

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

CASE REFERENCE NUMBER: 27/18

McG – APPELLANT

AND

DEPARTMENT OF FINANCE – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Christopher Kenton FRICS and Ms Angela Matthews

Date of hearing 25 September 2019

DECISION ON REVIEW

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision issued on 3 July 2019 and thus the tribunal's decision is affirmed and the appellant's application for review is dismissed.

REASONS

Introduction

1. This is an application for review of a decision of this tribunal ('the decision') in respect of an appeal against the outcome of a review of a decision by the respondent that the appellant was not entitled to Disabled Persons Allowance (DPA). The decision was issued to both parties by the Secretary of the Northern Ireland Valuation Tribunal ('the tribunal') on 3 July 2019.
2. The appellant, by email ('the review application') received in the Tribunals Hearing Centre on 11 July 2019, requested a review of the decision of this tribunal. The appellant made submissions in the review application.
3. The tribunal had before it the following documents in respect of the review application:

- (a) The appellant's review application received 11 July 2019;
 - (b) Response by the respondent dated 30 July 2019;
 - (c) Appellant's submission dated 9 August 2019.
 - (d) Correspondence between the parties and the tribunal.
4. Both parties having indicated that they were content that the matter be dealt with on the basis of the papers before the tribunal, the matter was listed for 3 September 2019. However due to administration issues the matter was subsequently adjourned and was listed for hearing on 25 September 2019.

The Law

5. The Valuation Tribunal Rules (NI) 2007 ('the Rules'), as amended provide at rule 21 as follows in respect of the review of any decision of the tribunal:
- "21.-(1) If, on the application of a party or its own initiative, the Valuation Tribunal is satisfied that-
- (a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; (*the first ground*) or
 - (b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had good reason for failing to be present or represented; (*the second ground*) or
 - (c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; (*the third ground*) or
 - (d) the interests of justice require (*the fourth ground*)
- the Valuation Tribunal may review the relevant decision."
6. The nature of a review application of a decision of the tribunal is that the appellant has in the first instance to establish proper grounds upon which the tribunal might proceed to review the decision. If such grounds are not established then the matter cannot proceed to a review.

The Appellants' Submissions

7. The appellant, in his review application, began by stating that the decision of the tribunal was wrong. The appellant stated that the tribunal may not have enough explanation of the kind of rehabilitation he conducts in the room. He

states that this is partially his fault in that he was not aware of the level of detail that was needed.

8. The appellant said that he was going to provide a letter from his GP in relation to the effects of stroke but had been unable to secure an appointment with his GP.
9. The appellant states that his application for review should be allowed in the interests of justice. He has always seen himself as a stroke survivor and not a victim. He indicates that he had not claimed DLA before although he said that he would have been entitled to claim the same. He considers that the DPA is not a major benefit in any shape or form (only amounts to 25% of the rates bill), however it is something that he is 100% entitled to as: he had a stroke; it left him with disabilities; and he uses the room with facilities to assist with his rehab from the stroke.
10. The appellant states that the room is not a living room. He states that it has no windows. The previous owner had a TV mounted to the wall. There is no TV socket, no aerial and no ability to receive broadband. He has no power tools to remove this and this is why the TV is on the wall. He would argue that the tribunal's decision fails to mention what he uses the room for – i.e. recovery and rehabilitation.
11. The appellant states that the room is of critical importance to his well-being – both physical and mental – as a consequence of the disabilities the stroke left him with.
12. He would argue that the decision further fails to mention that the desk in the room is to practice his handwriting as he has pain when writing for over five minutes, nor mentions his hand grip devices that he uses to strengthen his hand muscles and improve his circulation.
13. The appellant states that he uses the mat for stretching exercises to help with the weakness, numbness and stiffness that are a direct consequence of his stroke. He suffers from foot drop and general limpness on his left side. He also states that another consequence of his stroke is hemiparesis or

weakness of the right side of his body. He performs various exercises that focus on the right-hand side of his body.

14. The appellant also refers to another consequence of his stroke, namely incontinence and he therefore uses the room to perform pelvic floor muscles and Kegel exercises to achieve better bladder control.

15. He has also noticed that he has been experiencing spasticity which can be quite painful and he again uses his mat in the room to perform a range of motion exercises and strengthening of tighter muscles. He also uses the trampoline in this room for balance exercises as well as general exercise as both these are critical for his condition as a consequence of the stroke.

