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THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CSH/149/06

SOCIAL SECURITY ACT 1998

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

APPEAL FROM THE APPEAL TRIBUNAL UPON A QUESTION OF LAW

COMMISSIONER: D J MAY QC

Oral Hearing

Appellant: City of Glasgow Council

1st Respondent: Secretary of State
2nd Respondent

Tribunal: Glasgow

Tribunal Case No: U/05/096/2005/00367

DECISION OF SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the appeal tribunal given at Glasgow on 8 November 2005 is erroneous upon a point of law. I set it aside. I make the decision the tribunal ought to have made. It is to uphold the decision of the City of Glasgow Council in their capacity as housing authority dated 6 July 2004 with the effect that the claimant is not entitled to housing benefit for 187 Westercommon Road, Flat 18B from 11 June 2004 until 27 June 2004.

2. The appeal came before me for an oral hearing on 10 October 2006. The appellants were represented by Mr Blair, Advocate, instructed by the appellants. The first respondent, who is the Secretary of State, was represented by Mr Brown, Solicitor, of the Office of the Solicitor to the Advocate General. The second respondent, who was the claimant for housing benefit, was represented by Mr Craig, a welfare rights officer of Queen's Cross Housing Association. The appeal was heard along with the appeal in CSH/150/06. The appeals both raised the same point of statutory interpretation.

3. At the outset Mr Craig sought to have the hearing adjourned upon the basis that in a direction which I issued yesterday, I sought to be addressed on the effect on the appeals of my decision in CH/1363/2006. It was Mr Craig's submission that the adjournment should be given in the interests of fairness on the basis that he did not have sufficient time to prepare the appeal. It was also his position that the initial submission from the Secretary of State in writing submitted that the word 'adapt' had a wider meaning than that set out by me in paragraph 7 in the decision referred to in my direction. It was his submission that had he known of my decision, he would have had to have thought more widely about the issues in the appeal than he did having regard to what had been said by the Secretary of State in his written submission. He was unable to assist me with precisely what additional preparation he could have made having regard to the fact that the point was a narrow one and it could have been adequately researched. Further, the appellant's position in the appeal was not the same as the first respondent and accordingly he required to meet their argument. In these circumstances I refused his motion and the appeal proceeded.

4. The appellants have appealed to the Commissioner against the decision of the tribunal. The tribunal had made the following decision:

> "The appeal is allowed.
>
> [The claimant] is entitled to Housing Benefit for 187 Westercommon Road, Flat 18B, from 11/06/2004.
>
> ...
>
> [The claimant] has mental health problems and his moving into 187 Westercommon Road was part of a planned resettlement program after being homeless. When he was offered the tenancy the previous tenant had just moved out and the property needed to be redecorated. Due to his mental health problems, it was necessary for the flat to be rejuvenated and redecorated in order that he could feel comfortable, settled and confident. In my judgement the redecorating of the flat amounts to an adaptation to

meet his mental health needs. Accordingly, in my judgement [the claimant] satisfied Regulation 5(5)(e) and Regulation 5(6)(c)(i) of the Housing Benefit (General) Regulations 1987 and should be treated as occupying both dwellings as his home."

In giving reasons for their decision the tribunal said:

"3. I have had to consider whether [the claimant] satisfies Regulations 5(5)(e)(i) and 5(6)(c)(ii) of the Housing Benefit (General) Regulations 1987. In particular I must consider whether the delay in moving into 187 Westercommon Road was necessary in order to adapt the dwelling to meet [the claimant's] disablement needs. There is no specific definition of the words 'adapt' in the Regulations. The Oxford dictionary defines the word 'adapt' as to 'fit, adjust, make suitable, modify or alter'.

4. [The claimant] is a 30-year-old man who suffers from depression and anxiety which on occasions result in his being unable to leave his home. He lived on the streets for a period of time in 2002 before moving to a Salvation Army property at 70 Oxford Street. He was initially given a bedroom with shared facilities and in time, due to good behaviour, was allotted a self-contained flat. The Salvation Army Assistant Manager found the flat at 187 Westercommon Road and [the claimant] went to inspect the property with his Key Worker. The property had just been vacated and it needed carpeting, wallpapering and painting. [The claimant] was very anxious about the move and overwhelmed with the extent of the work required and at the thought of occupying his own home. He needed time to adjust to becoming independent and being responsible for his own life and li8ving arrangements. [The claimant] had no experience of painting, decorating of DIY and he required assistance and instruction from his Key Worker. Moving into his own property was a big event for [the claimant] and he would not have been able to make the move without being involved in the painting and decorating which was necessary taking into account his fragile mental state. Had the flat not been painted and adapted to provide a clean living environment it is likely the move to independent living would not have been successful. In addition [the claimant] needed time to take possession of the new property and the rejuvenation was a necessary condition to him feeling safe and comfortable. Although not relevant to the adaptation of the property [the claimant] also needed to become acquainted with his surroundings. This involved the Key Worker taking [the claimant] to the shops, locating the bus stops and learning the bus routes.

