



Trinity Term
[2023] UKPC 23
Privy Council Appeal No 0021 of 2021

JUDGMENT

**The Permanent Secretary, Ministry of Social
Development and Family Services and another
(Respondents) v Ruth Peters (Appellant) (Trinidad &
Tobago)**

**From the Court of Appeal of the Republic of Trinidad
and Tobago**

before

**Lord Briggs
Lord Sales
Lord Hamblen
Lord Burrows
Lord Stephens**

**JUDGMENT GIVEN ON
27 June 2023**

Heard on 27 March 2023

Appellant

Anand Beharrylal KC

Siân McGibbon

Dinesh Rambally

Kiel Taklasingh

Stefan Ramkissoon

(Instructed by Rhea Khan, Sovereign Chambers (Trinidad))

Respondents

Robert Strang

(Instructed by Charles Russell Speechlys LLP (London))

LORD SALES:

1. In July 2018 the appellant was diagnosed with Guillain-Barré Syndrome, a debilitating illness which has had a significant impact on her life. At that time the appellant was assessed as having 90% disability, which meant that she was unable to work. This appeal concerns her application for state disability benefits. Relevant state benefits are of two kinds: disability assistance benefit and public assistance benefit. Disability assistance benefit is paid at a higher rate.
2. The appellant obtained a certificate dated 23 October 2018 from a government medical officer which stated that she was disabled from earning and, as to the duration of her disability, stated “1 year pending clinical reports”. On the basis of this certificate the appellant applied to the Sangre Grande Welfare Office for disability assistance benefit, but it was refused. This was on the basis that such benefit would only be paid where the medical certificate states that the individual is permanently disabled. The decision of the Welfare Office was confirmed by the Permanent Secretary of the Ministry of Social Development and Family Services (“the Permanent Secretary”), who is the first respondent. The appellant was told she should apply for public assistance benefit instead.
3. The primary legislation governing both these benefits is the Public Assistance Act (“the PAA”), which has been amended from time to time. According to provisions of the PAA introduced in 1996, in order to claim disability assistance benefit an individual had to be permanently disabled. Subordinate legislation promulgated pursuant to the PAA shortly afterwards, the Public Assistance (Disability Assistance) (Prescribed Forms) Regulations (“the Forms Regulations”), specified the form to be used to apply for disability assistance benefit. The prescribed form stated that certification of permanent disablement is a condition of eligibility for disability assistance benefit.
4. There was a further round of amendments to the PAA in 1998. The wording of the provision governing the grant of disability assistance benefit, section 11A, was changed and no longer referred to permanent disablement. Instead, the relevant condition in section 11A(1)(d) now requires in relation to the individual claiming to be entitled to disability assistance benefit that “he is in the opinion of the Local Board so disabled that he is unable to earn a livelihood and has been certified by a Medical Officer as being so disabled”. The Forms Regulations remained in force. Therefore, although the reference to permanent disablement was removed from the face of the PAA, it remained a requirement appearing on the face of the application form prescribed by the Forms Regulations that the individual had to obtain a medical certificate of permanent disablement.

5. The principal issue which arises in these proceedings is whether Parliament, by making the changes to the wording of section 11A in 1998, removed the requirement that an individual has to be permanently disabled in order to be eligible for disability assistance benefit, or whether that requirement remains in place, in line with what is stated in the Forms Regulations.

The legislation

(a) The 1996 version of the PAA

6. The PAA makes provision for payment of public assistance benefit and for payment of disability assistance benefit, as part of an integrated scheme of benefits. By virtue of the definition provision in section 2, disability assistance benefit is treated as a form of public assistance benefit unless the context otherwise requires. Public assistance benefit is a benefit with wider application than disability assistance benefit and covers a range of situations in which persons or households might find themselves in straitened financial circumstances.

7. The 1996 version of section 11A of the PAA provided that a person is entitled to receive disability assistance benefit if certain conditions were satisfied, including that his or her income was below a certain level, that they were aged between 40 and 65 (at which point they would be eligible for an old age pension), and as to their disablement. It provided in relevant part as follows:

“11A. (1) Notwithstanding any provision of this Act, a person is entitled to receive disability assistance if-

...

(d) he is certified by a Government Medical Officer as handicapped with a disability that-

(i) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments;

(ii) is permanent or likely to be permanent; and

(iii) results in inability to earn a living which in the opinion of the Local Board would be adequate.

(2) Notwithstanding certification pursuant to subsection (1)(d), the Director (Social Welfare) may, if he sees fit, refer the applicant to the Chief Medical Officer for assessment and certification of disability and if such certification is not obtained, the Local Board may refuse the applicant's claim in accordance with this Act."

8. Section 11B was also added to the PAA. It provided:

"An application for disability assistance shall be submitted in writing in the form and manner prescribed in Regulations made under this Act, to the Local Board."

