

week. When the applicant's entitlement was properly calculated it was discovered that her housing benefit from April 1988 should have been nil. The respondents sought to recover a total of £618.90 rent and rate rebates. The applicant appealed to the respondents' Housing Benefit Review Board. Following written submissions, the board decided on March 10, 1989, that the overpayment was recoverable under regulation 99 of the Housing Benefit Regulations 1987. The reasoning of the board was that: "In all the circumstances and in particular having regard to the letter issued by the Housing Benefits Department in April 1988 advising the appellant of her estimated Housing Benefit the appellant could reasonably have been expected to realise that an overpayment had been made."

The appellant sought judicial review of the decision.

Held following the application

Regulation 99 of the Housing Benefit Regulations S.I. 1987 No. 1971, requires the reasonable expectation not that a payment might be an overpayment but that it was an overpayment; an estimate is not the same thing as an overpayment and knowledge that one is receiving an estimated payment cannot be equated with realisation either that it amounts to an overpayment or that it amounts to an underpayment.

R. Drabble for the applicant, instructed by the Vauxhall Community Law Centre, Liverpool.

C. Cross for the respondent, instructed by the Solicitor to Liverpool City Council.

NOLAN J.: In this case Mrs. Elsie Griffiths moves with leave for an order of certiorari to quash a decision of the Housing Benefit's Review Board, Liverpool made on March 10, 1989. The effect of that decision was that an overpayment of housing benefit in the total sum of £618.90 (made up as to £298.18 of rate of rebate and £319.92 of rent allowance) which had been received by Mrs. Griffiths was recoverable from her under regulation 99 of the Housing Benefit Regulations 1987.

Entitlement to income related benefits of which housing benefit is one arises by virtue of section 20(1) of the Social Security Act 1986. Section 28 of that Act dealing with housing benefit specifies three kinds, one described in section 28(1)(a) taking the form of a rate rebate and the other, so far as the present case is concerned, in paragraph (c) of a rent allowance. The Act provides for the scheme under which housing benefit is paid to be governed by regulation. Section 29(4) of the Act provides that:

"Except where regulations otherwise provide, any amount of housing benefit paid in excess of entitlement may be recovered in such manner as may be prescribed either by the Secretary of State or by the authority which paid the benefit."

The Housing Benefit Regulations 1987 (S.I. 1987 No. 1971) came into force on April 1, 1988. Regulation 76 imposes upon the housing authority, in this instance the Liverpool City Council, the duty of making a determination as to the entitlement of the particular claimant. Regulation 79(2) authorises a claimant to require a review of the determination by the housing authority and section 81 confers an entitlement to a further review by

R. v. Liverpool City Council, ex p. Griffiths

Queen's Bench Division

Nolan J.

March 14, 1990

Introduction

The Social Security Act 1986 made provision for three types of housing benefit: rent rebates for the tenants of the authority administering the rebate; rent allowances for other tenants; and rate rebates (which latter has now been replaced by the community charge rebate). Section 29(4) of the Social Security Act 1986 (*Encyclopaedia* para. 2-1690/9) provides for the recovery of overpayments in housing benefits, to be made in the prescribed manner. The Housing Benefit (General) Regulations S.I. 1987 No. 1971 (*Encyclopaedia* para. 3-1210 *et seq.*) make detailed provision for the implementation of the subsection.

Generally, payment of housing benefit should be made "within 14 days of the receipt of the claim . . ." (Regulation 88(3)). In respect of a rent allowance, where this is impracticable an authority may make a payment on account of entitlement of such amount as it considers reasonable having regard to the available information (regulation 91). The notice of any such payment on account should also inform the claimant that if on subsequent determination he was found not to be entitled to the whole or part of the amount paid, the whole or the excess would be recoverable (*ibid.*). Similar provision was made in respect of rate rebates by regulation 91A.

By Regulation 99, overpayments, including those made under regulations 91 and 91A, are recoverable unless the overpayment was caused by an official error where the claimant, at the time of receipt of the payment, could not "reasonably have been expected to realise that it was an overpayment."

Facts

The applicant was aged 66. In December 1987, she retired from work and made a claim for housing benefit, this claim was processed and paid in the usual way. Prior to this she had never made a claim for benefit of any kind.

