

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

HOUSING BENEFIT

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 5 October 2016

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I grant leave to appeal and proceed to determine all questions arising thereon as though they arose on appeal.
2. The decision of the appeal tribunal dated 5 October 2016 is in error of law. The error of law will be explained in more detail below. Pursuant to the powers conferred on me by Section 59 and Paragraph 8(4) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, as amended, (the 2000 Act) I set aside the decision appealed against.
3. I am remitting the case to Land and Property Services (LPS) to undertake remedial decision-making in connection with the appellant's former claim to Housing Benefit (HB). It will be for LPS to determine whether they now have the requisite evidence and/or information necessary to undertake such remedial decision-making or whether further such evidence/information is required from the appellant. The appellant may, in any event, think it appropriate to further such additional evidence/information which she feels is relevant to LPS including the evidence which she made available at the oral hearing before me. The appellant should note that the fact that the case is being remitted to LPS for further decision-making does necessarily mean that any further decision will be favourable to her. Any further decision will, of course, carry a further right of appeal to an appeal tribunal.

Background

4. In the Case Summary prepared for the oral hearing of the appeal, Ms O'Connor, for Decision Making Services (DMS), set out the following background to the appeal proceedings:

'(The appellant) had been claiming Housing Benefit (HB) from 06/09/10. She was also in receipt of Tax Credits and Incapacity Benefit. On 14/08/13 the Inland Revenue advised Land and Property Services (LPS) that (the appellant's) Tax Credits had ceased on 13/08/13 because she had started work.

On 23/07/14, some 11 months later (the delay was apparently due to "*a huge backlog of work*"), two letters were issued to (the appellant) by LPS requesting evidence of her income and capital and details about the circumstances of the non- dependants in her household.

On 26/09/14, when no reply was received, a reminder was issued to (the appellant). The letter advised her that her award of HB had been suspended as she had not responded to the previous request for information. The letter further advised that her award would be terminated if she did not respond within a month of the letter being issued. On 21/11/14 (the appellant's) entitlement to HB was terminated as LPS had not received the requested information.

It was not until 01/12/15, 12 months later, that (the appellant) sent in further correspondence following on from a court summons she had received in connection with an amount of rates outstanding on her account. The letter detailed extenuating circumstances for (the appellant) not having provided the information that had been requested within the time scales.

LPS treated this letter as a request for a reconsideration of the decision to terminate (the appellant's) HB award. On 09/02/16 a letter was sent to (the appellant) re-requesting the information originally requested, the non- receipt of which had resulted in the termination of her HB award. On 04/03/16 (the appellant) sent a response via e-mail containing some of the requested information: her bank statements had apparently failed to transmit, a fact of which she was advised.

On 08/03/16 a reconsideration was carried out but the original decision remained unchanged as ultimately (the appellant) had failed to make representation within one

month of the decision dated 21/11/14. (The appellant) was notified of this, given new appeal rights and was also advised to make a new application to HB.

On 19/04/16 a Housing Benefit appeal form was received from (the appellant) appealing against the decision notified to her on 08/03/16. Her grounds for appealing were that the letter she sent on 23/11/15, but not received by the Department until 01/12/15, was within the absolute time limit of 13 months of the original decision dated 21/11/14 being notified and the extenuating details contained therein appeared not to have been taken into account in the decision making process.

On 11/05/16 a letter was issued to (the appellant) advising her that her appeal letter was outside the 13 month absolute time limit because the last decision made on her HB award had been made on 21/11/14. The Department had apparently overlooked the “no change” reconsideration that had been done on 08/03/16. The correspondence was sent to The Appeals Service who determined that the appeal was indeed valid and could be accepted.’

5. I return below to the decision-making process in LPS.
6. The appeal tribunal hearing took place on 5 October 2016. The appellant was present and was represented by a local councillor. The appeal tribunal disallowed the appeal and issued a Decision Notice to the following effect:

‘(The appellant) is not entitled to Housing Benefit from 21 November 2014.

