

R(H) 4/08

Mr E Jacobs
Commissioner
5 September 2007

CH/402/2007

Tribunal jurisdiction – council tax benefit – termination following suspension of award – whether decision appealable

The claimant was receiving state pension credit and council tax benefit. The local authority issued to him a short review form asking for some basic information relevant to entitlement. The claimant did not complete the form and ignored a reminder, which warned that benefit might be suspended if he did not provide the information requested. The claimant did not reply and benefit was first suspended under regulation 13 of Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (the 2001 Regulations) and then terminated under regulation 14. The claimant appealed, but the appeal tribunal dismissed the appeal. The claimant appealed to the Commissioner, arguing that the local authority had not acted reasonably under the Verification Framework in requiring him to provide some of the information requested. Before the Commissioner the issue arose as to whether there was a right of appeal against a decision to terminate an award following suspension, since there was an apparent contradiction within the legislation. The issue was whether a termination decision was a “relevant decision” within the definition in paragraph 1(2) to Schedule 7 to the Child Support, Pensions and Social Security Act 2000, and therefore appealable, or an administrative decision outside the normal decision-revision-supersession rules and therefore not appealable. Regulation 14 of the 2001 Regulations provides that a person shall “cease to be entitled” to benefit from the date of suspension, but paragraph 5(b) of the Schedule to the 2001 Regulations prescribes a decision that entitlement to benefit is terminated under regulation 14 as having a right of appeal.

Held, dismissing the appeal, that:

1. the cessation of entitlement under paragraph 15 and regulation 14 must take effect by a decision of the local authority as for it take effect simply by operation of law would make it unique within the structure of the legislation, and that view is supported by paragraph 5 of the Schedule to the 2001 Regulations, which assumes that a decision is required (paragraph 28);
2. the decision–revision–supersession provisions are the only express decision-making provisions for council tax benefit once a claim has been decided and a termination decision fits within that framework as taking effect on supersession of the awarding decision on the basis of a change of circumstances under regulation 7(2)(a)(1) of the 2001 Regulations, whether that change of circumstances is the operation of regulation 14 or the facts underlying the operation of regulation 14 (paragraphs 30 to 31);
3. although regulation 8 purports to fix the effective date for supersession decisions made under regulation 7(2)–(7) and makes no provision for termination decisions, it must be read as limited to matters authorised by paragraph 4(6) of Schedule 7, whereas the effective date for termination decisions is governed by regulation 14 (paragraph 32);
4. a termination decision is therefore a “relevant decision” and within the right of appeal under paragraph 6(1) (paragraph 33);
5. the issue for the tribunal was whether the local authority had acted in accordance with regulation 72 of the Council Tax Benefit Regulations 2006 in its request for information and not whether it had followed the guidelines in the Verification Framework (paragraph 36);
6. the tribunal was right to accept jurisdiction and to decide the appeal as it did (paragraph 38).

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is given under paragraph 8 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000:

The decision of the Cardiff appeal tribunal under reference U/03/188/2006/00525, held on 24 August 2006, is not erroneous in point of law.

REASONS

2. This is an appeal by the claimant, which he brought with my leave. I held an oral hearing of the case at the Cardiff Civil Justice Centre on 3 September 2007. The claimant attended and spoke in support of his appeal. He had tried without success to arrange for legal representation. The local authority was represented by Mrs Crippin. The Secretary of State was represented by Mr Patel, accompanied by Miss Powick. I am grateful to them all for their contributions to the hearing.

Organisation of this decision

3. I first identify the issues and explain briefly how they arise. Next I deal with the first issue by setting out the relevant legislation, the Secretary of State's argument and my analysis. I then deal with the second issue. Finally, I comment on what has happened since the claimant's council tax benefit was terminated.

The issues

4. There are two issues.

5. The first issue is whether a local authority's decision to terminate council tax benefit under regulation 14 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (SI 2001/2002) is appealable to an appeal tribunal. This issue arises because there is an apparent contradiction within the legislation. Paragraph 5 of the Schedule to the 2001 Regulations assumes, or provides, that the termination decision is appealable. In contrast, a key definition used in Schedule 7 to the Child Support, Pensions and Social Security Act 2000 suggests that the decision is not appealable.

6. The second issue is whether the local authority acted reasonably in asking the claimant to complete a review form containing the questions that it did. This issue arises because the claimant argued that the local authority had not acted reasonably under the Verification Framework in requiring him to provide some of the information requested.

