

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 1/24E

BETWEEN:

MR. XY1 – APPELLANT

AND

DEPARTMENT OF FINANCE– RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Keith Gibson B.L.

Members: Mr Christopher Kenton FRCS and Mr Robert McCann

Date of hearing: 9th May 2024

DECISION

The unanimous decision of the tribunal is that the Decision of the Department of Finance is upheld and the appellant's appeal is refused.

INTRODUCTION:

1. This decision is anonymised because of the nature of the claim. I shall therefore refer to the Appellant as Mr. XY1 and to the property as 1 Blackacre Drive. This is an appeal by Mr. XY1 ostensibly on his son's behalf for a Disabled Person's Allowance. It was heard on the papers by the Tribunal on the 9th May 2024.
2. The relevant provisions are contained in Art. 31A of the Rates (Northern Ireland) Order 1977 1977 Order, the salient parts of which is replicated below;

31A. - (1) Subject to paragraphs (5), (7) and (8), the [Department of Finance] shall, in accordance with the provisions of this Article, grant to the person mentioned in paragraph (4) a rebate from the rates chargeable in respect of a hereditament to which this Article applies.

(2) This Article applies to -

(a) a hereditament in which there is a facility which is required for meeting the needs of a person who resides in the hereditament 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 in a hereditament 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.

- emphasis in bold added

3. Article 31A was inserted into the 1977 Order by the Rates (Amendment) (Northern Ireland) Order 1979. Article 31A was then amended thereafter by Article 17 of the Rates (Amendment) (Northern Ireland) Order 2006 but the amendments have no impact on the issues the Tribunal has to determine.
4. As far back as the 4th May 2007, the Appellant applied for Disabled Person's Allowance as his property had been adapted to accommodate the needs of his son, whom I shall refer to as XY2. There was no dispute as to either the amount or period of Disabled Person's Allowance from the 4th May 2007 until, that is, the 8th August 2023 when the Department of Finance received a letter from the Appellant indicating that XY2 had been admitted to a particular Nursing Care Centre, which I shall refer to as Whiteacre.
5. There was nothing to suggest that his admission was anything other than temporary and, arising out of same, on the 5th September 2023, a letter was issued by the Department indicating that the Disabled Person's Allowance had been cancelled for the simple reason that XY2 no longer resided in the property. On the 29th December 2023, the Appellant wrote to LPS requesting a review of the original decision. The correspondence of the 18th December 2023 made it clear that since his stay at Whiteacre, XY2 had got stronger after his illness and was able to return home for certain select periods. Those periods identified included XY2's birthday in or around the 7th December 2023 and Christmas. It was envisaged that he would further attend at the property in the New Year for three days / two nights, a similar period at Easter and July. The request was that Disabled Person's Allowance should be reinstated proportionally.
6. On the 18th January 2024, LPS on behalf of the Department responded citing the relevant provisions of the Rates (Northern Ireland) Order 1977 as detailed above. On the 6th January 2024, the Appellant appealed to this Tribunal in which his ground of appeal was that the wording of the legislation should be interpreted to make clear that the words "*usually resident*" should apply to home visit dates and, as such, on those dates he would be resident.

DECISION:

7. The Tribunal has of course the utmost of sympathy for the difficult situation which the Appellant and his family find themselves in. Notwithstanding that, however, the wording of the legislation is clear insofar as it pertains to individuals who are usually resident at the address for which the relief is being sought.
8. Under no interpretation can XY2 be said to be usually resident with his parents. Rather to the contrary, he is usually resident at Whiteacre, Belfast. It may well be, depending on the structure and nature of the property at Whiteacre, that they themselves would be entitled to a rate reduction but that rate reduction would be on the basis that XY2 was usually resident there and, in the circumstances, that appears to be a provision which would be easily satisfied.
9. The legislation does not however allow or provide for a pro rata reduction for days spent at a different address and so regrettably, therefore, this appeal is refused.

Mr Keith Gibson

Chairman

Date decision issued to the parties: 9th September 2024