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CH/1127/2008 and others

Case law

Case law date	21/05/2009
Commission/Judge	Deputy Judge White

Definition of exempt accommodation - "provided by" – interpretation in CH/3900/2005 applied

The background and outcome

The three claimants, who had significant special needs, lived in a bungalow under tenancies with Progress Care Housing Association Ltd. The claimants each had care plans established by Cumbria County Council. Day services were provided by Cumbria Care and domiciliary care by Thera North under a contract with the county council. It was argued that the claimants' cases came within the "exemption accommodation" provision because their accommodation was "provided by" the county council. The tribunal accepted that argument. The Upper Tribunal disagreed and allowed the local authority's appeal, holding that the tribunal's decision was contrary to CH/3900/2005.

Practice point

The Deputy Judge noted that the argument in CH/3900/2005 had been that the county council was the provider of the accommodation because it had engaged an organisation to help them find suitable accommodation for the tenant and it had the right to say who would live in that accommodation. This approach had, however, been rejected by the Commissioner in CH/3900/2005 who accepted the local authority's argument that the accommodation provider was the landlord, in other words, the person or organisation to whom the tenant was ultimately liable to pay their rent. This will be the person who holds either the freehold or the leasehold of the dwelling. The Deputy Judge said there were no distinguishing features in the instant case that would render the interpretation given in CH/3900/2005 inapplicable to the facts of the case. Applying the interpretation of "provided by" in CH/3900/2005 to the factual position before him, the Deputy Judge concluded that the accommodation had been provided by the housing association and not by the county council. The county council was no more than the facilitator in the provision of accommodation for the three claimants.