

Bellotti 180
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Commissioner's File: CH 3579/03

SOCIAL SECURITY ACTS 1992-2000

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Appellant: Leicester City Council
Respondent: [the claimant]
Claim for: Housing Benefit
Appeal Tribunal: Leicester
Tribunal Case Ref: U/04/175/2002/01749
Tribunal date: 29 April 2003
Reasons issued: 1 August 2003

1. The decision of the Leicester appeal tribunal consisting of a chairman sitting alone on 29 April 2003 was in my judgment erroneous in point of law in the way it dealt with the question of whether the claimant had shown continuous good cause to justify a backdated award on the claim for housing benefit she made on 15 April 2002, and for that reason I set it aside. The chairman was however correct in law in his decision on the question of her liability for rent, which had been disputed by the Council as its sole reason for rejecting her claim in its entirety and was the only issue it argued on her appeal against that rejection.

2. Having received submissions on the good cause issue in response to the directions given by the Legal Officer in this appeal I therefore exercise the power in paragraph 8, Schedule 7 **Child Support, Pensions and Social Security Act 2000** to substitute the decision I am satisfied is appropriate, which is that the claimant was entitled to housing benefit from the date of her effective claim on 15 April 2002 but not to any backdating for the period before that. The question of whether she has any right to actual payment of that benefit, or whether the Council is entitled to retain it on account of payments already made by its Social Services department to her landlord in respect of her rent, is outside the scope of this appeal and something on which the parties will have to take their own legal advice if they disagree.

3. The main facts are not in dispute. The claimant, a lady now aged 32, left Somalia in 1991 because of the civil war. She spent some years living in Kenya and then in Denmark, where she had a daughter born in 1998. In 2001 she decided to move to the UK for social and economic reasons, to settle indefinitely. She and her daughter

arrived here on 3 August 2001, stayed with relatives, and exactly a month afterwards presented themselves to the authorities as destitute. She applied for income support and in the meantime was given assistance by Leicester social services. In particular the Council arranged a tenancy for her with a private landlord and paid the rent in full for the entire period of her occupation which was from 1 October 2001 to 31 July 2002, when she left. The only information given to the tribunal about the terms of this arrangement was that it was done under section 17 **Children Act 1989** because of the needs of her child. Her application for income support was initially rejected on habitual residence grounds but she eventually succeeded in obtaining it: the file leaves it unclear from when, but it must have been before the housing benefit applications with which this appeal is concerned.

4. Those are two: an initial attempt at a claim on 17 December 2001, returned to her by the Council, on which relevant sections of the form were not completed and required supporting evidence not supplied, so that it never became effective (pages 35-39); and the fresh claim she submitted on 15 April 2002, which did (pages 1F-1Q, confirmed on 7 May 2002 as including a claim for benefit back to 17 December 2001: page 2). The Council has still not produced a proper copy of any actual decision issued to the claimant but there is no doubt the claim was rejected for the entire period she was seeking, on the single ground that she ought not to be treated as liable for any rent for housing benefit purposes when the whole of it was being taken care of by the Council itself under its statutory powers (pages 1A, 30, 33). Her appeal to the tribunal was against that rejection, and specifically raised the issue of whether her benefit should be backdated: pages 7-7A.

5. The chairman's statement of reasons for his decision (pages 13-15) contains some well deserved strictures on the Council's handling and presentation of the case. He said:

"5. Although the tribunal bundle did not include a copy of the letter of decision as notified to [the claimant] it is not disputed that the decision was in the terms set out at section 2 of the Appeal Submission Document. ... I set out the decision below as it is presented to me.

6. "We decided that [the claimant] has no liability for rent at 56b Cedar Road. This is because Leicester City Council Social Services had a statutory obligation to pay [the claimant's] rent under section 17 of the children act (sic), and did pay all of her rent. I (sic) am not saying that she had no liability because a third party paid her rent. I am saying that the existence of a statutory obligation for Social Services to pay the rent, negates [the claimant's] own liability".

