

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATE RELIEF (LONE PENSIONER ALLOWANCE) REGULATIONS (NORTHERN
IRELAND) 2008 AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND)
2007

CASE REFERENCE NUMBER: 27/09

F M CALLAGHAN - APPELLANT
AND
DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Gordon Jackson FRICS and Mr Peter Somerville.

Belfast, 2 October 2009

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed.

REASONS

Introduction

1. This is a reference under regulation 10 of the Rate Relief (Lone Pensioner Allowance) Regulations (Northern Ireland) 2008 ("the 2008 LPA Regulations"). This is the first such appeal dealt with by the Northern Ireland Valuation Tribunal under these Regulations which came into effect on 1 April 2008.
2. Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 provides that an appeal may be disposed of on the basis of written representations if all the parties have given their consent in writing. This is such a case.
3. The appellant Mr FM Callaghan appealed on behalf of his mother, Mrs Margarita Callaghan, against the outcome of a review of a decision of the Department that Mrs Callaghan was not entitled to claim Lone Pensioner Allowance ("LPA").

The Law

4. The statutory provisions are to be found in the 2008 LPA Regulations. In summary, regulation 3 (1) of the 2008 LPA Regulations provides to a qualifying person who has attained the age of 70 years a rebate from rates in respect of a dwelling-house which is occupied solely by him or her. In determining whether a dwelling-house is occupied solely by a qualifying person who has attained the age of 70 years, any other person who falls within a description specified in the Schedule to the 2008 LPA Regulations shall be disregarded. Regulation 8 (1) provides that the amount of a rebate shall be 20 per cent. of what would have been chargeable by way of rates in respect of the dwelling-house in question.

5. Material to this case is the issue of whether or not, in determining whether the dwelling-house in question was or was not deemed to be occupied solely by Mrs Margarita Callaghan (being a person who has attained the age of 70 years) for the purpose of rating, any other person who was in occupation of the dwelling house ought properly to be disregarded for the reason that such person falls within the description specified in the Schedule to the 2008 LPA Regulations. Therefore it is worthwhile for the purposes of this decision setting out in detail the material part of the content of the Schedule with which regulation 3 of the 2008 LPA Regulations is designed to be read. This reads as follows, with the particularly relevant portions emphasised by the tribunal in bold lettering, for clarity:-

Disregarded Persons

1.—(1) A person who is **engaged in providing care** to the person who has attained the age of 70 years in the circumstances set out in sub-paragraph (2).

(2) The circumstances referred to in sub-paragraph (1) are—

- (a) that the **person who has attained the age of 70 years is entitled to a prescribed benefit**;
- (b) the **person providing the care is resident in the same dwelling-house** as the person who has attained the age of 70 years;
- (c) the **care is being provided for at least 35 hours a week on average**; and
- (d) the person providing the care is **not a disqualified relative** of the person who has attained the age of 70 years.

(3) In this paragraph “prescribed benefit” means—

- (a) a higher rate attendance allowance under section 65 of the 1992 Act;
- (b) the highest rate of the care component of a disability living allowance under section 72(4)(a) of that Act;
- (c) an increase in the rate of a disablement pension under section 104 of that Act by an amount which is the highest amount determined in accordance with paragraph (a) of regulation 17 of the Social Security (General Benefit) Regulations (Northern Ireland) 1984 or, in a case to which paragraph (b) of that regulation applies, the amount determined in accordance with that paragraph; or
- (d) a constant attendance allowance at the rate provided for by article 14(4) or (5) of the Personal Injuries (Civilians) Scheme 1983(1) or article 8(4) or (5) or 71(4)(b) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (including those provisions as applied, whether with or without modifications, by any other instrument).

(4) For the purposes of this paragraph, a person is a **disqualified relative** of another if—

- (a) he is the **spouse of the other or they live together as husband and wife**; or
- (b) he is the **civil partner of the other or they live together as if they were civil partners**.

2.—(1) A person who—

- (a) is receiving care **from** the person who has attained the age of 70 years; and
- (b) **fulfils the requirements set out in sub-paragraph (2)**.