The Respondent's Submissions

16. The respondent, in relation to the appellant's comments on the nature of DPA as a benefit, states that it has a responsibility to ensure that all awards of DPA are in line with procedures/guidance as these are there to protect the public purse.

17. The respondent states, in relation to the appellant's point that it is not a living room, that there are two sofas and a TV in the room that would indicate that it is being used as a living room and used for leisure purposes in addition to rehabilitation. In relation to the room not having a TV aerial, the respondent would state that this does not prove that the TV is not in use – a TV aerial is not needed to stream shows or play games. The respondent also states that the appellant has stated that he uses the trampoline for rehab and general exercise which is another indicator that the room is used for other leisure activities.

The Tribunal's determination of the issues

18. As has been stated earlier, there are four possible grounds on which to base an application for a review of a decision of the Valuation Tribunal. The appellant has not indicated precisely in his submissions which of the grounds he is relying on to base his application for a review, although he does mention that the appeal is in the interests of justice. Therefore, the tribunal has

assessed each of the appellant's submissions against each of the relevant grounds as a whole.

19. In respect of the second ground for review, that a party who was entitled to be heard at a hearing but failed to be present, had good reason for failing to be present or represented, the appellant had indicated that he was content that the appeal was dealt with by written representations. Therefore, there is no reason that the appellant should succeed on this ground for application for review in respect of any of his submissions made in his application for a review.
20. At this point it is worth pointing out that the review procedure is not intended to be a second bite at the cherry, for an appellant who feels he has not submitted his best case to the tribunal to have another go.
21. In respect of an application that the decision of the tribunal is wrong, (the first ground for a review), *Crawford v Commissioner of Valuation*, a previous decision of the Valuation Tribunal, gives an insight into the type of circumstances in which a review may be undertaken under Rule 21(1)(a):
“The review procedure under this head is designed to correct obvious and fundamental flaws which arose because of human error, errors which when pointed out, are self-evident, patent and objectively, clearly erroneous. It is impossible to conjure up an exhaustive list of the type and nature of errors, which may be relevant, but if a Statement of Case failed to be included or dealt with at an appeal or if the body of one decision somehow became attached to the title of a different decision, such are the types of error which would entitle any party, or the NIVT of its own initiative, to seek a review.”
22. Applying this first ground for review, to this submission forwarded by the appellant as outlined in detail earlier, there is nothing in this submission that comes under the ground of obvious and manifest error in the decision.
23. In relation to the third potential ground for review – this is that new evidence to which the decision relates has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then. In the submissions of the appellant the only new evidence referred to by him on the application for a review of the decision,

(which was not referred to in his submissions to the tribunal in respect of the original hearing) relate to his bladder issues and the fact that he uses the room for pelvic floor muscles and Kegel exercises and stretching of tighter muscles. He uses the room three times per week for these exercises. The other matters referred to by the appellant in the application for review were referred to by him in his written submission to the original hearing of this matter. The tribunal also finds that the evidence of bladder issues is something that would have reasonably been known or foreseen at the time of the original hearing and therefore the application for a review on this ground must fail as well.

24. The question of where it would be appropriate to review a matter under the final ground in the 'interests of justice' has been considered by the tribunal in other cases, notably in *Cairns v Commissioner of Valuation*. In that case the President of the Valuation Tribunal concluded:

"In the absence of any identified authority within the tribunal's own jurisdiction being drawn to the tribunal's attention, the tribunal is of the view that the 'interests of justice' ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the 'interests of justice' ground might, for instance, be seen to apply to situations such as where there has been some type of procedural mishap.... Generally, it is broadly recognised that the 'interests of justice' in any case must properly encompass doing justice not just to the dissatisfied and unsuccessful party who is seeking a review but also to the party who is successful. Further, there is an important public interest in finality of litigation. The overriding objective contained within the tribunal's rules also bears upon the matter."

25. In the light of this, there is nothing in the applicant's submission that would warrant a review of the decision on this ground. The evidence submitted in the application for a review by the appellant was largely submitted to the tribunal in relation to the original determination of this matter. At the original hearing the tribunal considered in full the detailed submissions by the appellant and the respondent as to what the room was used for and determined on the issues accordingly.

Conclusion

26. The tribunal having considered this matter in detail is satisfied that the appellant has not made out any of the grounds justifying relief pursuant to Rule 21 of the Valuation Tribunal Rules and it is the unanimous decision of the tribunal that its original decision remains unaffected and the application for a review is dismissed.

Signed: Mr Charles O'Neill - Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 6 November 2019