

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal with the leave of a chairman from a decision of the Leicester Appeal Tribunal disallowing the claimant's appeal from a decision of the Leicester City Council. That decision was that an award of housing benefit could not be backdated to cover the period from 24 March to 8 June 2003 because the application to backdate was only made on 24 June 2004, more than 52 weeks after the end of the period for which backdating was sought.
2. The appeal is allowed. I set aside the decision of the tribunal and I substitute my own decision that the application to backdate was made by the renewal claim treated by the council as made on 3 June 2003, and that, good cause being shown throughout the period, the claimant is entitled to housing benefit and council tax benefit for the period from 24 March to 8 June 2003, both dates inclusive.
3. The claimant was born in 1914. She suffered from Alzheimer's disease, but lived alone in council accommodation until she had to be placed in a residential care home because of her mental health in mid-2004. She was assisted throughout the period in question by the council's Benefit and Support Team, which was aware of her age and state of health.
4. The total amount in issue in this case is under £500 in respect of housing benefit (less than £400 if, as now appears to be the case, benefit was paid for the first two weeks of the period) and around £100 council tax benefit. The claimant was on income support and obviously has very limited resources. It was the council to which any outstanding rent and council tax was owed. It is not even clear that the claimant, who cannot be blamed for what has occurred, has any resources from which recovery could be made, other than a possible right of action against the council for breach of a possible duty of care owed to her in relation to the steps it was taking on her behalf to ensure that she received the benefits to which she was entitled.
5. Instead of wasting resources in what is essentially a dispute between two departments of the council as to who is to blame for the failure to ensure that the claimant claimed benefit earlier than she did, and for the failure to ensure that a clear claim for backdating was spelled out in words of one syllable before June 2004, the practical solution was for the council to decide not to pursue recovery of the outstanding rent and council tax. Unfortunately, this did not happen, and as a result the energies of two of the council's departments, of the appeals service and now of this office have had to be directed to the determination of the legal consequences of what has occurred.
6. The claimant had for many years been in receipt of housing benefit and council tax benefit. Her entitlement was due to expire on 23 March 2003, and a renewal claim is said to have been sent to her on 22 January 2003. What happened to this form, if it was sent, is unclear. The claimant was not in a state to deal with it, and for some

reason no steps were taken to ensure that the benefits team at the council received a copy or were in a position to deal with it. I do not need to consider whose fault that was. There also appears to have been a telephone call from a housing officer to the claimant in April 2003 to the claimant, when the claimant is said to have stated that she would ask her nephew to return the form.

7. The backdate request form completed in June 2004 states that the claimant had made the claim at the right time and had requested for her benefit to be backdated to 24 March 2003. It went on to state that the claim form had been completed on 30 May 2003 by the welfare rights office and that the housing department had been authorised to contact the welfare rights office if it needed further information, and that this was not done. The form states that the claimant asked that the housing department should deal with the welfare rights office because of her dementia.
8. An incomplete form was received on 3 June 2003 and was returned to the claimant. At that stage there was an internal request for somebody to visit the claimant and complete the form. This eventually happened in early August. I infer that the document returned on 30 May 2003, prepared by the welfare rights office, was the document returned as incomplete on 3 June 2003.
9. The form ultimately completed and returned in August 2003 was headed "Housing Benefit & Council Tax Benefit Renewal (IS)". When this form was finally considered, an award was made on 30 September 2003 from 9 June 2003, and on 7 October 2003, a housing benefits officer noted (page 16 of the file) "Claim input from 09.06.03. Send backdate request form for the period 24.03.03 – 08.06.03." I infer that this was another copy of the forms which had been sent out on three previous occasions, including that partially completed on 30 May and returned on 3 June. A subsequent telephone note dated 5 February 2004 indicates that the request had not been completed and a further backdate request had been sent to the claimant's nephew who was said to deal with her affairs.
10. It appears to have been only on 20 May 2004 that the housing benefits department made contact for the first time with the person at the council's welfare rights department dealing with the claimant's affairs. That person, who has represented the claimant on this appeal, explained that due to the claimant's health problems she always put things in the bin, and asked that the backdate request should be sent to him. It was sent, but was only returned completed on 22 June 2004.
11. The backdate request form states that the claimant had made the claim at the right time and had requested for her benefit to be backdated to 24 March 2003. It went on to state that the claim form had been completed on 30 May 2003 by the welfare rights office and that the housing department had been authorised to contact the welfare rights office if it needed further information, and that this was not done. I note that the document returned on 30 May 2003 was presumably the document returned as incomplete a few days later. The form states that the claimant asked that the housing department should deal with the welfare rights office because of her dementia.
12. The council and the tribunal were plainly right to conclude that this backdating request, returned on 24 June 2004, was too late to entitle the claimant to have her