5. I find that the redecoration of the flat and the delay in doing so was reasonable and necessary in order to adopt the flat and make it suitable for occupation by a person with mental health problems and thereby enable [the claimant] to feel comfortable, settled, confident, and successfully move to independent living. His disablement needs arose from his mental health difficulties. [The claimant] was anxious and insecure and it was therefore necessary to redecorate the flat, thereby making it his own and enabling him to feel confident about the occupation. A person without [the claimant's] mental health problems may have been able to move into the property immediately. This was not the case for [the claimant]. Without the alterations [the claimant] would not have been able to move into the property. The redecoration was an adaptation to meet his mental health needs."

5. The statutory provisions referred to by the tribunal and which required to be interpreted and applied for the purposes of determining the appeal before them were regulations 5(5)(e)(i) and 5(6)(c)(ii) of the Housing Benefit (General) Regulations 1987. The provisions of regulation 5(5)(e)(i) are as follows:

> "(5) Where a person is liable to make payments in respect of two (but not more than two) dwellings, he shall be treated as occupying both dwellings as his home only –
>
> (e) in a case where a person –
>
> (i) is treated by virtue of paragraph (6) as occupying a dwelling as his home ("the new dwelling") and subparagraph (c)(i) of that applies; and
>
> (ii) he has occupied another dwelling as his home on any day within the period of four weeks immediately preceding the date he moved to the new dwelling,
>
> for a period not exceeding 4 benefit weeks immediately preceding the date on which he moved."

Regulation 5(6)(i) provides:

> "(6) Where a person –
>
> (a) has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
>
> (b) had claimed housing benefit before moving in …; and
>
> (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and –
>
> (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of that person …
>
> he shall be treated as occupying the dwelling as his home for a period not exceeding four weeks immediately prior to the date on which he moved into the dwelling."

6. The issue in this appeal and in CSH/150/06 was whether carpeting, wallpapering and painting of the dwelling – was it being adapted in the context set out in the regulations?

7. Mr Blair's submission was that the tribunal erred in law in holding that it did. In a short and concise submission, Mr Blair said that the crucial question was whether the dwelling had been adapted, and if it had not been adapted, then the statutory conditions referred to would not apply. It was his submission that the tribunal erred in law by considering and assessing the claimant's disablement needs before considering the question of whether the dwelling had been adapted in the light of disablement needs. It was his

submission that the dwelling had first to be adapted before the disablement needs fell to be considered. He said that his submission was consistent with the approach taken by myself in CH/1363/2006 and in particular what I said at paragraph 7 of that decision. There I said:

> "I am satisfied that the appellant's grounds of appeal are sound. Adaptation of a property to meet disablement needs would, in my view, require more than furnishing it, carpeting it and putting it in order. It is clear to me that what the legislation has in mind would be such provision as fixed handrails, raised lavatories, widened doors and alterations to the structure of the building to meet a disablement need. The claimant, through his representative seeks to widen the scope of the regulation beyond what it was intended to bear. The provision of furnishings and carpeting may render a building habitable and more congenial to live in. What it does not do is alter, change or add to the structure or fabric. I am satisfied that a change to the fabric or structure of the building is necessary, not simply the placing of furnishing or carpeting within it in order to adapt it. I accept "that the statutory provisions are directed to "the disablement needs of that person" not "someone" but it is the scope of the word "adapt" which is crucial in the context of the disablements needs of "that person". If what was done was not encompassed by the word "adapt" then the claimant cannot succeed. That is the position in this case."

8. Mr Blair then also submitted that there was authority in CH/3857/2004 that decoration did not qualify. There the Commissioner said in paragraph 9(ii) of his decision:

> "The works of cleaning and decoration done after 23.2.04 similarly do not quality since they, and indeed also the works carried out before, were not carried out to meet the disablement needs of the claimant, but necessary for any occupant, regardless of the claimant's disabilities. They are not adaptations to meet the requirements caused by his disabilities."

