

Housing Benefit Circular

Department for Work and Pensions
Caxton House, Tothill Street, London SW1H 9NA

HB A4/2014

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit staff
ACTION	For information
SUBJECT	R v The London Borough of Lewisham and the Secretary of State for Work and Pensions, ex parte Mahmoudi

Guidance Manual

The information in this circular does affect the content of the HB Guidance Manual, please annotate against Part A, Chapter 3.702.

Queries

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R v LB Lewisham and the Secretary of State for Work and Pensions, ex parte Mahmoudi

Introduction

1. In the recent case *R v. LB Lewisham and the Secretary of State for Work and Pensions*, the Court of Appeal ruled on the interpretation of the term “adapt the dwelling” as contained in Regulation 7 of the Housing Benefit Regulations 2006. (Although this case focused on the relevant regulation which applies to working age claimants, the same term is used in the Housing Benefit (HB) regulations which apply for pension age claimants, so the ruling will apply equally to such claims). The Court’s decision overturned previous rulings, which had restricted the meaning of “adapt” to cases where alterations were being made to the fabric or structure of the dwelling e.g. to install a stair-lift or handrails. It decided that, depending on the circumstances, the term could also include works such as redecoration or carpeting which had in the past been judged by the Upper Tribunal to fall outside the scope of adaptations to the dwelling.
2. The Court of Appeal’s decision means that local authorities (LAs) should no longer use the narrower interpretation, and must instead look on a case-by-case basis at the disablement needs of the claimant or any relevant family member who lives with them and how they relate to the works carried out. If the LA is satisfied that, due to the disablement needs of the claimant (or any relevant family member who lives with them) the completion of the works is reasonably required before they can move in (and the other requirements in Regulation 7(8) are also satisfied) benefit can be paid for up to 4 weeks before the move-in date.

Background

3. HB Regulation 7(8)(c) allows for a claimant to receive HB for a dwelling in respect of a period up to a maximum of 4 weeks before they began to occupy it as their home. It applies in certain circumstances, including where the delay in moving in is reasonable and is due to the need to “adapt the dwelling” to meet the disablement needs of the claimant or a family member who lives with them. In order to qualify under this provision, the claimant must request the payment (either as a part of a new claim or change of circumstances notification) before they move in, but will only be entitled to it once they have moved in. HB Regulation 7(6)(e) allows for benefit to be paid on *two* properties for up to four weeks in cases where Regulation 7(8)(c)(i) applies, if the claimant is liable to pay rent on both their old property and their new one whilst they are waiting for the adaptation works to be completed.
4. It had previously been established at the level of the Upper Tribunal¹ that in order to qualify as “adaptations”, the works being undertaken must involve a change to the fabric or structure of the dwelling, and that furnishing or redecorating the

¹ CH 1363/2006; R(H) 4/07; Bury MBC v DC (HB) [2011] UKUT 43 (AAC)

dwelling was not sufficient to come within the term “adapt”. In *Bury MBC v DC (HB)*, for example, a claimant who suffered from obsessive compulsive disorder was unable to move into their new home until it had been redecorated and had new carpets fitted.

5. Judge Jacobs decided that the claimant’s condition constituted a “disablement” and that “necessary” meant reasonably required rather than absolutely essential. He nonetheless ruled that the claimant did not qualify for HB before his occupation began, as redecoration did not constitute an “adaptation”. Judge Jacobs concluded that, although the meaning of “adapt” could be drawn more widely, the requirement for there to be changes to the fabric or structure of the dwelling was settled at Upper Tribunal level and this interpretation was not so unreasonable as to be legally wrong, meaning that he could not justify any departure from it at Upper Tribunal level.

