

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

CASE REFERENCE NUMBER: NIVT 32/19

MS DL – APPELLANT

AND

DEPARTMENT OF FINANCE – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Francis J Farrelly

Members:

Ms Noreen Wright (Lay)
and
Timothy Hopkins FRICS (Valuer).

Date of hearing: 7th October 2020 via WebEx 1

Present:

The appellant participated by telephone.

For the respondent – Mr Damien Campbell, presenting with Mr Mark Mulholland.

DECISION

The unanimous decision of the tribunal is that the appellant is entitled to the allowance in her household rates for a person with a disability.

REASONS

Introduction

1. The respondent received an application from the appellant on 5 February 2020. She sought the Disabled Person's Allowance (DPD) in respect of the rates payable on her home. She resides in the premises under discussion.
2. On 19 February 2020 the respondent refused the application on the basis it did not meet the statutory criteria. On 18 March 2020 her appeal was received from the NI Valuation Tribunal.

The Legislation

3. Sec 31 A of the Rates (NI) Order 1977 concerns rate rebates for persons with a disability. The relevant parts are as follows:

(1) Subject to paragraphs (5), (7) the Department shall...grant to the person mentioned in paragraph (4) a rebate from the rates ...

(2) This Article applies to—

(a) ... a facility which is required for meeting the needs of a person who resides ...and has a disability, including a facility of either of the following descriptions—

(i) a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used (whether for providing therapy or for other purposes) by such a person; or

(ii) an additional kitchen, bathroom or lavatory; and

(b) a hereditament in which there is sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of a person who resides in the hereditament and has a disability.

(3) In paragraph (2)—

(a) references to a person who resides ...include references to a person who is usually resident there; and

(b) subject to paragraph (3A), references to a facility or a wheelchair being required for meeting the needs of a person who has a disability are references to its being essential or of major importance to that person's well-being by reason of the nature and extent of the disability.

(3A) A wheelchair is not required for meeting a person's needs if he does not need to use it within the living accommodation comprising or included in the hereditament]

(4) The person entitled to a rebate under this Article (a "rebate") is—

(a) the person with a disability if he is the occupier ... or makes payments by way of rent in respect of all or any of it; or

(b) any person who is a member of the same household as the person with a disability and either is the occupier ... or makes such payments as aforesaid.

(5) No rebate shall be granted except on an application...

(6) Subject to paragraph (7), a rebate shall be granted for such period, being a year or part of a year, as the Department may determine (a “rebate period”).

(7) Where the hereditament qualifies for rebate for part only of a rebate period the rebate shall be proportionately reduced and if too large an amount has been paid or allowed by way of rebate the excess shall be recoverable summarily by the Department as a debt.

(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.

(9) A rebate may be granted either by making a payment of the amount of the rebate or, where the person entitled is the occupier of the hereditament, by reducing the rates payable by him.

(10) The amount of a rebate shall be so much of the rates chargeable in respect of the hereditament for, or properly apportionable to, the rebate period or the relevant part of it as is referable to 25 per cent. of its rateable capital value.

(11A) If the Department decides that an applicant for a rebate is not entitled to a rebate, it shall serve notice of its decision on the applicant.

(12) Any person who is aggrieved by a decision of the Department under paragraph (11A) may, within twenty-eight days of the service on him of a notice under that paragraph, apply to the Department for a review by the Department of its decision.

(12A) The Department shall serve on that person a notice of the result of the review.

(12B) If that person is dissatisfied with the result of the review, he may appeal to the Valuation Tribunal.

The Application

4. The appellant indicated she had surgery on her back in 2009 and two vertebrae were fused. She also mentions a road traffic collision in 2011. She indicated she has fibromyalgia which, amongst other things, affect her mobility. She also

suffers from irritable bowel syndrome and consequent urgency. She indicated she has been awarded the standard rate care and the enhanced rate mobility component of Personal Independence Payment.

5. Section 3A of the application form asks about any room which is wholly or mainly used for therapy or other purpose. The form indicates that any room used as a bedroom will not qualify. The appellant indicated her living room is used for 'everyday use + for sleeping in.' At section 3B of the application she advised that she was having the bath removed and a walk-in shower installed because of difficulties climbing into the bath. She goes on to state 'I live alone and I use the ground floor for living (watching TV), kitchen + bathroom...'
6. The refusal letter of 19 February 2020 states that the property did not have any of the qualifying facilities for meeting the needs of a person with a disability. The appellant disputed this and asked for relevant extract from the legislation. The review did not change the decision and the appellant then appealed to the tribunal. In an email sent to the tribunal on 13 July 2020 she advised that she had renovated her home to cope with a disability and had removed the bath and installed a walk-in shower and has a spare room which is used for deep tissues massage and physiotherapy. She provided several photographs.

The appeal hearing

7. There currently are restrictions on the types of appeal hearings available due to Covid. The appellant agreed to take part in a remote hearing. She agreed to take part in the hearing via her telephone with the tribunal and respondent representatives meeting with both audio and video links.
8. In advance of the hearing we were provided with a bundle of 6 items. During the hearing the appellant was also able to send us additional photographs.
9. At the outset it was accepted by the respondent that the appellant was a person with a disability. The issue was the facilities in her home.
10. The photographs submitted were not very clear and it was thought they simply showed a bedroom, apparently showing a bed and pillow. As such therefore it

was not specifically required to meet needs arising from a disability. Case law explaining this was cited including the High Court decision in Colin John Clothier. The court analysed the statutory wording and the need to demonstrate the room's uses as a requirement because of the condition over and above its normal use. It was thought the present appellant had chosen out of convenience to use this room as a bedroom.

11. The appellant said she may not have expressed herself clearly in the application. She explained the image in the photograph was not a bed for sleeping but was of a portable couch used as part of the therapy. She said the other portable equipment was used for therapy. She explained the room contained portable equipment which would be set up to facilitate this. To this end the further photograph she submitted at hearing showed, for instance, a stationary bicycle in situ. She had explained she lives alone and there were additional rooms in the property that were used as bedrooms.

Conclusions

12. It appeared there was a misunderstanding arising from the application as to what the facilities in question were. Considering the explanation for the use of the room given and the additional photographs the presenting officer was willing to reconsider the decision. As we were seized of the appeal and there was no objection from the respondent, we found we were able to conclude the matter rather than leave the appellant facing further uncertainty.
13. We found the appellant had demonstrated she met the requirements of Sec 31 A. There was no dispute that she was a person with a disability. We were satisfied from the account given, as supported by the photographs that a room in her house had been set aside for therapeutic purposes. As such, it is being used to meet the needs of her condition. Consequently, she was entitled to relief requested. Considering this finding it was not necessary to consider further the changes made to her bathroom.

Signed: Mr Francis J Farrelly – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 22 October 2020