

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is as follows. It is given under paragraph 8(4) and (5)(c) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000.
- 1.1. The decision of the Leeds appeal tribunal under reference U/01/013/2002/00120, held on 13th June 2002, is erroneous in point of law.
- 1.2. I set it aside and remit the case to a differently constituted appeal tribunal.
- 1.3. I direct the appeal tribunal that the overpayment is recoverable. I remit one issue to the appeal tribunal. That issue is whether the local authority has properly exercised its discretion to seek recovery from the landlord and not from the tenant claimant.

I have decided that appeal tribunals have no jurisdiction to deal with that issue. See my decision in *CH/4943/2001*. However, that decision is under appeal to the Court of Appeal. The tribunal will, therefore, have to stay the case. If the Court of Appeal decides that the appeal tribunal does have jurisdiction over this issue, the case will be listed for hearing and determined. If the Court of Appeal decides that the appeal tribunal does not have jurisdiction over this issue, the appeal will be ruled out of the tribunal's jurisdiction.

The appeal to the Commissioner

2. This case concerns the recoverability of an overpayment of housing benefit. The appellant is Leeds City Council, the local authority which is seeking recovery. The respondent is the landlord from whom recovery is sought.
3. The case comes before me as an appeal to a Commissioner against the decision of the appeal tribunal brought by the local authority with the leave of a district chairman of tribunals. The respondent does not support the appeal.

The history of the case

4. This case concerns an overpayment of housing benefit in respect of the inclusive period from 26th October 1998 to 15th November 1998.
5. On 10th November 1998, the local authority received from the claimant a new claim for housing benefit in respect of a different dwelling, stating that he had started living there on 24th October 1998. By the time the form was received, housing benefit had already been paid for the period up to 15th November 1998. The local authority also made a further payment for the period from 15th November, but that is not the subject of this case.
6. The local authority made a decision that the overpayment was recoverable from the claimant's landlord. The landlord challenged that decision. In due course, his challenge came before an appeal tribunal as an appeal against the local authority's decision.
7. The tribunal allowed the appeal and decided that the overpayment was not recoverable from the landlord, because the landlord could not reasonably have been expected to realise that benefit was being overpaid.

8. The local authority's appeal against that decision is now before me.

The legislation

9. The relevant legislation is regulation 99 of the Housing Benefit (General) Regulations 1987. It provides:

'(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4), this paragraph applies to an overpayment caused by official error where the claimant or the person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that overpayment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), "overpayment caused by official error" means an overpayment caused by a mistake made, whether in the form of an act or omission, by the appropriate authority or by an officer or person acting for that authority or by an officer of the Department of Social Security or the Department of Employment acting as such, or a person providing services to either Department where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake or omission.'

Did the appeal tribunal go wrong in law?

10. Yes, it did.

11. The appeal tribunal allowed the appeal, because the landlord could not reasonably have been expected to realise that benefit was being overpaid. That refers to regulation 99(2). However, regulation 99(2) only applies if the overpayment was 'caused by official error'. That is defined in regulation 99(3). The definition has two elements. One is that the overpayment must be caused by a mistake made on behalf of the local authority. The other is that neither the claimant nor the landlord caused or contributed to that mistake. The two elements are cumulative. Both must exist if the overpayment is to be caused by official error. If one of other of the elements is not satisfied, there is no official error and regulation 99(2) never applied.

12. Was there official error in this case?

13. From the evidence before the appeal tribunal, the local authority did not cause the overpayment with which the tribunal was concerned. The officers dealing with housing benefit did not know that the claimant had moved out of the dwelling until after that overpayment had been made. So, the first element of the definition is not satisfied. Even if the local authority did make a mistake, the claimant contributed to it by not notifying the local authority that he had moved out. So, the second element is not satisfied.

14. On that analysis, the evidence showed that the overpayment was not caused by official error. So, regulation 99(2) never applied. The overpayment was, therefore, recoverable

regardless of whether the landlord or the claimant could reasonably have been expected to realise that benefit was being overpayment.

How should I dispose of this case?

15. As the tribunal went wrong in law, its decision must be set aside.

16. Was there an overpayment? The landlord has argued that the local authority and the appeal tribunal failed to consider the application of regulation 5 so that housing benefit might be properly awarded in respect of both dwellings. I reject that argument. There was never any evidence to suggest that that regulation might apply.

17. Is the overpayment recoverable? Yes, it is. I have dealt with this in my decision. A rehearing is not necessary in order to decide this issue.

18. Is the overpayment recoverable from the landlord? The answer to this issue depends on the outcome of the appeal to the Court of Appeal against my decision in *CH/4943/2001*. The landlord has raised this issue. However, in view of the tribunal's approach to the case, it did not need to deal with it. It does not arise before me. There is no need to delay the case further before the Commissioner. I have, therefore, remitted this one issue to the tribunal. The authority for remitting limited issues only is *Aparau v Iceland Frozen Foods plc* [2000] 1 All England Law Reports 228.

Signed on original

**Edward Jacobs
Commissioner
7th January 2003**