

RE: C R (A CHILD)

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

DISABILITY LIVING ALLOWANCE

Appeal to a Social Security Commissioner
on a question of law from a Tribunal's decision
dated 6 July 2022

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. Both parties have expressed the view that the decision appealed against was erroneous in point of law.
2. Accordingly, pursuant to the powers conferred on me by Article 15(7) of the Social Security (Northern Ireland) Order 1998, I allow the appeal, I set aside the decision appealed against and I refer the case to a differently constituted tribunal for determination.
3. It is imperative that the appellant notes that while the decision of the appeal tribunal has been set aside, the issue of her son's entitlement to Disability Living Allowance (DLA) remains to be determined by another appeal tribunal.
4. I direct that the parties to the proceedings and the newly constituted appeal tribunal take into account the following:
 - (i) the decision under appeal is a decision of the Department, dated 14 January 2021, which decided that the appellant's son was not entitled to DLA from and including 9 March 2021;
 - (ii) the Department is directed to provide details of any subsequent claims to DLA and the outcome of any such claims to the appeal tribunal to which the appeal is being referred. The appeal tribunal is directed to take any evidence of subsequent claims to DLA into account in line with the principles set out in *C20/04-05(DLA)*;

- (iii) it will be for both parties to the proceedings to make submissions, and adduce evidence in support of those submissions, on all of the issues relevant to the appeal; and
- (iv) it will be for the appeal tribunal to consider the submissions made by the parties to the proceedings on these issues, and any evidence adduced in support of them, and then to make its determination, in light of all that is before it.

Background

5. On 14 January 2021 a decision maker of the Department decided that the appellant was not entitled to DLA from and including 9 March 2021. Following a request to that effect, and the receipt of additional information, the decision dated 14 January 2021 was reconsidered on 31 March 2021 but was not changed. An appeal against the decision dated 14 January 2021 was received in the Department on 30 April 2021.
6. The appeal tribunal hearing took place on 6 July 2022. The appellant, as appointee for her son was present. There was no Departmental Presenting Officer present. The appeal tribunal allowed the appeal in part, making an award of entitlement to the lowest rate of the care component of DLA for the fixed period from 9 March 2021 to 9 September 2024 but disallowing entitlement to the mobility component of DLA.
7. On 12 October 2022 an application for leave to appeal to the Social Security Commissioner was received in the Appeals Service (TAS). The appellant was represented in this application by an officer in RNIB. On 1 November 2022 the application for leave to appeal was granted by the Legally Qualified Panel Member (LQPM). In granting leave to appeal, the LQPM identified the following point of law:

‘Have the tribunal made sufficient findings of fact in relation to the appellant’s visual acuity, visual field loss and spatial awareness and the impact of lighting and conditions on his vision.’

Proceedings before the Social Security Commissioners

8. On 16 December 2022 the appeal was received in the Office of the Social Security Commissioners. On 3 January 2023 observations on the appeal were requested from Decision Making Services (DMS). In written observations on the appeal dated 13 January 2023, Mr Clements, for DMS, supported the appeal on the grounds which had been advanced on behalf of the appellant.
9. The written observations were shared with the appellant and her representative on 16 January 2023.

Errors of law

10. 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?
11. 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.”

Disposal

12. The most expeditious method of disposal of this appeal is by the application of Article 15(7) of the Social Security (Northern Ireland) Order 1998. In doing so, I am grateful to the appellant’s representative, Ms Conolly and Mr Clements for their thorough analysis of the issues arising in the appeal.

(signed): K Mullan

Chief Commissioner

(dated)