JB v DEPARTMENT FOR SOCIAL DEVELOPMENT (DLA) [2011] NICOM 227, NORTHERN IRELAND SOCIAL SECURITY COMMISSIONER’S UNREPORTED DECISION NO C/28/11-12(DLA), 29 NOVEMBER 2011

**Disability living allowance-whether an indefinite award of care component of DLA by the Social Security Agency can be subsequently terminated for failure by the claimant to complete re-assessment forms**

**Facts**

In November 2004, the claimant had been granted an indefinite award of the care component of DLA by the appeal tribunal. In October 2008, the DSD issued a Form DLA1000 and Form DLA 250 to the claimant’s appointee (his mother), which had to be filled out and returned. The claimant’s appointee argued that as the appeal tribunal had made a determination that the claimant was indefinitely entitled to the care component of DLA, and since there was no change in the claimant’s condition and the DSD had all relevant information as to the claimant’s condition, she would not complete the form. The claimant’s appointee had been informed that should she not complete the form, then the claimant’s entitlement to DLA would be suspended. The claimant’s DLA payment was suspended in December 2008. The claimant’s appointee refused to complete the requisite forms as requested, the payment was terminated in January 2009. The decision to terminate was confirmed by the appeal tribunal in September 2009.

The claimant was granted leave to appeal this decision by the Social Security Commissioner on the basis that the decision on the appeal tribunal was an error of law. The claimant stated that the wrong legislative base had been utilised in terminating the DLA payment. Secondly, since an appeal tribunal had indefinitely awarded the DLA care component payment in 2004, this could not be set aside by subsequent requests for information by the DSD. The DSD accepted that there may have been an error of law, as regards the grounds that were relied upon for terminating the payment, but argued that this error did not affect the initial decision made.

**Held**

The Social Security Commissioner considered three key issues (i) whether the decision of the appeal tribunal was an error of law, and if so should the decision be upheld on different grounds or set aside; (ii) is there a right to appeal a suspension or termination of payment decision; and, (iii) the legal nature of an indefinite award of DLA.

(i) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 provided for the suspension of payment in prescribed circumstances (Regs. 16-18), including on the basis that an issue arose as to whether conditions for entitlement were being met (Reg. 16(3)(a)(i)) and whether the award should be revised or superseded (Reg. 16(3)(a)(ii)). Reg. 18 of the 1999 Regulations permit a payment of a benefit to be terminated in cases of a failure to furnish information or evidence on entitlement to a benefit. In submissions to the Commissioner, the DSD stated that the correct legal basis for suspension/termination of the payment should have been Reg. 16(1) and Reg 16(3) of the 1999 Regulations. The Commissioner was of the view that the decision maker of the Department and the appeals tribunal did not apply the correct legislative provisions in deciding to suspend payments. While Reg. 16(3)(a)(i) and Reg. 16(3)(a)(ii) of the 1999 Regulations could be used as the legal basis for suspension of DLA, the correct legal basis was Reg. 32(1) and Reg. 32(1A) of the Social Security (Claims and Benefits) (Northern Ireland) Regulations 1987 (as amended) which imposes a duty on every person entitled to a social security benefit to provide to the DSD information and evidence as the DSD might require in order to decide whether an initial decision awarding the entitlement to the benefit should be revised or superseded. Reg. 17(2)(c), Reg. 17(4) and Reg. 17 (5) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 provide, in totality, that a failure to comply with 1987 Regulations, as regards requests for information and/or reassessment of claim, can result in a suspension and/or termination of benefit payment. Decision *R(IB)2/04* by the Tribunal of Social Security Commissioners in Great Britain was clear authority for the power of Commissioners to *inter alia* remedy defects in legal reasoning of an initial decision and/or appeal.

(ii) The Commissioner noted that the Social Security (Northern Ireland) Order 1998 and the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 set out the rules relating to the procedure for decision making on claims to benefit and determination of appeals arising from such decisions. Paragraph 22 of Schedule 1 of the 1999 Regulations provides that suspension of certain benefits (including DLA) does not carry appeal rights. This meant that the initial suspension decision of December 2008 could not carry a right of appeal. In relation to termination, referring to similarly worded legislative provisions in the UK relating to council tax and appeal rights, and relying on Decision *R(H) 4/08* of the Tribunal of Social Security Commissioners in Great Britain, the Commissioner found that the termination of a benefit under Reg. 18(1)(b) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999, was a supersession decision against which an appeal lay.

(iii) The Social Security Commissioner noted that Section 71(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (as amended) permits the indefinite award of DLA. The 2004 appeal tribunal decision had awarded the care component of DLA for an indefinite period to the claimant. For the reasons set out above, the Commissioner noted that the DSD were entitled to undertake regular checks on indefinite awards, which may allow for a reduction or increase in the level of DLA awarded. While the claimant’s parents requests for meetings with DSD officials to discuss the case had not been responded to, payment of the DLA component may have continued if the claimant’s parents had completed the requisite documentation to continue the claimant’s entitlement to payment.

The Commissioner therefore allowed the appeal of the claimant, however for the reasons outlined above, found that while the appeal tribunal erred in law, this error could be rectified and the same conclusion reached that the termination of entitlement to DLA was lawful.