It was his submission that the recarpeting and decoration were not changes to make the dwelling disability enhanced. In these circumstances he asked me to make the decision the tribunal ought to have made which was to uphold the decision of the appellants in their capacity as housing authority at page 16.

9. Mr Brown, on behalf of the Secretary of State, who was the first respondent, indicated that the Secretary of State had asked to be sisted as a party as it was considered by him that a novel point arose in the two appeals before me. The Secretary of State, he said, had not been aware of my decision in CH/1363/2006. He accepted that initially the Secretary of State had supported the appeals on the basis of written submissions which were inconsistent with my decision. However his position now was that the first respondent was content with my decision in CH/1363/2006. It was said by him that the Secretary of State was not appealing that decision. In the light of that decision he now submitted that both the decision in the instant appeal and in CSH/150/06 that the tribunals in both cases erred in law.

10. Mr Craig, on the other hand, on behalf of the second respondent who is the claimant, submitted that the tribunal made no error in law. His submission was that I ought not to follow what I said in paragraph 7 of my decision which, he submitted, was a decision which was given without full argument on the issue involved. In paragraph 7 of that decision I had used the word 'adaptation' and he submitted that that had different connotations from the

word 'adapt' which was the statutory language. He also submitted that I had made reference to 'a building' whereas the statutory language was 'dwelling'. He submitted that there was a difference between a dwelling and a building. He submitted that there was no statutory definition of the word 'adapt' in the regulations. He pointed out that in the Commissioner's decision in CH/3857/2004, he had set out the Oxford English Dictionary definition which was:

> "1. To fit, to make suitable.
> 2. To alter so as to fit for a new use."

It was his submission that the word 'adapt' in the context of that definition was wide enough to cover carpeting and redecoration. In these circumstances the tribunal were, in his view, entitled to make the decision which they did. It was also his submission that in CH/3857/2004, the Commissioner had made no specific connection between the work carried out and the disabilities which required to be met. It was his submission that the word 'adapt' on a literal interpretation went wider than simply the building. It was further his submission that the purpose of the legislation was such that if the claimant could not cope with the property in an undecorated and uncarpeted state due to his disability, that was sufficient for the purpose of the regulations to encompass adaptation. Mr Craig also pointed out what was said by the Secretary of State in his written submission in the instant case at paragraph 5 where he said:

> "The policy intentions underlying the provisions are to allow assistance for disabled people awaiting adaptations to the new home, e.g. widening doorways to accommodate wheelchairs or the accommodation needs to be scrupulously clean otherwise the person's mental health could be adversely affected."

and in paragraph 5 in CSH/150/06 where the same submission was made.

11. Nothing said by Mr Craig or Mr Kelly in CSH/150/06 has persuaded me that I decided CH/1363/2006 wrongly. I adhere to the views which I expressed in that case. I simply cannot accept that redecoration and furnishing in the form of carpeting constitutes adapting the dwelling for the reasons which I have set out in paragraph 7 of CH/1363/2006. I consider that the basis upon which Mr Craig submitted I should not follow my own decision by virtue of using the word 'adaptation' instead of 'adapt' and 'building' instead of 'dwelling' is a semantic distinction which is not material to the essence of the decision I have made. Notwithstanding the Secretary of State's written submission in respect of policy intentions, which he did not insist on orally, I consider that my approach to the word 'adapt' is the proper one.

12. After I had drafted this decision an e-mail was received by the Office of the Commissioners in the following terms:

> "Following the oral hearing of Tuesday 10/10/2006, I request that the Commissioner defers making a final decision on these appeals, to allow the opportunity for further submission and further relevant material, regarding the policy intentions of Regulations 5(6)(c)(i), to be provided. I intend to provide further particulars to support this request before the close of business today."

I do not accede to his request. He could have sought further material about policy intentions if he had thought them to be relevant to the determination of the appeal. He could have made submission to me thereon at the hearing. The appellants' position in the appeal has been clear all along. Thus he had to deal with the grounds of appeal made by them. The preparation and submissions he now wishes to make could have been made timeously. He does not act for the claimant in CSH/150/06.

13. The appeal succeeds.

(Signed)
D J MAY QC
Commissioner
Date: 11 October 2006