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Rare social security case win in the Court of Appeal under the Human Rights Act

The carer of a child under a Residence Order has the same entitlement as adoptive and birth parents to Sure Start Maternity Grant (a social security benefit) under Article 14 of the European Convention on Human Rights (ECHR), the Court of Appeal ruled today.

Implications of this case

This appeal, brought by the Public Law Project on behalf of Sara Francis, has widespread implications for the large number of children looked after under a Residence Order by kinship carers and others. Until now these carers have been excluded from eligibility to the Sure Start Maternity Grant. Following today's ruling, they will enjoy the same eligibility as parents of children who are adopted.

From now on, a kinship carer of a baby under 12 months old who is financially eligible and who has a Residence Order can claim SSMG in exactly the same way as if they were the natural parent.

Clare Collier, the appellant's solicitor, said, "This case is important not only for my client but also the many other families in her position who in future will be able to benefit from the Court of Appeal's ruling in this case. Cases brought under the Human Rights Act concerning eligibility for social security benefits rarely succeed, so this win is a major victory."

Background to this case

Sara Francis, 32, of Leicester is a full time mum to her own three children and her nephew.

The appeal was based on the contention that the refusal of the Secretary of State for Work and Pensions to award a £500 Sure Start Maternity Grant (SSMG) to Sara Francis in respect of her nephew was discriminatory and therefore unlawful under Article 14 of ECHR. The ECHR is incorporated into English law by the Human Rights Act 1998.

The appellant argued that there was no relevant difference between an Adoption Order and a Residence Order for the purposes of SSMG since in both cases the person who is actually looking after the child is the one in need of the financial

support to assist them in buying essential items for the new baby (cot, pushchair etc) that SSMG is designed to provide.

Ms Francis' nephew had been taken into care by the local authority when he was just 3 days old as her sister was unable to care for him due to serious health problems. Ms Francis took over looking after him when he was a few weeks old. She did not want to adopt him as she did not want to sever the child's ties with his natural mother, whom he saw occasionally. It was not disputed that Ms Francis satisfied the means test conditions for SSMG, nor that it would have been available to her had she adopted her sister's child, or if she was his natural mother.

Despite these circumstances, Ms Francis' claim was refused by the Department for Work and Pensions and on appeal by the Social Security Appeal Tribunal. She appealed to the Social Security Commissioner who dismissed both her appeal arguments that the reference to adoption in Regulation 5 of the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 should be given a broad meaning to include a person who has a Residence order for the baby in question, and that a failure to give SSMG to those with a residence order was discriminatory as there was no objective justification for her being treated differently from an adopter.

Concluding Judgment

At the Court of Appeal today, Sir Peter Gibson, Lord Justice Auld and Lord Justice Moore-Bick unanimously held that the difference in treatment between those carers who have an Adoption Order in respect of a baby and those who have a Residence Order was discriminatory under Article 14 ECHR, that there was no rational justification for the difference in treatment, and that it was therefore unlawful under section 6 of the Human Rights Act 1998 for Sara Francis not to be paid SSMG in respect of her nephew.

The Secretary of State for Work and Pensions was refused permission to appeal to the House of Lords.

**For further information, please contact Hannah Jones at The Public Law Project –
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Editors' Notes

- 1) Case ref: [2005] EWCA Civ 1303. Full judgement is available on www.bailli.org
- 2) The court has imposed reporting restrictions in respect of the child in question who cannot be named.
- 3) The Public Law Project (www.publiclawproject.org.uk) is a national legal charity which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage.