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Re McCann

[1970] 2 O.R. 117-121.

ONTARIO

[COURT OF APPEAL]

GALE, C.J.O., MCGILLIVRAY AND KELLY, JJ.A.

15th JANUARY 1970.

Administrative law -- Judicial review -- Jurisdiction of Court based "on matters of law alone" -- Whether any evidence to support decision of administrative tribunal -- Family Benefits Act, 1966, s. 11b.

Section 11b (enacted 1968, c. 39, s. 2) of the Family Benefits Act, 1966 (Ont.), c. 54, empowers the Court of Appeal to hear appeals on questions of law alone from the board of review, which under the Act reviews decisions of the Director which in turn determine the payment of family benefits.

When the Director has terminated family benefits paid to an unmarried mother on the grounds that she could not be said to be a "single person" under the Act when she was living with a man and the board of review has upheld that decision, a question of law can be said to be raised only if there is no evidence to support the decision.

Although the question of whether the applicant was or was not a single person was not relevant to the decision as to her eligibility, it could not be said that there was no evidence to support the board's decision since the board based its conclusions on findings other than those dealing with the question of the definition of a single person. Consequently, there was no question of law raised to authorize an interference with the board's decision.

APPEAL pursuant to s. 11b of the Family Benefits Act, 1966, from a decision of the board of review upholding the Director's decision to terminate family benefits payments to the appellant.

Counsel:

Innis M. Christie, for appellant.

E.M. Pollock, for respondent, the Attorney-General for Ontario.

The judgment of the Court was delivered orally by

KELLY, J.A.: -- This is an appeal pursuant to s. 11b (enacted 1968, c. 39, s. 2) of the Family Benefits Act, 1966 (Ont.), c. 54, from the decision, dated September 15, 1969, of a board of review set up to review the decisions of the Director. The right of appeal is narrow, being limited to a question of law alone.

The legislation provides:

11b(1) Where the board of review has reviewed a decision, order or directive and given its decision on the review, the applicant or recipient who requested the review may appeal on a question of law alone to the Court of Appeal.

(2) Every appeal shall be upon notice of motion served upon the chairman of the board of review within thirty days after the delivery of the notice of decision under subsection 4 of section 11a, and the practice and procedure in relation to the appeal shall be the same as upon an appeal from a report or certificate of a master of the Supreme Court.

The scheme of the Act, the basic purpose of which is to provide benefits "on the basis of need for beneficiaries" as therein defined, requires the Director to "determine the eligibility of each applicant to receive a benefit and, where

the applicant is eligible, determine the amount of the allowance or other benefit and direct provision thereof accordingly, and may from time to time vary any amount so determined" (s. 3(1) (b)). Any decision, order or directive of the Director is reviewable by a board of review which has the power to direct the Director to "make such decision as the Director is authorized to make under this Act and as the board deems proper" (s. 11a (3) [rep. & sub. 1968, c. 39, s. 2]).

The decision of the board of review, from which this appeal is taken, is set out in the notice of the decision of the board of review dated September 15, 1969, which reads as follows:

Hearings were held by the Board of Review at the office of the Department of Social and Family Services, Kingston, Ontario, on August 20th, 1969, at 9:00 a.m. Miss McCann attended the Hearing, accompanied by Mr. Don Kuyck, representing her to the Board, Mr. John Whyte and Mr. Barry Stewart.

Purpose of Hearing:

Miss McCann submitted Form 6, requesting a hearing by the Board of Review because of the suspension of her Family Benefits Allowance (March 1 to December 31, 1968) and because of the deduction of \$10.00 per month by which her Family Benefits Allowance has been reduced since she was reinstated effective February 1st, 1969.

Findings:

1) Miss McCann received a Family Benefits Allowance for herself and a dependent child from October 1st, 1967. She moved during that month to a two-bedroom apartment and the allowance was increased to \$173.00 per month.

2) Mr. Donald Brown, aged 24, single, moved into the apartment with Miss McCann approximately November 1st, 1967. Because his employment was irregular, he did not contribute towards expenses, except occasionally bringing in groceries and giving Miss McCann money to assist.

3) The Family Benefits Allowance was suspended March 1st, 1968 as the Director, Family Benefits Branch, considered Miss McCann "was no longer living as a single person".

4) Miss McCann returned to her parents' home in April, 1968 and Mr. Brown returned to his parents' home in New Liskeard that same month.

5) A second child, Richard, was born to Miss McCann August 20th, 1968. Mr. Brown admitted paternity and has been ordered by the Family Court to pay \$10.00 for Richard's maintenance effective December 1968.

