Applications Nos: A4/18-19(IS), A5/18-19(IS) and A6/18-19 (IS)

**SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998**

Application by the above-named claimant

for leave to appeal to a Social Security Commissioner

on a question of law from a Tribunals decision

dated 8 November 2017

**DETERMINATION OF THE SOCIAL SECURITY COMMISSIONER**

 **Background**

1. These applications relate to unsuccessful tribunal appeals from (i) a decision of the Department which decided that Income Support (IS) in the amount £79050.27 for the period from 14 January 2004 to 18 June 2013 had been overpaid to the late applicant and was recoverable from him (ii) an IS entitlement appeal relating to the overpayment and recoverability decision and (iii) a decision that the applicant failed to satisfy the conditions of entitlement to Housing Benefit (HB) from 12 April 2007 and, if yes, that an overpayment of HB amounting to £24353.11 had occurred for the period from 12 April 2007 to 25 January 2015 which was recoverable from the applicant.
2. The applications were listed for oral hearing on 20 April 2023.
3. On 12 April 2023 email correspondence was received from the applicant’s representative in which he stated:

‘We refer to the above matter and to your letter dated 29 March 2023.

We can confirm that sadly, (the applicant) has passed away.

We can further confirm that we do not hold any instructions in relation to the administration of (the applicant’s) estate.

We are using our best endeavours to contact (the applicant’s) personal representative to ascertain if the latter wishes to pursue this matter. We will revert to you as soon as ever possible, however, in the circumstances we would ask that the oral hearing listed on 20th April is vacated.’

1. The oral hearings of the applications were cancelled.
2. On 10 July 2023 I directed that further enquiries be made on the applicant’s representative to ascertain the then current position.
3. On 19 July 2013 email correspondence was sent to the applicant’s representative in the following terms:

‘Further to your email below dated 12 April 2023 advising us that the claimant had sadly passed away. You were trying to contact the claimant’s personal representative to see if they wished to continue with these applications.

Can you please advise whether or not you have heard anything from the claimant’s personal representative and the current situation in this case.’

1. There has been no reply to the email correspondence of 19 July 2023.

 **The principles which now apply**

1. In *R(I) 2/83* the background was that a claimant appealed to the Commissioner against the disallowance of his claim for special hardship allowance but died before his appeal could be heard. His widow was unwilling to be appointed to act in respect of the outstanding appeal and the Official Solicitor declined to become involved. The Commissioner said the following, at paragraphs 5 and 6 of his decision:

‘In Decision R(S) 7/56 where the appeal of a claimant since deceased was an appeal against a decision requiring repayment of benefit overpaid, the Commissioner dismissed the appeal without there being any representative of the deceased or his estate on an assurance by the insurance officer that no attempt would be made to enforce repayment. This was a practical solution to the problem in that the assurance made it virtually certain that no one would ever seek to have the decision dismissing the appeal set aside. No comparable assurance has been offered or indeed can readily be devised that would achieve an equivalent effect in the present case. I note that in Decision R(P) 2/62 the Commissioner left open the question whether it would be proper to dismiss an appeal in a case where there was neither a personal representative nor an appointment under the then equivalent of regulation 29. I have reached the conclusion that it is better not to dismiss such an appeal in circumstances such as the present but merely to declare it abated. In my judgment when in such circumstances an appeal is declared abated by the Commissioner (or in the case of an appeal to the local tribunal by that tribunal) the matter can for practical purposes be regarded as closed. It is true that there remains a faint possibility of its being revived; but, even if the appeal were dismissed in the absence of anyone to represent the claimant, there would remain the possibility of an application to have the dismissal set aside.

I have discussed with several other Commissioners the practice recommended in this Decision and they have authorised me to say that they agree that it is appropriate for adoption in comparable cases, that is to say in cases where the claimant is the appellant and has died since his appeal has been launched and where (1) there is no person willing to be appointed a representative under regulation 29, (2) there is no personal representative or the equivalent functionary in Scotland and (3) the case is not amenable to the procedure adopted in Decision **R(S)** 7/56. It is not appropriate where the appellant is the insurance officer and if the insurance officer is in such a case unwilling to withdraw his appeal some other procedure must be devised.’

1. The reasoning in *R(I) 2/03* has never been doubted and has been applied in other decisions of the Social Security Commissioners. In *R(SB) 25/84*, the Commissioner said the following at paragraph 3:

‘In these circumstances I have reached the conclusion that the reasons given by the Commissioner in Decision R(I) 2/83 for following the procedure adopted in that decision are equally applicable to supplementary benefit cases. It is better not to dismiss a deceased claimant’s appeal in a case where there is neither a personal representative nor an appointee under regulation 28. In circumstances such as the present it is preferable merely to declare that the appeal is abated. The matter can then for practical purposes be regarded as closed. I have discussed with several other Commissioners the practice recommended in this decision and they have authorized me to say that they agree that it is appropriate for adoption in comparable cases. It is not appropriate where the appellant is the supplementary benefit officer and if that officer is in such a case unwilling to withdraw his appeal some other procedure must be devised.’

1. In *R(IS) 6/01* the Commissioner stated the following at paragraph 41:

‘In cases where a claimant dies after making an appeal against a decision on a claim, but there is no personal representative of the estate or an appointee under regulation 30(1) of the Claims and Payments Regulations (but now see regulation 34 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999), it was settled that the appeal is a nullity (R(SB) 8/88) or, I think more properly, abates (R(I) 2/83 and R(SB) 25/84). Where there is no duly constituted person with a right of appeal at the time when the appeal is purportedly made, I think there can be no question of abatement, but it must be the case that there has never been a valid appeal in being. In R(SB) 8/88, the Commissioner, having decided that the appeal to the appeal tribunal in that case was a nullity, as there was no validly constituted party to the appeal, set the appeal tribunal’s decision aside. But there was no validly constituted party to the appeal to the Commissioner either, so that I am not at all sure that he had the statutory power to set the appeal tribunal’s decision aside.’

1. So far as I need to, I adopt and accept the reasoning and analysis of the Commissioners in each of these decisions which, in my view, properly reflect the law in Northern Ireland.

 **Appointee**

1. As far as I am aware, there is no Departmental appointee in this case.
2. In any event, an appointee is not appropriate for the following reasons.
3. Regulation 30(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, as amended, provides:

‘30. (1) On the death of a person who has made a claim for benefit, the Department may appoint such person as it may think fit to proceed with the claim and any related issue of revision, supersession or appeal.’

1. In *CIS/1423/1997*, the Social Security Commissioner was considering the equivalent of Regulation 30(1). At paragraph 21, he stated the following:

‘In my judgment, the plain words of regulation 30(1) do not allow the Secretary of State to appoint a person to represent the claimant or their estate in the context of a decision for the recoverability of an overpayment from the claimant's estate. And if they had purported to allow that, they would not have been within the powers granted by primary legislation.’

1. Regulation 34(1) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999, as amended, (‘the 1999 Regulations’), provides:

‘34. (1) In any proceedings, on the death of a party to those proceedings, the Department may appoint such person as it thinks fit to proceed with the appeal in the place of such deceased party.’

1. In regulation 1(3) of the 1999 Regulations, ‘appeal’ is defined as ‘an appeal to an appeal tribunal’.

 **Personal representative**

1. I have determined that there is no personal representative wishing to take his appeal forward.

 **Disposal**

1. In these circumstances the appropriate disposal is to declare that the applications are abated.
2. I have appended an electronic signature to this determination to facilitate its promulgation.

 

K MULLAN

CHIEF COMMISSIONER

07 November 2023