

***This judgment supersedes judgment dated 23 September 2019***

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**PORT OF SPAIN**

**Claim No. CV 2019-01839**

**Between**

**RUTH PETERS**

**Claimant**

**And**

**PERMANENT SECRETARY OF AND/OR REPRESENTING THE  
MINISTRY OF SOCIAL DEVELOPMENT AND FAMILY SERVICES**

**First Defendant**

**CENTRAL PUBLIC ASSISTANCE BOARD**

**Second Defendant**

**Before the Honourable Madam Justice Eleanor J. Donaldson-Honeywell**

Delivered on: 23 September, 2019

**Appearances:**

Jagdeo Singh, Dinesh Rambally, Kiel Tacklalsingh, Stefan Ramkissoon and Rhea Khan, Attorneys-at-Law for the Claimant.

Tinuke Gibbons-Glenn, Rachel Theophilus, Svetlana Dass and Diane Katwaroo, Attorneys-at-Law for the Defendants

## JUDGMENT

### **A. Introduction**

1. In this matter the Claimant, Ms. Ruth Peters challenges by Fixed Date Claim Form filed on 28 May 2019, the policy and/or criterion and/or regulation imposed and maintained by the Defendants stipulating that an applicant for a Disability Assistance Grant must be certified as being, *inter alia*, 'permanently disabled'.
2. The circumstances that led to this matter arose when the Claimant was diagnosed with Guillain Barre Syndrome and assessed with a 90% disability around July 2018. A medical certificate obtained for the Claimant on October 23, 2018 indicated that she was disabled from earning. In relation to the duration of this disability it stated, "1 year pending clinical report".
3. The Claimant's father visited the Sangre Grande Welfare Office on her behalf on or around October 2 2018 and received a form from the Welfare Officer which purported to be an application for Disability Assistance Grant. When he returned with the completed forms and medical certificate, he was told that this was not the correct form. He was given a new form which asked for the same information that was required on the previous form. When on December 4, 2018 this was resubmitted, he was told by the Welfare Officer that nothing could be done for the Claimant as she was not 100% disabled and could not receive disability grant. Granted an audience with the supervisor, he was then told that the form was incorrect, and he was given yet another form with the same title as the previous one.
4. At this point the Claimant and her father engaged their Attorneys-at-Law to write on January 16, 2019 to the Chairman of the Sangre Grande Public Assistance Board, Ministry

of Social Development and Family Service. The Ministry's response signed by its Permanent Secretary on February 5, 2019 included the following statement:

*"It was noted that while the doctor verified Ms. Peter's disability, he also stated that her period of disability was for one year. The officer explained to Mr. Peter that in order for Ms. Peters to qualify for a Disability Grant, the medical report must state that person is permanently disabled. Since, the medical report only stated the period of disability was for one year, **the Officer held the view that Ms. Peters should apply for a Public Assistance Grant with the said report**".* [Emphasis added].

5. The view expressed by the said Officer was approved in the said response. In so doing the decision of the Officer not to accept the application in the way the Claimant's father attempted to submit it was confirmed by the Permanent Secretary. In closing submissions herein Counsel for the Defendant sought further to justify this approach at paragraph 24:

*"... the Disability Assistance grant was meant to be permanent since other forms of impairment which are not permanent fall under the broader Public Assistance provisions".*

6. On receiving the January 16, 2019 response from the Defendant the Claimant's father noted the stipulation for permanence of disability on the Disability Grant Application forms which were available on the Ministry's website. He consulted with his Attorneys who advised that there was no such requirement for permanence in the Act. Accordingly, the present action was subsequently initiated.

## **B. Legislative Framework**

7. The **Public Assistance Act, Chap. 32:03** ("the Act") and Regulations set the legislative framework for inter alia the two types of assistance grants referred to by the parties herein. Those two grants are the Disability Assistance Grant, which is the one the

Claimant tried to access and the Public Assistance Grant which the Defendant argues was the only grant she was entitled to apply for.

