if for special reasons I should admit the application."

I adhere to these views.

10. In accordance with these views I hold that the application is competent. It thus follows that I have to consider the question as whether to waive the irregularities caused by the failure to comply with the requirements of regulation 10(2)(b) and (c) of the 1999 Commissioners Procedure Regulations under regulation 27 of the same Regulations. Inevitably the claimant is not in a position to supply the document required under

regulation 10(2)(c) because it is accepted that leave to appeal was never sought from the tribunal. In respect of regultino 10(2)(b) I do not accept that what is contained in the summary of grounds is a full statement of facts and reasons that is not only obvious from its terms but the claimant's representative himself asked orally for a full statement at the hearing and never received one. I am thus prepared to waive it in the circumstances of this case.

11. The question then is whether I should for special reasons I should admit the application by virtue of the provisions of regulation 3(2)(f). Mr Oliver's position in respect of special reasons was that he had made an oral request for a full statement. However, when at a later stage he noticed what he had failed to notice at the time namely that the tribunal chairman had purported to make the summary of grounds a full decision. Thus he decided to make an application to the Commissioner out of time. He said he took the view that he had made a mistake. In this case there is no record of proceedings thus there is no indication as to whether the chairman noted the request for a full statement. If an oral request had been made in the circumstances the chairman could have been expected to have pointed out that the summary of grounds purported to be a full decision. Standing the terms of the summary of grounds there is an argument that the claimant's representative should have persisted in his application for a full statement and done so in writing. However in the peculiar circumstances of this case and given the sparse and brief form of the summary of grounds which purports to be a full statement but which on the face of it is wholly inadequate for such a purpose I am prepared to accept the late application.

12. Mr Armstrong fully supported the proposition that the tribunal erred in law upon the basis of the inadequate nature of such a statement of facts and reasons as were produced. That concession was properly made. The purported full decision is no more than a statement of conclusions that further did not take account of the claimant's general practitioner's evidence at page 99 which was material to the lower rate of the mobility component. Given the consent of parties to the hearing of this application being treated as a hearing on the appeal I have determined the appeal in the manner set out above.

13. This case goes before a freshly constituted tribunal. I direct the freshly constituted tribunal that a summary of grounds and a statement of reasons are to be regarded as separable and that they should under no circumstances seek to short circuit the statutory procedures. This practice of purporting to provide a full decision within the decision notice is one which is far too widespread and is inconsistent with the purpose of the statutory provisions. There is no doubt in my mind that the purpose of the statutory provisions was to alleviate chairmen of the necessity of writing full decisions in each appeal because of the numbers of appeals that tribunals require to hear each session. Purporting in a summary of grounds, which is no more than what was provided by the tribunal whose decision I have set aside, to assert that the summary is a full statment cannot be regarded as such. If attempts are made to short circuit the procedures then applications such as the present appeals are generated, with the attendant complications caused thereby by virtue of the nature of the regulations. Whereas if on a separate occasion the chairman had written up a full statement of facts and reasons in a response to a request for a full statement than a decision which was correct would be less likely to be held erroneous in law by virtue of an inadequate statement of facts and reasons as a more elaborate and considered statement of the facts and reasons would have been likely to have been produced. The attempts at short circuiting in my view demonstrate what I regard as an unacceptable approach and one which must stop.

14. The appeal succeeds.

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

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Dear Editor

Find enclosed copies of commission decisions CSDLA/551/99 and CSDLA/536/99.

In both cases, commissioner May admitted an application for leave without the full statement of reasons.

In CSDLA/551/99 the commissioner allowed the appeal and in CSDLA/536/99 he did not.

Note his comment at paragraph 13 to CSDLA/551/99.

I hope these decisions prove useful.

Yours faithfully

Lee Oliver
Welfare Rights Officer

Encs

NB
There were 2 of these heard at the same time. I represented 4 of the cases. In one case the decision was to admit the appeal and refer it to the S. of S. for his submission on the merits. In the 4th the decision was the case was incomplete because no decision has been taken by the chair refusing leave, there was no suggestion that this appeal would be entertained if re-submitted post refusal.

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