

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

CASE REFERENCE NUMBER: NIVT 43/24E

CD – APPELLANT

AND

DEPARTMENT OF FINANCE – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Michael Flanigan LLB

Members: Andrew Tough and Robert McCann

Date of hearing: 4th March 2025

DECISION

The unanimous decision of the Tribunal is that this appeal is **granted** and the appellant is entitled to a Disabled Person's Allowance (DPA) back dated to 1st April 2023.

REASONS

Introduction

This is a reference under Article 12B of the Rates (NI) Order 1977 (as amended) (the 1977 Order).

The Law

The statutory provisions are to be found in the 1977 Order. Article 31A (12B) of the 1977 Order was amended by Article 17(8) of the Rates (Amendment) (NI) Order 2006 (the 2006 Order). Article 31A (12B) of the 2006 Order enables a person to appeal to the Tribunal against the result of a review by the Department (the respondent in 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 DPA.

The Appellant's Submissions

This was an appeal against the Department decision to back date the appellants entitlement to DPA to start of the rating year 1st April 2024. The appellant had submitted that the DPA should have been back dated to 2017 when he first made contact with the Department and had requested an application form for DPA.

Article 31A (12B) of the 2006 Order enables a person to appeal to the Northern Ireland Valuation Tribunal against the result of a review by the Department of a decision. Of particular relevance to this appeal are the provisions of Article 31A paragraph 8 which states as follows:

31A (8) No rebate shall be granted,

(a) for any period before 1st 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.

This provision grants the Department a broad discretion in relation to the backdating of the rebate subject only to it being “in such circumstances and to such extent as the Department may determine”.

The appellant application for DPA is dated 3rd April 2024 and contains the following details. The appellant suffers from Parkinsons disease and moved into his present premiss in 2017. The premises have an additional bathroom and an additional toilet and have had both those facilities from 17th February 2017. The appellant’s application was received on 5th April 2024 and granted on 16th September 2024. In accordance with Art 31a (8)(b) the DPA was awarded from 1st April 2024.

The appellant then requested that DPA be back dated further by letter dated 21st September 2024. This letter submitted evidence that the appellant had been in receipt of Personal Independence Payment from 2017 and that the DPA should be back dated to then for that reason. That request was refused by the Department. The appellant then made the case that he had applied for DPA in 2017 but had been sent the wrong form at that time. He had subsequently made regular annual contact with the Department about DPA but had been misled by them as to the criteria being applied.

The Department had a record of a request for a Housing Benefit form being made by the appellant in 2017 but had no record of any subsequent phone calls until the appellant phone call requesting a DPA form in March 2024. Tribunal hearings are imperfect forums for resolving disputes as to fact such as the above however in this case it was not necessary for the Tribunal to do so. The responsibility for making an application for DPA rests at all times with the applicant. Even if the appellant was sent an incorrect form in 2017 there was nothing to prevent him obtaining and submitting the correct one. What was not in dispute was that the appellant had asked for a DPA application form on 22nd March 2024 and that once received the DPA was granted promptly. In accordance with the 2006 Order the DPA was back dated to start of the rates year commencing 1st April 2024. The Department has a discretion to back date further but decided not to do so.

The Department discretion to backdate an award past the beginning of the current rating year is a broad one limited only by the words “in such circumstances and to the extent as the Department may determine”. The Department has issued guidelines as to how that discretion should be exercised. The Department have settled on two areas which can guide decision makers, one is where the department by its own actions prevented an application being submitted and secondly where there were some circumstances personal to the appellant which prevented an application being submitted. The example given in the flow chart is that of a person with authority to manage a disabled persons affairs failing to submit an application.

The appellant has appealed the decision of the department to the Tribunal. This is not a judicial review of the Department decision. The appellant has an automatic right of appeal and the Tribunal has the power to make any decision which the Department could have made. The Tribunal has regard for the Department Guidelines but is not bound by them. The terms of Art 31a merely state that the discretion to backdate the rebate past the current date is exercised in such circumstances and to the extent that the Department may determine.

On appeal the discretion, set out in Art 31A 8(b) to back date the award of DPA, now rests with the Tribunal. It now exercises that discretion to award the appellant the rebate backdated to the 1st April 2023. In doing so it has taken into account the following circumstances. That CD initiated his application on 22nd March 2024 during the rate year 1st April 2023 to 31st March 2024.

The Tribunal also takes into account that the appellants personal circumstances were such that his entitlement to DPA was well founded and that an application for DPA submitted after 2017 would almost certainly have been granted. The Tribunal rejected the appellants case that he was prevented from making an application or he was given misleading advice. The appellant is responsible for submitting his own application for the DPA. It was common case that the only application form he submitted was that dated 4th April 2024. It was also common case that he initiated his application by telephone call on 22nd March 2024.

The Department submission was that an application for DPA can only be treated as being in the rate year once it is received in the Department. The appellant’s application form was received on 9th April 2024. The Tribunal notes that the 2006 Order refers to the year “in which the application is made”. It could be argued that the application was made when the first telephone call request was made by the appellant. It is common practice within the benefit system that applications are treated as having made on the date of the first telephone request.

The Tribunal makes no definitive decision as to whether an application is “made” at the first point of telephone contact or whether it is made when the application form itself is received by the Department. This would require much fuller argument from both sides than took place at the hearing on 4th March. The Tribunal does however find that the date when CD initiated his application for DPA was one of the circumstances which the Tribunal is entitled to take into account when exercising its discretion. Taking that into account together with the obvious merits of the application, the Tribunal decision is that the appellant be granted a further DPA rebate backdated to the 1st April 2023.

Chairman: Michael Flanigan

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 31/03/2025