

HOUSING COSTS – ADAPTING A DWELLING

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INTRODUCTION

1. This memo gives guidance on a recent Court of Appeal judgement¹ and expands the guidance at DMG 23529, 44343 and 78356.

1 Mahmoudi, R v London Borough of Lewisham & Anor [2014] EWCA Civ 284

2. This judgement concerned the correct interpretation of “adapt” in circumstances where it was necessary to adapt the dwelling to meet the disablement needs of the claimant or any member of his family¹.

1 IS(Gen) Regs (NI), Sch 3 para 3(7)(c), para 11(9), para 16(2)(k); JSA Regs (NI), Sch 2 para 3(7)(c), para 10(8), para 15(2); ESA Regs (NI), Sch 6 para 5(7)(c), para 12(8), para 17(2); SPC Regs (NI), Sch 2 para 4(7)(c), para 8(6), para 12(2)

BACKGROUND

3. It had previously been established by the Upper Tribunal that in order to qualify as an adaptation the work being undertaken must involve a change to the fabric or structure of the dwelling. Furnishing or redecoration was not sufficient to qualify as an adaptation.

THE COURT OF APPEAL DECISION

4. The Court of Appeal decided that the definition previously accepted by the Upper Tribunal was too restrictive and that the question to be asked was whether the process which the dwelling had undergone was a change that made it more suitable for the needs of the disabled person.

ASSESSING FUTURE CASES

5. Decision makers can no longer apply the rigid requirement that works must be to the fabric of the dwelling. Redecoration and changing the floor covering are examples of changes which could meet the definition of adapt the dwelling where there is a clear connection between the work undertaken and the claimant's disability needs.

Example 1

Benson has significant difficulties with balance and coordination. He currently lives on an upper floor in a block with no lift access, and is moving to a ground floor flat. This flat currently has polished wooden floors, which would be a health hazard to Benson 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 liability for his new property for the week before he moves in. The decision maker decides that Benson is treated as occupying both dwellings as his home as the delay in moving is reasonable and there is a clear connection between the adaptations being made and Benson's disablement.

Example 2

Yasmin, 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 Yasmin is able to move in. She makes a claim for Housing Benefit to be awarded for the first two weeks of her tenancy before she takes up occupation. Her claim is refused as although the delay in moving is reasonable; there is no connection between her disability and the works which are being carried out.

Example 3

Karen suffers from obsessive compulsive disorder and has anxiety problems. Her property is being repainted throughout and she is having all her carpets replaced with tiling so that it is easier for Karen to keep clean. Karen requests help with the further loan she has taken out to pay for these improvements. The decision maker allows the home improvement loan as there is a direct connection between the work being carried out and her disability and it is reasonably necessary for the works to be carried out in order to prevent Karen from suffering distress.

ANNOTATIONS

Please annotate the number of this memo (DMG Memo Vol 4/120, 8/56 & 13/57) against the following DMG paragraphs:

23447, 23529, 23591, 23597, 44263, 44343, 78238, 78356.

CONTACTS

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