

B-116h 195

5/1/05

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CSHB/606/05

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:

Respondent: Secretary of State

Tribunal: Dundee

Tribunal Case No:

DECISION OF SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the appeal tribunal given at Dundee on 15 June 2005 is not erroneous upon a point of law. The appeal fails. I dismiss it.

2. This appeal came before me for an oral hearing on 2 March 2006. The claimant was represented by Mr Kinghorn, Solicitor of the Dundee North Law Centre. The respondents, Dundee City Council were represented by Mr David Barrie, Solicitor.

3. The claimant has appealed to the Commissioner against the decision of the tribunal which is recorded at page 53. The appeal decided that the claimant was not entitled to housing benefit from and including 16 August 2002 as she does not satisfy the criteria set out in regulation 6(1)(c) of the Housing Benefit (General) Regulations 1987.

4. The claimant was born on 24 February 1987. She made her claim for housing benefit on 10 May 2002. The parties indicated that there was no issue between them having regard to the claimant's age in respect of the claimant's capacity to make the claim. Her mother was the tenant of the house in which she lived with her mother and two brothers at the date of claim. They still reside in that house. The claimant's father, who is married to her mother but separated from her, was and is the owner of the house and the landlord. The claimant's mother had been in receipt of housing benefit in respect of her tenancy of the house from her husband, the landlord. However, shortly prior to the claimant's claim her benefit was withdrawn by virtue of a legislative change to regulation 7 of the Housing Benefit (General) Regulations 1997 which, as amended, resulted in the claimant's mother being treated as if she was not liable to make payments in respect of the tenancy of the house by virtue of the application of sub-paragraph (d) of that regulation.

5. Entitlement to housing benefit is provided for in section 130 of the Social Security Contributions and Benefits Act 1992. As far as relevant for the purposes of this appeal, that section provides:

“130(1) A person is entitled to housing benefit if –
(a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home;
...”.

6. Regulation 6(1) of the Housing Benefit (General) Regulations sets out circumstances in which a person is treated as to be liable to make payments in respect of a dwelling when there is no contractual liability on them to do so as there would be if they were the tenant. That regulation, so far as material to this appeal, provides:

“6(1) Subject to regulation 7 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling) the following persons shall be treated as if they were liable to make payments in respect of a dwelling –

...
(c) a person who has to make the payments if he is to continue to live in the home because the person liable to make them is not doing so and either

.... Or

- (ii) he is some other person whom it is reasonable to treat as liable to make the payments;

...”.

7. It was not a matter of dispute between the parties that the tenant was not at the time of the claim, nor has she since, been making payment of rent to the landlord. It was further not dispute that she was contractually obliged to make payment of rent. Thus there is no dispute for the purposes of regulation 6(1)(c)(ii) that the tenant was liable to make payments in respect of the dwelling and was, and is, not doing so.

8. Thus the primary question is whether the claimant was a person who has to make the payments if she is to continue to live in the home.

9. The tribunal decided that the claimant was not such a person.

10. Their reasons were as follows:

“The Tribunal was not persuaded on the evidence that [the claimant] would have to make the payments if she were to continue to live in the house [The tenant] was still the tenant and therefore still the liable person. No rent had been paid since June 2002 and [the landlord] had not made any attempt to collect the rent or arrears of rent. He had not taken any steps to evict [the tenant] and the family. There was evidence of extenuating circumstances for this, principally the care needs of the two younger boys. [The tenant] spoke of the house being specially adapted for their needs and she was of the view that [the landlord] would be reluctant to evict her and the family because of the boys. It had been their and [the claimant's] home all their lives. [The tenant] conceded that [the claimant] could have lived elsewhere and stated that in her view [the landlord] did not much care what happened to her or [the claimant]. Mr Kinghorn told the Tribunal that he had had a meeting with him and that he was concerned about the rent not being paid as he had a mortgage over the property, but was equivocal about it. There was no suggestion that he expected that another member of the family should be liable to make the payments.

The Tribunal considered that there was no compelling evidence that [the claimant] would have had to make the payments, either notionally or in fact had she had the means, in order to continue to live in the house. [The landlord was not making any contribution to her maintenance or that of the boys, as both he and [the tenant] were on income support. Although this was not canvassed at the hearing, there is nevertheless an obligation to do so, and [the landlord] may have regarded the family's occupation in the home as partially meeting this. It was clear that for whatever reason, [the landlord] had never at any time sought to enforce the terms of the tenancy agreement, even although his own financial circumstances were constrained.”

11. Mr Kinghorn took issue with the approach of the tribunal. It was his submission that the tribunal approached the matter too narrowly in deciding that the claimant was not a person who had to make payments if she was to live in the house by virtue of the fact that the landlord had not taken steps to evict the tenant, the claimant and the other two children. It was his submission that as the contract had been breached by the tenant, unless the claimant made the payments of rent, occupation of the home would be precarious and the tenant would be subject to eviction. It followed that the claimant had to make the payments. In these

circumstances she was a person whom it was reasonable to treat as being liable to make the payments and accordingly the tribunal erred in law. In making his submission, Mr Kinghorn indicated that there was little authority in relation to the application of these particular statutory provisions. He was only able to refer me to one case, namely R(H) 5/05 decided by Mr Commissioner Mesher. That case was cited to the tribunal.

12. Mr Barrie on behalf of the respondents submitted that the tribunal had not erred in law. It was said by him that as a matter of fact the tribunal found that the claimant was not a person who had to make payments if she were to continue to live in the house. It was his submission that on the evidence this was a conclusion which they were entitled to reach.

13. The facts of R(H) 5/05 were substantially different from the present case. In that case the tenants were a limited company who were liable to make but were not making payments of rent for the dwelling occupied as the claimant's home. The landlord had no connection with either the tenant or the claimant. The basis for the decision by the Commissioner in that case is set out at paragraph 34 of his decision. Having accepted that the tenants were liable to make but were not making payments of rent, he determined the primary question first. He determined in the circumstances of that case that the claimant was a person had to make payments in respect of the dwelling. He then went on to consider the reasonableness of treating the claimant as liable to make payments. He then decided it was reasonable to treat him as liable to make the payments. I consider that correctly sets out the approach that requires to be taken in applying the regulation by taking each step at a time.

14. I am not persuaded by Mr Kinghorn that the tribunal's approach was in error of law. They answered the primary question first. I consider that the conduct of the landlord in relation to his wife, who is the tenant and his children in relation to the home and his attitude to their occupation of the home, which is set out in the tribunal's reasoning was pertinent and material as to whether the claimant had to make the payments of rent to remain in it. They were entitled to take these matters into account and, as a fact finding body, entitled to make the finding they did which I have set out in paragraph 9. There are no grounds for the Commissioner to interfere.

15. The conclusion having been reached that the claimant was not a person who would have to make the payments if she was to continue to live in the home, that concludes the matter. It is only if the conclusion had been reached that she had to make the payments if she was to continue to live in the home, that consideration as to whether it is reasonable to treat her as liable to make the payments would have arisen. In the event it appears that the tribunal did look at that issue. In their reasons the tribunal said:

"... [The tenant] was disentitled from Housing Benefit and the Tribunal was of the view that the application by [the claimant] was simply a device to circumvent [the tenant's] ineligibility for benefit because she was excluded by virtue of Regulation 7(1)(d). The Tribunal concurred with the Secretary of State's submission at Section 7 of the papers that it was unlikely that Regulation 6(1)(ii) was intended to be applied for that purpose. The Tribunal did not consider it reasonable in the present circumstances for a dependent child of 15 years of age to make application for housing benefit and found on the provisions of Regulation 6(1)."

Whilst it was not strictly necessary for them to do so, having regard to their decision on the primary question, I am satisfied they were entitled to reach the conclusion that it would not be reasonable to have treated the claimant as liable to make the payments. I take that view because the effect of doing so would have been to negate the legislative change to regulation 7. That cannot be what Parliament intended.

16. The appeal fails.

(Signed)
D J MAY QC
Commissioner
Date: 7 March 2006