

Before Upper Tribunal Judge A Lloyd-Davies

DECISION

My decision is that the decision of the tribunal held on 26 June 2009 is erroneous in law. I set it aside: I give the decision that the tribunal ought to have given, namely, that the local authority has thus far failed to establish any lawful grounds for terminating the claimant's entitlement to HB and CTB with effect from 11 November 2007 and that the claimant's entitlement (or otherwise) to HB and CTB from that date should be the subject of a fresh determination by the local authority (in the light of the evidence available at the date of that fresh determination).

REASONS

1. The claimant was in receipt of HB and CTB. The local authority arranged a home visit to take place on 8 November 2007 "to review" the claims. The claimant was not present. On 8 November 2007 the local authority wrote to the claimant telling him his benefits had been suspended and advising him to get in touch. On 26 November 2007 the local authority wrote to the claimant advising him that a further visit would take place on 12 December 2007 (at an unspecified time) and that if the visit was "unsuccessful" the claimant's claim would be "cancelled". The local authority made a home visit on 12 December 2007: no reply was forthcoming as a result of the visit or following a telephone call (or calls). On 18 December 2007 the local authority "cancelled" the claimant's entitlement to HB and CTB with effect from 11 November 2007. The claimant appealed. The tribunal dismissed his appeal. The claimant appeals again with my leave.

2. Benefit can be suspended under either regulation 11 or 13 of the HB Regulations (I do not refer to the equivalent CTB regulations). The tribunal seems to have muddled which applied. The local authority accepts (as do I) that benefit was suspended under regulation 11 and that the reference to regulation 13 in the tribunal's statement of reasons was an immaterial error. However, following a suspension under regulation 11, before there can be a termination under regulation 14 there must be an information request within regulation 13, which request is not complied with. An information request posits that certain, identified, information is requested; the only information request relied on by the local authority is the notice of intended visit given on 26 November 2007; that notice was a bare notification of intended visit and did not state what information was requested; it therefore cannot, in law, amount to an information request within regulation 13 which could justify termination under regulation 14 (see CH/2995/2006). The appeal is therefore allowed: although the regulation 11 suspension remains in place, this does not absolve the local authority from deciding the question of the claimant's entitlement to

benefit as from the date of suspension, which question should be decided on the basis of all evidence available to the local authority at the date of its new decision.

(Signed)

**A Lloyd-Davies
Judge of the Upper Tribunal**

(Date)

10 February 2010