9. Section 16(1) of the PAA has at all material times provided that "The Minister may make Regulations for carrying the purposes and provisions of this Act into effect, and, without limiting the generality of the foregoing may make Regulations- ... (b) prescribing the procedure to be followed on and the forms to be used for applications for public assistance".

(b) The Public Assistance Regulations

10. In 1997 the Minister made the Public Assistance Regulations, which have remained in force at all material times. These specify the circumstances in which public assistance benefit will be payable. Regulation 3 provides as follows:

"3. (1) Public assistance may be provided to a person who is in need by reason of his being prevented by some physical or mental disability from earning a living.

(2) Public assistance shall be in the form of a grant for a period not exceeding twelve months and is subject to review."

11. Regulation 5 provides in relevant part that "an application for public assistance shall be supported by a medical certificate from a Government Medical Officer and

forwarded to the Chairman of the Local Board in the Local Public Assistance District in which the applicant resides". It is common ground that public assistance benefit is available to individuals who are temporarily disabled.

12. Regulation 11A, added by amendment in 2004, provides that where a recipient of disability assistance benefit is absent from Trinidad and Tobago for a period in excess of twelve months, that benefit shall be discontinued. If he returns, he may reapply for it.

(c) The Forms Regulations

13. In 1997 the Forms Regulations were promulgated. They are stated on their face to be "made under section 11B". Regulation 3 provides that "the form required to be prescribed under section 11B of the Act is the form set out in the Schedule". The Schedule to the Regulations sets out the "Form of Claim for Disability Assistance Grant", including a set of qualifications regarding age, citizenship or residency in Trinidad and Tobago, income and disablement. In relation to disablement the form says:

"To be eligible for a Disability Assistance Grant, a person –

...

(d) must be certified by a Government Medical Officer as being permanently disabled from earning a livelihood as a result of visual, mental, hearing or physical impairment."

14. The prescribed form includes a declaration to be made by the individual applying for the benefit saying that they are not, to the best of their knowledge, disqualified from receiving the benefit "for any of the reasons stated on this form".

15. The form of certificate used by the government medical officer in the appellant's case, dated 23 October 2018, had been drawn up by the Ministry to reflect the prescribed form to be used by an applicant for disability assistance benefit. It included spaces for the officer to state the "Nature of Disability", "Whether [the applicant was] Disabled from earning", "Percentage of disability" and "Whether Disability is Permanent". It was in this latter space that the medical officer in the appellant's case had written the note set out at para 2 above.

(d) The 1998 version of the PAA

16. In 1998, section 11A of the PAA was amended. The conditions of eligibility for disability assistance benefit in section 11A(1) were amended in various respects. Section 11A(1)(d) was changed to say:

“(d) he is in the opinion of the Local Board so disabled that he is unable to earn a livelihood.”

A new subsection (4) was added, which provides:

“A person who is paid disability assistance shall continue to receive such assistance so long as-

(a) his total income does not exceed the amount referred to in subsection (1);

(b) he satisfies the conditions referred to in subsection (1)(b) [which relate to citizenship and residency]”.

17. The Forms Regulations and the Public Assistance Regulations continued in effect with no changes. There was no suggestion at the time of the enactment of the changes to section 11A of the PAA in 1998 that the Forms Regulations or the Public Assistance Regulations would be amended.

18. By a further change in 2004 section 11A(1)(d) was amended to say:

“(d) he is in the opinion of the Local Board so disabled that he is unable to earn a livelihood and has been certified by a Medical Officer as being so disabled.”

The decisions of the lower courts

19. In May 2019 the appellant issued these judicial review proceedings to challenge the lawfulness of the policy or criterion imposed and maintained by the respondents, including in the Forms Regulations, requiring that the entitlement of an applicant for

disability assistance benefit depends upon them being certified as “permanently disabled”. She contended that the inclusion of this requirement in the form of application prescribed by the Forms Regulations is ultra vires the current (2004) version of section 11A(1)(d) of the PAA.

20. The claim for judicial review succeeded before Donaldson-Honeywell J at first instance. She held that the change in the wording of section 11A(1)(d) in the 1998 version (and as continued in the 2004 version) indicated that Parliament meant to remove the requirement that the disability in question should be permanent. Instead, what was required was that the individual be disabled from being able to earn a living for a period of time. On this basis, the judge considered that there was a mismatch between the Forms Regulations and the substantive requirements in the PAA itself. Therefore she held that the word “permanently” should be treated as expunged from the prescribed form scheduled to the Forms Regulations and that the appellant should be treated as eligible for disability assistance benefit. The judge had regard to certain statements made in Parliament when the amended form of section 11A was introduced in 1998, which in her view supported the interpretation of section 11A which she favoured.

21. The Permanent Secretary appealed. The Court of Appeal (Mendonça, Smith and Dean-Armorer JJA) allowed the appeal and set aside the order of the judge. In their view the judge had failed to consider the significance of section 11A(4) of the PAA and the differences in terminology between section 11A(1)(d) of the PAA and regulation 3 of the Public Assistance Regulations, which tended to indicate that disability assistance benefit is payable only to those who are permanently disabled. Also, it was unlikely that Parliament would have intended to target disability assistance benefit on the same people who are eligible for public assistance benefit. The Court of Appeal considered that these features of the legislation meant that the new (1998 and 2004) form of section 11A(1)(d) was ambiguous. On that basis, on application of the principle in *Pepper v Hart* [1993] AC 593, it was legitimate to have regard to statements in Parliament at the time the amendments were introduced, different from those relied on by the judge, which in the opinion of the Court of Appeal supported the submission of the Permanent Secretary that there remained a requirement that disablement should be permanent notwithstanding the change in the wording of section 11A(1)(d).

The issues in the appeal

22. The appellant appeals to the Board with permission granted by the Court of Appeal. On this appeal the appellant maintains her case that, on its proper interpretation, section 11A(1)(d) does not make eligibility for disability assistance benefit conditional upon certification of permanent disablement, with the result that

the Forms Regulations are ultra vires to the extent that they refer to disablement having to be permanent. She further contends that the Court of Appeal erred in regarding section 11A(1)(d) as ambiguous and in referring to statements in Hansard to resolve that ambiguity when she was not properly on notice of this point. The appellant also submits as a new additional point that the Forms Regulations are ultra vires because they purport to be made under section 11B of the PAA, whereas that provision does not contain any rule-making power at all.

Analysis

(a) The rule-making power in relation to the Forms Regulations

23. The new additional point raised by the appellant can be dealt with shortly. It is true that section 11B of the PAA does not itself create a rule-making power, but it refers to regulations to be made under the Act. The PAA contains a rule-making power in section 16. In the Board's view, it is clear that when the Forms Regulations stated that they were made under section 11B the effect of this was to indicate that they were made under the PAA under the relevant rule-making power in the Act appropriate to make the regulations referred to in section 11B. This clearly meant they were made under section 16. In context, this is the only sensible interpretation to be given to the statement in the Forms Regulations referring to section 11B. Accordingly this point cannot found a conclusion that the Forms Regulations are ultra vires.

(b) The interpretation of section 11A(1)(d) and the requirement of permanent disablement

24. The 1998 amendments to section 11A were not enacted in a legal vacuum, as though on a blank sheet of paper. The 1996 version of section 11A and the Public Assistance Regulations operated in coherent fashion according to which, if an individual suffered permanent disablement, they could obtain a certificate to that effect from a medical officer and then be entitled to disability assistance benefit without the need for periodic review, whereas if they suffered from a temporary disablement they would be entitled to public assistance benefit for so long as the disablement continued and for so long as they were able periodically to present certificates to verify their continuing disablement.

25. The effect of the appellant's submission is that with the amendment of section 11A(1)(d) in 1998, while the Forms Regulations and the Public Assistance Regulations continued in force, this coherent position was disrupted in two ways. First, since the

new version of section 11A(1)(d) did not expressly refer to permanent disablement it no longer corresponded with the requirements stated in the prescribed form scheduled to the Forms Regulations. Secondly, the new version of section 11A(1)(d) was to be interpreted as referring to temporary disablement as well as permanent disablement, and so would cover the same class of cases as were already covered by regulation 3 of the Public Assistance Regulations.

26. The appellant's response to these points is that the Forms Regulations have by implication been rendered ultra vires by the amendment of section 11A(1)(d), in order to bring that provision and the Forms Regulations back into alignment, and that the position now is that a person who is temporarily disabled from earning their livelihood is entitled to claim the higher amount of disability assistance benefit even though that has the practical effect of making regulation 3 of the Public Assistance Regulations redundant.

27. It can readily be seen that it was infelicitous drafting to remove from the 1998 version of section 11A(1)(d) the reference to permanent disablement which was in the 1996 version of that provision. That created disharmony with the Forms Regulations, which remained in place and an inappropriate degree of overlap with regulation 3 of the Public Assistance Regulations. This gives rise to questions about the proper interpretation of the 1998 and current (2004) versions of section 11A(1)(d) which could easily have been avoided. However, it remains the case that the provision is to be interpreted according to the conventional approach to statutory construction. The primary indication of the meaning of the provision is the words Parliament chose to use, read in the context applicable at the time: for a recent statement of the relevant principles see *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 28-30 (Lord Hodge). Section 11A(1)(d) was drafted to fit into the existing regime for payment of public assistance benefits and disability assistance benefits, so the relevant context includes the established framework for the operation of that regime as well as the scheme of the group of sections at sections 11A to 11C of the PAA.