8. By Statutory definition the Public Assistance grant is broader as it is said to include the Disability Assistance Grant. However, the criteria is different and the Disability Assistance Grant that the Claimant sought provides a higher monthly payment. As explained by Counsel for the Claimant in closing submissions the difference in financial assistance evinces an intention for two different funds being set up to cover different situations. They submit that the fact that the Claimant may qualify for a Public Assistance Grant does not mean that she is prevented from applying for the Disability Assistance Grant.
9. The Act only sets out the criteria for one of the two grants mentioned herein, namely the Disability Grant. Section 11 (A) 1(d) of the Act, stipulates that the requirement to qualify for a disability grant is as follows:

*“Notwithstanding any provision of this Act, a person is entitled to receive disability assistance if—*

*(d) he is in the opinion of the Local Board so disabled that he is unable to earn a livelihood and has been certified by a Medical Officer as being so disabled.”*

10. By section 16 of the Act, the Minister is given the power to make regulations. The Section provides that the Minister:

*“...for carrying the purposes and provisions of this Act into effect, and without limiting the generality of the foregoing, may make Regulations:*

- a. Causing the circumstances of every applicant for or recipient of public assistance to be enquired into;*
- b. Prescribing the procedure to be followed on and the forms to be used for applications for public assistance;***

- c. *Providing for the maintenance of adequate records of applications for public assistance, reports and decisions thereof and amounts of public assistance paid;*
- d. *Prescribing the method and places of payment of public assistance granted under this Act;*
- e. ***Providing for the suspension or discontinuance of disability and public assistance grants;***
- f. *Providing for the payment of grants in the event of mutilation, destruction or loss of the instrument of payment;*
- g. *Prescribing the procedure for verifying that the recipient of a grant is alive.”*  
[Emphasis added]

11. It is by way of **Regulation 3(1) of the Public Assistance Regulations** that the criteria for Public Assistance which was not set out in the Act is provided. The criteria is simply that the applicant must be “in need by reason of his being prevented by some physical or mental disability from earning a living”.

12. In addition to setting out the only requirement for a Public Assistance Grant the Minister has purported by way of another Regulation, the **Public Assistance (Disability Assistance) (Prescribed Forms) Regulations LN186/1997** to supplement the criteria for Disability Grants although this was already addressed in the Act. The Regulation does so by introducing a Form to be used when applying for the Disability Grant and in that form stating under the Rubric “Qualifications”:

*“To be eligible for a Disability Assistance Grant, a person...*

*(d) must be certified by a Government Medical Officer as being **permanently** disabled from earning a livelihood as a result of visual, mental, hearing or physical impairment.”*[Emphasis added]

13. The Public Assistance Regulations also include at 3(2) a provision that logically points to all grants under the Public Assistance legislative framework being reviewable. The Minister is specifically empowered under Section 16 (1)(e) of the Act to make regulations for the suspension or discontinuance of both disability and public assistance grants. Regulation 3(2) of the Public Assistance Regulations stipulates that Public Assistance is for a one-year period and is reviewable. As aforementioned under the Interpretation section, Section 2 of the Act, “public assistance” includes disability assistance. Accordingly, both types of grant are subject to review based on updated medical reports. There is no expressed or implied provision in the Act that a Permanent disability must be proven for any of the grants.

**C. Issues**

14. The Claimant submits that the issue to be reviewed is narrow i.e. whether or not the impugned regulation requiring that a person be “permanently disabled” in order to access a disability grant is ultra vires the Public Assistance Act. Put another way, the Claimant submits that the element of permanence and/or of being “permanently” disabled, as introduced by the regulations, is ultra vires. Accordingly, there was no valid basis for the Defendant’s decision.

15. The Defendant submits that there is a further issue of whether there has been a decision made that can be subject to review, arguing that no decision had been made by the Defendants in relation to a Disability Assistance Grant or a Public Assistance Grant pertaining to the Claimant.

#### D. Law and Analysis

##### *Issue 1*

16. The Claimant and Defendant both agree that the courts have the jurisdiction to declare a statutory instrument ultra vires by reason of its contents. However, the Defendant does not adhere to the Claimant's position that the regulations in question are in conflict with the existing legislation.

