

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This appeal, which is brought with the leave of a commissioner, is allowed. I set aside the decision of the Telford Appeal Tribunal given on 3 September 2003, and I substitute my own decision remitting the case to the local authority to recalculate the claimant's entitlement to housing benefit on the basis set out in this decision. Any decision of the local authority recalculating entitlement will be subject to the claimant's right of appeal to an appeal tribunal.
2. The claimant rents his home from a housing trust. His tenancy agreement is not in evidence but the provisions as to rent are explained in a series of letters from the trust which are in evidence and are not challenged by either the claimant or the local authority. By letter of 6 June 2002 (file, pp.R15B-R15C) it is explained that the trust charges an annual rent which is collected by reference to 23 due dates within any one calendar year, commonly referred to as rent fortnights. The timing of these rent fortnights varies slightly from year to year to account for the slight mismatch between weeks, calendar months and years but the total annual rent collected is unchanged by this timing. In a further letter from the trust dated 3rd June 2003 (file, pp.S47-48) it is made clear that under the tenancy agreement an annual rent is due in respect of the period 1st April one year to 31st April the next and that this is collected over 23 fortnights contained within that period.
3. The local authority has calculated the claimant's entitlement to housing benefit, after taking into account his income, on the basis that both regulation 69 and regulation 70 of the Housing Benefit (General) Regulations 1987 apply. Regulation 70 is said to apply because the fortnights in which no rent is collected are treated as rent free periods falling within that regulation. Complex calculations have been made on this basis which are challenged by the claimant.
4. For the reasons which I give below, I am satisfied that the fortnights in which no rent is payable are not rent free periods within regulation 70 and that that regulation has no relevance to this case. The claimant's entitlement must be recalculated in the manner set out by me below, without regard to the provisions of that regulation.
5. Regulation 70(1) provides that "This regulation applies to a claimant for any period (referred to in this regulation as a rent free period) in respect of which he is not liable to pay rent except for any period to which regulation 6(1)(d) (waiver of rent by landlord in return for work done) applies." However, it is plain from the letters from the trust that the claimant is charged an annual rent covering the whole year. The fact that it is paid by 23 instalments does not alter this fact. The claimant was liable to pay rent for the whole year by those 23 instalments and there is no part of the year in respect of which he was not liable to pay rent. There were simply some parts of the year when no payment fell to be made.
6. This natural construction of regulation 70(1) is supported by regulation 6(2) which provides that "A person shall be treated as liable to make a payment in respect of a dwelling for the whole of the period in respect of which the payment is to be made notwithstanding that the liability is discharged in whole or in part either before or during that period...". The test is not when the payment is made, but the period in respect of which it is made, and in my judgment the payments here are made in respect of the rent owed for the whole of the year in

question. It follows that the tribunal erred in holding that regulation 70 applied and that its decision was wrong in law and must be set aside.

7. In my judgment the weekly amount of the claimant's eligible rent is to be calculated under regulation 69(2), and the resulting figure is the eligible rent for each week including weeks and fortnights in which no rent is actually paid, so long as the annual rent remains unchanged. It does not matter for this purpose whether regulation 69(2)(a) or (b) is the correct measure. The result is the same. Applying regulation 69(2)(a), every time a fortnightly rent payment is made, the amount paid is one twenty third of the annual rent. In a year containing 365 days, it is therefore payable in respect of one twenty third of those days or 15.869565 days, which equates to 2.2670807 weeks. To establish the weekly eligible rent, one must therefore take the fortnightly payment and divide by 2.2670807. The resulting figure is the weekly rent for every week that the annual rent remains unchanged, including the so-called rent free fortnights.

8. Thus, when the annual rent in the present case was £2687.78 and the 23 fortnightly payments were £116.86, the payment of £116.86 is to be divided by 2.2670807, producing an eligible weekly rent of £51.55 for each benefit week. The same result would be reached using the formula in regulation 69(2)(b), where one has to take the annual rent of £2687.78, divide it by 365 and multiply the result by 7, again giving a sum of £51.55 per week.

9. Weekly income is then calculated in accordance with regulation 25. and is not subjected to an artificial uplifting by reference to a notional 46 week year, as the local authority has done to date to counterbalance its eligible rent calculations over the same period. Thus using the calculations of the local authority at the top of page S156, if the council's basic figures are correct, the claimant's weekly income would be £204.50 per week over 52 weeks and not the artificially inflated £231.17 over 46 weeks.

10. The elimination of regulation 70 as a factor in the calculations not only simplifies the calculations but gets rid of any need to deal with a notional 53 week year which the claimant felt worked unfairly to his disadvantage.

11. I remit to the local authority the task of recalculating the claimant's entitlement to housing benefit on the basis set out above. The claimant will have the right to challenge the calculations on appeal to an appeal tribunal if he does not agree with them, but the method of calculation must be consistent with this decision.

12. The appeal is allowed and I give the decision set out in paragraph 1 above.

**(Signed) Michael Mark
Deputy Commissioner**

1 September 2004