How the issues arise

7. The claimant had been receiving state pension credit for a number of years and was receiving council tax benefit when, in March 2005, his case was selected for review. The local authority issued to him a short review form asking for some basic information relevant to entitlement. The claimant did not complete the form and ignored a reminder, which warned that benefit might be suspended if he did not provide the information requested. The claimant did not reply and benefit was first suspended under regulation 13 of the 2001 Regulations and then terminated under regulation 14. The claimant exercised his right of appeal, but the appeal tribunal dismissed the appeal.

Schedule 7 to the 2000 Act

8. Paragraph 1(2) contains a key definition:

“In this Schedule ‘relevant decision’ means any of the following –

- (a) a decision of a relevant authority on a claim for housing benefit or council tax benefit;
- (b) any decision under paragraph 4 of this Schedule which supersedes a decision falling within paragraph (a), within this paragraph or within paragraph (b) of sub-paragraph (1) of that paragraph;

but references in this Schedule to a relevant decision do not include references to a decision under paragraph 3 to revise a relevant decision.”

9. A local authority is under a duty to decide a claim: regulation 75 of the Council Tax Benefit Regulations 2006 (SI 2006/215). That decision will be a “relevant decision” within the definition as “a decision ... on a claim”.

10. Alterations to decisions are governed by paragraphs 3 and 4. Both apply only to relevant decisions.

11. Paragraph 3 deals with revisions of relevant decisions. A revising decision is not a “relevant decision” within the definition. It replaces the decision revised and takes on the characteristics of that decision, including its status as a “relevant decision”.

12. Paragraph 4 deals with supersessions of relevant decisions. Paragraph 4(1) authorises the supersession of decisions:

“Subject to sub-paragraph (4), the following, namely –

- (a) any relevant decision (whether as originally made or as revised under paragraph 3), and
- (b) any decision under this Schedule of an appeal tribunal or a Commissioner,

may be superseded by a decision made by the appropriate relevant authority, either on an application made for the purpose by a person affected by the decision or on their own initiative.”

This is the only provision in Schedule 7 that expressly authorises the supersession process. Sub-paragraph (4) provides:

“Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this paragraph.”

Sub-paragraph (5) deals with the date from which the supersession takes effect and sub-paragraph (6) provides:

“Regulations may provide that, in prescribed cases or circumstances, a decision under this paragraph shall take effect from such other date as may be prescribed.”

13. An appeal to an appeal tribunal is governed by paragraph 6. Paragraph 6(1) provides for the right to appeal against

“any relevant decision ... of a relevant authority which –

- (a) is made on a claim for, or on an award of, housing benefit or council tax benefit; or

- (b) does not fall within paragraph (a) but is of a prescribed description.”

Paragraph 6(2) contains a list of decisions that are not appealable, which ends with this provision:

“(e) any such other decision as may be prescribed.”

14. Paragraph 11 provides that decisions are final:

“Subject to the provisions of this Schedule, any decision made in accordance with the preceding provisions of this Schedule shall be final.”

15. Paragraphs 13 and 14 deal with suspension. Paragraph 15 authorises termination of entitlement for failing to provide information required by the local authority:

“Regulations may provide that, except in prescribed cases or circumstances –

- (a) a person whose benefit has been suspended in accordance with regulations under paragraph 13 and who subsequently fails to comply with an information requirement, or
- (b) a person whose benefit has been suspended in accordance with regulations under paragraph 14 for failing to comply with such a requirement,

shall cease to be entitled to the benefit from a date not earlier than the date on which payments were suspended.”

The 2001 Regulations

16. The 2001 Regulations contain the relevant provisions authorised by Schedule 7 to the 2000 Act.

17. Part II of those Regulations is headed **Revisions and Supersessions**. Regulation 7 deals with the circumstances in which a decision may be superseded. It is made under the authority of paragraph 4(4) of Schedule 7. Regulation 7(1) provides:

“Subject to the provisions in this regulation, the prescribed cases and circumstances in which a decision may be made under paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions) are as set out in paragraph (2).”

The rest of regulation 7 sets out grounds on which a decision may be superseded. They do not expressly include termination following suspension, but regulation 7(2)(a)(i) authorises a supersession when “there has been a change of circumstances since the decision had effect”.

18. Regulation 8 deals with the date from which a supersession takes effect. It is made under the authority of paragraph 4(6) of Schedule 7. Regulation 8(1) provides:

“A decision made by virtue of paragraph 4 of Schedule 7 to the Act (‘the superseding decision’) shall take effect on a date other than the date on which it is made or the date on which the application was made in the cases or circumstances prescribed in paragraphs (2) to (7).”

