

**SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998**

**EMPLOYMENT AND SUPPORT ALLOWANCE**

Appeal to a Social Security Commissioner  
on a question of law from a Tribunal's decision  
dated 29 May 2013

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

- 1 The appeal is abated.

**REASONS**

- 2 In *R(I) 2/83* the background was that a claimant appealed to the Commissioner against the disallowance of his claim for special hardship allowance but died before his appeal could be heard. His widow was unwilling to be appointed to act in respect of the outstanding appeal and the Official Solicitor declined to become involved. The Commissioner said the following, at paragraphs 5 and 6 of his decision:

'In Decision R(S) 7/56 where the appeal of a claimant since deceased was an appeal against a decision requiring repayment of benefit overpaid, the Commissioner dismissed the appeal without there being any representative of the deceased or his estate on an assurance by the insurance officer that no attempt would be made to enforce repayment. This was a practical solution to the problem in that the assurance made it virtually certain that no one would ever seek to have the decision dismissing the appeal set aside. No comparable assurance has been offered or indeed can readily be devised that would achieve an equivalent effect in the

present case. I note that in Decision R(P) 2/62 the Commissioner left open the question whether it would be proper to dismiss an appeal in a case where there was neither a personal representative nor an appointment under the then equivalent of regulation 29. I have reached the conclusion that it is better not to dismiss such an appeal in circumstances such as the present but merely to declare it abated. In my judgment when in such circumstances an appeal is declared abated by the Commissioner (or in the case of an appeal to the local tribunal by that tribunal) the matter can for practical purposes be regarded as closed. It is true that there remains a faint possibility of its being revived; but, even if the appeal were dismissed in the absence of anyone to represent the claimant, there would remain the possibility of an application to have the dismissal set aside.

I have discussed with several other Commissioners the practice recommended in this Decision and they have authorised me to say that they agree that it is appropriate for adoption in comparable cases, that is to say in cases where the claimant is the appellant and has died since his appeal has been launched and where (1) there is no person willing to be appointed a representative under regulation 29, (2) there is no personal representative or the equivalent functionary in Scotland and (3) the case is not amenable to the procedure adopted in Decision **R(S)** 7/56. It is not appropriate where the appellant is the insurance officer and if the insurance officer is in such a case unwilling to withdraw his appeal some other procedure must be devised.'

- 3 The reasoning in *R(I)* 2/83 has never been doubted and has been applied in other decisions of the Social Security Commissioners. In *R(SB)* 25/84, the Commissioner said the following at paragraph 3:

'In these circumstances I have reached the conclusion that the reasons given by the Commissioner in Decision R(I) 2/83 for following the procedure adopted in that decision are equally applicable to supplementary benefit cases. It is better not to dismiss a deceased claimant's appeal in a case where there is neither a personal representative nor an appointee under regulation 28. In circumstances such as the present it is preferable merely to declare that the appeal is abated. The matter can then for practical purposes be regarded as closed. I have discussed with several other Commissioners the practice recommended in this decision and they have authorized me to say that they agree that it is appropriate for

adoption in comparable cases. It is not appropriate where the appellant is the supplementary benefit officer and if that officer is in such a case unwilling to withdraw his appeal some other procedure must be devised.'

4 In *R(IS) 6/01* the Commissioner stated the following at paragraph 41:

'In cases where a claimant dies after making an appeal against a decision on a claim, but there is no personal representative of the estate or an appointee under regulation 30(1) of the Claims and Payments Regulations (but now see regulation 34 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999), it was settled that the appeal is a nullity (R(SB) 8/88) or, I think more properly, abates (R(I) 2/83 and R(SB) 25/84). Where there is no duly constituted person with a right of appeal at the time when the appeal is purportedly made, I think there can be no question of abatement, but it must be the case that there has never been a valid appeal in being. In R(SB) 8/88, the Commissioner, having decided that the appeal to the appeal tribunal in that case was a nullity, as there was no validly constituted party to the appeal, set the appeal tribunal's decision aside. But there was no validly constituted party to the appeal to the Commissioner either, so that I am not at all sure that he had the statutory power to set the appeal tribunal's decision aside.'

5 So far as I need to, I adopt and accept the reasoning and analysis of the Commissioners in each of these decisions which, in my view, properly reflect the law in Northern Ireland.

6 In the present case, the late appellant's application for leave to appeal was granted but before the appeal could be decided the Office of the Social Security Commissioners was informed that she had passed away. Subsequently enquiries were made from her representative, her solicitors, her next-of-kin and from the Department to ascertain whether there is a personal representative or an appointee who might proceed with the appeal. There is no Departmental appointment. The appellant's representative before the Social Security Commissioners confirmed that he did not hold any details of who was dealing with the late appellant's estate and there have been no replies to the correspondence sent to the appellant's solicitors and her next-of-kin on the specific issue of personal representative.

7 In these circumstances the appropriate disposal is to declare that the appeal is abated.

(signed): K Mullan

Chief Commissioner

18 August 2020