

**NORTHERN IRELAND VALUATION TRIBUNAL**  
**THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND**  
**THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007**

**CASE REFERENCE NUMBER: 20/08**

**GEOFFREY McKAY - APPLICANT**  
**AND**  
**DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Jeremy Mills.**

**Members: Mr Brian Sparkes FRICS and Mr Keith Farrell.**

**Belfast, 1<sup>st</sup> December 2008**

## **DECISION**

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

### **REASONS**

#### **Introduction**

This is a reference under Article 12B of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). There was no appearance before the tribunal by or on behalf of the applicant and the respondent, both parties having indicated that each was content to rely upon representations in writing. In accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007, an appeal may be disposed of on the basis of written representations if all the parties have given their consent in writing to that course.

The applicant appealed against the outcome of a review of a decision of the Department that the applicant was not entitled to a full claim of Disabled Persons' Allowance ("DPA").

### **The Law**

The statutory provisions are to be found in the 1977 Order. Article 31A (12B) of the 1977 Order was inserted by Article 17(8) of the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). That Article 31A (12B) enables a person to appeal to the tribunal against the result of a review by the Department (the respondent to this appeal) of a decision that a person is not entitled to a rate rebate for a property with a special facility for a person with a disability. This is referred to as Disabled Person's Allowance - "DPA".

The relevant statutory provisions have been summarised in previous Decisions of The Northern Ireland Valuation Tribunal and the tribunal does not therefore propose to set them out here. The most relevant statutory provision in this particular case is Article 31A (8) of the 1977 Order which states -

"(8) No rebate shall be granted—

(a) for any period before 1<sup>st</sup> April 1979; or

(b) except in such circumstances and to such extent as the Department may determine, for any period before the beginning of the year in which the application is made."

### **The Evidence**

There was no oral evidence. The tribunal had before it the applicant's form of appeal to the tribunal (Form 2) and copies of various documents including the following:-

1. The applicant's application for DPA dated 19<sup>th</sup> May 2008 and his letter of the same date.

2. Letters from the respondent to the applicant dated 23<sup>rd</sup> May 2008 and 29<sup>th</sup> July 2008
3. Letters between Sammy Wilson MP MLA, who was supporting the applicant's claim, and the respondent dated 28<sup>th</sup> May 2008, 17<sup>th</sup> June 2008 and 1<sup>st</sup> July 2008.
4. A letter from the applicant to the respondent dated 4<sup>th</sup> August 2008.
5. Correspondence between the tribunal and the parties including various written representations from both sides following tribunal Orders seeking further documentation dated 1<sup>st</sup> September 2008 and 24<sup>th</sup> October 2008

### **The Facts**

On the basis of such information as was before it the tribunal determined, upon the balance of probabilities, the following facts:-

1. The hereditament consists of a dwellinghouse situated at number 15 Berry Park, Newtownabbey, County Antrim, BT37 OFS ("the property"). The property is stated to be owned by the applicant. The applicant is understood to be the ratepayer.
2. The applicant applied to the respondent for DPA by application dated 19<sup>th</sup> May 2008 which was received on 22<sup>nd</sup> May 2008.
3. The essence of the applicant's claim was that his wife Linda had been diagnosed with motor neurone disease in June 2003. He carried out extensive alterations to the property in 2004 to enable him to care for his terminally ill wife during what was to be a long and difficult period for the family. Tragically, Mrs McKay passed away on 10<sup>th</sup> April 2008.
4. In his covering letter to the Department dated 19<sup>th</sup> May 2008, enclosing his claim, the applicant explained that he wished to apply for DPA retrospectively for the previous four year period since he had carried out the extensive adaptations. He acknowledged that the respondent would normally consider an application such as his at the outset when

<sup>th</sup> May 2008 and 1<sup>st</sup> July 2008 from Sammy Wilson MP MLA to the respondent.

5. By letter dated 17<sup>th</sup> June 2008 the respondent wrote to Mr Wilson explaining that as the claim had been made after Mrs McKay's death, DPA could only be awarded for the period from the start of the financial year in which the application was made, namely 1<sup>st</sup> April 2008, until the date of her death on 10<sup>th</sup> April 2008. The respondent highlighted that the revised DPA scheme commenced on 1<sup>st</sup> April 2007 and that as part of the publicity scheme all rates bills issued were accompanied by an information leaflet advising of all reliefs available. The respondent also explained that if the claim had been submitted prior to the 31<sup>st</sup> March 2008 year end an award of DPA could have been made from 1st April 2007 because all the statutory qualifying conditions had otherwise been "clearly satisfied" The applicant was informed of his right to ask for a review of the decision.
6. By letter dated 1<sup>st</sup> July 2008 Mr Wilson on behalf of the applicant wrote to the respondent requesting a review. He pointed out that the applicant had, in very difficult circumstances, missed the application deadline for 2007-2008 by a few days. He submitted that this was a deserving case and asked that the respondent exercise any discretion it might have in favour of the applicant.
7. On 29<sup>th</sup> July 2008 the respondent wrote to the applicant in regard to the review request confirming that the original decision should remain unchanged. The respondent stated in the letter that DPA would only be awarded from 1<sup>st</sup> April 2008, the start of the rating financial year, until

<sup>th</sup> April 2008 when Mrs McKay as the disabled occupant of the property passed away.

8. The applicant was informed of his right to appeal to this tribunal.

### **THE TRIBUNAL'S DECISION**

As the respondent has accepted that the property met all the qualifying conditions for an award of DPA to be made, those facts are not in contention. The sole issue for determination by the tribunal is, firstly, whether the applicant's claim for DPA was indeed made too late to fully succeed and, secondly, whether there is anything that might excuse such a "late" claim.

In considering this appeal the tribunal had considerable sympathy for the applicant's circumstances and understands entirely why the applicant felt unable to apply sooner for the DPA to which he was entitled. However the tribunal has to apply the law and turning to the first question the tribunal considered the terms of Article 31A(8) (b) of the 1977 Order. The tribunal finds that the applicant only submitted his claim for DPA on 22<sup>nd</sup> May 2008 and therefore, on the face of things, no rebate could be granted by the respondent for the period "before the beginning of the year in which the application is made ..", namely 1<sup>st</sup> April 2008.

Turning to the second question, the tribunal reluctantly concludes that the applicant ought to have known throughout the four year period in question that it was open to him to make a claim for DPA and that there could be adverse consequences if he delayed in doing so. It was not incumbent on the respondent to actively seek the applicant's claim. The tribunal does not underestimate the considerable difficulties that the applicant was facing during this time but the legislation provides that applications should be made promptly so that the respondent can inspect the subject property and the background circumstances of the claim in question to ascertain that each and every claim is justified and well founded. The tribunal does understand how the applicant could view the respondent's award of only ten days DPA as

being hurtful and insensitive. However, the tribunal is satisfied that the respondent dealt with, considered and processed the applicant's claim in accordance with the legislation referred to above and that it was within the law in determining not to backdate the award of DPA to the time when the qualifying adaptations to the property were carried out by the applicant.

That being the case the tribunal's unanimous decision is that the appeal is dismissed.

**Mr Jeremy Mills, Chairman**  
**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties:**