



Cameron Mathieson, a deceased child (by his father Craig Mathieson) v. Secretary of State for Work and Pensions

[2015] UKSC 47; UKSC 2014/0166

Country: United Kingdom

Region: Europe

Year: 2015

Court: United Kingdom Supreme Court

Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, Disabilities, Health systems and financing, Hospitals

Human Rights: Freedom from discrimination, Right to social security

Facts

The appellant, Craig Mathieson, represented his deceased son, whose Disability Living Allowance (DLA) had been suspended by the Secretary of State for Work and Pensions. The son had been severely disabled since birth and required a high level of care. His parents were his primary care-givers.

The son was admitted to the hospital for chronic bowel obstruction and remained an in-patient there for more than 84 days. Regulations 8, 10, 12A and 12B of the Social Security Regulations stipulated that when a person under 16 years was an in-patient at a hospital free of charge, after a period of 84 days, that person would no longer receive DLA. Pursuant to these regulations, the Secretary of State suspended the son's DLA.

Mr. Mathieson argued that the DLA suspension breached Article 14 of the European Convention on Human Rights ("Convention"), which prohibits discrimination. Mr. Mathieson argued that the suspension also affected Cameron's right to (a) "the peaceful enjoyment of his possessions" (Article 1 of Protocol 1) and (b) "respect for his...family life" (Article 8). He argued that the suspension constituted discrimination under on Article 14 because the suspension discriminated between his son and severely disabled children who did not require in-patient hospital treatment.

The Secretary of State admitted that the suspension was within the scope of Article 1 of Protocol 1. However, he argued that the suspension was justified by the rule against overlapping benefits. He stated that in-patient disability needs were met by the National Health Service (NHS).

Mr. Mathieson also requested that the Court read the DLA suspension provisions in a way that would exclude children from their scope.

Decision and Reasoning

The Court held that the Secretary of State's DLA suspension violated the son's human rights under Article 14 when read in conjunction with Article 1 of Protocol 1. The Court stated that it was not necessary to consider if his rights were violated under Article 14 when taken with Article 8.

The Court held that the son had "other status" within the meaning of Article 14 as a severely disabled child requiring in-patient treatment, and that his difference in treatment was not justified. The Court accepted evidence that the Mathiesons' expenses increased as a result of their son's hospital stay. The Court also relied on an interested charity's report about the situation of parents with disabled children in the hospital. The report stated that the parental level of care remained the same or increased, and that parents typically incurred extra costs. The Court stated that the Secretary of State's reference to overlapping benefits did not confront the reality of these increased expenses for parents.

The Court declined to interpret the DLA provisions in a way to exclude children from payment suspension. It stated that it would not always follow that a DLA suspension would violate a child's human rights, and that the matter would have to be determined on a case-by-case basis.

Decision Excerpts

“Decisions both in our courts and in the ECtHR therefore combine to lead me to the confident conclusion that, as a severely disabled child in need of lengthy in-patient hospital treatment, Cameron had a status falling within the grounds of discrimination prohibited by article 14. Disability is a prohibited ground...Why should discrimination (if such it be) between disabled persons with different needs engage article 14 any less than discrimination between a disabled person and an able-bodied person?” Para. 23.

“Mr Mathieson asks this court to discharge its interpretative obligation under section 3 of the 1998 Act by somehow reading the provisions for suspension of payment of DLA in regulations 8(1) and 12A(1) of the 1991 Regulations so as not to apply to children. In my view however it is impossible to read them in that way...it may not always follow that the suspension of payment of a child’s DLA following his 84th day in hospital will violate his human rights. Decisions founded on human rights are essentially individual; and my judgment is an attempted analysis of Cameron’s rights, undertaken in the light, among other things, of the extent of the care given to him by Mr and Mrs Mathieson at Alder Hey.” Para 49.

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