17. The Claimant cites the case of **R v Secretary of State for Social Security, ex p Joint Council for the Welfare of Immigrants [1996] 4 All ER 385, [1997] 1 WLR 275** wherein the court discussed legality of subsidiary legislation. The Court stated:

*"The principle is undisputed. **Subsidiary legislation must not only be within the vires of the enabling statute but must also be so drawn as not to conflict with statutory rights already enacted by other primary legislation.** Once that is accepted, the question in the present case becomes one of degree and extent....**The question is not to be answered, however, by appeal to such considerations of policy, persuasive though they may be. Nor, in my judgment, is the answer to be found through an inquiry as to whether the effect of the Regulations on the rights conferred by the Act of 1993 is direct or indirect. It involves looking with an objective eye at the practical result for most of those affected by the Regulations.**" [Emphasis added]*

18. **R (on the application of The Public Law Project) v Lord Chancellor [2016] UKSC 39** at [23] is also cited as follows:

*"**Subordinate legislation will be held by a court to be invalid if it has an effect, or is made for a purpose, which is ultra vires, that is, outside the scope of the statutory power pursuant to which it was purportedly made.** In declaring subordinate legislation to be invalid in such a case, the court is upholding the supremacy of Parliament over the Executive. That is because the court is*

*preventing a member of the Executive from making an order which is outside the scope of the power which Parliament has given him or her by means of the statute concerned. Accordingly, when, as in this case, it is contended that **actual or intended subordinate legislation is ultra vires, it is necessary for a court to determine the scope of the statutorily conferred power to make that legislation.***"

[Emphasis added]

19. The Claimant's main argument is that the impugned regulation is ultra vires the act in that it is contrary to the expressed intent of the legislation and would hinder the objects of the Act. Further, the Claimant argues that if this regulation were to be upheld and/or continued, the practical effect of applying same would essentially deny deserving applicants' access to the said disability grant.
  
20. The Defendant in response argues that the Disability Assistance is a type of Public Assistance. They say that there is no conflict with the intent/object of the Act as other forms of impairment which are not permanent would be covered by the broader category of Public Assistance. The Defendant argues that in the absence of any provision suggesting otherwise, the Disability Assistance Regulations by inserting the requirement of permanent disability in the prescribed application form was meant to distinguish between the two types of grants. Further, they argue that removal of the permanence qualification would mean that persons with temporary disabilities could apply for both grants and there would then be no need for a separate Disability Grant.
  
21. It is well established by authorities such as **Pepper v Hart 1993] A.C. 593** that Parliamentary material as an aid to the construction of legislation should be used only where the wording of legislation was ambiguous or obscure or its literal meaning led to absurdity. In the instant case the legislation is not ambiguous. It is clear from the Act that there is no requirement for permanent disability. Furthermore the literal meaning which

allows for disabled persons to access grants without undue hindrance leads to no absurdity. However, the following extracts of the Hansard (26 April, 1999) in relation to **The Public Assistance (Amendment) Bill, 1999**, though not the basis for my decision were examined not as evidence of the purport of the legislation but simply for information on the statement by the Minister of Social Development on the Ministry's interpretation:

*"Mr. Martin Joseph (St. Ann's East): ... While he boasts that so many people have access, my understanding is that there are people who are concerned with the manner of determination as to whether they qualify for a disability allowance. It is either standardized or exercised in a way in which people do have some questions as to the equity of it, and I think this needs to be addressed.*

***My understanding is that in some instances, the question about the persons determining whether or not a disability exists and whether or not this disability is permanent or partial, it seems as if there is a concern with respect to how this disability is determined.** So that there are concerns expressed by the persons who have to access this particular benefit as to whether or not the criteria are being applied across the board. That is the first concern I would like the Minister to address...*

*So there are two questions I am asking:-*

*(1) **The question about the determination of a disability: whether it be permanent or partial; who determines that disability, and whether or not there has been a shift in the determination of the disability in the recent past.***

*(2) Whether or not when funds for the provision of this disability assistance run out, there is some deliberate plan of the Government.*

*What people are saying is that it seems as if insufficient funds are allocated and what they do is increase the disability requirement to reflect the amount of funds that are available.*

...

