

DECISION OF DEPUTY SOCIAL SECURITY COMMISSIONER

Decision

1. I hold that the tribunal erred in law and allow the appeal. As the facts are not in dispute I consider that I can substitute for the decision of the tribunal, the decision that the tribunal ought to have given.
2. I hold that the tribunal ought to have held that Regulation 5(5)(d) of the Housing Benefit (General) Regulations 1987 [HB Regs] applied and accordingly that the claimant was entitled to housing benefit [HB] in respect of 54 Hall Road, in addition to any other right to HB, for four benefit weeks immediately preceding 11/5/05, when she moved into 54 Hall Road and then from 11 May 2005 onwards, while she still qualified for HB.

Background

3. The following are the relevant and undisputed facts:

| | |
|----------|--|
| 22/11/04 | Claimant moved into Woman's Aid Refuge at 12 Whitesands due to domestic violence & awarded housing benefit [HB] from that date for that address. |
| 11/4/05 | Claimant was granted tenancy of 54 Hall Road and applied for HB for this address in addition to that paid for 12 Whitesands; |
| 9/5/05 | Claimant moved out of 12 Whitesands and into 54 Hall Road |
| 24/5/05 | Claimant awarded HB for 54 Hall Road from 16/5/05 |
4. The claimant was not allowed double HB to cover the period from 11 April 2005 when she was granted the tenancy of 54 Hall Road and paid rent therefore, until 16 May 2005. The delay in the move was caused by the fact that the claimant had no furniture or furnishing for 54 Hall Road, but could not apply for grant aid until she had actually been given the tenancy.

Appeal to tribunal

5. The claimant appealed to the tribunal. The tribunal refused the appeal and issued a Statement of Reasons. The tribunal found that the claimant met the conditions of Reg 6(c)(ii) of the HB Regs (move in delayed and delay reasonable), but that this did not avail the claimant, because this regulation did not come within Reg 5(5). Reg 5(5) specified the *only* circumstances in which double HB could be paid and Reg 5(5)(e) only applied to Reg 6(c)(i) (disabled modifications). The tribunal considered, and held that the claimant did not come within any of the other sub-paragraphs of Reg 5(5). The tribunal considered that Reg 5(5)(d) might apply, but held that "moved into" and "occupied" in that paragraph meant physical occupation and as the claimant had not physically "moved into" 54 Hall Road, she did not qualify.

Appeal to the Commissioner

6. The claimant was granted leave to appeal to the Commissioner, who considered that complex issues of law arose. The grounds of appeal are at pages 26/27. It was submitted that

Reg 5(5)(d) applied and the claimant should be treated as occupying the two dwellings. It was also argued that Reg 5(6) applied.

7. The Secretary of State was requested to make a submission as the Respondents had not put in a submission, when leave to appeal was granted. The Secretary of State does not support the appeal. The submissions at pages 54/57 are referred to for their terms.

Discussion

8. It is clear from CH/2201/2002, the reasoning in which I follow, that double HB can only be claimed if a person qualified under Reg 5(5) of the HB Regs. Regs 5(6) and (7), on which reliance is placed in this case, only apply where HB is being claimed in respect of the houses mentioned therein, but even if a person qualifies under those regulations it does not allow for double HB, unless the person qualifies under Reg 5(5).

9. I therefore have to look at the circumstances in Reg 5(5) to see if the claimant qualifies for double HB in this case. In respect of each sub-paragraph:

- (a) does not apply. I did consider whether a refuge was a "dwelling" and if it was not, whether the former house could qualify as being the one that the claimant left through fear of violence. I came to the conclusion that dwelling could include the refuge and in any event the claimant did not intend to return to occupy the former dwelling [ie the one she left through threat of violence] and she did not intend to return to the refuge.
- (b) this does not apply as the claimant is not a student.
- (c) this does not apply as two dwellings have not been allocated.
- (d) I consider that the claimant qualifies under this paragraph for the reasons given hereafter.
- (e) this does not apply as it only applies to 5(6)(e)(i) and the claimant only qualifies under 5(6)(e)(ii) to which Reg 5(5) does not apply.

10. Reg 5(5)(d) provides:

"(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—

...

(d) in the case where a person has moved into the new dwelling occupied as the home, except where paragraph (4) applies, for a period not exceeding four benefit weeks if he could not reasonably have avoided liability in respect of two dwellings

...

for a period not exceeding 4 benefit weeks immediately preceding the date on which he moved."

11. I consider that Reg 5(5)(d) applies because (i) the claimant had moved into the dwelling, which she occupied as her home at 54 Hall Road, and (ii) it is clear from the opening words about being treated as occupying two dwellings, that it relates from the last

words of the paragraph to the "period ... immediately preceding the date on which he moved". This means that paragraph (5) and in particular (d) relates to a consideration of the 4 benefit weeks, before the claimant moved. The question then relates to whether there was a liability to make payment for 2 dwellings in the four benefit weeks before the claimant moved in one of the circumstances set out in (a) to (e). During those 4 weeks did she have to pay for two houses and this could not reasonably have been avoided. In the present case, for the 4 benefit weeks immediately preceding the date on which the claimant moved into the new house, I hold that she could not reasonably avoid payment in respect of two houses.

12. The consequence of this decision is that the claimant is entitled to HB for the 4 benefit weeks preceding 11 May 2005 when she moved to 54 Hall Road and being entitled to HB for that period, I also consider that she is entitled to HB from 11 May 2005 and not from 16 May 2005 as awarded.

(Signed)
Sir Crispin Agnew of Lochnaw Bt QC
Deputy Commissioner
Date: 4 June 2006