KR -v- Department for Communities (DLA) [2025] NICom16

Decision No: C2/25-26(DLA)

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

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

**DISABILITY LIVING ALLOWANCE**

Application by the claimant for leave to appeal

and appeal to a Social Security Commissioner

on a question of law from a Tribunal’s decision

dated 25 July 2024

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I give leave to appeal and allow the appeal. I direct that the Appellant’s appeal against the Department’s decision of 7 September 2023 be remitted to the Appeal Tribunal to be considered entirely afresh by a wholly differently constituted panel.

2. The fact that this appeal has succeeded on a point of law carries no implication as to the likely outcome of the Appellant’s appeal against the Department’s decision, which is a matter for the new panel.

3. By the above decision, the Department had awarded the highest rate of care component (HRCC) and the lower rate of the mobility component in respect of the Appellant, the Appointee’s daughter. Previously, she had also been awarded the higher rate of mobility component (HRMC). At the time of the decision under appeal, she was aged 12.

4. On 25 July 2024 her appeal against that decision came before the Appeal Tribunal at Ballymena. A previous tribunal had adjourned to give the option of attending in person, but it was declined. The Appointee had provided a written submission dated 8 June 2024, attaching various items of evidence. The tribunal went ahead, deciding the appeal on the papers. The appeal was dismissed.

5. The Appointee, now represented by Louise Heatherley of Law Centre NI, seeks leave to appeal to the Commissioners.

6. In the usual way, the comments of the Department were invited on the application. These were provided by Michael Killeen who by a submission dated 6 February 2025 supported the application for leave on the basis that the tribunal’s reasons were inadequate, and indicating that if leave were to be granted, his observations could be treated as observations on the appeal, under Regulation 18(1) of the Social Security Commissioners (Procedure) Regulations (Northern Ireland) 1999.

7. The key point in dispute in the case was whether the Appellant was eligible for HRMC by reason of meeting the requirements of section 73(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992. As it was common ground that she was entitled to HRCC, the remaining issues were whether she was “severely mentally impaired” and exhibited “severe behavioural problems”, as respectively explained in reg 12(5) and (6) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992/32.

8. These provide:

 (5)  A person falls within section 73(3)(a) (severely mentally impaired) if he suffers from a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning.

 (6)  A person falls within section 73(3)(b) (severe behavioural problems) if he exhibits disruptive behaviour which –

 (a)  is extreme;

 (b)  regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property; and

 (c)  is so unpredictable that he requires another person to be present and watching over him whenever he is awake.

9. As regards “severe mental impairment” (reg 12(5)), the Appeal Tribunal noted that

“It was not disputed that the Appellant has dyslexia, sensory processing disorder and ASD and therefore satisfies the first limb.”

10. Mr Killeen has confirmed in the course of these proceedings that the Department accepts that the Appellant satisfies reg 12(5) and I say no more about it.

11. As to reg 12(6), the material provided with the Appointee’s letter of 8 June 2004 included a statement of special educational needs, individual education plans prepared by schools and letters from the Appellant’s GP and other treating professionals. They spoke of such matters as a lack of awareness of danger, self-harming and a tendency to eat non-edible substances, which could reasonably be viewed as behavioural problems. Whether they would enable a person to meet the reg 12(6) test would depend on the evidence.

12. The Reasons for the Appeal Tribunal’s decision recorded that the letter of 8 June had been considered. It did not discuss any of the attachments individually, but proceeded straight to a conclusion that “the Appellant has some behavioural issues, but the tribunal was not satisfied that there were significant behavioural problems present for most or all of the time, or that they would be so severe that they could be considered to satisfy the third limb of the test” and it then went on to set out verbatim the reg 12(6) test.

13. In proceeding straight from recording in general terms the evidence before the tribunal to a conclusion, the reasons explain that the appeal was unsuccessful, but not why it was unsuccessful. The reasons did not meet the legal standard of adequacy. As was said by the Chief Commissioner in Great Britain in R(A) 1/72:

“The obligation to give reasons for the decision in [a case involving a conflict of evidence] imports a requirement to do more than only to state the conclusion, and for the determining authority to state that on the evidence the authority is not satisfied that the statutory conditions are met, does no more than this. It affords no guide to the selective process by which the evidence has been accepted, rejected, weighed or considered, or the reasons for any of these things. It is not, of course, obligatory thus to deal with every piece of evidence or to over elaborate, but in an administrative quasi-judicial decision the minimum requirement must at least be that the claimant, looking at the decision should be able to discern on the face of it the reasons why the evidence has failed to satisfy the authority. For the purpose of the regulation which requires the reasons for the review decision to be set out, a decision based, and only based, on a conclusion that the total effect of the evidence fails to satisfy, without reasons given for reaching that conclusion, will in many cases be no adequate decision at all.”

14. For the reason I have given, I therefore give leave to appeal and allow the appeal, setting the decision of the Appeal Tribunal aside.

15. This is not a case in which I consider it expedient to remake the decision myself. Further findings of fact are required and, they will best be made by a panel of the Appeal Tribunal, which will contain a Medically Qualified Panel Member and a Disability Qualified Panel Member.



(Signed): C G WARD

DEPUTY COMMISSIONER (NI)

28 July 2025