

1. This appeal, brought by the local authority with leave of a district chairman, succeeds. The decision of the tribunal on 14 7 04 was erroneous in law, as explained below, and I set it aside. But I consider it expedient to make any further findings of fact and substitute my own decision accordingly, under paragraph 8(5)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000. This is that the claimant was not entitled to housing benefit in respect of rent paid (or, according to the rent book, largely not paid) to the landlord, his brother, on a six-month tenancy which began on 13 2 04.

2. The claimant was homeless, and came across his brother, A, who offered to put him up. A had a two-bedroom bungalow with living-room, kitchen, bathroom and lavatory. The brothers at some point (not immediately, because the claim form of 4 4 04 denies the existence of one and the claimant did the same in a telephone call on 7 4 04) entered into an undated tenancy agreement for six months starting on 13 2 04. This was headed "room to let", but specified A's furniture in the whole of the property (including garage and hallway) excluding only A's own bedroom. The housing benefit claim, for £50 a week, was not made until April, and this may be, as A has suggested, because they did not apply until they had been given (wrong) advice that their relationship would not affect entitlement.

3. Regulation 7 of the Housing Benefit (General) Regulations 1987 (HBGR) sets out circumstances where a person who is liable to make payments in respect of a dwelling is to be treated as not so liable – and therefore not entitled to housing benefit. Paragraph (1)(b) refers to a liability "to a person who also resides in the dwelling and who is a close relative". "Close relative" by regulation 2(1) includes a brother. It seems the brothers here did not know each other well, not having been brought up together; but that makes no difference.

4. The tribunal, before whom only the local authority appeared, found that the undated document was a tenancy agreement giving the claimant exclusive occupation of his bedroom. Upon that basis it adopted part of the commentary at pages 269/270 in the sixteenth edition of CPAG's *Housing Benefit and Council Tax Benefit Legislation (Findlay)*, which suggests that where there is a tenancy rather than a licence it cannot be concluded that the landlord resides in the dwelling because this would be inconsistent with the tenant's exclusive possession. The local authority appealed on the basis that the "dwelling" included the lounge, kitchen and bathroom, as well as the bedroom of which the claimant had exclusive possession. Leave was granted by a district chairman.

5. The brother A responded, the claimant having left to work abroad. He made the point that they had had advice, both direct and indirect, from the local

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authority that their relationship would not prevent a claim for housing benefit. He also complained about his single person discount/second adult rebate dates.

6. The local authority submitted that neither of these matters was any concern of mine. I entirely agree, though I trust the local authority will ensure that staff of whom inquiries may be made are properly trained about regulation 7.

7. I allow this appeal because it seems to me the tribunal, in adopting the textbook commentary, got the law wrong. The claimant's agreement was called a tenancy agreement and contained some standard covenants, and doubtless he did have exclusive occupation of his bedroom. But on the face of the agreement itself he shared all the rest of the accommodation, except for the second bedroom, with his brother. This is surely a standard house-sharing arrangement, where all the major activities of life except sleeping are carried out in common. *Findlay's* suggestion that tenancy + exclusive possession must mean regulation 7(1)(b) is excluded may apply, say, where a sibling rents a bed-sittingroom and shares only common parts, but I see no reason for applying it automatically where more accommodation is shared. Everything must depend on the facts. To say the subparagraph may only apply where the parties are sharing a room, one paying rent to the other, is constraining it too narrowly.

8. The claimant argued that if his brother had not let the accommodation to him he would have let it to someone else who could have claimed housing benefit, and so he might. But the regulation 7 exceptions, which may work harshly in practice, are aimed at catching certain well-recognised situations where there may be connivance between the parties. It is not necessary that there **should** be connivance, nor is there here any suggestion of it.

9. I cannot blame the tribunal for adopting *Findlay's* reasoning, but it was wrong in this case. The appeal is therefore allowed.

(signed on original)

Christine Fellner
Commissioner

21 January 2005