



FIRST-TIER TRIBUNAL

SOCIAL SECURITY

Held at **FOX COURT** on **26.03.14**

Before **Miss AF DAMZER**

Appellant: MISS	Tribunal Ref. SC242/13/14074
	NI No
Respondent: Secretary of State for Work and Pensions Arq	London Borough of Camden
Second Respondent:	

STATEMENT OF REASONS FOR DECISION

This statement is to be read together with the decision notice issued by the tribunal

1. Miss [redacted] appeared before the Tribunal with her representative, 2 friends, her carer Mr [redacted] and a BSL interpreter. The Tribunal relied on the oral evidence of the appellant and the evidence contained in the bundle of papers. Mr [redacted] left the room at the beginning of the proceedings as the appellant wished to call him as a witness.

2. Miss [redacted] lives on her own at [redacted] Road, London [redacted]. The property is designated by the London Borough of Camden as a 5 bedroom house. On 1.04.13 the appellant's housing benefit entitlement was reduced by 25% on the basis that she was a single person and her home was under occupied by two or more rooms. The appellant appeals the decision on the basis that she only had 2 bedrooms in the property and that the 2nd bedroom is required for an overnight carer.

3. The Tribunal find that the appellant is in receipt of the middle rate of the disability living allowance and the lower rate of the mobility component. The Tribunal is satisfied on a balance of probabilities that the appellant reasonably requires and has in fact arranged for one or more people, who do not occupy as their home the dwelling, to provide overnight care for the appellant on a regular basis. The Tribunal find that Mr [redacted] who lives in Watford stays overnight to provide support and care for the appellant. The Tribunal find that the appellant is a person who requires overnight care. This is based on the evidence of the appellant which was corroborated by Mr [redacted]. The appellant has been deaf all her life and wakes up at night with panic attacks and is very scared and Mr [redacted] has been staying over for about 10 years. Mr [redacted] corroborated these facts when giving evidence and confirmed that the appellant has night time terrors. Due to her congenital deafness and inability to communicate since birth and her state of mind it is reasonable for her to have care overnight.

4. The Tribunal has to determine on a balance of probabilities the number of bedrooms in the house. The Tribunal find that alterations have been made to the first floor of the house where there were originally 3 bedrooms and this is not in dispute. It is not alleged that the appellant made any of the alterations. The Tribunal find that there were originally 3 bedrooms on the first floor of the house with a further bedroom on the landing above the first

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floor. The Tribunal find that the room in the attic cannot be described in the ordinary meaning of the word as a bedroom. Photographs were produce of this room showing the water tank exposed and wires exposed (document 63). The area next to the attic has no outside light and has not been referred to as a bedroom by the housing Department. It is also accepted that there is damp in the ceiling; the respondent states that the meter readings show this to be light but the pictures would appear to show the ceiling is quite heavily marked by the water. The Tribunal find on a balance of probabilities based on the above that this is not a bedroom.

5. The appellant initially moved into the property with her 4 children. At least 5 people were living at the property. On the 1st floor it is evident and it is accepted that there were 3 bedrooms. The tribunal find based on the oral evidence of the appellant and Mr . . . that Miss . . . sleeps in one of the bedrooms on the first floor and Mr . . . sleeps in the adjoining bedroom. Miss . . . contends that there is one bedroom on the first floor. There is a small opening between Ms . . . 's bedroom and the room where Mr . . . sleeps. There is no door or curtain covering the opening but at one stage it is assumed there was a curtain as there is a curtain rail above the opening. The tribunal find that on a balance of probabilities there are 2 bedrooms on the first floor. Ms . . . chooses to have the opening uncovered between herself and Mr . . . as she is deaf and can only communicate through BSL and Mr . . . likes to be able to see her as he is also deaf. There are clearly 2 bedrooms on the first floor. It is the appellant's choice to sleep with the opening uncovered. The tribunal find that the room Mr . . . sleeps in was at one stage smaller but a wall/partition was removed between the two rooms making the room into one large room. At some stage the appellant lived in the property with 4 other people. Although the appellant has herself referred to the property as a 5 bedroom property this indication appears on forms which have been completed on her behalf as she struggles to read forms or any written words other than very simple ones. The appellant has been deaf since birth and English is her second language after BSL. All forms were completed in the absence of a sign language interpreter. It was obvious to the Tribunal today that the appellant can become very confused. As one example of this, at document 17 which was her application for a discretionary housing payment where she has indicated that she does not have an overnight carer and then on the next line it says if you have answered yes who requires care and she has put herself down as needing care and above she has stated that there are 5 bedrooms in the house and 3 are spare indicating that one of them is used but has indicated that she does not have someone staying overnight. The Tribunal also find that on all documentation held by the Housing Department the property is referred to by them as a 5 bedroom house and on a balance of probabilities the Tribunal find that the section on bedrooms has been filled in for her by a Housing Officer or she has accepted that as the description of the property even though there were not 5 bedrooms.

6. It is also alleged that the appellant's right to freedom from discrimination had been breached by the respondent. It is argued that if there is a reduction in her housing benefit as a result of applying the under occupancy rules the appellant will be forced to move and for this particular appellant this is discriminatory as she has a network of support in the area as a result of her condition and to move would have a devastating impact on her health and lifestyle far greater than on any other person without a disability. However the appellant is assuming that she would have to leave the area. The appellant seeks to distinguish her claim from that of MA (The Queen on the application of MA & others and the Secretary of State for work and pensions 21.01.2014 c1/2013/2452) However the appellant is not arguing that there are any adaptations in the house due to her disability. It is not the leaving of the actual house that will cause her problems. In any event the Tribunal find that there is no discrimination against the appellant if the housing benefit is reduced. The appellant is in receipt of disability living allowance and discretionary housing allowance and even if she was not she will not be prejudiced by living in a 2 bedroom house. The tribunal find that there is no reason why she would not continue to be supported by Mr . . . and her friends and she has been awarded the lower rate of the mobility component of the disability living allowance for someone to accompany her along unfamiliar routes and the middle rate of the care component to assist her with her bodily functions which include communication with other people so that she will continue to be able to go out and will continue to receive assistance in her home.

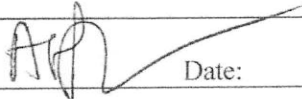
7. The Tribunal find that the appellant is a person who reasonably requires overnight care and therefore under the regulations her housing benefit is to be assessed as requiring a second bedroom. Her disability has been fully taken

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into account by the Tribunal in setting aside the original decision. As the Tribunal has found that there are 3 bedrooms in the property the appellant's entitlement is to be reduced by 14% as there is an underoccupancy of one bedroom. It was stated quite clearly on behalf of the appellant that if she moved she would not require more than two bedrooms. The thrust of the appeal is on the basis that if the Tribunal finds that there are more than 2 bedrooms she will have to leave her property due to the reduction in Housing benefit. Due to her disability she receives disability living allowance and the Tribunal find that she is not discriminated against when compared with other people with no disabilities by the application of the "bedroom tax" for the reasons set out above.

8. Accordingly the appeal succeeds in that the Tribunal find that the appellant is entitled to 2 bedrooms and must be assessed on that basis and that there is an under occupancy of one room. The decision of the Tribunal is as set out in the decision notice dated 26.03.14

The above is a statement of reasons for the Tribunal's decision, under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Signed Tribunal Judge: AF DAMAZER 	Date: 26.04.14
Statement issued to	Appellant on: 6/05/14
	Respondent on: 6/05/14