She failed to provide information required to process her claim.’

7. To an extent, therefore, the appeal tribunal was endorsing what was described by Ms O’Connor above as the ‘termination’ decision of 21 November 2014.
8. On 20 February 2017 an application for leave to appeal to the Social Security Commissioner was received in the Appeals Service (TAS). On 21 March 2017 the application for leave to appeal was refused by the Legally Qualified Panel Member (LQPM).

Proceedings before the Social Security Commissioner

9. On 24 April 2017 a further application for leave to appeal was received in the Office of the Social Security Commissioners. On 16 May 2017 observations on the application for leave to appeal were requested from

DMS. In written observations dated 15 June 2017, Ms O'Connor, for DMS, opposed the application for leave to appeal on the grounds advanced by the appellant. Written observations were shared with the appellant on 19 June 2017.

10. Following a direction for an oral hearing there then followed a delay in the listing of the appeal to facilitate the appellant's attempts to obtain representation. The oral hearing took place on 2 August 2018. The appellant was present. The Department was represented by Ms O'Connor. I am grateful to both for their submissions and observations.

Errors of law

11. A decision of an appeal tribunal may only be set aside by a Social Security Commissioner on the basis that it is in error of law. What is an error of law?
12. In *R(I)2/06* and *CSDLA/500/2007*, Tribunals of Commissioners in Great Britain have referred to the judgment of the Court of Appeal for England and Wales in *R(Iran) v Secretary of State for the Home Department* ([2005] EWCA Civ 982), outlining examples of commonly encountered errors of law in terms that can apply equally to appellate legal tribunals. As set out at paragraph 30 of *R(I) 2/06* these are:

“(i) making perverse or irrational findings on a matter or matters that were material to the outcome (‘material matters’);

(ii) failing to give reasons or any adequate reasons for findings on material matters;

(iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters;

(iv) giving weight to immaterial matters;

(v) making a material misdirection of law on any material matter;

(vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of proceedings; ...

Each of these grounds for detecting any error of law contains the word ‘material’ (or ‘immaterial’). Errors of law of which it can be said that they would have made no difference to the outcome do not matter.”

Analysis

13. There are aspects of the initial decision-making process in LPS which give me cause for concern and it is the endorsement of that problematic decision-making process by the appeal tribunal which, in my view, renders

its decision as being in error of law. I accept that the appellant could have been more proactive at an earlier stage in responding to requests for information relevant to her entitlement to HB but, as against that, there were parallel delays on the part of LPS, in addition to the somewhat perplexing decision-making process.

14. I return to the chronology set out by Ms O'Connor in her carefully prepared Case Summary. It is clear that LPS were provided by information from Her Majesty's Revenue and Customs that the appellant's matching entitlement to Tax Credits had ceased on 13 August 2013. It is axiomatic that this development had the potential to impact on the appellant's extant entitlement to HB. Despite that, nothing was done by LPS for a further eleven months. Ms O'Connor's researches as to the cause of the delay have elicited the reason for it as a 'huge' backlog in work within LPS. Nonetheless, a deferral of action of that magnitude was not at all helpful.
15. The action instigated by LPS was to forward correspondence to the appellant. Included in the appeal submission which was prepared for the appeal tribunal hearing is a copy of correspondence dated 23 July 2014 from LPS to the appellant seeking various types of information and requesting that it be returned to LPS within a ten day period. The requested information included (i) the appellant's most recent pay slips and, if such were not available a statement confirming same such that the information could be obtained from her employer (ii) a copy of the appellant's most recent detailed and certified annual accounts of self-employment and, again, if same were not available a statement to that effect and (iii) the most recent statements for each 'account' held by her and showing transactions covering the previous two months. By 'account' the requester meant monetary accounts such as a bank or building society account.
16. I pause here to observe that the LPS had the right, in law, to make this request. That is because regulation 82(1) of the Housing Benefit Regulations (Northern Ireland) 2006 ('the 2006 Regulations') provides:

'A person who makes a claim, or a person to whom housing benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person's entitlement to, or continuing entitlement to, housing benefit and shall do so within one month of being required to do so or such longer period as the relevant authority may consider reasonable.'
17. It is clear that the correspondence of 23 July 2014 was sent pursuant to the regulation 82(1) power.