In April 1988, as a result of changes in the rules for calculating housing benefit the respondents were unable to process all the housing benefit claims made to them. Estimated payments were therefore sent to claimants.

The applicant received letters in April 1988 in respect of both her rent and rates rebate entitlements. These stated that the amount to be paid was estimated. Prior to April 1988, the applicant was receiving a total of £19.11 a week; from April 1988, her estimated housing benefit was £19.06 per

the review board which is an independent consumer review service by the council. Regulation 88 paragraph (3) provides:

"Subject to regulations 91 to 96 . . . every authority shall make the first payment of any housing benefit awarded by it within 14 days of the receipt of the claim at the designated office or, if that is not reasonably practicable, as soon as possible thereafter."

Regulation 91, dealing with rent allowances, provides as follows:

"(1) Where it is impracticable for the appropriate authority to determine a claim for a rent allowance within 14 days of the claim for it having been made and that impracticability does not arise out of the failure of the claimant, without good cause, to furnish such information, certificates, documents or evidence as the authority reasonably requires and has requested, the authority shall make a payment on account of any entitlement to a rent allowance of such amount as it considers reasonable having regard to such information which may at the time be available to it concerning the claimant's circumstances."

(2) The notice of award of any payment on account of a rent allowance made under paragraph (1) shall contain a notice to the effect that if on subsequent determination of the claim the person is not entitled to a rent allowance, or is entitled to an amount of rent allowance less than the amount of the payment on account, the whole of the amount paid on account or the excess of that amount over the entitlement to an allowance, as the case may be, will be recoverable from the person to whom the payment on account was made."

(3) Where on subsequent determination the amount of rent allowance payable differs from the amount paid on account under paragraph (1) future payments of rent allowance shall be increased or reduced to take account of any under payment or, as the case may be, overpayment."

Regulation 91(A) makes substantially similar provision in the case of rate rebates. Regulation 99, which is the crucial provision for the purposes of this case, provides as follows:

"(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable."

(2) This paragraph applies to an overpayment caused by an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment, reasonably have been expected to realize that it was an overpayment."

(3) In paragraph (2), 'overpayment caused by official error' means an overpayment caused by a mistake made or something done or omitted to be done by the appropriate authority or by an officer or person acting for that authority or by an officer of the Department of Health and Social Security or the Department of Employment acting as such where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake, act or omission."

The procedure of the review board is governed by regulation 82 and takes the form of an oral hearing. In this instance there was an oral hearing attended by representatives of Mrs. Griffiths and of the council and both supplied the board with written submissions. No oral evidence was called. The submission for the council contained this information, which was not in dispute.

... in April 1988 approximately 100,000 claimants were receiving correct housing benefit payments. From April 1988, the City Council experienced great difficulties in implementing the Government's housing benefit changes. The on-line computer system could not be amended in time to calculate the new benefits. Faced with the stark choice of doing nothing or making some effort to make payments on account (estimated payments) to approximately 45,000 non-income support claimants the City Treasurer opted to make payments on account knowing that some claimants would be underpaid and others would be overpaid."

The submission then entered into the arithmetic which concerned Mrs. Griffiths. Prior to April 1988, she was receiving £19.11 a week. After April 1988, her estimated housing benefit was £19.06. When the calculations were ultimately carried out, it was discovered that since April 1988 her housing benefit should have been nil hence the overpayment agreed to have arisen."

Mr. Cross, representing the board and the council, has submitted, and again this is not in dispute, that the City found itself in very great difficulties. It was physically impossible for the City Treasurer to make the necessary calculations within the 14-day period and that was why he made an estimate of entitlement in each case. This was entirely understandable and one's sympathies go out to the City in its difficulties, no doubt shared by many other authorities faced with the need to implement highly detailed and complex legislation at short notice in the face of staffing difficulties and financial constraints."

It is also to be borne in mind that, if, as the applicant maintains, the overpayment she has received is irrecoverable, then she will have been left at the expense of other citizens with more than her intended entitlement under the legislation. But these general considerations cannot carry conclusive weight. The result in law must depend upon the facts and upon the proper application to them of regulation 99, to which I have referred."

I think in relation to Mrs. Griffiths herself all I need add is that the submission on her behalf, again undisputed as to its content, is that she is a 66-year-old woman living alone. She only retired from work in December 1987 and for the first time in her life made a claim for benefit. She had no prior knowledge of the housing benefit system nor the amount of benefit to which she was likely to be entitled."