28. In the Board's view, read in that context, the Court of Appeal was right to interpret the current version of section 11A(1)(d) as continuing to require permanent disablement, as the 1996 version had done in express terms. The Board does not accept the appellant's submission as to the proper interpretation of the 1998 and 2004 versions of section 11A(1)(d). This is for the following reasons:

- (1) The 1998 and 2004 versions of section 11A(1)(d) do not specify the period in relation to which the applicant for disability assistance benefit must be "so disabled that he is unable to earn a livelihood". It is therefore necessary to

look to the context of the provision in the regime for the payment of public assistance benefit and disability assistance benefit and to the scheme of sections 11A to 11C in order to determine this.

(2) The 1998 and 2004 versions of section 11A create a scheme in which certification of disability by a medical officer is central, in the first place in an opinion to be provided to the Local Board under section 11A(1)(d), with the possibility of review and a replacement certification by the Chief Medical Officer under section 11A(2) (in effect, as a form of appeal). Although the 1998 version of section 11A(1)(d) did not refer in terms to an opinion to be provided by a medical officer at the first stage, clearly some form of medical opinion would need to be provided at that stage in order for the provision to be operated properly. The amendment in 2004 to refer to a certificate by a medical officer explained in more detail how this mechanism would work. In order to know what the medical opinion has to say and what is to be certified, so far as the period of disablement is concerned, it would be necessary to refer to the application form in which, according to the Forms Regulations—the law applicable as at the date of the amendment of section 11A(1)(d)—it was stated that a certificate of permanent disablement was required. It is not suggested that the Forms Regulations were ultra vires at the time they were made (1997) or at any time down to the enactment of the amended version of section 11A(1)(d) in 1998. Since that amended version does not itself supply an answer to the critical question of the required duration of the disablement, while at the time of enactment there was an extant valid law forming part of the general benefit payments regime into which section 11A(1)(d) was inserted, the natural inference is that Parliament intended that the answer should be derived from that law.

(3) The appellant's suggestion that the new version of section 11A(1)(d) caused the Forms Regulations to become ultra vires by a side wind, which in turn required and authorised deletion of a word in the prescribed form, is not persuasive. There is no good reason to think that Parliament intended to make valid subordinate legislation invalid by such an indirect route. Further, it is by no means obvious whether, according to the rules governing severance in relation to invalid subordinate legislation, it would have been possible for a court to revise the Forms Regulations and the prescribed form in the manner adopted by the judge, in order to save them in part, rather than treating them as wholly ultra vires and devoid of effect. There is no reason to think Parliament intended to introduce such uncertainty into the operation of the benefits regime by amending section 11A(1)(d) as it did.

(4) It would undermine the coherence of the law to say that at the same time as the new version of section 11A(1)(d) came into effect the obvious legislated guidance as to the duration of the disablement (the prescribed form) was removed so as to leave the law uncertain on this point. The appellant's argument that the Forms Regulations should be amended in line with her proposed interpretation of section 11A(1)(d) is circular and assumes what has to be proved.

(5) There is no provision for successive applications for disability assistance benefit, save in regulation 11A of the Public Assistance Regulations. Section 11A(4) provides that an individual awarded disability assistance benefit "shall continue to receive such assistance" unless and until certain specified events occur, which do not include ceasing to be disabled. The scheme of the legislation therefore envisages that once an award of disability assistance benefit is made, payment of the benefit is to continue subject only to the occurrence of one of the specified events. All this only makes sense if the award is in respect of disablement which is assessed to be permanent, rather than in relation to a medical condition which may fluctuate over time in its effect on the ability of the individual to earn their livelihood. (Regulation 11A of the Public Assistance Regulations was added after the amendments in 1998: it presupposes that disability benefit assistance is payable for longer than 12 months and specified another event when the benefit would cease to be payable, which tends to confirm that absent such a specified event disability assistance benefit is continuously payable once it has been granted).

(6) Having regard to the overall scheme of the benefits regime, it is not plausible that Parliament would have intended to override the practical application of regulation 3 of the Public Assistance Regulations in relation to public assistance benefits in respect of disablement which is temporary. If that had been the intention, one would expect it to have been articulated with much greater clarity.

29. In the Board's view, this reasoning is sufficient to give a clear answer to the question of interpretation of section 11A(1)(d) in this appeal. Interpreted in the light of the context in which they were enacted, the 1998 and 2004 versions of section 11A(1)(d) are not ambiguous. Therefore, according to the guidance in *Pepper v Hart*, it is not necessary nor appropriate to have regard to statements made in Parliament.

Conclusion

30. For the reasons given above, the appeal is dismissed.