

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

**SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS
(NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (CONSEQUENTIAL PROVISIONS)
(NORTHERN IRELAND) ACT 1992**

INCOME SUPPORT

Appeal to the Social Security Commissioner
on a question of law from the decision of the
Belfast Social Security Appeal Tribunal
dated 21 June 1991

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the Adjudication Officer against the decision of a Social Security Appeal Tribunal that claimant was entitled to severe disability premium from 9 October 1989.
2. I arranged an oral hearing at which claimant was represented by Mr Allamby of Belfast Law Centre and the Adjudication Officer was represented by Mr Philip Gunn, Solicitor of the Department of Health & Social Services.
3. Briefly the facts are that claimant, a single lady, lives in a Northern Ireland Housing Executive House with her mother Mary and her sister Ann. Claimant's mother is in receipt of income support and mobility allowance and her sister Ann receives severe disability allowance and an attendance allowance. The claimant herself is in receipt of invalidity benefit and an attendance allowance. The tenancy of the house is in the mother's name who is entitled to a maximum housing benefit, but a deduction is made for non-dependants Sandra and Ann in respect of rent and rates.
4. The question which is raised in this appeal is whether or not the claimant is entitled to severe disability premium and the answer to that question depends upon the meaning given to regulation 3 of the Income Support (General) Regulations (Northern Ireland) 1987 as amended from 9 October 1989.

5. By virtue of the Social Security (Northern Ireland) Order 1986 a claimant is a severely disabled person if and only if -

- i. he is in receipt of attendance allowance; and
- ii. subject to sub-paragraph 3 he has no non-dependents, aged 18 or over residing with him;
- iii. (not relevant to this case).

6. From 9 October 1989 regulation 3 of the General Regulations defined a non-dependent as meaning anyone except someone to whom paragraph 2 applied who normally resided with a claimant, and it is the meaning to be given to paragraph 2 that is the subject of this appeal. Paragraph 2 reads:-

"(c) A person who jointly occupies the claimant's dwelling and either is a co-owner of that dwelling with the claimant or his partner (whether or not there are other co-owners) or is liable with the claimant or his partner to make payments in respect of his occupation of the dwelling."

6. It is not disputed that the claimant jointly occupies the dwelling with others, what is in dispute is whether or not another person, in this case the mother, is liable with the claimant to make payments in respect of her (the mothers) occupation of the dwelling.

7. Mr Gunn has based his argument on a Great Britain Commissioner's Decision CIS/299/1990 in which Commissioner Saunders said:-

".... the claimant does not satisfy the condition in question unless the other person and the claimant are jointly liable to make payments as co-owners or co-tenants or perhaps co-licensees."

Mr Gunn also adopted Commissioner Saunders' argument that as the payment to qualify under the Regulations must be "in respect of" the occupation of the dwelling that would rule out payments for gas and electricity because whether or not the liability of such payments arose by statute or by contract it seemed to the Commissioner that even if the claimant was liable to the gas and electricity board the liability to make such payments was not in respect of the occupation of the dwelling but in respect of the supply of the services in question.

8. Mr Gunn also argued that there was no validity in Mr Allamby's argument that because the housing benefit was reduced because of claimant's joint occupation of the house and claimant had to make up that money to her mother in respect of rent, that she (the claimant) was jointly liable with her mother in respect of her occupation of the dwelling, because he said the Adjudication Officer had a duty to interpret the Regulations for himself and could not act on the dictation of another statutory body; and also argued that the phrase "liable of make payment" meant legally liable. As far as the liability to pay rates was concerned he said that the bill would be in the mother's name and she would be primarily liable to make the payment. He said that it would have been a very simple matter for the Regulations to have embodied the

word "legally liable" but that was unnecessary because if words were given their ordinary meaning it clearly meant legal liability.