7. I say at the outset that the decision causes me a great deal of concern, not least because it seems to represent a conclusion that has been reached with scant regard to the regulatory scheme governing entitlement to Housing Benefit. Indeed it strikes me that

an appellant who did not have the advantage of representation, as [the claimant] has had, could not possibly know how to answer the respondent's argument. I note that section 17 of the Children Act 1989 (which deals with the assessment of children adjudged by a local authority to be in need, and their families) is not set out even though its application is considered to be definitive, and that there was no attempt made by the respondent to set their decision within the context of the regulations. Notwithstanding that the practical outcome so far as [the claimant] is concerned, might well be identical to that which has been achieved had the law been applied correctly, it is essential that a statutory authority, such as the respondent, bases its decisions upon the correct law.

8. It is not possible from the respondent's submission, as it ought to be, to identify what this appeal is about but I am confident that I have done so after examining the documents contained within the tribunal bundle and speaking to the representatives. The submission as written consists largely of an attack upon [the claimant's] representative's submission on her behalf. That can never be an appropriate starting place. For the benefit of the respondent I would suggest that their submission should explain the decision under appeal by setting out the facts that the decision maker has found and the law that has been applied to those facts."

6. Those criticisms were as I say well justified, and I regret to say that the Council's submissions on this appeal showed an equal lack of understanding of the nature of the process. Local authorities must understand that appeals to tribunals and Commissioners in housing benefit cases are legal proceedings, and make it their business to find out how to conduct a case properly and present submissions covering (and confined to) the points of fact and law that are relevant. Councils are not without resources or access to legal advice, and will find it more economical as well as more effective to do so. In the present appeal to me for example, the rather diffuse material submitted by the Council includes a number of observations veering into general assertions of fact and opinion, but nowhere sets out a clear analysis of the issues or its arguments on the law, which is what is actually needed and could have been done in a much shorter space. Moreover despite the Legal Officer's express direction on 21 October 2003 no copy of the decision letter under appeal to the tribunal has been produced; and the Council's final observations in reply dated 17 December 2003 at page 55 contain a fresh suggestion that the claimant's tenancy was a "sham", that was nowhere made in its submissions to the tribunal and cannot therefore have any place in an appeal against the decision on a question of law.

7. There is no doubt in my judgment that the tribunal chairman was justified in rejecting as he did the Council's assertion that the claimant had no legal liability for rent as tenant of the property she occupied. The evidence before him included the written tenancy agreement between her and the landlord dated 27 September 2001 at pages 4-4c. As the chairman observed this is in standard form, its terms are clear and it is signed by both parties. There was no suggestion that the agreement was not apt to create legal liability in accordance with its terms and even if there had been some defect in the document itself, the claimant would still have had an implied liability for the rent

by being let into occupation as tenant, as it is beyond dispute she was. The argument that her personal liability to pay the landlord should in some way be treated as non-existent because the Council was discharging it for her (whether as a matter of discretion, or its own general duty to safeguard and promote the interests of children in need in its area) had no foundation in law, and the chairman rightly held there was nothing in the evidence before him that could reasonably have led to the conclusion that the claimant did not have a liability to pay rent for 56b Cedar Road.

8. He was also undoubtedly right to treat the question of any possible backdating as before him on the appeal, even though the Council informed him that it had not addressed this question itself when refusing benefit because the entire claim was considered to fail on the ground of liability. The appeal was of course against the refusal of benefit, not any particular thought processes of the Council that gave rise to it, and as noted above the question of backdating for good cause if the claimant succeeded on liability was raised clearly and unambiguously as an issue in her written appeal document at page 7A. The Council's submissions at pages 20-22 about the scope of the appeal are thus simply wrong, and if as there asserted the Council "made no representations about a backdate" it had only itself to blame if the tribunal nevertheless went on to deal with it.

