

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

HOUSING BENEFIT

Application by the claimant for leave to appeal
and appeal to a Social Security Commissioner
on a question of law from a Tribunal's decision
dated 30 April 2018

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal sitting at Belfast.
2. For the reasons I give below, I grant leave to appeal. I allow the appeal and I set aside the decision of the appeal tribunal. However, rather than refer the appeal to a newly constituted tribunal, I consider that I should determine the appeal myself. Under Article 15(8)(i) of the Social Security (NI) Order 1998, I give the decision that the tribunal should have given. I find that the appellant is not entitled to housing benefit and is not entitled to rate relief from and including 19 December 2017.

REASONS

Background

3. The appellant, a full-time student, made a claim to Land and Property Services (LPS) on 19 December 2017 in respect of the rates on his owner-occupied accommodation in Belfast. The claim form was headed "Housing Benefit and Rate Relief Claim Form for Owner Occupiers". On 13 January 2018 the claim was disallowed on the basis that the appellant was not entitled to housing benefit (HB) as he was a full-time student. The appellant submitted an appeal to the LPS housing benefit and rate relief team. However, he waived his right to an oral hearing of the appeal.

4. The appeal was considered by a tribunal consisting of a legally qualified member (LQM) on 30 April 2018. The tribunal disallowed the appeal. The appellant then requested a statement of reasons for the tribunal's decision and this was issued on 9 August 2018. The appellant applied to the LQM for leave to appeal from the decision of the appeal tribunal. Leave to appeal was refused by a determination issued on 20 September 2018. On 15 October 2018 the appellant applied for leave to appeal from a Social Security Commissioner.

Grounds

5. The appellant submits that the tribunal has erred in law on the basis that it has erroneously applied law relevant to HB to his claim for rate relief.
6. LPS was invited to make observations on the appellant's grounds. Mr Barker of Decision Making Services (DMS) responded on behalf of LPS.
7. He submitted that there were procedural errors in the decision, on the basis that the tribunal had not fully addressed all relevant legislation. However, he submitted that the outcome would have been the same had it done so. He indicated that LPS supported the application to this limited extent and asked for the Commissioner to make the decision that the tribunal should have made, referencing the correct legislative provisions.

The tribunal's decision

8. The legally qualified member has prepared a statement of reasons for the tribunal's decision. From this I can see that the tribunal had sight of an LPS submission, containing documents that included the appeal form of 12 February 2018, the claim form of 19 December 2017, evidence relating to the appellant's status as a student, bank statements and decisions from LPS. The appeal proceeded in the absence of the parties and no oral evidence was taken.
9. The tribunal found that the appellant was a full-time student and, as such, was precluded from entitlement to HB by regulation 53 of the Housing Benefit Regulations (NI) 2006. This provides that "a full time student shall be treated as if he was not liable to make payments in respect of a dwelling". The tribunal disallowed the appeal.

Relevant legislation

10. The claim, decision and aspects of the proceedings in this case refer to two distinct schemes, namely rate relief and HB. While claimed by way of the same claim form, submitted to the same authority, and decided by the same authority, these schemes operate under entirely separate legislation.

11. The scheme of rate relief has its origins in the Rates Order (NI) 1977 (the 1997 Order) and is governed by Article 30A of the 1997 Order and the regulations made under that provision. This provides:

30A.—(1) Regulations may make a scheme (the “rate relief scheme”) providing that, in cases specified in the scheme, the amount which, apart from this Article, would be payable on account of a rate in respect of a dwelling-house shall for each year be reduced in accordance with the scheme.

(2) Regulations may make such provision as the Department considers necessary or expedient for the purposes of this Article.

(3) Regulations may include—

(a) provision for purposes corresponding to those of any statutory provision—

(i) which has any application in relation to housing benefit or universal credit; or

(ii) which, at any time specified in the regulations (being a time before the coming into operation of the regulations), had any application in relation to housing benefit;

(b) provision applying any such statutory provision with modifications;

(c) provision creating offences and penalties.

(4) Nothing in paragraph (3) shall affect the generality of paragraph (2).

(5) In this Article—

“housing benefit” means housing benefit provided by virtue of a scheme under section 122 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);

“rate in respect of a dwelling-house” includes a rate in respect of the rateable capital value of a hereditament which is used partly for the purposes of a private dwelling;

“reduced” includes reduce to nothing.

12. The relevant regulations in force at the time of the claim in the present case are the Rate Relief Regulations (NI) 2007 (the 2007 Regulations). These provide, at Part 15, for appeals to be brought under Schedule 7 to the Child Support, Pensions and Social Security Act (NI) 2000.

13. By contrast, HB was established by section 122 and 129 of the Social Security Contributions and Benefits Act (Northern Ireland) 1992 (the 1992 Act). By section 129(1):

“A person is entitled to housing benefit if-

- (a) he is liable to make payments in respect of a dwelling in Northern Ireland which he occupies as his home; ...

14. HB entitlement for persons in the appellant’s age group is currently provided for by the Housing Benefit Regulations (Northern Ireland) 2006 (the 2006 Regulations). Regulation 12 of the 2006 Regulations provides:

12.—(1) The payments in respect of which housing benefit is payable in the form of a rate rebate are the payments by way of rates in respect of the dwelling which a person occupies as his home.

15. The statutory framework for decision making in relation to HB is set out in the Housing Benefit (Decisions and Appeals) Regulations (NI) 2001. HB appeals are brought under Schedule 7 to the Child Support, Pensions and Social Security Act (NI) 2000.

16. By regulation 7 of the 2007 regulations:

7. A person is entitled to rate relief if—

- (a) he is liable to make payments in respect of a hereditament which he occupies as his home; ...