(2) The requirements referred to in sub-paragraph (1) are that the person is—

- (a) entitled to a prescribed benefit;
- (b) resident in the same dwelling-house as the person who has attained the age of 70 years who is providing him with care;
- (c) receiving that care for at least 35 hours a week on average; and
- (d) not a disqualified relative of that person.
- (e) Sub-paragraphs (3) and (4) of paragraph 1 shall apply for the purposes of this paragraph as they apply for the purposes of paragraph 1.

6. The tribunal shall make further observations regarding these disregarding provisions and the issue of exemptions below.

The Evidence

7. Any evidence is available from the appellant's application form to the tribunal, in Form 5, received by the Office of the Tribunal on 8 July 2009 and which application had appended to it a copy of a letter dated 11 June 2009. The form of appeal and the annexed letter dated 11 June 2009 were both made out and signed by Mrs Callaghan's son, Mr FM Callaghan, on Mrs Callaghan's behalf. The tribunal also had sight of certain additional copy correspondence and documentation, including a copy of the Lone Pensioner Allowance application form dated 4 April 2009 and further correspondence on behalf of the appellant and the Department.

The Facts

8. On the basis of the evidence and information before it the tribunal determined, upon the balance of probabilities, the following material facts:-
 - (a) The dwelling-house under consideration is situated at 161 Ballagh Road, Fivemiletown BT5 0QP ("the dwelling-house"). The occupant, Mrs Margarita Callaghan, is understood to be the ratepayer in respect of the dwelling-house. Mrs Callaghan had attained the age of 70 years at the time of the application.
 - (b) Mrs Callaghan has two other persons residing in the dwelling-house. The first of these persons is Mrs Callaghan's son, Mr FM Callaghan. Mr FM Callaghan states in the aforementioned letter dated 11 June 2009 that he has a permanent address at another location in Fivemiletown. He resides overnight at the dwelling-house as he is a carer for Mrs Callaghan. He states that Mrs Callaghan is in reasonable health, but that overnight supervision is desirable, if not essential.
 - (c) Mr FM Callaghan also confirms that Mrs Callaghan's brother-in-law, a Mr James Joseph Callaghan, resides in the dwelling-house. There is no date stated for the commencement of that occupancy by James Joseph Callaghan. However, Mr FM Callaghan states the following in the said letter dated 11 June 2009 in respect of James Joseph Callaghan (and in that letter making references to a specific medical condition which this tribunal does not think it appropriate to make reference to in this decision):- *"...he recently had to give up his business and reside here until alternative arrangement can be made On his consultant's instructions he was not permitted to live alone whilst undergoing treatment He currently receives treatment every three months. Eventually he hopes to move elsewhere and live independently but until that day comes he must remain here. He is 77 years old."*

THE CONTENTIONS OF THE PARTIES

9. In summary, it is contended by Mr FM Callaghan that the tribunal ought properly to regard both of the persons occupying the property in addition to Mrs Callaghan as being subject to be provisions of the Schedule to the 2008 LPA Regulations. It is contended that occupation of the dwelling-house by these occupants ought not to disqualify Mrs Callaghan from LPA. Mr FM Callaghan has made the additional argument that, as he puts it in a letter dated 29 June 2009 to the tribunal, “... *L&PS is not financially disadvantaged by my part time residence at the above address and that this should be taken into consideration.* “
10. The Department's case is succinctly stated in a letter dated 8 June 2009 from S Quinn, Rating Officer, to Mr FM Callaghan, which letter was sent as a result of Mr Callaghan's request to have the case reviewed upon the earlier decision to refuse LPA. Therein, the Department states:- “*Having considered your request, I have decided the decision on your application should remain unchanged. In coming to my decision I have taken into account that the property is not solely occupied by your Mother. There are two people who reside with her. The criteria are that you are a Pensioner 70 or over and live alone. The carer may be considered as a disregard if they provide care for 35 hours per week and are entitled to the prescribed benefit. The other person does not meet the criteria for the Lone Pensioner Allowance scheme*”.

