

Bulletin 184

CS121, -]

PLH

Commissioner's Files: CH 4390 & 4391/03

SOCIAL SECURITY ACTS 1992-2000

**APPEAL FROM DECISION OF APPEAL TRIBUNAL
ON A QUESTION OF LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

<i>Appellant:</i>	<i>[the claimant]</i>
<i>Respondents:</i>	(1) Sedgefield BC (2) Secretary of State
<i>Claim for:</i>	Council Tax Benefit
<i>Appeal Tribunal:</i>	Darlington
<i>Tribunal Case Ref:</i>	
<i>Tribunal date:</i>	16 July 2003
<i>Reasons issued:</i>	8 September 2003

1. These two appeals by the claimant are dismissed, as in my judgment there was no material error of law in the two decisions of the Darlington appeal tribunal given on 16 July 2003, in which the respondent authority was found to have acted correctly in terminating her entitlement to council tax benefit for failure to provide evidence and information reasonably required in connection with her claim and award.

2. It is also material that the claimant had her benefit fully restored and re-awarded the day after the tribunal hearing, once she did comply with the authority's requirements. Thus everything she could possibly have gained in these further appeals has already been given to her, and had already been given to her long before she even applied for leave to bring them. It has been a misuse of the appeal procedure for these appeals to have been pursued, as they have, without mentioning that fact. I would not have granted leave to appeal at all had the true position been disclosed to me initially. Appeals on law under section 14 **Social Security Act 1998** are for real and substantial errors or injustices, not mere slighted feelings.

3. The claimant is a lady now aged 63. She lives with her husband who is aged 70, and they are on retirement pension supplemented by income support, or "minimum income guarantee". These proceedings all stem from a gross overreaction on her part (or perhaps more accurately his, since he usually deals with formfilling and correspondence) to some routine enquiries from the Sedgefield Borough Council in connection with their council tax benefit, a further means-tested benefit for which they qualify. As for all benefits, there are periodic checking and verification procedures for CTB to ensure that the considerable sums of public money involved are being spent

correctly. A routine notification that an officer of the council proposed to pay the claimant and her husband a visit at home to discuss and verify details of their claim was however viewed by him as harassment, and met by a series of flat refusals and accusations in a stream of lengthy and highly-coloured correspondence, of which the following extract from a letter to the Director of Finance dated 5 October 2002 and signed by the two of them (page 30 of file CH 4390/03) gives the general tenor:

“This smacks of “Gestapo” and “Secret Police”. Shortly, we shall be being transported in cattle trucks, in the middle of the night. Is this the state, Mr Blair has reduced this country to?”

“If we were Foreigners and not indigenous people of these Islands, I am quite certain we would not be treated in this manner.”

4. After a long period of correspondence that involved various officers of the council, the Local Government Ombudsman and the Secretary of State, the council exercised its powers under paragraphs 14 and 15, schedule 7 **Child Support, Pension and Social Security Act 2000** and regulations 13 and 14 **Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001** S.I. No. 1002, first to suspend and then to terminate the claimant’s entitlement to council tax benefit. Its ground for doing so was her failure to comply with its requirement under regulation 63 **Council Tax Benefit (General) Regulations 1992** S.I. No. 1814 to furnish information and evidence in connection with her claim or award at a home visit: in particular the confirmation such a visit could provide that she continued to meet the residence conditions for the benefit.

5. The decision to terminate the benefit, against which the first appeal was brought, was contained in a letter dated 21 March 2003 at pages 67 to 68 of file CH 4390/03. It brought to an end from 10 March 2003 the current entitlement under an award dated 21 November 2002 covering the period 9 December 2002 to 1 February 2004: see pages 96, 106. The letter of 21 March 2003 advised the claimant that she had the right to appeal against the termination of her benefit, which she did. In addition, on 31 March 2003 she submitted a fresh claim, but the council refused to proceed with that until she agreed to a home visit for her details, in particular her occupancy of the property, to be verified. Eventually they issued a letter on 21 May 2003 (page 23 of file CH 4391/03), saying:

“As you have failed to comply with the request to arrange a visit to your home, I regret I am unable to make a decision on your claim, and therefore you are have not *[sic]* been awarded Council Tax Benefit”.

6. The claimant was permitted to bring an appeal against that refusal as well, which was the second appeal the tribunal dealt with on 16 July 2003. No point has been

taken against her either at the tribunal or in these proceedings as to whether there is strictly a statutory right of appeal against that kind of decision at all, and for present purposes that does not matter.