17. In relation to students, regulation 21 of the 2007 Regulations further provides:

21. Subject to regulation 9 (exclusions from rate relief), Part VII of the Housing Benefit Regulations (students) shall apply for the purposes of these Regulations as it applies for the purposes of the Housing Benefit Regulations with the following modifications—

- (a) as if for “housing benefit”, wherever it occurs, there were substituted “rate relief”; ...

Assessment

18. The appellant submits that the tribunal has erred in law on the basis that he applied for rate relief and that the tribunal has disallowed HB but not considered rate relief. The appellant is supported by Mr Barker on this ground, who acknowledges that the tribunal was misled by the submission of LPS. I would add that the tribunal would have been equally misled by the decision notices issued by LPS to the appellant,

since these only referred to HB. In light of Mr Barker's support, it is plain that the appellant presents an arguable case and I grant leave to appeal.

19. I believe that confusion has arisen in this case from the policy background that provides for overlapping schemes of financial assistance. I accept the submission of Mr Barker that rate relief is not a social security benefit, but a Department of Finance means-tested scheme providing help with rates. I accept that it is separate from and additional to any help with rates provided under HB. Mr Barker points out that when a person claims HB for rates, a claim for rate relief is also made and a separate claim is not required.
20. I observed above that the appellant's claim was made on a single claim form headed "Housing Benefit and Rate Relief Claim Form for Owner Occupiers". Due to the lower taper of 12% applied to excess income in the rates relief calculation – compared with 20% in the case of HB – where a claimant's means are sufficiently low, there may be an entitlement to both HB and rate relief at the same time (see regulation 23 of the 2007 Regulations for the calculation).
21. However, while there is divergence in the rules governing the calculation of entitlement that permits a rate relief award to top up a HB award, the general rules governing entitlement appear otherwise parallel. The key provision regarding HB is regulation 53(1) of the 2006 Regulations, which was relied upon by the tribunal in making its decision. It provides that a full-time student shall be treated as if he were not liable to make payments in respect of a dwelling.
22. To be entitled, a HB claimant must be liable to make payment in respect of a dwelling in Northern Ireland which he occupies as his home. When regulation 53(1) is read together with section 129(1) of the 1992 Act, it has the effect of disentitling a student to HB for rates, unless coming within one of the exceptions in regulation 53(2). However, these exceptions do not apply in the present case. This was the conclusion arrived at by the tribunal and it appears to me that this was correct in law as far as it went.
23. However, the tribunal did not then also consider the position as far as rate relief is concerned. This had been claimed on the same claim form as appeared in the LPS submission to the tribunal. A decision notice in relation to HB was issued, in compliance with regulation 86 of the 2006 Regulations. Whereas the LPS decision letter did not make express reference to rate relief, I consider that a formal decision was required by regulation 30 of the 2007 Regulations, which imported the equivalent HB decision making provisions, including regulation 86, to the rate relief scheme. In the absence of any formal decision, it appears to me that a refusal of rate relief must be impliedly communicated by LPS decision notice of 13 January 2018. The appeal submitted by the appellant to the LPS housing benefit and rate relief team properly encompassed both the refusal of HB and the refusal of rate relief.

24. The submission from LPS to the tribunal referred to HB but not rate relief. It therefore did not direct the tribunal to all of the relevant law. The tribunal proceeded on the basis that it was dealing with a HB claim alone, and referred to provisions relevant to determining such a claim. I consider that the tribunal's attention should properly have been drawn to the fact that it was dealing with appeals from two legally distinct claims.
25. I am grateful to Mr Barker for addressing the issues in this case with candour. I also feel sympathy for the tribunal, which was misled by the incomplete LPS submission before it. However, it is inescapable that it has not applied all the legislation relevant to the case before it. Whereas it applied the 2006 Regulations, it should also have applied the 2007 Regulations. By failing to apply all the relevant law, it has also failed to give adequate reasons for its decision. This may seem like a very technical omission. However, it has clearly given rise to a real grievance on the part of the appellant who understood the tribunal to have applied the wrong legislation to his case.
26. As observed above, regulation 53(1) of the 2006 Regulations has the effect of disentitling the appellant to HB. The parallel position in relation to the rate relief scheme arises from regulation 21 of the 2007 Regulations. This regulation modifies the 2007 Regulations and causes them to operate as if Part VII of the 2006 Regulations, which governs the position of students, applied to the 2007 Regulations as it does to the 2006 Regulations. In consequence, regulation 53(1) of the 2006 Regulations applies equally to the rate relief scheme and to the HB scheme.
27. Whereas the tribunal referred to regulation 53 of the 2006 Regulations and applied it correctly to the HB claim, it was led into error by omitting to refer to the rate relief claim and the legislation under which it fell to be decided. Accordingly, I must allow the appeal and set aside the decision of the appeal tribunal.
28. Nevertheless, this will not bring any change in outcome. I am satisfied that there would be no merit in remitting the appeal to a newly constituted tribunal. I am empowered to decide the case myself under Article 15(8)(i) of the Social Security (NI) Order 1998.
29. I adopt the finding of the tribunal that the appellant was a full-time student. As the appellant was a full-time student, he falls within regulation 53(1) of the 2006 Regulations. This means that he is not entitled to HB in the form of a rate rebate from and including 19 December 2017. As he falls within regulation 53(1), he is also not entitled to rate relief from and including 19 December 2017 due to the application of regulation 21(a) of the 2007 Regulations. I disallow his appeal.

(signed): O Stockman

Commissioner

1 October 2019