

Bulletin 190

E. H. H. J.

CH/3857/2004

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the appeal tribunal was erroneous in point of law. I set it aside and, in pursuance of the powers in that behalf contained in section 8(5)(a) Child Support Pensions and Social Security Act 2000, I give the decision which I consider that the tribunal should have given. That decision is that the claimant is not entitled to housing benefit for the period 23.2.04-29.3.04.

2. This is an appeal by the local authority with leave granted by the chairman from the decision of an appeal tribunal dated 19.8.04.

3. The claimant is registered blind. He is also diabetic and suffers kidney failure. He lived at Flat 2, 44 Barwick Street until 29.3.04, when he moved to 8 Regent Street. That is a warden controlled ground floor flat. He had taken a tenancy of that flat from 23.2.04 and, from that date, became liable for the rent thereof. At all material times he was in receipt of Housing Benefit in respect of Flat 2.

4. He made a claim for housing benefit in respect of 8 Regent Street for the period 23.2.04-29.3.04, pursuant to the provisions of regulation 5(6) of the Housing Benefit (General) Regulations 1987 SI 1971 which provides:

“(6) Where a person —

- ✓ (a) has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- ✓ (b) had claimed housing benefit before moving in ...; and
- (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and —
 - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of that person ...

he shall be treated as occupying the dwelling as his home for a period not exceeding four weeks immediately prior to the date on which he moved into the dwelling.”

The provisions of sub-paras (a) and (b) are satisfied. The only point is whether the provisions of para (c)(i) are.

5. The first point to be made is that there is a limit for benefit of four weeks. Thus Housing Benefit would only be payable 29.2.04-28.3.04 (2004 being a leap year).

6. In his application at p9, the claimant describes as regards the works carried out on 8 Regent Street:

"I have taken up Yorkshire Coast Homes offer and plan to move in on the 29 March having given my present landlord the four weeks notice required (29 February to 29 March). However, between the flat at 8 Regent Street becoming vacant and it being offered to myself, Yorkshire Coast Homes have carried out extensive refurbishment work in the way of electrical re-wiring, the installation of a new bath and installation of a new sink unit and work tops in the kitchen. This has created a lot of cleaning and redecoration work required (particularly in the bathroom and kitchen) before I could consider it to be in a suitable condition for me to move in. Also, Yorkshire Coast Homes removed all the carpets and the vinyl within the flat - I understand that these were found to be of substandard condition for passing over to a new tenant.

"With the help of my mother and close family members, painting and decorating is being carried out and arrangements made to have carpeting and vinyl floors fitted prior to my move. ..."

It appears (18) that there was some temporary fault in the gas, discovered on 12 March and remedied on 17th.

7. The claim was refused by the local authority. The claimant therefore appealed to the appeal tribunal, who heard and allowed the appeal on 19.8.04 where it decided:

"Regulation 5(5)(e) and 6(c)(i) Housing Benefit General Regs 1987 apply to benefit for 2 homes I am satisfied that the work required to make 8 Regent Street habitable by the claimant who suffers from diabetes, blindness and severe damage to his feet can properly be accepted as adaptations to the property."

And the tribunal gave reasons as follows:

"The local authority have refused to pay benefit for the new flat on the grounds that the works undertaken did not constitute adaptations for the disabled needs of [the claimant]. Having considered all the written documents including the medical evidence, I am satisfied that although the significant constructural work was carried out before the tenancy commenced, the consequential cleaning, redecorating and laying of vinyl flooring was a continuation of the adaptations and having regard to his diabetes,

blindness and nerve damage to his feet can properly be accepted as adaptations in order to meet his disablement needs. I have regard for the dictionary definition of the word adapt." ...

The OED definition is:

- " 1. To fit, to make suitable.
- 2. To alter so as to fit for a new use."

8. The local authority appeals to the Commissioner and the grounds of appeal are set out at 80/82 and are broadly speaking:

1. The works carried out by Yorkshire Coast Homes were standard improvements necessary before any tenant occupied the property, and were not specific to the claimant or related to his particular disablement. Moreover, the majority of the works were in fact completed prior to the property even being offered to the claimant.

2. The works undertaken to the property between 23.2.04 and 28.3.04 consisted solely of cleaning, redecorating and replacement of carpets/vinyl floor covering and is considered normal for any person to clean, redecorate and lay a new carpet/vinyl before moving in. Those works are not adaptations for the disablement needs of a person.

9. (i) I do not see how works carried out before the commencement of the tenancy were instrumental in the delay between 23.2.04 and 29.3.04. They do not qualify.

(ii) The works of cleaning and decoration done after 23.2.04 similarly do not qualify since they, and indeed also the works carried out before, were not carried out to meet the disablement needs of the claimant, but necessary for any occupant, regardless of the claimant's disabilities. They are not adaptations to meet the requirements caused by his disabilities.

(iii) In any event any claim must be limited to the four weeks period as mentioned in para 5 above.

10. My decision is therefore as set out in para 1 above.

(signed on the original)

J M Henty
Commissioner

7 March 2005