18. There is no evidence that the appellant responded to the correspondence of 23 July 2014. Accordingly, on 26 September 2014 LPS forwarded further correspondence to the appellant making reference to the correspondence of 23 July 2014 and the failure to respond. In addition, the correspondence of 26 September 2014 added the following:

‘Unfortunately as yet we have not received the required information and as a result have had to suspend your entitlement to Housing Benefit/Rate Relief (under Regulation 13 of the Housing Benefit (Decisions and Appeals Regulations (Northern Ireland 2001)).

If you can supply the requested information within **one month** of issue of this letter your claim for rates Housing Benefit/Rate Relief will be restarted immediately. However, failure to supply this information will result in the termination of your benefit.’

19. Regulation 13 of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland 2001 (‘the 2001 Regulations’) provides that:

‘13(1) The relevant authority may suspend in whole or in part any payment of housing benefit in relation to persons who fail to comply with the information requirements (as defined in paragraph 14 of Schedule 7 to the Act) as provided for in regulations made pursuant to section 5(1)(hh) of the Administration Act (person required to satisfy the information provisions).

(2) For the purposes of section 5(1)(hh) of the Administration Act in so far as it applies to housing benefit the prescribed persons are—

(a) a person in respect of whom payment of benefit has been suspended under regulation 11(2)(a);

(b) a person who has made an application for a decision of the relevant authority to be revised or superseded;

(c) a person in respect of whom a question has arisen in connection with his award of benefit and who fails to comply with the requirement in regulation 82 of the Housing Benefit Regulations or, as the case may be, regulation 63 of the Housing Benefit (State Pension Credit) Regulations to furnish information or evidence needed for a determination whether a decision on an award should be revised under paragraph 3 or superseded under paragraph 4 of Schedule 7 to the Act.

(3) The relevant authority shall notify any person to whom paragraph (2) refers of the requirements of this regulation.

(4) A person to whom paragraph (2) refers must—

(a) furnish the information or evidence needed within a period of—

(i) one month beginning with the date on which the notification under paragraph (3) was sent to him, or

(ii) such longer period as the relevant authority considers necessary in order to enable him to comply with the requirement, or

(b) satisfy the relevant authority within the period provided for in paragraph (4)(a) that—

(i) the information or evidence so required does not exist, or

(ii) it is not possible for him to obtain the information or evidence so required.

(5) Where a person satisfies the requirements in paragraph (4), the relevant authority shall, so far as practicable, make, or as the case may be, restore the payment within 14 days of the decision to make or restore that payment.'

20. I pause here to observe that regulation 13 of the 2001 Regulations cannot be read in isolation but must be read in the context of Part III of the 2001 Regulations as a whole.
21. The correspondence of 26 September 2014 from LPS to the appellant is reasonably compliant with the requirements of regulation 13 of the 2001 Regulations. The appellant had, by 26 September 2014, failed to comply with the requirements of regulation 82(1) of the 2006 regulations, and, as a consequence, fell within regulation 13(2)(c). The appellant was informed of the requirement to provide the required information within one month (regulation 13(2) and (4)(a)(i) and is informed, although not in such specific terms, that the provision of the information within that time period will result in the restoration of her entitlement to benefit).
22. It is clear, once again, that the appellant did not respond. Accordingly, LPS moved to terminate her entitlement to HB/Rate Relief. In the submission which was prepared for the appeal tribunal hearing, and in the

chronology prepared by Ms O'Connor, that the termination 'decision' was made on 21 November 2014 and that the appellant was notified of that decision on the same date.