The communication to her in April 1988 of the estimate made by the City of the amount due to her was contained in two separate letters, one dealing with rent allowance and one with rate rebates. Both letters were dated April 7, 1988. It will be sufficient if I quote from the letter dealing with rate rebate which is in rather fuller terms, though not materially different from the other letter. It says:

"From April 1988, the Government is changing the rules for calculating housing benefit. Like many other local authorities, the City Council has not yet had enough time to work out the right amount of benefit for claimants. In order to help you, I have estimated your rate rebate to be £298.99 for the period 01/04/88 to 31/03/89."

Your general rates bill will take into account the estimated benefit mentioned above. Therefore, if you pay by instalments, they will be reduced accordingly."

If you have returned the housing benefit form which was recently sent to you, I will work out your correct rebate as soon as possible. I will

which write to you again mentioning you or your concerned rebate and on any revision made to your rate account.

If I do not return the form I will reclaim all the estimated benefit." With that letter there was sent to Mrs. Griffiths a rates information notice giving a good deal of general information about the City's rate revenue and how it was spent. It included, under the heading "Housing Benefit Rate Rebates 1988-89," the following passage:

"From April 1988, the Government is changing the rules to calculating rate rebate. Unfortunately, the City Council has not had sufficient time to calculate the correct amount of rebate for all claimants. Ratepayers who received Supplementary Benefit last year and are still on Income Support (Supplementary Benefit) should have the correct amount of rebate shown on their rate account. Other ratepayers whose residence is unchanged, and who received rebate last year, may have an estimated amount of rebate shown on their rate account for 1988-89."

The decision of the review board disallowing Mrs. Griffiths's appeal to them that she should be relieved from any obligation to repay gave the following reasons:

"The board having taken into account the evidence submitted by the City Treasurer and the Appellant considers that—

1. There has been an overpayment of Housing Benefit;
2. The overpayment was caused by an official error;
3. In all the circumstances and in particular having regard to the letter issued by the Housing Benefits Department in April 1988 advising the appellant of her estimated Housing Benefit the appellant could reasonably have been expected to realize that an overpayment has been made; and
4. The overpayment is therefore recoverable under Regulation 99 of the Housing Benefit Regulations 1987."

The short issue arising upon this application for judicial review is whether the board were entitled, and they did, to decide against Mrs. Griffiths upon the ground mentioned in paragraph 3 of their reasons. It is common ground that if I upheld the application on that point then it will be necessary for the case to be sent back to the review board for further argument. There are different points arising out of the regulations which may arise for decision if that event should occur. On any view therefore it would be unhelpful for me to dwell upon them in this judgment.

Concentrating then upon the issue raised by paragraph 3, I have to decide whether Mrs. Griffiths could reasonably have been expected to realize that the sums received by her were overpayments. Mr. Cross for the Council directs my attention to the letter of April 7, 1988, to which I have referred, and to the plain message conveyed by it that what was being given to her was an estimate which was subject to recalculation. He submits in his skeleton argument that the recipient of a letter such as that must be taken to have known that the calculation was an estimate, that if he was underpaid he would receive an additional sum by way of adjustment and that if he had been overpaid he would be called upon to make a repayment.

As Mr. Cross submits, this kind of procedure must be a familiar one to the ordinary household. If the gas or electricity meter reader cannot gain access a bill is sent on the basis of an estimate of consumption and everyone knows that adjustments will follow. Further, submits Mr. Cross, the

decision reached by the board upon this matter was a decision of fact. It is not therefore one which the court can reverse, save in the event of there being no evidence to support it. The evidence upon which it relies, as indeed the board evidently relied in their judgment, was the letter issued by the Housing Benefit Department making plain the estimated nature of the payment.

To this Mr. Drabble, for Mrs. Griffiths replies: let it be that Mrs. Griffiths realised or should reasonably have realised that there was the possibility of an adjustment to the payments being made by her pursuant to the April letter. That, he submits, by no means leads to the conclusion that she or anybody else could reasonably have been expected to realise that the estimate involved an overpayment. It could equally well have involved an underpayment. That is the essential character of an estimate and, he submits and emphasises, the sub-paragraph requires the reasonable expectation not that it might be an overpayment but that it was an overpayment.