9. However I do consider the chairman misdirected himself about the scope of the backdating issue before him, and in the conclusion he reached that continuous good cause for not claiming had been shown to exist over the whole period back to the start of the tenancy and down to the date of the actual claim on 15 April 2002. In the first place the only evidence of any application for backdated benefit was that of 7 May 2002 at page 2, which clearly stated that the period being claimed for was from 17 December 2001 onwards: the claim period for which benefit had been refused in the decision under appeal was therefore limited to the period from that date, not the start of the tenancy the previous October as the chairman's statement assumes. Secondly, the stated reasons given in paragraph 21 of that statement for accepting the existence of continuous good cause are insufficient for such a finding. The written submission referred to fails to show why she did nothing further to complete her application of December 2001 after it was returned to her, and the chairman's comment that she "had children to care for, her English was poor and she sought advice as soon as she could" fails to address her obvious knowledge of the benefits system from shortly after she arrived in the UK and that according to her own representative's factual statement on her behalf at page 9c she came to Leicester "about the middle of August and immediately started to look for housing she could afford, she found out about schools, GP's and Social Security Benefits

... she did everything she could to settle in the UK". Given the "growing Somali community with good facilities" in Leicester also referred to in that statement, the evidence simply fails to support the chairman's finding that she had good cause for not pursuing her claim or getting advice for another four months until 15 April 2002.

10. I therefore set aside his decision as erroneous in law on the backdating of the claimant's benefit entitlement to the start of her tenancy, and as both sides have taken the opportunity to make submissions on the substance of the backdating issue following the Legal Officer's direction, it is expedient to substitute my own decision.

11. The letter sent to the claimant on 19 December 2001 when her original housing benefit application was returned to her (pages 35-39) explained in very clear terms what was required in order to maintain the claim without loss of benefit, and in particular that the form itself should be returned with all the relevant sections completed even if not all the supporting documents to prove the claimant's identity and the existence of her tenancy were immediately to hand. It said:

"Thank you for your form to claim benefit, which we received on 17/12/01. Unfortunately I must return it to you as you haven't completed the relevant sections. Complete items as marked with an * on pages marked on the form. Please note that unless this application form is returned to the HB section within 4 weeks you could lose benefit."

It then explained the further documents that were needed to enable the Council to process the claim including proof of the claimant's identity, and a rent book, tenancy agreement or letter from the landlord's agent to show she had a tenancy, but concluded:

"If you are unable to provide all the documents straight away, please send back your application form anyway to avoid losing benefit. The documents can be sent to us at a later date."

12. That is an entirely reasonable and clear letter, and I do not accept that after receiving it a claimant who had been capable of putting in her housing benefit claim in December 2001 in the first place should be taken as having good cause for not pursuing the claim at all or taking further advice before April the next year. She could have done so even if she was not able to submit all the required documents at once, as actually still remained the case at the time of her April claim but did not prevent the claim being accepted as effective once a properly completed form was submitted: pages 40-44.

13. In my judgment therefore the claimant fails to establish that she had continuous good cause throughout the period down to 15 April 2002 for her failure to make an effective claim for housing benefit earlier, and accordingly is not entitled under

regulation 72 **Housing Benefit (General) Regulations** 1987 SI No 1971 to have her claim treated for benefit purposes as made on any earlier date than that. However as the chairman was correct on the liability issue she was entitled to benefit from that date, so I substitute that decision and remit the case to the Council to calculate the amount due.

14. There is an added air of unreality in this case in that the claimant contends the result of her being held entitled to housing benefit should only be to transfer money from one pocket of the Council to another and is seeking no payment to herself (paragraph 17 of the chairman's statement, and her representative's submission at page 50) while the Council has insisted it is obliged to make her an undeserved present at public expense without any allowance or offset for having already paid all her rent itself from another account (page 1c). It is common ground between both sides that the claimant has never actually been made to pay any of the rent for which she was liable to her landlord, and never will be. Whether this gives rise to a right of offset in favour of the Council's social services account is not a question for me to decide in this appeal, nor do I have the information to do so. I can only suggest that the Council should take some legal advice on it as quickly as possible, if the apparent concession on the claimant's behalf made on page 50 (that there is a debt due to the Council on its social services account, with the consequence that any housing benefit found due to the claimant for the period from 15 April 2002 should properly be applied to discharge it) is for some reason not agreed.

(Signed)

P L Howell
Commissioner

11 February 2004