claim backdated, because it was more than 52 weeks after the end of the period for which backdating was sought. On seeking leave to appeal to the commissioner, the welfare rights officer acting for the claimant complained that the housing department had failed to forward relevant evidence to the tribunal. The evidence was a document dated 18 March 2003, which was said to be a decision awarding full housing benefit and council tax benefit to the claimant for the year 2003/4. The council has responded that it was not a notification of a benefit awarded and that a notification of termination of entitlement had been sent to the claimant after that document had been issued. I do not find it necessary to consider the relevance of the disputed notification or the consequences of the council's failure to disclose it, as I am able to decide this appeal on a different basis.

13. In the course of submissions on this appeal, the claimant's representative highlighted the fact that the renewal form completed by the housing officer on 30 May 2003 was seeking renewal of the previous award and that in performing his or her duty to the claimant when helping to fill in the form, that officer ought specifically to have asked for the award to be backdated. There appears to me to be force in the submission that the housing officer ought to have spelled out that the claim was from 24 March, but, as the claimant's representative points out, the claim was in any event made on a renewal form, that the date 23/03/03 was printed on the form. The representative therefore contends that it should in any event have been treated as a claim for renewal from that date.
14. By a direction dated 22 March 2006, a legal officer in this office directed that the council should respond, inter alia, to this new submission. A further submission dated 4 April 2006 was then provided, which made no reference to this point at all, and despite a further direction from the legal officer dated 19 April 2006 clearly spelling out precisely what the point was, the council's representative again totally failed to understand the point. The point on which a submission was sought, as spelled out in the directions of 22 March and 19 April was "whether the fact that the form returned by or for the claimant was a renewal claim form (headed 'Housing Benefit and Council Tax Benefit Renewal') meant that it necessarily included a claim for any period since the end of the award on the previous claim." I am satisfied that the point was clearly made and that the council has had a proper opportunity of dealing with it.
15. Regulation 72(15) of the Housing Benefit (General) Regulations 1987 provides that

"Where the claimant makes a claim in respect of a past period (a "claim for backdating") and, from a day in that period up to the date of the claim for backdating, he has continuous good cause for his failure to make a claim, his claim in respect of that period shall be treated as made on -

- (a) the first day from which he had continuous good cause; or
- (b) the day 52 weeks before the claim for backdating, whichever fell later."

There is a similar provision in respect of council tax benefit in regulation 62(16) of the Council Tax Benefit (General) Regulations 1992.

16. It is to be noted that what is required is not a claim for backdating. It is that a claim is made in respect of a past period. The first question, therefore, is whether the claimant

was making a claim in respect of a past period. The claim was not a new claim but was, as the form states, a claim for the renewal of benefit. The form identifies the date of expiry of the old benefit as 23 March 2003. In my judgment, in completing this form, asking for renewal of benefit, the claimant was making a claim in respect of the whole of the period from the expiry of the previous award. She plainly needed to supply further information to establish entitlement to payment in respect of that part of the period of claim that was past, but that could be, and was, provided subsequently.

17. I consider that the claimant's age and state of health, together with the absence of proper assistance from the council when it was obvious that she needed it, caused her to fail to make her claim for renewal before the time that she did make it, and that that constitutes good cause up to and including 3 June 2003. It follows that throughout the period from the date in January 2003, when the first renewal claim was sent to her, the claimant had continuous good cause for her failure to make the claim and it should therefore be treated as having been made in January 2003. It follows that, as she was in receipt of income support throughout, she is entitled to housing benefit and council tax benefit between 24 March and 8 June 2003 as well as before and after those dates.

(signed on the original)

**Michael Mark**  
**Deputy Commissioner**  
**17 May 2006**