

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

L B's Application (Leave Stage) [2011] NIQB 51

IN THE MATTER OF AN APPLICATION BY L B
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

STEPHENS J

[1] The applicant seeks leave to bring judicial review proceedings against the Legal Services Commission seeking to impugn a decision in relation to family proceedings not to fund an anger management course for the applicant.

[2] Article 10 (3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 provides that "legal aid shall consist of *representation*, ... by a solicitor and so far as necessary by counsel" but it also includes "all such assistance as is usually given by a solicitor or counsel in the steps preliminary or *incidental* to any proceedings". Accordingly steps incidental to the proceedings are included in legal aid but subject to the qualification that the incidental steps have to be assistance as is usually given by a solicitor or counsel. By way of example in a personal injury action legal aid includes the incidental step of obtaining expert medical reports in relation to the injuries sustained by the plaintiff. That incidental step would be assistance as is usually given by a solicitor or counsel. However in a personal injury action medical treatment of the plaintiff has nothing to do with representation nor is it an incidental step as is usually given by a solicitor or counsel. There is no question of legal aid being available to fund medical treatment as opposed to a report from a medical expert.

[3] An anger management course in the context of family proceedings has two purposes:-

- (a) A therapeutic purpose to improve an individual's control of his anger and accordingly to improve the physical and emotional atmosphere in which his or her children are growing up. The therapeutic purpose is

usually achieved by education leading to greater insight and the ability for instance to deploy coping mechanisms in stressful situations; and

- (b) The purpose of assessment to assist the court in determining whether a specific individual poses a risk to his or her partner or to their children and if so the degree and nature of the risk. In the area of anger management the assessment usually includes a record as to the number of sessions attended by the individual, the topics covered and as to whether that individual understood the contents of the course and has the ability to apply it in his or her life particularly in stressful situations.

Those purposes are not distinct in that assessment is an ongoing part of the process of therapy. In order to educate an individual the educator has to assess how the individual is progressing. Accordingly there is an element of assessment which is a necessary component of therapy and it is not possible to compartmentalise the purposes into two distinct and separate purposes.

[4] The Legal Services Commission has no obligation to fund the therapeutic purpose of an anger management course. Its only obligations relate to representation and all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings.

[5] The applicant acknowledges that legal aid is not available for the therapeutic purpose of an anger management course but contends that the therapeutic and assessment purposes are so inextricably mixed that it is impossible to facilitate the assessment purpose without carrying out the therapy. Accordingly it is contended that legal aid should be available for all the costs of the anger management course rather than the amount which the Legal Services Commission is prepared to fund being some £80 representing the costs of a report at the conclusion of the course.

[6] If there is not an inextricable mixture of the two purposes then inevitably this application for judicial review will fail. The proposition that therapy cannot be carried out by one person and the assessment by another is somewhat difficult from the point of view of the applicant. On the information presently before the court there is nothing to suggest that there is such an inextricable mixture and the applicant now seeks to adjourn the leave application in order to obtain evidence, if it is available, that there is such an inextricable mixture.

[7] I anticipate that the applicant's task in this respect is going to be difficult. At present I see no reason why if therapy is carried out by one person the assessment could not be formed by another, for instance, a psychiatrist, a psychologist, a social worker or by another anger management therapist. For instance, in this case the applicant can be sent to an anger management organisation that does not provide reports to the court and he could be referred back for assessment and for a report to an anger management organisation that does provide reports to the court.

[8] There are a number of other difficulties from the point of view of the applicant. In forming an assessment as to whether someone needs anger management I assume that there are various tools engaged by the anger management therapist. That it is not just a matter of self reporting. If there be such tools to determine whether someone needs to go on an anger management course then I cannot see why they should not be deployed by a person who is preparing a report for the benefit of a court.

[9] I also envisage that an anger management course, properly conducted, generates paperwork. The analogy is of medical practitioners in personal injury cases. Medical practitioners in the course of treatment prepare notes and records. Medical practitioners engaged for legal purposes are assisted by the notes of the treating medical practitioners. I anticipate that in carrying out an anger management course the person who conducts the course will keep some records. If that be the case, then it may well be a simple matter of obtaining those records and asking another individual to comment on them for the purposes of the family proceedings.

[10] I have serious reservations as to whether there is an inextricable mixture of therapy and assessment in an anger management course but I am prepared to allow the applicant to adjourn this application for a short period of time to address those issues and to file a further affidavit. I put the applicant on strict terms in relation to the time within which that is to be done.

Adjourned hearing on 30 June 2011

[11] The applicant's further affidavit revealed:-

(a) That as anticipated there was no inextricable mixture of the two purposes involved in an anger management course. Self NI is a dedicated training and counselling organisation specialising in the fields of anger management and individual therapeutic counselling. By letter dated 14 June 2011 Self NI stated that the therapeutic purpose could be separated from the purpose of assessment. They also indicated that if they were only to carry out an assessment that they would need to conduct three one hour sessions at a cost of £40 per hour and then provide a report at a cost of £80. Accordingly the total cost involved in providing an assessment and a report would be £200. In short they do not need to carry out a full therapeutic course in order to provide an assessment for the court.

(b) Therapy is available on the National Health Service on referral by the applicant's general practitioner to Clinical

Psychology. The only cost to the applicant would be for a report to the court from the psychologist. The exact cost of the report was not specified.

(c) The Irish Association of Anger Management is a government funded organisation and there is a therapeutic course available to the applicant for which there will be no cost to him. The applicant understands that the Association does not provide reports to the court.

[12] In addition at the adjourned hearing I was informed by counsel on behalf of the applicant that the Men's Advisory Project provides counselling and support for anger management for both men and women. That it is government funded and that they sub-contract those courses to Self NI. I was also informed that they do provide a report to the court but the cost has not been specified.

[13] In view of the fact that there is no inextricable mixture of the two purposes, therapy and assessment, the application to judicially review the decision of the Legal Services Commission not to fund the therapeutic purpose is bound to fail.

[14] The applicant is now making another application to the Legal Services Commission for funding. I anticipate that this application will be for the costs of an assessment and a report by Self NI. That application is to be made by 8 July 2011 and there is to be a response from the Legal Services Commission by 29 July 2011.

[15] This application has brought into focus what elements of anger management can be funded by the Legal Services Commission. This a matter of importance in dealing with a large number of family cases and by consent, rather than dismissing the matter immediately, I further adjourn the leave application in order to determine the final approach of Legal Services Commission to the anticipated further application by the applicant.

Adjourned hearing on 6 October 2011

[16] By letter dated 16 September 2011 the Legal Services Commission agreed, on the facts of this specific case, to fund an assessment of the applicant by Self NI involving three sessions at an overall cost of £120 together with the costs of providing a court report at £80. The total cost to include the assessment and Court Report was not to exceed £200.

Conclusion

[17] The applicant is not entitled to legal aid for therapy. Legal Services Commission has agreed to fund an assessment and a report. Leave to apply for judicial review is refused.