23. Included in the appeal submission which was prepared for the appeal tribunal hearing is a copy of undated correspondence which states the following:

'We have been notified that your circumstance. Your rates Housing benefit and rate relief claim has been terminated because you did not return information that we asked for. Please find details of our decision below.

Summary of Your Award

The table below shows the amount of Housing Benefit and/or Rate Relief you are entitled to for the indicated and the amount of rates, if any, you still have to pay. All amounts are per week.

... have changed the information

We regret to inform you that you are not entitled to Housing Benefit from 24/11/2014.

We regret to inform you that you are not entitled to Rate Relief from 24/11/2014.'

24. Attached to the correspondence was a series of pages providing details of benefit entitlement.
25. I observe that the contents of this correspondence are not of sufficient standard to outline to a claimant such as the appellant the reasons why her entitlement to HB/Rate Relief had been terminated. What was of better quality was correspondence dated 21 November 2014 sent to the appellant. It stated:

'We contacted you on 26/09/14 informing you of the suspension of your rates Housing Benefit/Rate Relief claim.

We have not received the required information and as a result have terminated your claim for rates Housing Benefit/Rate Relief from 23/11/2014 under *Regulation 14 of the Housing Benefit (Decisions and Appeals Regulations (Northern Ireland 2001)*.

You are now responsible for all of the rates on this property from 24/11/2014. If you think this decision is wrong you have the right to appeal.'

26. The correspondence of 21 November 2014 then provided additional details as to how an appeal might be brought and the time limits involved.

27. Regulation 14(1) of the 2001 Regulations provides as follows:

'14 (1) A person in respect of whom payment of benefit has been suspended—

(a) under regulation 11 and who subsequently fails to comply with an information requirement, or

(b) under regulation 13 for failing to comply with such a requirement,

shall cease to be entitled to the benefit from the date on which the payments were so suspended, or such earlier date on which entitlement to benefit ceases.'

28. As with regulation 13, regulation 14 cannot be read in isolation but must be read in the context of Part III of the 2001 Regulations as a whole.

29. I note that although reference was made to the Part III requirements in the two items of correspondence which were sent to the appellant, there was no reference in the appeal submission to the Part III power to suspend and terminate and that regulation 14 was the legal basis for the termination decision. In the appeal submission there was a reference to regulation 82 of the 2006 Regulations as the source of the duty to provide information. It is the case, however, that regulation 82 of the 2006 Regulations does not provide the power to suspend or terminate. The suspension/termination powers are to be found in Part III of the 2001 Regulations. It is probably because the appeal submission concentrated on regulation 82 that this was endorsed by the appeal tribunal. It is the case that the statement of reasons for the appeal tribunal's decision makes no reference to Part III as the legal basis for the termination decision and the earlier building-block suspension decision. None of that was, however, in itself, fatal to the decision-making process.

30. There was no further contact from the appellant until LPS received correspondence dated 25 November 2015 from her on 1 December 2015. As was noted by Ms O'Connor, what prompted the appellant to forward this correspondence was receipt by her of a court summons in connection with an amount of rates outstanding on her account. In the correspondence of 25 November 2015, the appellant did not specify that

she wished to appeal against the termination decision of 21 November 2014 but did indicate that she wished LPS to 'review these proceedings.'

31. In her chronology, Ms O'Connor has submitted that LPS treated the correspondence of 25 November 2015 as a request for a reconsideration of the decision to terminate the appellant's HB award. Further, on 9 February 2016 correspondence was sent to the appellant asking again for the information which had originally been requested and the non- receipt of which had resulted in the termination of her HB award.
32. A copy of the correspondence dated 9 February 2016 was included in the original appeal submission. The correspondence makes reference to the requester needing the relevant information in connection with the appellant's 'appeal' but nothing necessarily turns on that. On 4 March 2016 e-mail correspondence was received in LPS from the appellant in which she indicates and summarises bank statements and accounts which she submits she has attached to the e-mail.
33. The response from LPS was to treat the e-mail correspondence of 4 March 2016 as an application for a reconsideration of the termination decision of 21 November 2014. That this was the chosen form of action is evidenced by (i) the making of a determination by a decision maker on 8 March 2016 that there could be no change to the termination decision of 21 November 2014 (ii) the notification of the 'reconsideration/no change' decision to the appellant by way of correspondence dated 8 March 2016 and (iii) the forwarding of e-mail correspondence to the appellant also on 8 March 2016.
34. Copies of all three documents were attached to the original appeal submission. The contents of the correspondence dated 8 March 2016 to the appellant and the e-mail correspondence of the same date are instructive. In the correspondence the appellant was advised as follows:

'We have looked again at our decision

You asked us to look again at the Housing Benefit decision issued to you on 21/11/2014.

We have looked again at the facts and evidence we used to make our decision and look at the points you have raised. However, we have not changed our original decision for the following reasons.

You failed to make any representation regarding your claim until letter received 01/12/2015.

If you think this decision is wrong you have the right to appeal. **If you have already made your appeal then you do not need to take any further action.'**

35. The correspondence gave further details as to how an appeal might be brought and the time limits involved.
36. In the e-mail correspondence of 8 March 2016, the appellant was advised as follows:

'I have looked at your claim and your request for reconsideration of termination.

Your claim was terminated on 21/11/14 and a letter was issued to you but you made no contact or provided any information until letter received from you on 1/12/2015. For this reason your claim remains terminated. You will need to complete a new claim form which has been issued today. The bank statements you provided have not come through on email so can you enclose these with you claim form. We will require two recent consecutive bank statements for each account you hold and details of any other income.'

37. For the sake of completion, an appeal form was received in LPS on 19 April 2016. For a while there was some confusion as to whether the appeal had been received within the prescribed time limits for making an appeal but, as was observed by Ms O'Connor in her chronology, LPS had not considered that the appeal was against the 'reconsideration/no change' decision of 8 March 2016. The appeal was eventually accepted as being within the prescribed time limits by the appeal tribunal.
38. It has to be noted that the 'reconsideration/no change' decision of 8 March 2016 is a revision made under section 59 of and Schedule 7 to the 2000 Act and regulation 4 of the 2001 Regulations. LPS have either accepted the correspondence of 4 March 2016 as an application for an 'any grounds' revision and extended the time limits for the making of such an application, as permitted under regulation 5 of the 2001 Regulations or an 'any time' revision.
39. No matter which form of revision was being contemplated by the decision maker in LPS once it had been accepted that a decision on a revision was required the decision-making process had to be rigorous. In my view, in this instance, it was not. It was not sufficient for the decision maker to abandon the evidence which the appellant was endeavouring to forward to LPS on the basis that the attachments to the e-mail could not be accessed or downloaded. It would have been undemanding for the decision maker to inform the appellant that the evidence could not be opened or read and for the evidence to be re-submitted in another format. It is clear that the appellant would have had no difficulty in producing paper

copies of her bank statements as she did produce these at the oral hearing before me. In addition, the reasons offered for the refusal to reconsider the termination decision of 21 November 2014 – namely that the request to look again at that decision was received some considerable time after the decision had been made – is not persuasive or compelling. The decision-making process undertaken on 8 March 2016 was not sufficiently thorough.

40. Moving on to the decision-making at the appeal tribunal stage, as was noted above the appeal tribunal concentrated on regulation 82 of the 2006 Regulations and the statement of reasons for the appeal tribunal's decision makes no reference to Part III as the legal basis for the termination decision and the earlier building-block suspension decision. That was probably because the appeal submission was prepared in terms of regulation 82. The appeal tribunal did not undertake any analysis of the validity of the 'reconsideration/no change' decision of 8 March 2016. In my opinion, the appeal tribunal's inquisitorial role obliged it to undertake such scrutiny. The failure of the appeal tribunal to do so renders its decision as being in error of law.

(signed): K Mullan

Chief Commissioner

11 October 2018