6) Miss McCann received General Welfare Assistance from August 1968 to January 1969. From February 1st, 1969 a Family Benefits Allowance was reinstated.

7) Counsel for Miss McCann submitted a brief on her behalf, maintaining that the definition of a "single person" had no relevance to Miss McCann's case.

8) Under the Family Benefits Act, Regulation 1(1) (c) states:

"1. (1) In this regulation,

(a) 'single person' means an adult person who is a widow, widower, unmarried, deserted, separated or divorced and who is not living with another person as husband or wife."

9) The Board of Review finds that from approximately November 1st, 1967 to March 1st, 1968, Mr. Brown and Miss McCann lived together as if they were a married couple.

10) The general practice of the Family Benefits Branch is to consider the participants of such a union, including any children, as a family group, whether or not a wedding ceremony has taken place. In such circumstances the man in the household is considered the head of the family for welfare purposes, and other members of the household are considered to be his dependants.

Decision:

1) Based on Findings 2, 5 and 10, the Board of Review affirms the decision of the Director, Family Benefits Branch.

James S. Band, Chairman.

Counsel for the appellant, for the purposes of this appeal, accepts and confines himself to the findings which have been set out in the notice of decision, but his submission is that, notwithstanding the acceptance of these findings, the facts and the situation they disclose do not support the finding of the Director, affirmed by the board of review that this applicant had ceased to be eligible.

If the applicant is, as she alleges she is, entitled to an allowance it is so by virtue of s. 7 of the Act. Section 7 of the Act, in so far as it is relevant to this appeal, reads as follows:

7(1) An allowance shall and other benefits may be provided in accordance with the regulations to any person in need who is resident in Ontario as determined by the regulations and,

(d) who is a mother with a dependent child and,

(vii) whose dependent child was born out of wedlock, where the mother is sixteen years or more of age and her dependent child is three months or more of age;

It is under the provisions of this section that the appellant was found to be entitled to benefits under the Family Benefits Act, 1966 from October 1, 1967. Subsection (3) of s. 7 reads as follows:

7(3) Any benefit may be suspended or cancelled if the recipient fails to comply with any requirement of this Act or the regulations(SECTION).

Ontario Regulation 102/67 and amending Regulations provide in

s. 1(3) as follows:

1(3) For the purposes of subsection 1 of section 7 of the Act, "any person in need" means any person who by reason of disability, age, loss of the principal family provider, or permanent unemployability is found, in accordance with this Regulation, to be unable to provide adequately for himself, or for himself and his dependants, or any of them, but, subject to section 20, does not include a person who is a resident in or a patient in, [Therein refers to a number of institutions which are not relevant to this matter.]

There is no question in the mind of the Court, and with this counsel agree, that if the finding of the board of review whose decision is under appeal is totally unsupported by any evidence, a question of law is raised which may be dealt with by this Court. But we are equally firm in our view that if there is evidence on which a finding could be made, then the action of the board in making that finding cannot be reviewed.

In the light of s. 7(3) giving the power of suspending or cancelling, it is our view that the determination of eligibility, at any time due to changed circumstances, also falls within the power of the Director. The board of review was set up to review the decision of the Director as to eligibility and that is the finding of fact which he has to make. In our opinion, on the facts which appear in the decision there is evidence to support a finding of loss of eligibility and on this basis we are of the opinion that what is before this Court is not a question of law exclusively. Consequently, the Court has no right to interfere with the board's or the Director's discretion in deciding a matter which is committed to it or him.

Argument was directed to the question as to whether the applicant came within the definition of a single person as it is contained in the Regulations.

The Regulations made pursuant to the Act, in fixing the maximum amount of liquid assets an applicant may have and still qualify for an allowance or benefit, use "single person" as one

of the criteria for determining the allowable maximum: but save with respect to the effect on the allowable maximum of liquid assets, the question of whether the applicant is or is not a single person is not relevant to the decision the Director has to make under s. 3 as to the eligibility of the appellant. Also we would point out that the board of review based its conclusions on findings in the decision other than those dealing with the question of the definition of a single person. The point the board had to deal with was eligibility and whether eligibility flowed from the findings which they referred to. They relied upon evidence which would support a finding a loss of eligibility. As there is no question of law raised which would authorize this Court to interfere the appeal will be dismissed. We do not feel, and in this feeling counsel for the Attorney-General concurs, that this is an appropriate case for the awarding of costs.

Appeal dismissed.