Housing Benefit and Council Tax Benefit Circular
Department for Work and Pensions
The Adelphi, 1 - 11 John Adam Street, London WC2N 6HT

HB/CTB A12/2005

ADJUDICATION AND OPERATIONS CIRCULAR

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Guidance Manual


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If you

- want extra copies of this circular/copies of previous circulars, they can be found on the website at www.dwp.gov.uk/hbctb
- have any queries about the
  - technical content of this circular, details are shown at the end of each section
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Commissioner’s decision regarding occupation of a home

Background

1. You may be aware that there has been a Commissioner’s decision, Commissioner’s case No. CH/2957/2004, regarding the occupation of a home.

2. The claimant entered into a new tenancy agreement and was hoping to move in to her new home a month later, after adaptations for her disability needs had been carried out. Unfortunately, just before she was due to move in she was taken ill, admitted to hospital and was therefore prevented from entering her new home. However, as her previous tenancy was terminated, her family moved all her belongings, as planned, from her previous dwelling to the new home.

3. If the claimant had not been admitted to hospital, she would have moved in to her new home which would have become her ‘normal’ residence. As the claimant was having the dwelling adapted for her disability needs, HB would have been payable, under HB (General) Regulations 1987 regulation 5(6), for the period beginning four weeks prior to her moving in. This date would have coincided with the start of the tenancy. However, the claimant did not move in until later as she was discharged from hospital to rehabilitation before she moved in to her new home. The LA paid HB from the date she finally moved in and for the four weeks prior to her moving in. The claimant appealed the decision not to pay HB for the period whilst she was in hospital.

4. The Commissioner allowed the appeal and decided that under these circumstances the claimant can be treated as occupying the dwelling from the start of the tenancy while being temporarily absent from it. This is because the claimant had removed all her belongings from her previous tenancy to the new one with the intention of moving in but, unfortunately, was prevented from doing so by her admittance to hospital. In effect she had no other home and this was her only and main dwelling and therefore, she could be treated as having occupied it and being temporarily absent while in hospital.

5. We do not intend to appeal this decision and are amending our guidance accordingly.

DWP Guidance

6. Under HB (General) Regulations 1987 regulation 5(1) & (2) we expect a person to physically occupy a dwelling to be able to be treated as being temporarily absent from it.
However, in view of the Commissioner’s decision, and under exceptional circumstances such as those described above, we would advise LAs to accept that the claimant can be treated as occupying a dwelling even though they had not physically occupied the dwelling in person.

The following examples illustrate the different types of situations when a person may or may not be treated as occupying a new home as their main dwelling:

- The claimant is in hospital and then decides to take on a new tenancy with the intention of moving in when discharged. The claimant is unable to occupy the dwelling as treatment is still being received, but does not intend to occupy it from the start of the tenancy as the likely date of discharge from hospital is not known. Even though the claimant’s belongings have been moved in and the claimant intends to move in to the dwelling eventually, the claimant did not need to have taken on the liability while still an in-patient with no discharge date set, and could not, unlike the claimant in CH/2957/04, have had the intention of occupying the dwelling in person from the start of the tenancy. We would not advise the payment of HB in this case.

- A claimant in hospital is given a date of discharge within the next four weeks. The claimant takes on a new tenancy to start when discharged from hospital as the intention is to move in then and the claimant’s belongings are moved in to the new dwelling. However, just before discharge the claimant suffers a relapse and is unable to move in to the new home. We would advise the payment of HB in this case as the claimant intended to move in from the start of her tenancy, has no other home and would have moved in had it not been for the relapse.

The LA must look at each case on its own merits and decide whether the claimant can be treated as occupying a dwelling as their main and only home even if the claimant has never physically stayed there from the start of the tenancy but from a later date. Take the total circumstances into account, including:

- the date from which the claimant intends to occupy the new dwelling
- the date on which the claimant relinquishes their former tenancy
- whether the claimant is making payments on the new tenancy
- when the claimant’s possessions are moved into the new dwelling

Queries

If you have any queries on the technical content of this section, contact Lucy Da Silva

Email: Lucy.Da-Silva@dwp.gsi.gov.uk
Childcare Guidance

11 To help you identify approved childcare providers for the purpose of applying the childcare deduction in HB/CTB and as promised in paragraph 12 of HB/CTB Circular A5/2005, see Appendix A to this circular for a list of registered and approved childcare providers.

12 This list will be incorporated as an appendix in the HB/CTB Guidance Manual and will be regularly updated.

Queries

13 If you have any queries on the technical content of this section, contact Elsian Linsell

Email: Elsian.Linsell@dwp.gsi.gov.uk
Registered or approved childcare providers

1. This appendix is to help you identify approved childcare providers for the purpose of applying the childcare deduction in HB/CTB.

2. If the childcare element is in payment with the Working Tax Credit (WTC), usually childcare has been approved and the relevant childcare costs can be deducted for HB/CTB purposes.

3. If the childcare element is not in payment or there are doubts about whether the claimant qualifies, you may need to investigate further or urgently contact the relevant person as shown on the contact list.

4. You may find the following list helpful in identifying who are relevant childcare providers
   - registered childminders, nurseries and playschemes
   - out-of-hours clubs on school premises run by a school or LA
   - childcare schemes run by approved providers, for example an out-of-school-hours scheme
   - approved foster carers, the care must be for a child who is not the foster carer’s foster child
   - in England only, a childcarer who is approved by the Office for Standards in Education (OFSTED) to care for a child or children in the child’s own home. However, the Home Childcare Approval Scheme run by OFSTED is being phased out
   - in England only, childcare given in the child’s own home* by a person registered to look after a child or children in the child’s own home under the Childcare Approval Scheme
   - in England and Wales only, childcare provided in the child’s own home by a domiciliary worker or a nurse from a registered agency under the Domiciliary Care Agencies Regulations 2002
   - in Scotland only, childcare given in the child’s own home* by, or introduced through, childcare agencies, which must be registered

   *Costs of childcare given in the child’s own home cannot be deducted if the person registered or approved to give that childcare is a ‘relative’ of the child. Relative means a parent, grandparent, aunt or uncle, brother or sister (whether by blood, half-blood, marriage or affinity), and includes step-parents.

5. A registered childminder, nursery or childcare scheme, or an approved home childcare provider, is one that is registered or approved in
   - England, by OFSTED
   - Wales, by the National Assembly for Wales, through the Care Standards Inspectorate for Wales
   - Scotland, by the Scottish Commission for the Regulation of Care