The point is an extremely short one. I have to some extent elaborated it by thinking aloud in the course of argument about the sort of case which might naturally fall within regulation 99 paragraph (2) without dispute, the case of someone who had received regular payments of housing benefit and who suddenly received one of twice the normal amount. In such a case no doubt the recipient might reasonably be expected to realise that there was an overpayment.

In this connection Mr. Cross said that there had been wide public discussion and concern about the changes brought in by the 1987 Regulations, not just because of their complexity but because of it being well known that by and large their effect was to reduce entitlements, in some cases drastically.

He did not however rely upon this factor in the present case and I think rightly not. There is no suggestion that the case for the council was put before the board on the basis that, so to speak, subjectively Mrs. Griffiths should have realised that her entitlement had been substantially diminished in fact. Bearing in mind that it appears to have continued in the form of weekly payments of about the same or very slightly less than the previous weekly payments, that, I think, must be the right approach.

I have been referred to a press cutting in the Liverpool Echo of April 22, 1988, quoting the City Treasurer as saying:

"There are some 100,000 people in Liverpool entitled to some form of housing benefit or rate rebate, so I decided to opt for interim payments to them. But many will not be getting the right money. There will be those getting enough and eventually we will pay back what is owed. Others are getting overpaid and eventually we will try to recoup that money—as sympathetically as we can."

This seems to me to bear out and to support Mr. Drabble's general submission that an estimate is not the same thing as an overpayment and that knowledge that one is receiving an estimated payment simply cannot be equated with realisation either that it amounts to an overpayment or that it amounts to an underpayment. If one had to hazard a guess, which one does not, one would assume that if anybody on the City Council side had realised that it was an overpayment it would have been reduced. It seems hard to expect Mrs. Griffiths, receiving it as an estimate, to make such an assumption against herself.

On the basis of the decision of the board, the evidence before them being, as Mr. Cross firmly and rightly acknowledges, the April letter and the notice sent with it, it seems to me that I am bound to conclude that, in so far as it is a question of fact as distinct from what amounts almost to a question of construction of the letter read with regulations 99(2), then it is not one which can be supported by the evidence. My judgment, in other words, is that upon this point the board were in error and that they should not have dismissed Mrs. Griffiths's appeal on the ground that they did. The application for judicial review therefore succeeds.

Jones and Massey v. Cook and Cook

Court of Appeal.

Stocker and Woolf L.J.J.

March 15, 1990

Introduction

By section 98(1) of the Rent Act 1977 (*Encyclopedia* para. 1-1988), a court may not make an order for possession of premises let on a protected tenancy unless it considers it reasonable to make such an order and either it is satisfied that suitable alternative accommodation is or will be available to the tenant or it is a case to which one or more of the Cases set out in Schedule 15, Part I, of the Act apply.

Part IV of Schedule 15 to the Act (*Encyclopedia* para. 1-2324) deals in detail with what constitutes "suitable alternative accommodation." Paragraphs 4 and 5 of that Part deal with the requirements of such alternative accommodation when it is not to be provided by a local housing authority. In summary, paragraph 4 requires that the alternative premises be let as a separate dwelling either on a protected tenancy or on terms which will in the opinion of the court afford reasonably equivalent security of tenure, and that in either case the accommodation fulfills the conditions to be found in paragraph 5.

The conditions in paragraph 5(1) are that

"the accommodation is reasonably suitable to the needs of the tenant and his family as regards proximity to place of work and either—(a) similar as regards rental and extent to the accommodation afforded by dwelling-houses provided in the neighbourhood by any housing authority for persons whose needs as regards extent are, in the opinion of the court, similar to those of the tenant and of his family; or (b) reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent and character;—" (emphasis added).

By paragraph 5(2), for the purposes of paragraph 5(1)(a),

"a certificate of a local housing authority stating—

- (a) the extent of the accommodation afforded by dwelling-houses provided by the authority to meet the needs of tenants with families of such number as may be specified in the certificate, and
- (b) the amount of rent charged by the authority for dwelling-houses affording accommodation of that extent, shall be conclusive evidence of the facts so stated."

Facts

In May 1975, the defendants rented a house on a protected tenancy from a landlady who died in October 1975. In 1989, the landlady's executors