

# HOUSING BENEFIT

## Entitlement to Housing Benefit during a notice period on entering permanent residential care



### The issue

A problem many people face is that Housing Benefit legislation, in the past, has been interpreted in such a way that, as soon as a person serves notice to quit and leaves her/his property, then Housing Benefit stops. For a person who enters residential care on a permanent basis and who must continue to pay rent on her/his former home it can prove to be a financial headache. Health and social services trusts have reported different practices in different areas. This has been resolved by the decision of a Social Security Commissioner (CH4546/02).

### The decision

In this decision, a GB Commissioner clarified the position for those people who find themselves liable for rental/accommodation charges on two dwellings.

While the general rule is that a person can normally only be treated as occupying one dwelling as her/his home and therefore only get Housing Benefit for that home, in certain exceptional circumstances a person can for a short period be treated as occupying two homes. For example, Regulation 5(5)(d) of the Housing Benefit General Regulations 1987 states "*where a person is liable to make payments on two dwellings he shall be treated as occupying both dwellings where a person has moved into a new dwelling occupied as the home for a period not exceeding four benefit weeks if he could not reasonably have avoided liability in respect of the two dwellings.*"

This provision would apply where, for example, a disabled person living in unsuitable accommodation is offered a new home designed to suit her/his needs provided s/he moves immediately. As similar accommodation is unlikely to become available for some time, the tenancy is accepted. As a result, rent has to be paid concurrently for the unserved period of notice on the former home and on the new one.

As in the circumstances described in the opening paragraph, where a person goes into residential care permanently and the person gives notice to quit on her/his rented former home, the normal practice would have been for her/his Housing Benefit to have

been stopped on the grounds that there is no longer an intention to return home. However, as a claimant is liable to make payments on two homes when s/he moves to permanent care and has to pay rent in her/his notice period, the Commissioner has decided that s/he comes within the ambit of regulation 5. In such circumstances, because a person has an actual liability on both dwellings s/he can be treated as occupying the two dwellings for her/his home and Housing Benefit can be paid in respect of the rent on the property s/he leaves behind for up to a maximum period of four weeks.

### Guidance following the decision

The impact of the decision is that where a person goes into residential care permanently the unserved notice on her/his former home can be covered by Housing Benefit for up to a maximum of four weeks, although s/he will not get Housing Benefit to cover residential care fees, though s/he can claim help through the social security and social services financial systems. It is important to remember that where liability on two dwellings is a relevant consideration for a client, the liability must be one that, if not met, would mean the person would lose her/his right to occupy the dwelling.

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An advice line operates from the Law Centre's Belfast and Derry offices between 9.30 am and 1 pm daily. The community legal advisers are Patricia Southern (028 9024 4401) and Vincent Shiels (028 7126 2433).

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