



FIRST-TIER TRIBUNAL
SOCIAL SECURITY

Held At: Dundee

Held on: 2/03/10

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| Appellant : | Tribunal Reg No: 948/09/00947; 948/09/00931; 948/09/00998 |
| Respondent: Dundee City Council | |
| Second Respondent: | |

STATEMENT OF REASONS FOR DECISION

This statement is to be read together with the decision notice issued by the tribunal

This statement of reasons relates to the above numbered appeals along with sixteen other appeals which gave rise to common or related issues of law whose reference numbers are given on the summary decision notice which was issued in respect of these three appeals. These appeals were singled out as lead cases because they covered all of the disputed service charges which the Respondent deem not to be eligible for housing benefit.

Findings in fact

1. All of the tenants in the related cases are disabled and are tenants of Margaret Blackwood Housing Association specialising in housing with adaptations/equipment which encourage independent living for tenants with disabilities. These adaptations/equipment are not provided for carers or support workers to support the tenant but are used by the tenant to maintain independence. The charges are for the maintenance and servicing of the equipment.
2. The adaptations/equipment are fittings in the property which cannot be removed easily. New tenants are matched to properties which, as far as possible, already have adaptations which are suited to their current or expected future needs.
3. The adaptations/equipment which feature across the appeals are as follows:
 - Individual door opener: pendant electronic system and wall mounted push pads (to mains electricity) which enables the tenant to automatically open the door without a key.
 - Individual door entry: phone system allowing tenant to speak to visitors and push button to allow access the property.

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- Clos-o-mat: specialist toilet with automatic WC with a shower and drying facility which allows disabled tenants independence to be able to carry out toileting without assistance.
- Track and hoist : overhead tracking system (metal runner) which enables a hoist to move around the room to assist tenants out of bed or chairs.
- Window-opener: electronic system with touch control pad at low level for tenants who are wheelchair bound or cannot use a handle.

The disputed charges refer to charges for maintenance and replacement of the equipment.

4. It is not disputed that payment of the charges is a condition of the tenancies.
5. It is not disputed that all of the tenants in the related appeals have a need for the adaptations in their homes owing to their disabilities which vary according to the individual.
6. The council have been accepting these services relating to the equipment as eligible for housing benefits for several years. A rise in the cost of the services triggered the decision maker to look again at the nature of the services and decide that they were ineligible under Housing Benefit Regulations regulation 11 and Schedule, 1 Part 1.

Reasons for the decision

7. At the hearing, it was conceded by the appellants' representative that the decision-maker's reason for looking at the awards again was owing to a change of circumstances because of the rise in rent in each case (notwithstanding that these charges had in many of the cases been accepted for housing benefit purposes for many years). I am satisfied that the change of circumstances forms the basis of the supersession.
8. It was common ground at the hearing that the two disputed provisions are Housing Benefit Regulations 2006 Schedule 1, Part 1 paragraphs 1(f) and (g)
9. I endorse the common submission of the appellants' representative at pages 97-103 of appeal 948/09/00947 (being the copy of that submission referred to by page number in the record of proceedings) in so far as it addresses the above mentioned provisions. The submission comprehensively sets out the legislation, the legal arguments and the relevant authorities.
10. I concur with the representative that the charges are not akin to the provision of general counselling or other support under 1(f) which are clearly services in the nature of advice and support provided to the person.
11. I agree with the conclusion that when considering housing benefit claimants, provision for an able bodied appellant cannot be presumed to be the standard from which to judge adequacy of accommodation but it must encompass people with disabilities and take into account what is

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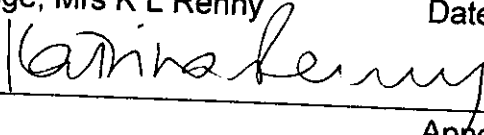
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adequate for them. This is clearly the point made by Commissioner Mesher in CIS/1459/1195 and followed by UTJ Turnbull in CH/1615/2008 that the individual personal needs of the residents must be taken into account.

- 12. I conclude that none of the illegible services provisions of Schedule 1, Part 1 apply. While a ground for supersession has been identified, no grounds have been established on the merits.
- 13. The appeals are accordingly allowed.

The above is a statement of the reasons for the Tribunal's decision under Regulation 53(4) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

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| Signed: Tribunal Judge, Mrs K L Renny | Date: 21/04/10 |
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| Statement issued to: | Appellant on: Respondent on: Second Respondent on:) 27/04/2010 |