

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

JOBSEEKER'S 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 19 May 2021

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal with reference BE/246/20/73/L.
2. An oral hearing of the application has not been requested.
3. For the reasons I give below, I grant leave to appeal. I allow the appeal and set aside the decision of the appeal tribunal. I direct that the appeal shall be determined by a newly constituted tribunal and that the parties shall have regard to the directions and recommendations set out below.

REASONS

Background

4. This appeal addresses the standard of evidence necessary to ground a finding that a person has been residing at a particular address as a non-dependant.
5. The appellant claimed jobseeker's allowance (JSA) from the Department for Communities (the Department) from 16 April 2015. He was living with his father, who was in receipt of the standard care rate of personal independence payment (PIP). The appellant was then himself awarded the standard care rate of PIP. Following a supersession, he was awarded an increase of JSA to add the severe disability premium to his entitlement from 15 December 2018. The Department subsequently became aware that a non-dependant (the appellant's brother) had claimed employment

and support allowance (ESA) from the same address as the appellant and his father. On 28 November 2019 the Department decided on the basis of all the evidence that the appellant did not satisfy the conditions of entitlement to the severe disability premium element of JSA from and including 26 January 2019. A mandatory reconsideration was carried out but the decision was not revised. The appellant appealed. However, he waived the right to an oral hearing of the appeal.

6. The appeal was considered on the papers by a tribunal consisting of a legally qualified member (LQM) sitting alone. On 19 May 2021 the tribunal disallowed the appeal. The appellant then requested a statement of reasons for the tribunal's decision and this was issued on 15 September 2021. The appellant applied to the LQM for leave to appeal from the decision of the appeal tribunal but leave to appeal was refused by a determination issued on 23 November 2021. On 8 December 2021 the appellant applied to a Social Security Commissioner for leave to appeal.

Grounds

7. The appellant submits that the tribunal has erred in law on the basis that:
 - (i) it made insufficient findings of fact;
 - (ii) it gave insufficient reasons for its decision;
 - (iii) it made perverse and unfair findings relating to whether the non-dependant actually resided at the same address as the appellant.
8. The Department was invited to make observations on the appellant's grounds. Mr Barker of Decision Making Services (DMS) responded on behalf of the Department. Mr Barker submitted that the tribunal had not erred in law as alleged and indicated that the Department did not support the application on the appellant's grounds. However, he did accept that it may arguably have erred in law on other grounds. In particular, on the basis of evidence now available, he submits that the Department might well have reached a different conclusion.

The tribunal's decision

9. The LQM has prepared a statement of reasons for the tribunal's decision. From this I can see that the tribunal had documentary material before it consisting of a Departmental supplementary response containing a letter from the appellant's father dated 12 December 2019, a psychological therapist's letter relating to the appellant, his JSA claim form dated April 2015, Departmental computer screen prints, a JSA decision notice of 15 May 2019, a decision awarding severe disability premium from 15 December 2018, a report that a non-dependant was claiming employment and support allowance (ESA) from the family address in Lisburn dated 11 November 2019, a change of address notification by the non-dependant dated 11 March 2019 indicating that he was using that address from 31

January 2019, a revised JSA decision from 28 November 2019 reducing entitlement, a reconsideration request, bank statements of the non-dependant, the Coroner's certificate of death relating to the non-dependant, and an original Departmental submission, containing the appeal form, various decision notices and miscellaneous evidence. As the appellant had waived his right to an oral hearing there was no oral evidence.

10. The tribunal addressed the documentary evidence. It found on the basis of the bank statement evidence and the Departmental change of address notification evidence that, on the balance of probabilities, the non-dependant was living at the same address as the appellant from 31 January 2019. It acknowledged the written statement of the appellant's father that the non-dependant only stayed a short time at the address in or around September 2019 and thereafter for a couple of days at a time. It found that this evidence was insufficient to detract from the findings based on documentary evidence and found against the appellant.

Relevant legislation

11. By regulation 83 of the Jobseeker's Allowance (NI) Regulations 1996, a claimant's weekly applicable amount shall include the amount of any premiums which may be applicable to him, determined in accordance with Parts III and IV of Schedule 1.
12. By Schedule 1, paragraph 15, provision is made for a severe disability premium. The key conditions of entitlement for a single claimant set out in the paragraph (1) are that:
 - (a) he is in receipt of armed forces independence payment, attendance allowance, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Benefits Act or the daily living component of personal independence payment at the standard or enhanced rate in accordance with Article 83(3) of the 2015 Order;
 - (b) subject to sub-paragraph (4), there are no non-dependants aged 18 or over normally residing with him or with whom he is normally residing, and
 - (c) no person is entitled to, and in receipt of, a carer's allowance under section 70 of the Benefits Act or has an award of universal credit which includes the carer element in respect of caring for him.
13. By paragraph (4), certain people are excepted from the category of non-dependants, namely:
 - (a) a person in receipt of armed forces independence payment, attendance allowance, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Benefits

Act or the daily living component of personal independence payment at the standard or enhanced rate in accordance with Article 83(3) of the 2015 Order; and

(b) subject to sub-paragraph (6), a person who joins the claimant's household for the first time in order to care for the claimant or his partner and immediately before so joining the claimant or his partner satisfied the condition in sub-paragraph (1) or, as the case may be, (2), or (c) a person who is severely sight impaired or blind or treated as severely sight impaired or blind within the meaning of paragraph 14(1)(h) and (2).

Assessment

14. An appeal lies to a Commissioner from any decision of an appeal tribunal on the ground that the decision of the tribunal was erroneous in point of law. However, the party who wishes to bring an appeal must first obtain leave to appeal.
15. Leave to appeal is a filter mechanism. It ensures that only appellants who establish an arguable case that the appeal tribunal has erred in law can appeal to the Commissioner.
16. An error of law might be that the appeal tribunal has misinterpreted the law and wrongly applied the law to the facts of the individual case, or that the appeal tribunal has acted in a way which is procedurally unfair, or that the appeal tribunal has made a decision on all the evidence which no reasonable appeal tribunal could reach.
17. There is no dispute in this case about the interpretation of the law. The law provides that the appellant will not be entitled to receive a severe disability premium if a non-dependant aged 18 or over normally resides with him. Certain other people who receive PIP, attendance allowance or disability living allowance are excepted from the category of non-dependant. The appellant received PIP on the basis of autistic spectrum disorder and anxiety and was assisted in this appeal by his father due to this disability. While not formally the appellant's appointee, his father resides at the relevant address and is a relevant witness in the proceedings. The appellant's father receives PIP himself and therefore falls within the excepted category. The issue of fact that was before the tribunal is whether the non-dependant was residing at the family home at the relevant dates.
18. It is not in dispute that the non-dependant reported a change of address for ESA purposes on 11 March 2019, stating that from 31 January 2019 he had been residing at the family home. In the course of the appeal, the appellant's father provided the non-dependant's bank statements to the tribunal. These were sent to the non-dependant at the family home. The appellant's father had submitted these to advance a more nuanced argument than is evident from the tribunal decision. I consider that it is necessary to explore the tribunal's response to this in more detail. I also

note that the Department expresses a measure of support for the argument that the initial decision in the case was based on insufficient evidence. Therefore I grant leave to appeal.

