IN THE UPPER TRIBUNAL **Appeal No.** UA-2019-001384-HB
ADMINISTRATIVE APPEALS CHAMBER **Previously** CH/1602/2019

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Between:

WH

Appellant

- v –

1. Powys County Council
2. Secretary of State for Work and Pensions

Respondents

Before: Upper Tribunal Judge Ward

Decision date: 25 July 2022
Decided on consideration of the papers

Representation:

Appellant:	In person
First Respondent:	Mr Peter Barker, Housing Benefit Consultant
Second Respondent:	Ms Katherine Apps and Mr Benjamin Tankel, instructed by Government Legal Department

DECISION

The decision of the Upper Tribunal is to remake the decision under appeal as follows:

The Appellant's appeal to the First-tier Tribunal ("FtT") against the First Respondent's decision of 3 July 2017 refusing him housing benefit on and from 19 December 2016 is allowed. He had a sufficient right to reside for housing benefit purposes and, provided he continued to fulfil the other conditions of entitlement, remained entitled to housing benefit between 19 December 2016 and 5 June 2019.

REASONS FOR DECISION

1. By an interim decision dated 14 September 2021 I set aside for error of law the decision of the First-tier Tribunal dated 8 March 2019 for failing to address a submission put to it by the Appellant regarding proportionality (see "the second issue" below). The issues in the appeal before me fell into two main groups: the first involved a series of points which, even by the standards of European and domestic law relating to the right to reside and social security co-ordination, were highly technical. They were the subject of the Interim Decision. The conclusion was, put shortly, that the Appellant could not rely on Comprehensive Sickness Insurance Cover ("CSIC") derived from his economic activity in Germany many years previously. That was a logical precondition to dealing with the second issue, which was the possible application of the doctrine of proportionality, so that when remaking the decision the Upper Tribunal should disapply the legislative requirements of which (as it at that stage appeared) the Appellant's claim had fallen foul. The Secretary of State was joined as Second Respondent because of the potential wider implications of the case.

2. I gave Directions on the proportionality issue and received submissions from all parties. However, before a decision was given, the Court of Justice of the European Union gave judgment in C-247/20 *VI v HMRC*. When considering "the United Kingdom's public sickness insurance system offered free of charge by the National Health Service" the Court held at [69] that "once a Union citizen is affiliated to such a public sickness insurance system in the host Member State, he or she has comprehensive sickness insurance within the meaning of Article 7(1)(b)."

3. It is common ground that as the present case relates to a period falling before the Brexit "IP completion day" of 31 December 2020, the Appellant is entitled to rely on this decision.

4. The Appellant has lived in Wales since 1986 and would be considered for healthcare purposes to have ordinary residence there. He has given evidence that he was an NHS patient between 1986 and 2016. He was for a long time of independent means, the first sign of any difficulty in that regard being in around 2014. In those circumstances, there will have been a period of considerably more than the 5 years needed to qualify for the right of permanent residence (introduced in 2006 by art.16 of Directive 2004/38) during which he fulfilled both limbs of art.7(1)(b) of the Directive (sufficient resources not to become a burden on the social assistance system of the host Member State during his period of residence and CSIC). There is no suggestion on the evidence that any such period while the right was being acquired will have been materially interrupted. Once acquired, such a right of permanent residence can only be lost through absence from the host Member State for a period exceeding two consecutive years (and there is no suggestion of that here either).

5. Neither of the Respondents has sought to contend that the anti-test case rule in sched.7, para 18 of the Child Support, Pensions and Social security Act 2000 applies. They are correct not to do so, as the definition of "relevant authority" in para 1 of the Schedule refers to "an authority administering housing benefit" which of course HMRC, the respondent in VI's case, is not.

6. Consequently, the Appellant meets the requirements of reg. 10 of the relevant Housing Benefit regulations for the period between when his claim was disallowed for lack of a right to reside until the date when, having acquired "settled status" under Appendix EU of the Immigration Rules, he had once again become eligible in any event.

C.G.Ward
Judge of the Upper Tribunal
Authorised for issue on 25 July 2022