19. I need to mention two further regulations in Part II. Regulation 10 requires a local authority to give written notice of a decision against which an appeal lies. And regulation 10A authorises the correction of accidental errors in relevant decisions.

20. Part III of the Regulations is headed **Suspension and Termination of Benefit and Other Matters**. Suspension for failing to provide information is governed by regulation 13. Regulation 14 then provides for termination:

“A person in respect of whom payment of benefit or reduction 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 or reduction were so suspended, or such earlier date on which entitlement to benefit ceases.”

21. Finally, regulation 16(1) in Part IV of the Regulations is relevant:

“No appeal shall lie against a decision specified in the Schedule to these Regulations.”

The Schedule is headed **Decisions Against Which No Appeal Lies**. Paragraph 5 provides:

“No appeal shall lie against a decision under Part III of these Regulations of a relevant authority relating to –

- (a) suspension of a payment or of a reduction; or
- (b) restoration following a suspension of payment of benefit or of a reduction,

except a decision that entitlement to benefit is terminated under regulation 14.”

The Secretary of State’s argument

22. The Secretary of State was the only party to make observations on the first issue. Mrs Crippin relied on the Secretary of State’s arguments and, as those arguments were to the claimant’s advantage, he limited his submissions to the second issue.

23. Mr Patel argued that a decision terminating benefit following a suspension was appealable to an appeal tribunal. He relied on the right to a hearing before an independent tribunal under Article 6(1) of the European Convention on Human Rights as background. Specifically he argued that the final words of paragraph 5 of the Schedule to the 2001 Regulations were authorised by paragraph 6(1)(b) of Schedule 7 and extended the scope of that paragraph. He recognised that paragraph 6 only applies to relevant decisions. To overcome this problem, he argued that a termination decision was a relevant decision under the definition in paragraph 1(2)(a) of Schedule 7 as “a decision ... on a claim”. Mr Patel admitted that the legislation was not happily worded to cover his suggested interpretation, but submitted that this was necessary to give effect to the right to a hearing before an independent tribunal.

24. Mr Patel also referred to Circular A2/2006. This advised local authorities that a termination decision was not within the statutory provisions allowing an appeal. The relevant passage reads:

“The legal position

35 You will note that the guidance gives the decision maker a wide discretion. The reason for this is that the decisions given under Regulations 11-14 of the HB/CTB Decision and Appeals Regulations are made outside the normal revision/supersession rules. In essence they are 'administrative decisions' not 'relevant decisions' under the 2000 Act. This means that they are capable of being altered as and when appropriate, ie there is no time limit and there are no grounds which need to be satisfied. Moreover, and this is a key point, there is no right of appeal against the termination decision. If the customer is unhappy with what transpires under these provisions, they can seek a judicial review. You must bear this in mind when notifying the termination and any post-termination decisions.”

Mr Patel told me that that advice was based on the belief that the final words in paragraph 5 of the Schedule were not authorised by primary legislation. That was no longer the Secretary of State’s position.

Analysis

25. I accept the conclusion of the Secretary of State’s argument that termination decisions are appealable, but I do not accept the reasoning on which it was based. I will explain first why that reasoning is not satisfactory and then set out my analysis.

26. It would be surprising if paragraph 5 of the Schedule to the 2001 Regulations were made in part under the authority of paragraph 6(1)(b) of Schedule 7. Paragraph 6(1)(b) extends the scope of appeal rights. However, regulation 16 says that the Schedule to the 2001 Regulations deals with cases in which no appeal lies, the heading of the Schedule reflects that and paragraph 6(1)(b) is not identified in the preamble as one of the provisions that authorise the Regulations. It would, though, be possible, against the background of Article 6(1), to interpret paragraph 5 of the Schedule as extending appeal rights and to treat paragraph 6(1)(b) as included within the ‘all other powers him enabling in that behalf’ reference in the preamble.

27. However, there is another problem. Paragraph 6(1) only applies to relevant decisions. It cannot extend the right of appeal to decisions that are not relevant decisions. I do not accept Mr Patel’s argument that a termination decision is “a decision ... on a claim” within paragraph 1(2)(a). The flaw in his argument is that a claim ceases to subsist once it has been decided: paragraph 2(a) of Schedule 7. Terminating entitlement under an award occurs at a time when the claim no longer subsists. It cannot, therefore, be a decision on a claim.