19. The evidence before the tribunal was that the appellant received PIP on the basis of autism spectrum disorder and anxiety, and that he lived with his father who also received PIP on the basis of anxiety and stress. The non-dependant in the case was the brother and son of the appellant and his father respectively. He is described by his father as having alcohol and addiction problems, and not having been in contact for some years until he arrived at the family home in September 2019 asking to stay for a few days. His father had later asked him to leave the house due to his alcohol problems, although he had stayed a few days at a time subsequently. He later died on 20 January 2020. His last known address, apart from the family home, was in Belfast BT14.
20. The appellant's father had stated that the non-dependant brother had used the family address at different times in the past to apply for loans and that he had needed to deal with various debt management companies contacting his house afterwards. He submitted copies of the non-dependant brother's bank statements for the relevant period to the tribunal. These were sent to the family address. However, the father submitted that they tended to prove that the non-dependant brother was not living at the home address at the dates stated as they [the transactions] all seemed to be in Belfast.
21. The appellant's father had not attended the tribunal to expand on this point. However, he expands on it in writing to me. He had provided the non-dependant's bank statements giving the family home address from December 2018 to the tribunal. However, he submitted that an analysis of the transactions in the bank statements – noting that the locations of various purchases in local shops and garages, cash machine withdrawals, etc. clearly indicated a focus on locations in BT14 up to August 28 2019. He then observed that after that date, the focus of transactions shifted to Lisburn, which was also the location of the home address.
22. Among his deceased son's papers, another significant document had been located since the tribunal hearing. This was an employment contract signed in November 2018, giving the BT14 address, indicating that the brother had started a part-time cleaning job for 16 hours each week at a well-known retail store. The bank statements demonstrate payments coming from the employer into the brother's bank account through to May 2019. Although not directly submitted by his father, the fact that the non-dependant appears to have been claiming ESA and working at the same time might tend to explain why he had given different addresses to the Department and to his employer.
23. I acknowledge the difficulty faced by the tribunal in the absence of the appellant and full oral submissions on the evidence that was before it. The appellant himself was unable to attend due to his anxiety and autism. His

father sought to represent him as best he could. In particular, he made available the non-dependant's bank statements to the tribunal. The tribunal took the fact that the brother had reported a backdated change of address to ESA in March 2019 and the address on the non-dependant's bank statements as evidence establishing that he resided at that address at the material times.

24. However, it appears to me that the tribunal failed to engage with the father's submission that the bank statements showed that the non-dependant's transactions all occurred in and around BT14 until August 2019, and only in Lisburn from September 2019. This was consistent with his account that the non-dependant only came back to the family home around that date. The tribunal has not actively engaged with that submission.
25. The evidence before the tribunal tended to demonstrate that the non-dependant lived an alcohol addicted lifestyle and had used the family address without permission in the past for loan applications. The evidence that was not before the tribunal now demonstrates that the non-dependant had a job near BT14 between at least November 2018 and May 2019 that was inconsistent with his ESA claim. This would tend to suggest that the non-dependant had given the family address to ESA in an effort to avoid detection of the fact that he was working.
26. Whereas the tribunal, in the absence of other evidence and submissions, might have been entitled to make a presumption from the ESA change of address notification and the bank statements that the non-dependant was living at the family home, there were contrary submissions that required attention. Principally, albeit obliquely, the appellant's father had relied on the location of the transactions detailed in the bank statements at different periods in an effort to rebut the presumption. He spelled those submissions out rather more clearly to me than to the tribunal, but I accept that the submission was made to the tribunal, although it may not have registered it. As the tribunal has not dealt with the submission, I consider that the tribunal has erred in law.
27. A further factor, derived from papers that were found among the late non-dependant's possessions, is the employment contract and the fact of payments from work being paid into the non-dependant's bank account. This is clear evidence of a motive for the non-dependant giving his family address as the home address, even though he was not living there.
28. This case demonstrates the limitations that can result from an appellant or a representative not attending a hearing. The tribunal proceeded on the documentary evidence before it. However, in all the circumstances of the case I consider that it did not fully engage with the submission made by the appellant's father that the bank statements he submitted demonstrated that the non-dependant did not actually reside in the family home. It has erred in law for that reason. Therefore, I allow the appeal and I set aside

the decision of the appeal tribunal. I refer the matter to a newly constituted tribunal for determination.

29. Mr Barker for the Department has made some submissions casting doubt on the Department's adjudication in this case. Ahead of the new hearing, I direct the Department to revisit its decision on the basis of the evidence now available and to reconsider any matters that may no longer be in dispute. In any event, I direct that it should prepare a submission for the new tribunal based upon all the evidence that is now available.
30. While I cannot direct this, I would also encourage the appellant's father, if matters of fact remain in dispute, to consider attending the new tribunal to give evidence. I direct that the new tribunal should be an oral hearing accordingly.

(signed): O Stockman

Commissioner

23 March 2022