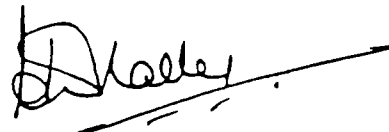
9. Mr Allamby argued that her housing benefit was reduced because of the claimant's occupation of the premises and the claimant therefore had to make up that balance to her mother and disputed Mr Gunn's argument that "liable to make payments" meant legally liable. But even if it did he said that each occupier was legally liable for the rates.
10. I have considered at length all that has been said and I have considered the decision of Commissioner Saunders but must with reluctance differ from his argument on two points.
11. I think it is an unnecessary stretch of language to say that a person who occupies premises and who has to pay or make a contribution for gas and electricity does not make those payments in respect of the occupation of the dwelling but in respect of the supply of the services in question. I am quite satisfied that those payments are made and the liability to meet them arises because of and in respect of the occupation of the dwelling. I reject Mr Gunn's argument that the regulation means "legally liable" because it would have been very simple to have said so if that was intended.
12. I also take issue with the Commissioner when he re-writes the Regulations. I think it is always very dangerous to substitute words for the words that are in the Regulations and then to base a decision on the substituted words, and he expands the Regulation by adding to jointly liable to make payments "as co-owners or co-tenants or perhaps co-licensees". So it is very difficult to know what in fact he is deciding; does he decide that a co-licensee complies with the Regulations or not. The Regulation comprises people who are either co-owners or liable to make payment, so what he is saying that "jointly liable to make payment" is as a co-tenant or a co-licensee. No enquiry was made by the Commissioner or any argument mounted in Commissioner Saunders' case as to whether or not the claimant was a co-licensee; or even a licensee but there are also a variety of other relationships, as in the instant case where the mother is the tenant and the claimant could well be a licensee, but I cannot see why she should have to be a co-licensee and I am not satisfied either that it is necessary to confine the meaning of the Regulation by adding words which are not there.
13. Giving the matter my best consideration I am satisfied that claimant and her mother are jointly liable to make payments in respect of the occupation of the dwelling and consequently comply with the Regulations and claimant is entitled to severe disability premium as she satisfies all the other relevant conditions.
14. That now brings me to the decision of the Social Security Appeal Tribunal which is being appealed against. One matter which I have not yet dealt with was whether or not the Tribunal was right to back-date the award to 9 October 1989. This situation has arisen because of a previous decision of a Great Britain Commissioner on the meaning of joint occupier and as a result of that decision many people who were previously denied the benefit were in a position to claim it, and the Belfast Law

Centre urged claimants to appeal against the refusal of the Adjudication Officer to pay the premium from the 11.4.88 which was the starting point of the new interpretation.

15. Claimant on 25 October 1990 requested that her claim for income support be back-dated to 9 October 1989 as she felt she was entitled to the severe disablement premium from that date and on the same date asked for a review of her entitlement from 11.4.88 although there was no previous decision of an Adjudication Officer on that point. On 26 October 1990 the Adjudication Officer decided that she was not entitled to income support.
16. As far as the back-dating of the benefit is concerned Mr Allamby in his written submission accepts that the original Tribunal erred in that after holding that the claimant was entitled to the severe disablement premium the Tribunal should have made a finding on whether or not under regulation 19 of the Claims and Payments Regulations there was good cause throughout the period for the failure to claim income support from an earlier date, and also that the maximum period for which such an award could have been made was 52 weeks ie 25 October 1989 and the Tribunal was wrong in awarding the benefit for any period prior to 25 October 1989.
17. I am satisfied the Tribunal was correct on the substantive point that she was entitled to the severe disablement premium but that it erred in awarding it from 9 October 1989, and also in not considering the "good cause" aspect of the late claim. Even if it makes a finding that good cause existed it could only have awarded the benefit from 25 October 1989.

I therefore allow the appeal for that reason and refer the matter back to a different Tribunal to consider the good cause aspect of the matter.

(Signed):


COMMISSIONER

(Date):

5/5/93