

CO/4103/2009

Neutral Citation Number: [2010] EWHC 130 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 18 January 2010

B e f o r e :

MR JUSTICE COLLINS

Between:

THE QUEEN ON THE APPLICATION OF FRANCIS BAUER-CZARNOMSKI
Claimant

v

THE LONDON BOROUGH OF EALING

Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 0207 404 1424
(Official Shorthand Writers to the Court)

The Claimant appeared in person

Mr Mark Baumohl (instructed by LB Ealing, Legal Department) appeared on behalf of the
Defendant

J U D G M E N T

1. MR JUSTICE COLLINS: I can deal with this claim shortly because it is not necessary or perhaps desirable to spell out the full details. The parties are well aware of them.
2. In effect, Mr Bauer-Czarnomski has been living in a four-bedroomed house which is owned and occupied by his aging parents. Sadly, both of them suffer from problems, which perhaps can be described as mental problems. His father received a nasty injury to his head during the war, and this has led to a degree of irrationality from time to time in his behaviour, and sadly his mother, who is now 83, suffers from vascular dementia, and this means that her behaviour is also irrational. The result has been that he has been living in the house as carer for both of his parents, and this has placed upon him a burden which he has found from time to time intolerable, and which has adversely affected his health.
3. As long ago as 2004, he applied to the Council to be placed under their allocation policy in a band which recognised his medical condition. The Council operates under what is known as a Locata scheme. The scheme itself is not under challenge, but what is under challenge is the fact that at all material times Mr Bauer-Czarnomski has been placed in the lowest band, which is Band D. The relevant medical conditions are referred to in both Band B, which is a high priority band, and Band C, which is the band which is headed "Identified Need Reasonable Preference". I deal with C first. The medical (including mental health hardship) is stated as follows:

"Band C status for medical need will be given where an applicant's or member of the household's current housing conditions are having an adverse effect on their medical condition which creates a particular need for them to move."
4. In order to achieve Band B, the medical condition is stated as follows:

"Band B status for medical need will only be given where an applicant's or a member of a household's current housing conditions are having a major adverse effect on their medical condition.

It will not apply where the effect of housing conditions on health is comparatively moderate, slight or variable."
5. The claimant obtained a report from his treating doctor, Dr Soutzos, in 2006. That report made clear that it was the doctor's view that the conditions under which he was living were having a major effect upon his health. That was because effectively he was on 24-hour duty, was frequently disturbed in the course of the night and obviously was having problems in being able to sleep and to be able to rest properly. He was never able to be sure that he could get away from his parents, not because they were acting in any way maliciously, but because their mental condition meant that they needed his assistance, or said they needed his assistance, at all times of night and day, and this was, understandably, having a damaging effect upon his health. So much was confirmed by his doctor.

6. The Council's reaction was to obtain a report from their advising doctor. I emphasise that that doctor did not at any time see or communicate with the claimant. That doctor's view was that the letter from Dr Soutzos did indicate that an adverse health effect arose in current accommodation, and he accepted Dr Soutzos's view on that matter. That was as far as any medical consideration could properly go. However, the doctor went on to advise on priority on the basis of the absence of a particular necessity to move, as the current accommodation appeared to contain a more than adequate size and facility for the applicant to maintain independence and separation from other family members where necessary, and if he so chose. He had his own bedroom and so on. That, with respect, is not a matter for the doctor. He appears to have approached it on the basis that the physical condition of the house and the fact that there was an independent bedroom was sufficient to mean that the conditions of the housing were not such as were affecting his health within the meaning of the policy. That, in my judgment, was manifestly wrong. Conditions must extend to the conditions involving those who are living at the house, the effect of their actions and so on. It is not and cannot be limited to the physical conditions of the house. Indeed, the Council was clearly wrong to have relied upon that approach from Dr Keen.
7. There was a further advice obtained from a psychiatric adviser, a Dr Wilson, and that agreed with Dr Keen, and he said the question that requires the most attention is whether the applicant needs to be re-housed. He said that, in his view, there were others who were in a more unpleasant situation. But, again, that is not a matter for him; that is a matter for the local authority to decide on the basis that here was someone whose physical health, and possibly mental health too, was being adversely affected by the conditions which existed because of the disabilities that his parents were suffering from.
8. It seems to me in those circumstances that at all material times at the very least he should have been placed in Band C. It may be that following the reconsideration that is going to take place he should now be in Band B. I cannot decide which it should be. What I can say is that, unless there has been substantial change for the better in the medical situation having regard to his parents' disabilities, it seems to me that it would be quite impossible for the Council to do other than place him at the very least in Band C. As I say, depending on the medical evidence, it may be higher than that. Of course, I cannot anticipate the reconsideration, and I obviously do not make and cannot make any mandatory order to any particular effect.
9. The fact is that, on the face of it, he has been deprived of the opportunity of bidding under the Locata policy within a band which gives him a greater priority than that which he has been provided with under Band D. Thus, that wrongful deprivation must mean, I would have thought, that he be given a priority in whatever band is considered appropriate, assuming that there is no good reason, and it is very difficult to conceive that there could be, for him to be maintained now in Band D. But, again, that is not a matter I can make any specific direction about. I simply record it so that the Council know the approach that is proper for them to adopt.
10. One final matter that Mr Bauer-Czarnomski raises, and that is to refer to the guidance notes in relation to the policy. At 5.13 it says:

"... housing authorities should contact the most appropriate health or social care professional who has direct knowledge of the applicant's condition, as well as the impact his condition has on his housing needs."

11. Mr Bauer-Czarnomski makes the point that had he been placed in Band C, and had the medical condition been properly recognised, he would have had access to the social department side, and that may well have been something which assisted him as well because he would have been able to discuss the matter with and get the input from a social care professional. That, again, he has not done. He makes the point that it is wrong, he submits, for the Council simply to rely upon the medical views of any doctor who has not even contacted him and has no direct knowledge other than simply seeing the report from whichever doctor has been presented to the Council.
12. I do not think that it is essential that the Council's adviser in any given case does see the individual certainly if he does not dissent from the medical views given in the report that is presented. The problem here is that the doctors went beyond their medical remit. They agreed with the effect that the situation was having on Mr Bauer-Czarnomski. They then went on to give opinions as to whether he should be put on whatever band was considered appropriate, which was not, as I repeat, a matter for them and was an opinion which the Council should not have relied on because it was an immaterial consideration and it rendered their decision irrational in the Wednesbury sense. I say "in the Wednesbury sense", in fact in the sense that is indicated by Lord Diplock in the CCSU case: not perverse, but having regard to an immaterial consideration. But, in fact, having regard to the medical evidence, it would also, and indeed was, in my judgment, a perverse decision to keep him in Band D.
13. Obviously it is appropriate that there should be an up-to-date medical consideration. Mr Bauer-Czarnomski does not, as I understand it, dispute that. He must give authority to his doctor to enable that doctor to give information to whichever medical adviser the Council wishes to instruct, and obviously any report will be copied to him.
14. In those circumstances, what I shall do is to declare that the Council's decision to place him on Band D has been erroneous, at least since September 2006, which is when they received the confirmation and he produced the relevant reports. It may well have been wrong earlier, but it is not, I think, possible for me to say in terms that it was clearly as a matter of law erroneous before that. But it has been erroneous since September 2006. Unless the evidence now is that the medical condition has improved so that effectively the situation is no longer having an adverse effect on him, it is difficult to see how they could do other than place him at least in band C and, as I have already said, it may be that Band B would be appropriate, but I cannot direct that that is the position.
15. In those circumstances, do I need to quash the decision that he is in Band D?
16. MR BAUMOHL: I think your Lordship does, yes.
17. MR JUSTICE COLLINS: I will quash the decision that he is in Band D. I will declare that there must be a reconsideration, and I have already indicated, I think quite clearly, what the basis of that will be.

18. Mr Bauer-Czarnomski, what I will direct is that a transcript is produced and you will have a copy of what I have said so everyone knows what the position is. I do not think I need do a formal declaration as a matter of judgment because it is all contained in what I have said. So the only order I will make is to quash the decision that you are placed in Band D.
19. You can have some costs too. Costs, I am afraid, for a litigant in person are not terribly generous. I cannot remember what the rates are, but what I would ask you to do is to have a word with the lady behind you, and she will tell you what are the maximum hourly rates that you are entitled to as a litigant in person. You also will be entitled of course to, for example, photocopying of documents, travel expenses, that sort of thing. So what I would ask you to do is to have a word, see what you can recover and then submit a schedule of the costs to the other side and to the court. They will then have the opportunity to dispute them, if they wish, and if there is no final agreement, I will consider the matter on paper and make a decision. But, in principle, you are entitled to your costs. As I say, it is a question of assessing them, but I warn you they are not terribly generous for a litigant in person.
20. MR BAUMOHL: My Lord, can I ask then that the order on costs will be the defendant do pay the claimant's reasonable costs at a litigant in person rate, to be assessed if not agreed. Does your Lordship want a direction or some form of order that it is referred back to your Lordship?
21. MR JUSTICE COLLINS: No, what I am saying is that Mr Bauer-Czarnomski should put in a schedule and serve it on you. If you do not agree it, you say why and I will make a decision. I will make a summary assessment.
22. MR BAUMOHL: Your Lordship is not proposing detailed assessment --
23. MR JUSTICE COLLINS: No, that will only add to costs. What I am going to do is to say that it must come back to me for an assessment. Obviously if I feel that it is essential that there is a detailed assessment, I will say so, but I doubt it. I think that is all.
24. MR BAUMOHL: There is one other matter, my Lord, which is this: your Lordship has directed that effectively Mr Bauer-Czarnomski should have been in Band C, I think is as far as it has gone, since September 06. I think there ought to be some form -- I know your Lordship has said it is going to be contained in the transcript, but there should be some form of direction in the order to that effect.
25. MR JUSTICE COLLINS: I have said that he ought to have been in C and that should give him some priority now. I do not think it is necessary to put it specifically in the order because it will be indicated in the judgment.
26. MR BAUMOHL: So be it, my Lord. If your Lordship is happy.
27. MR JUSTICE COLLINS: I am happy with that because if the Council do not take any notice of it, they will be in trouble.

28. MR BAUMOHL: My Lord, yes.
29. MR JUSTICE COLLINS: Thank you.