8 July 2015

PRESS SUMMARY

Cameron Mathieson, a deceased child (by his father Craig Mathieson) (Appellant) v Secretary of State for Work and Pensions (Respondent) [2015] UKSC 47
On appeal from [2014] EWCA Civ 286

JUSTICES: Lady Hale (Deputy President), Lord Mance, Lord Clarke, Lord Wilson, Lord Reed

BACKGROUND TO THE APPEALS

Cameron Mathieson was born on 19 June 2007 and sadly passed away on 12 October 2012. He was diagnosed with cystic fibrosis and Duchenne muscular dystrophy soon after he was born, and his parents went to great lengths to meet his exceptional and complex care needs during his short life **[3]**. They received, on his behalf, the state benefit known as Disability Living Allowance ("DLA"). Cameron's disabilities were so severe that he was entitled to the highest rates of the "care component" and the higher rate of the "mobility component" of DLA **[8-10]**.

On 4 July 2010 Cameron was admitted to Alder Hey Hospital in Liverpool for symptoms of chronic bowel obstruction. He remained there as an inpatient until 4 August 2011 **[4]**. During his stay one or other of his parents was present in the hospital at all times. They remained his primary caregivers, including administering twice daily physiotherapy, giving nebulised antibiotics, feeding him via a nasogastric tube, and changing his stoma bag up to eight times a day **[5]**. The additional costs incurred by the family over the duration of Cameron's hospital admission, including the costs of travel from their home in Warrington, amounted to around £8,000 **[6]**.

Regulations 8(1), 10, 12A and 12B of the Social Security (Disability Living Allowance) Regulations 1991 ("the 1991 Regulations") together provide that a child under 16 will cease to receive DLA after the 84th day of his or her admission as an inpatient in an NHS hospital **[12]**. In the case of a person aged 16 or over, DLA is withdrawn after the 28th day. On 3 November 2010 the Secretary of State decided that Cameron's DLA should be suspended effective from 6 October 2010 on grounds that he had been an inpatient at Alder Hey for more than 84 days **[13]**. The Mathieson family continued to receive other state benefits including child benefit, child tax credit, and income support **[15]**. However, the suspension of DLA from October 2010 to August 2011 amounted to a loss of about £7,000 **[14]**.

Cameron challenged the Secretary of State's decision in the First-tier Tribunal (Social Security and Child Support), which dismissed his appeal on 10 January 2012. After Cameron died, his father continued the proceedings in his stead **[2]**.The Upper Tribunal (Administrative Appeals Chamber) dismissed Mr Mathieson's further appeal on 15 January 2013, as did the Court of Appeal on 5 February 2014.

JUDGMENT

The Supreme Court unanimously allows the appeal, sets aside the Secretary of State's decision and substitutes the decision that Cameron Mathieson was entitled to continued payment of DLA with effect from 6 October 2010 **[48]**. Lord Wilson (with whom Lady Hale, Lord Clarke and Lord Reed agree) gives the leading judgment. Lord Mance (with whom Lord Clarke and Lord Reed agree) gives a concurring judgment.

REASONS FOR THE JUDGMENT

Cameron's father, Mr Mathieson, in taking forward the appeal contended that the 84 day rule breached Article 14 of the European Convention on Human Rights ("ECHR"), which provides: *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status"* **[16]**. It was conceded by the Secretary of State that the provision of DLA falls within the scope of Article 1 of Protocol 1 ECHR, which protects the peaceful enjoyment of possessions **[18]**. Therefore, the government is obliged to administer DLA without discrimination on any of the identified grounds **[17]**. The ground relied upon by Mr Mathieson was *"other status",* namely that of being a severely disabled child in need of lengthy inpatient hospital treatment **[19]**. Lord Wilson concludes that such status falls within the grounds of discrimination prohibited by Article 14: disability has been found to be a prohibited ground, and discrimination between disabled persons with different needs equally engages Article 14 **[23]**. Lord Mance, in his concurring judgment, prefers to formulate the relevant status as being that of a child in an NHS hospital for over 84 days, rather than a private hospital **[60]**.

Lord Wilson goes on to consider whether the difference in treatment in withdrawing DLA from children in hospital for longer than 84 days was justified, or whether it amounted to unlawful discrimination. A difference in treatment on a prohibited ground will be justified if it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised **[24]**. In the area of welfare benefits, a court will not interfere with the government's approach unless the rule applied is manifestly without reasonable foundation **[26]**. Neither will a bright-line rule be invalidated because hard cases fall on the wrong side of it, provided that the rule is beneficial overall **[27]**.

In this case, the government's aim in imposing the 84 day rule was to avoid overlapping provision to meet disability-related needs **[28]**. However, the court was presented with evidence showing that the disability-related needs of children in hospital are far from being entirely met by the NHS. Since the 1980s, parental participation in the care of a child in hospital has been increasingly encouraged and ultimately become the norm **[30]**. An online survey of families with disabled children showed that almost all carers provide the same or a greater level of care when their child is in hospital rather than at home, and bear increased costs **[33]**. The Citizens Advice Bureau confirmed that parents are positively required to take an active part in their child's medical management in hospital, and that financial difficulties arise due to expenditure on travel, meals and childcare for siblings, together with loss of parental earnings **[35]**. This evidence (to which the Secretary of State did not adduce any material in response) demonstrated that the Mathiesons' situation was not a "hard case"; rather, the personal and financial demands made on the substantial majority of parents with disabled children in hospital are at least no less than when they care for them at home **[36]**. Therefore, state provision for disabled children in hospital is not overlapping to an extent which justifies the suspension of DLA after the 84th day. This conclusion is in harmony with the rights afforded to Cameron under international law by the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities **[44]**.

Although Mr Mathieson invites the court to disapply the provisions for the suspension of DLA under the 1991 Regulations in the case of children, the court declines to do so, leaving it to the Secretary of State to decide what measures should be taken to avoid the violation of the rights of disabled children such as Cameron following their 84th day in hospital **[49]**.

References in square brackets are to paragraphs in the judgment