7. The tribunal chairman dismissed both appeals because having heard and considered all the evidence she found as a fact that the requirement to provide evidence and information at a home visit was a reasonable one within the terms of regulation 63 cited above, and the claimant and her husband had refused to comply.

8. Regulation 63 provides so far as material as follows:

“Evidence and information

63.- (1)...A person whom makes a claim, or a person to whom council tax benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person’s entitlement to, or continuing entitlement to, council tax benefit...”

9. The chairman's statement of reasons on the first appeal (pages 139-141) records that the local authority in this case had adopted an anti-fraud verification framework recommended by central government which required a home visit to continuing claimants in the appellant’s category every three years. In particular this was to ascertain if the claimants were resident and that they were not sub-letting, and to request a signature on a statement to say there had been no changes in circumstances. The appellant had refused to allow such a visit and failed to comply with the council's request. In those circumstances:

“The Tribunal found as a fact that regulation 63(1) of the Council Tax Benefit Regulations 1992 had not been satisfied in that it is a requirement to provide certificates, documents, information and evidence in connection with a claim or award as may be reasonably required by the relevant authority in order to determine that person's entitlement to council tax benefit. ...

The Tribunal found as a fact that it was unreasonable to refuse a home visit. The Tribunal accepted that the local authority had no right of entry but found that it was reasonable to follow the verification framework which included a home visit in order to investigate possible fraud.

The Tribunal found that it was reasonable under section 63 to require a home visit if the appellant was in receipt of benefit.

A letter had been sent to the claimant on 15 April requesting that a suitable time be arranged and no response was given with the time scale and regulation 63(1) was therefore not satisfied.

The decision of 21 March 2003 was confirmed in that the appellant failed to comply with the requirements of regulation 63 of the Council Tax Benefit (General Regulations) 1992 and the Local Authority were therefore correct to terminate benefit..."

10. For similar reasons the appeal against the council's refusal to proceed to make an award under the fresh claim in the absence of the required home visit was also rejected: page 71 of file CH 4391/03. Although the passage quoted above from the chairman's statement of reasons referred only to a letter of 15 April 2003 there is no possible room for doubt that the refusal to agree to a home visit for the purposes required by the council had dated from long before that, and the couple had been given specific notice of the requirement to make themselves available for such a meeting within a four week time limit by at the latest 17 February 2003: see page 58 of CH 4390/03. There was therefore no doubt that the claimant and her husband had failed to comply with the council's requirements within the time stipulated under regulation 63.

11. In my judgment the tribunal chairman was justified in holding on the facts before her that the requirements imposed by the council in this case had been reasonable and within their powers under regulation 63, and it was the claimant and her husband that had been unreasonable in refusing to comply with them. It is well within the bounds of reasonableness for an authority or the Secretary of State to require evidence and information to substantiate or confirm a person's entitlement to be given not only by completing the normal printed forms but also from time to time in the form of a signed statement given in response to direct questions from a council or departmental officer at a home visit; supplemented if necessary by visual demonstration that the claimant is indeed continuing to occupy the property in a normal manner, and has not for example sub-let or parted with possession in a way that could prejudice their right to the benefit. As the tribunal correctly recorded, the authority has no right to insist on entry into a person's home in this context, but that is a different question. Here the council had been at pains to assure the claimant and her husband more than once that it was not seeking any enforced entry, and the eventual interview after the tribunal hearing in fact took place at the claimant's door.

12. In my view therefore the tribunal chairman's conclusion that the claimant and her husband had failed to comply with a reasonable requirement under regulation 63, so as to justify the termination and refusal to re-award the benefit, was not erroneous in law.

13. As noted above it was not at any stage disputed by the council that the claimant was able to appeal each of the letters of 21 March and 21 May 2003 to the

tribunal, and for the purposes of this decision it is not necessary for me to express any view on whether they really both fell within the scope of paragraph 6, schedule 7 **Child Support, Pensions and Social Security Act 2000**. I do however express the hope that this decision will mark the closure of the battle between the claimant's husband and the council. I dare say he and his wife are unhappy, as ordinary pensioners, to find themselves involved with the means-tested benefits system, but that is the fault of successive governments for at least the last 25 years, in allowing the value of the pension to be eroded: it is quite unfair to take it out on the officials who have to try and administer the system as we have got it.

14. The appeals are dismissed accordingly. As I have said the claimant did in fact have her benefit restored and re-awarded in full by the council only the day after the tribunal hearing when she and her husband finally did allow a home visit to take place.

(Signed)

P L Howell
Commissioner
3 June 2004