The Court of Appeal’s decision

6. Mr Mahmoudi moved to a new address and requested that HB be paid for a period of just less than two weeks before his occupancy began. He was a kidney dialysis patient, and his new dwelling needed to be thoroughly repainted and redecorated in order to provide a clean environment to allow his home dialysis treatment to take place. The LA accepted that, due to his disablement needs, it was necessary for these works to be done before he moved in, but refused the claim on the grounds that they were not “adaptations” as the terms “adapt the dwelling” required alterations to be made to the structure or fabric of the property, and it was settled law that redecoration did not meet this requirement. Mr Mahmoudi appealed against this decision, but the appeal was dismissed both by the First-tier Tribunal and the Upper Tribunal.
7. The Court of Appeal granted Mr Mahmoudi permission to appeal due to the general importance (beyond the facts of his particular case), of establishing how the term “adapt the dwelling” should be interpreted. The Court of Appeal allowed Mr Mahmoudi’s appeal on the basis that, in this context, the term “adapt” should not be rigidly defined as requiring a particular type of work to be undertaken and ruled that the interpretation previously accepted at Upper Tribunal level was too restrictive.
8. The Court of Appeal took the view that a case-by-case examination was required, taking into account the work being done to the property and setting it against the claimant’s disablement and the needs arising from it. The question to be asked was whether the claimant’s disablement needs (or those of a family member living with them) made it reasonably necessary for that work to be completed before the claimant moved in. If the delay in moving in was reasonable and the works were reasonably required before the claimant and his family could move in, then the dwelling was being adapted to meet a disablement need.

Assessing future cases

9. The Upper Tribunal decision in *Bury* (although now overtaken by the Court of Appeal's decision in *Mahmoudi* in relation to the meaning of "adapt the dwelling") remains good authority for the following propositions –
 - i) Disablement includes mental and physical disablement, and there is nothing in HB Regulations 7(6) and 7(8) to indicate that they should be distinguished
 - ii) 'Necessary' should be given its everyday meaning of "reasonably required" and does not mean "absolutely essential", since such a narrow interpretation would severely restrict the operation of the provision
 - iii) It is the substance of the works that are carried out which must have a connection to the disablement of the claimant or a relevant family member, not the manner in which the works are carried out.
10. LAs can no longer apply the rigid requirement that works must be to the structure or fabric of the dwelling in order to be considered as "adaptations". Structural works, the fitting of handrails or redecoration and changing the floor coverings are examples of changes which could now be treated as "adaptations" to the dwelling, provided there is a clear connection between the work being undertaken and the claimant's disability needs and the completion of the works is reasonably required before the claimant can move in.
11. Regulation 7(8)(c) decisions (including cases where Regulation 7(6)(e) also applies) should now be made on a case-by-case basis and it will be a question of fact and degree whether the claimant is entitled to HB for any period before they move into the new property. Even if the works are of a type e.g. redecoration, that might be performed for any new tenant regardless of disability, they may still count as adaptations if the particular disablement needs of the claimant or relevant family member are such that the works are reasonably required before the claimant and their family can move in.

Annex A

Examples**1)**

Mr A has significant difficulties with balance and coordination. He currently lives on an upper floor in a block with no lift access, and is moved by his housing association to a ground floor flat. This flat currently has polished wooden floors, which would be a health hazard to Mr A due to his condition. His move to the new address is delayed for a week to allow the polished floors to be covered by carpets. He claims a dual payment of HB for his new property for the week before he moves in. The LA decides that Mr A is eligible for HB on two homes as the delay in moving is reasonable, there is a clear connection between the adaptations being made and Mr A's disablement needs, and the works are reasonably required before he is able to move in.

2)

Miss B, who is wheelchair bound, is moving from her present owner-occupied house to a single-floor dwelling. It has been left in poor condition by the previous tenant and so must be fully redecorated before Miss B is able to move in. She makes a claim to the LA for HB to be awarded for the first two weeks of her tenancy before she takes up occupation. The LA refuses her request as, although the delay in moving is reasonable, there is no connection between her disability and the works which are being carried out.

3)

Miss C suffers from obsessive compulsive disorder and has anxiety problems. She has been allocated a property by her LA, which is being thoroughly repainted and having its carpets replaced with tiling so that it is easier for Miss C to keep clean. Miss C requests HB for the first two weeks of her tenancy whilst she is waiting for the redecorations to be completed. The LA allows her claim as there is a direct connection between the work being carried out and her disability. The Upper Tribunal has ruled that "disablement" includes mental as well as physical conditions¹ and it is necessary for the works to be carried out before she moves in to prevent Miss C from suffering distress.

¹ CH 1363/2006; R(H) 4/07; Bury MBC v DC (HB) [2011] UKUT 43 (AAC)