**Mr. Fitzgerald Hinds (Laventille East/Morvant):** ... *Mr. Speaker, we therefore call on the Government to understand that disabilities come in varying ways. I have a constituent who is about 90 per cent deaf. As a result of that, he cannot find employment, and he indicated to me only about a month ago that wherever he seeks employment and the question of his inability to hear arises, employers simply do not want him, although he is very good at what he does. He is not in a wheelchair, he is not paraplegic, but he is, by any reasonable approach to the thing, in a sense, disabled and he would not qualify. He has to battle with all of us without serious hearing difficulty and, therefore, he is at sea in this.*

*...I therefore ask the Minister and, of course, the Government, to desist from its usual stiff-neckedness and to give some attention to many classes of people, those between 60 and 65, those are the constituents to whom I referred with a serious disability, that is to say, largely deaf, nothing more, but who would not qualify based on the new definition.*

...

**The Minister of Social and Community Development (Hon. Manohar Ramsaran):** *I will respond, again, to a contribution made by the Member for St. Ann's East which was on track. He is deserving of a reply. He spoke about the availability of funds as to determining whether we give the disability assistance grant or not. This is not at all accurate, and I would like to remind him of the means test that we still have. This is applicable to the public assistance disability grant.*

**A person must be between the age of 40—65 years; resident 20 years preceding the claim for the grant; of course, five years allowed to be out of the country; and disability grants are given, in the opinion of the board, to persons so disabled that they are unable to earn a living.**

*Since the beginning of this programme, there has been an attempted abuse by applicants—and I use the word “attempted” because the officers have been vigilant and they have been researching and investigating the claims. **The Ministry of Social and Community Development, through its Director of Social Welfare, found out that people with asthma, diabetes, hypertension, nervousness, heart disease and some with 20 per cent disability, approach the offices for assistance and, the intention of this disability assistance grant is really to assist those who are so disabled they cannot earn a living.***

*We placed these people in different categories. **For example, they must be severely handicapped; persons physically handicapped, most times bedridden; persons who are mentally retarded; people who are visually impaired, and people who are also suffering from hearing impairment, as the Member for Laventille East/Morvant described. So, if his case is accurate and the person about whom he spoke is 40 years or more, then I think he should apply. I am sure if that is accurate, he would be considered for disability assistance grant.***

*So, to come to Parliament and tell the nation as it were, that the officers at the Ministry are not equitable in the handling of cases, I think is really a misrepresentation of the facts...”*

22. These debates are not cited as an indication of the intent of the drafters of the legislation but they usefully guide as to what the position of the Minister of Social Development was in canvassing for the legislative regime for public assistance after the creation of the Regulations in 1997. As set out in the **Halsbury’s Laws of England**, under “Post-enactment History” at [745], “Official statements published by the department administering an Act, or by any other authority concerned with the Act, may be taken into account as persuasive authority on the meaning of its provisions. The courts will not, however, allow departments or others to use post-enactment guidance or other documents as a way of trying to turn what they did enact into what they wish they had enacted.”

23. The position of the Minister was simply a reiteration of the requirements set out in the Act. There was no indication of a requirement for permanence of disability to be entitled to be considered for a grant, even in direct response to a question posed by an MP on the subject. Instead, there was need for merely a severe handicap that makes a person “so disabled that they are unable to earn a living”. The Minister of Social Development also indicates in the debate that a person with a 90% disability would be considered for disability assistance grant.
24. It is also noteworthy, as pointed out in the Affidavit of Rhea Khan, Attorney-at-Law for the Claimant filed 28 May, 2019, that the published policy in relation to the accessibility of the Disability Assistance Grant on the Social Welfare Division – Ministry of Social Development and Family Services website ([www.social.gov.tt/divisions/social-welfare-division](http://www.social.gov.tt/divisions/social-welfare-division)) no mention is made of a requirement for “permanence”.
25. Further, the website suggests that there is a disparity in the quantum of the grants available for Public Assistance (\$1,150 to \$1,750 per month) and Disability Assistance (\$1,800). Therefore, although the Defendants are adamant that the Claimant can succeed in an application for Public Assistance, it is clear that she would receive less assistance through that course. The Claimant would therefore be prejudiced by having to apply under Public Assistance.
26. Upon examination of the scope of the statutorily conferred power to make the regulations in question, it is observed that Section 16 of the Act does not confer power on the Minister to limit the requirements for qualification for the Disability or Public Assistance Grants. The scope of the power granted to him at Section 16 (1)(b) of the Act is limited to *regulate the process* for application for and payment of the grants. No mention is made in the limited powers at Section 16 of the Minister having the power to adjust or add to the qualifications for application for a Disability Assistance Grant.

27. The provision, by the challenged Regulation, for a prescribed form with the added qualification of permanence of disability indeed appears to have an effect which is outside the scope of the statutory power pursuant to which the Regulation was purportedly made. There is merit to the submission of the Claimant that the said Regulation limits the rights conferred by the Act in a way that prejudices her and other potential applicants that meet the statutory requirements. It is therefore ultra vires.

28. The Claimant seeks in its application *“An Order of Mandamus compelling the Defendants to expunge the unlawful criteria from its forms, published policy and/or procedure and/or regulation and further cause to be published a policy for the application of a disability assistance grant made available and accessible to public in accordance with the Public Assistance Act”*. However, the court need not go further than necessary in order to remedy the unlawfulness of the provision. It meets the justice of the case to compel the Defendants to expunge the word “permanently” from the provision. This would place the provision in alignment with the requirements of the Act. There is no need to expunge the entire provision or to mandate that a new regulation be put into place to prescribe a completely revised Application form.

#### *Issue 2*

29. With regard to the Defendant’s submission that whether a decision was actually made is in issue, Counsel for the Defendant cites S.5(1)&(2) of the **Judicial Review Act, Chap. 7:08**:

*“5. (1) An application for judicial review of a decision of an inferior Court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall be made to the Court in accordance with this Act and in such manner as may be prescribed by Rules of Court.*

*(2) The Court may, on an application for judicial review, grant relief in accordance with this Act—*

*(a) to a person whose interests are adversely affected by a decision;”*

30. They submit that no decision was made by the Defendants in relation to a Disability Assistance Grant or a Public Assistance Grant pertaining to the Claimant as an application was never submitted. There is in my view no merit to this point. This is so firstly, in that the pre-action response letter sent to the Claimant's Attorneys by the Permanent Secretary clearly sets out the decision made by the Ministry's own Welfare Officer.
31. Secondly, the underlying decision reviewable in the present case, as outlined in submissions of the Claimant, is the decision of the Minister to make the impugned regulation which the Defendants relied on in deciding not to accept a Disability Grant application in relation to the Claimant. As in the above-referenced decision of **ex p. Joint Council for the Welfare of Immigrants**, judicial review can be and has been used to challenge the validity of delegated/subsidiary legislation. This submission therefore fails.

*Damages*

32. In relation to the claim for Damages, including aggravated and exemplary damages, the Claimant made no submission nor put forward any proposed sum for damages in evidence.
33. As correctly pointed out by the Defendants, citing **Neil Bennett v The Attorney General of Trinidad and Tobago CV 2009-01581**, Damages in judicial review cases are only recoverable where they would have been recoverable in an ordinary action and must be supported by evidence. Certainly, the Claimant has not proven arbitrary or oppressive action by the Minister in creating these regulations or by the Defendants in applying same against the Claimant as there are no facts outlined in relation to that aspect of the Claim. No evidence has been led specifically either on the losses sustained by the Claimant. The claim for damages must therefore fail due to lack of specific pleading, evidence and legal submissions on the point.

**E. Conclusion**

34. The Claimant has succeeded in her challenge to the vires of the Regulation provision regarding permanence as a qualification for Disability Assistance Grant. This provision goes outside of the scope of the requirements set out in the Act and limits the rights conferred by the Act unfairly. Accordingly, the challenge to the Defendants' decision not to allow the Claimant to apply for a Disability Grant succeeds.

**35. It is hereby Ordered as follows:**

- i. A declaration that the Defendants' policy and/or criterion and/or regulation of being certified by a Government Medical Officer as being permanently disabled from earning a livelihood as a result of visual, mental, hearing or physical impairment is unlawful and/or ultra vires the **Public Assistance Act Chapter 32:03, Section 11(A)(1)(d)**.
- ii. The claim for Damages is dismissed.
- iii. The Defendant is to pay the Claimant's costs in an amount to be assessed by the Registrar if not agreed.
- iv. Liberty to apply

.....  
Eleanor Joye Donaldson-Honeywell  
Judge

Assisted by: Christie Borely JRC I