28. Now I come to my analysis. I begin by noting that neither paragraph 15 nor regulation 14 refers to the making of a decision by the local authority. They provide only for an effect – that entitlement to benefit shall cease. They make no provision for how that is put into effect. It could, of course, take effect simply by operation of law. However, that would make it unique within the structure of the legislation. I accept Mr Patel’s argument that the local authority had to make a decision. This is supported by paragraph 5 of the Schedule to the 2001 Regulations, which assumes that a decision is required.

29. Given that a decision is required, how does that fit into the structure of the legislation? There are two possibilities. One is that the decision fits within the decision–revision–supersession provisions. The other is that the decision operates outside those provisions.

30. The decision-revision-supersession provisions are the only express decision-making provisions for council tax benefit once a claim has been decided. It is possible to fit a termination decision within that framework. On my analysis, the termination decision takes effect on supersession for a change of circumstances. My preferred view is that the operation of regulation 14 that entitlement shall cease is a change of circumstances. Another view would be that the facts underlying the operation of regulation 14 constitute the change of circumstances. In other words, the failure to comply with the requirement to provide information within the time allowed is a change of circumstances that authorises the local authority to terminate entitlement. These are merely two different ways of looking at the same thing. On either view, there is a change of circumstances. But is it a change that comes within regulation 7(2)(a)(i) of the 2001 Regulations?

31. To come within regulation 7, it must be made under paragraph 4 of Schedule 7. And to come within paragraph 4, it must involve the supersession of a relevant decision. There is no difficulty with this point, because the termination decision ends entitlement on the award of council tax benefit and the decision making that award was a relevant decision because it was a decision on a claim. The decision can, therefore, be made under paragraph 4 and is within regulation 7.

32. However, there is an issue on the effective date. Regulation 8 purports to fix the effective date for decisions made under regulation 7(2)–(7). But it makes no provision for termination decisions. The effective date for those decisions is governed by regulation 14. Regulation 8 must, therefore, be read as subject to regulation 14. That presents no difficulty. It is, no doubt, standard drafting to identify that one regulation is subject to another. But that is just a matter of practice. The Regulations have to be read as a whole and, when so read, regulation 8 is subject to regulation 14. This is easily achieved by limiting regulation 8 to matters authorised by paragraph 4(6) of Schedule 7. Regulation 14 is made under different authority, paragraph 15 of Schedule 7, and that paragraph is identified as one of the enabling provisions in the preamble to the Regulations.

33. On this analysis, a termination decision is given on a supersession of a relevant decision. As such it is itself a relevant decision. And as a relevant decision it is within the right of appeal under paragraph 6(1).

34. I have tested this analysis against the consequences if the termination decision operates outside the decision–revision–supersession provisions. First, it is not a relevant decision. From that it follows that there is no provision for correcting mistakes under the powers to revise (paragraph 3 of Schedule 7) and to correct accidental errors (regulation 10A of the 2001 Regulations). It also follows that there is no right of appeal. Second, the finality provision in paragraph 11 of Schedule 7 does not apply. That provision only applies to decisions made under the preceding provisions. It does not apply to paragraph 15, which comes later in the Schedule. Those consequences suggest that it would be preferable if the termination decision fitted into the decision–revision–supersession provisions.

The reasonableness of the local authority's action

35. This was the claimant's concern. He took me through the Verification Framework and emphasised two points. First, the local authority was under a duty to act reasonably in all respects. Second, the local authority should not ask for more information than was required and, in the case of someone on state pension credit, should only ask for confirmation that the person was entitled to that credit.

36. The claimant was right in everything he said about the contents of the Verification Framework. However, the issue for the tribunal was whether the legislation had been properly applied. The Framework merely provides guidance to local authorities on how the legislation should be implemented. It is not itself legislation. Everything the local authority did was in accordance with regulation 72 of the Council Tax Benefit Regulations 2006, as the tribunal explained. The questions asked on the review form were few and focused on the key elements of entitlement.

The claimant's entitlement to benefit

37. At the end of the hearing, I asked the claimant about his present entitlement to council tax benefit. He told me that he had still not provided the information requested by the local authority and that he had not made a new claim for benefit. As a result his council tax account was considerably in arrears. I am grateful to Mrs Crippin for her constructive suggestion as to how this might be best resolved and hope that the claimant has accepted the arrangement that she proposed.

Disposal

38. The tribunal was right to accept jurisdiction and to decide the appeal as it did. I dismiss the appeal against the tribunal's decision.