

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is as follows. It is given under paragraph 8(4) and (5)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000.
  - 1.1. The decision of the Burnley appeal tribunal under reference U/40/123/2002/00641, held on 29<sup>th</sup> July 2002, is erroneous in point of law.
  - 1.2. I set it aside, make findings of fact and give the decision appropriate in the light of them.
  - 1.3. I find the facts as set out in paragraph 4.
  - 1.4. My decision is that throughout the period of the overpayment decision, the claimant was not barred from entitlement to housing benefit by regulation 7(1)(h) of the Housing Benefit (General) Regulations 1987. So, there was no overpayment and there is nothing to recover from the appellant.

**The appeal to the Commissioner**

2. This case concerns an alleged overpayment of housing benefit. The appellant is the person to whom housing benefit was paid. The respondent is the Borough of Pendle, the local authority that paid the benefit.
3. The case comes before me as an appeal to a Commissioner against the decision of the appeal tribunal brought by the appellant with my leave.

**The facts**

4. The appellant is the landlord of the dwelling in respect of which the benefit was awarded. He is the brother of the housing benefit claimant. Until 1994, they jointly owned the dwelling, but the claimant then transferred his share to his brother. At first, the brother lived in the property himself. He then let it. Next it stood empty for about 18 months. Finally, he let the property to the claimant from December 1998.
5. I take these facts from the statement at page 87, which was produced in response to my direction on 18<sup>th</sup> February 2003. I have not given the local authority a chance to comment on that statement, because it is credible on its face and is supported by documentary evidence.

**The legislation**

6. This case concerns regulation 7(1)(h) of the Housing Benefit (General) Regulations 1987:

'(1) A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where-

- (h) he previously owned, or his partner previously owned, the dwelling in respect of which the liability arises except where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing ownership'.

7. Regulation 7(1)(h) was introduced by regulation 3 of the Housing Benefit (General) (Amendment No 2) Regulations 1998. Regulation 1(3) of these Regulations made transitional arrangement for those who were in receipt of housing benefit and affected by the amendment. It provided:

'Where a claimant is in receipt of an award of housing benefit on 25<sup>th</sup> January 1999, these Regulations shall come into force in respect of that individual on the day after the last day of the benefit period in respect of which that award is made.'

#### **14<sup>th</sup> December 1998 to 24<sup>th</sup> January 1999**

8. This is the first part of the claimant's first benefit period. It runs from the start of that period to the day before regulation 7(1)(h) was inserted into the 1987 Regulations.

9. The alleged overpayment began on 14<sup>th</sup> December 1998. The tribunal based its decision on regulation 7(1)(h). However, that provision did not come into force until 25<sup>th</sup> January 1999.

10. When a tribunal is concerned with past entitlement, it usually has to apply the legislation that was in force at the time with which it is concerned. It can only apply legislation that is passed or made later if that legislation is retrospective in its effect. That will not usually be the case so far as entitlement to benefit is concerned. It is not the case here.

11. The local authority concedes this point and accepts that the claimant was entitled to housing benefit for the inclusive period from 14<sup>th</sup> December 1998 to 24<sup>th</sup> January 1999. That concession is correct in law. There is, therefore, no overpayment for that period.

#### **25<sup>th</sup> January 1999 to 19<sup>th</sup> December 1999**

12. This is the rest of the claimant's first benefit period. It is stated on the front of the claim form on page 1E.

13. The local authority's concession overlooked the transitional protection in regulation 1(3) of the 1998 Regulations. Under that protection, the claimant was entitled to housing benefit up to and including 19<sup>th</sup> December 1999. The appellant mentioned this in his response to the local authority's observations and the local authority has now conceded the point. Again that concession is correct in law.

#### **From 20<sup>th</sup> December 1999 onwards**

14. This is the remainder of the period covered by the local authority's decision. It is clear from the facts as I have set them out that the claimant was originally an owner of the property,

but that he was not in continuous occupation after selling the property. So, regulation 7(1)(h) does not apply. See my decision in *CH/0716/2002*.

15. Regulation 7(1)(h) has been amended by regulation 2(a) of the Housing Benefit (General) Amendment Regulations 2001 to read:

‘(h) he previously owned, or his partner previously owned, the dwelling in respect of which the liability arises *and less than five years have elapsed since he or, as the case may be, his partner, ceased to own the property, save that this paragraph shall not apply* where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing ownership’.

That amendment came into force on 21<sup>st</sup> May 2001. By that date, more than 5 years had elapsed since the claimant ceased to own the property.

### Summary

16. I allow the appeal and substitute my own decision in favour of the appellant.

**Signed on original**

**Edward Jacobs  
Commissioner  
6<sup>th</sup> March 2003**