THE TRIBUNAL'S DECISION

11. This is not a case where an occupant of a dwelling-house who has attained the age of 70 years lives alone. However, the applicable statutory provisions contained in the 2008 LPA Regulations do not require in all the circumstances that the applicant for LPA shall live alone. In determining whether a dwelling-house is occupied solely by a person who has attained the age of 70 years, certain other persons are to be disregarded by virtue of regulation 3(3) and the Schedule to the 2008 LPA Regulations. It must be said that the evidence in this case is incomplete. For example, there was no specific evidence concerning the necessary prescribed benefit nor the duration of the care provided. Were it not for the fact that the case may be fairly easily resolved in the manner appearing below, the tribunal would inevitably have had to seek further evidence and information from or on behalf of the appellant as to the potential qualification for LPA. However, if the tribunal focuses purely on the matter of the occupancy of the dwelling-house by James Joseph Callaghan, then the resolution of this appeal is easily achieved.
12. As the dwellinghouse is without doubt occupied by James Joseph Callaghan, and as no where in the papers or in the case made out by the appellant is it apparent that James Joseph Callaghan might qualify under the exemptions provided for in the Schedule to the 2008 LPA Regulations (as set out in detail above), then the legal effect of the fact of occupation of the dwellinghouse by James Joseph Callaghan is to disqualify the case from the application of the Lone Pensioner Allowance.

13. Thus, the appeal cannot succeed and consequently the tribunal's unanimous decision is that the appeal is dismissed.

THE TRIBUNAL'S CONCLUDING REMARKS

14. In conclusion, as this is the first such appeal coming before this tribunal under the relatively new jurisdiction of the 2008 LPA Regulations, the tribunal would think it prudent to observe, for the benefit of future applicants to the tribunal by way of appeal, that the tribunal would require to be satisfied evidentially in regard to the particular provisions of regulation 3 and the Schedule to the 2008 LPA Regulations. As is mentioned above, in this type of case where Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 is invoked - with the request that the appeal shall be disposed of on the basis of written representations - the tribunal will inevitably be denied an opportunity at hearing to clarify matters of evidence in order to determine whether the statutory tests have or have not been satisfied. Particular difficulties are presented if proceedings have to be adjourned for want of adequate evidence, or worse, dismissed. Inadequate information and evidence can lead to delays and difficulties in the administration of justice. Therefore the tribunal would wish to encourage future applicants bringing appeals to the tribunal under the 2008 LPA Regulations to pay particular attention to the statutory tests for qualification for LPA and for persons to be deemed disregarded under the terms of the Schedule to the 2008 LPA Regulations. The tribunal trusts that having proper regard to these matters might avoid potential difficulty or a delay in regard to future applications.
15. The only other, and indeed final, issue to be mentioned is that regulation 10 of the 2008 LPA Regulations provides that if a person on whom a notice is served under regulation 9(3) of the 2008 Regulations is dissatisfied with the result of the review, he or she may appeal to the Valuation Tribunal. The process is that regulation 5 of the 2008 LPA Regulations provides that a rebate shall be granted only if an application containing such information as the Department may reasonably require is made to a relevant authority by or on behalf of the person entitled to the rebate. Regulation 9 of the 2008 LPA Regulations provides that where an application has been made under regulation 5, the relevant authority shall serve notice of its decision on the applicant. Any person who is aggrieved by a decision of a relevant authority notified to him or her may apply to the relevant authority for a review by that authority of its decision. The relevant authority shall then serve on that person a notice of the result of the review (under regulation 9(3)). That notice may then be appealed to the tribunal under regulation 10. The tribunal believes that it would be preferable that any person seeking to appeal (being thus a person who has attained the age of 70 years and who is seeking under regulation 3 (1) of the 2008 LPA Regulations to invoke the statutory entitlement by pursuing an appeal to the Valuation Tribunal) would be better named personally as appellant in any appeal even if such a person is or were to be assisted by another on grounds of age or infirmity.

**Mr James V Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: