

**Casebase Number: G0002**

**Title of Payment: Deserted Wives' Allowance**



Northside Community Law and Mediation Centre  
Northside Civic Centre  
Bunratty Road  
Coolock  
Dublin 17

Date of Final Decision: 20/11/2005

**Title of Payment:** Deserted Wives' Allowance

**Date of Final Decision:** 20<sup>th</sup> November, 2005

**Keywords:** Means—appellant not entitled to receive CE scheme and Deserted Wives simultaneously—whether statutory provision discriminatory—lack of jurisdiction—appeal disallowed.

**Organisation who assisted claimant:** Northside Community Law and Mediation Centre (NCL&MC)

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**Case Summary:**

Applicant was in receipt of Deserted Wives Allowance when she applied for a Community Employment Scheme. Applicant was not entitled to keep the Deserted Wife Allowance and work on a Community Employment Scheme and she appealed claiming that the decision was discriminatory. Once she ceased the Community Employment Scheme, the Deserted Wives Allowance was re-instated.

**Summary of Benefit(s) Received:**

Deserted Wives Allowance is a means tested payment made to women deserted by their husbands. The allowance is now closed to new applicants as it was replaced by other benefits in 1997, although previous recipients may continue to receive the allowance. Beginning in 1978, Appellant received the Deserted Wives Allowance for many years, and re-applied once she was again eligible in 1996.

**Background:**

Appellant had a child in November of 1974, and was married to the father in August of 1975. Her husband left in November of 1976. He contributed some money for her support until mid-July of 1977, and then stopped supporting her. His location at this time was unknown. She applied for the Deserted Wives Allowance. Her claim was denied in November because she did not meet the statutory definition of Deserted Wife. The reason given was that her husband had not wilfully refused or neglected to contribute towards the support and maintenance of her and her children. Appellant gave birth to another child in December of 1977, and re-applied for Deserted Wives Allowance in January of 1978. The information about her means and her husband's contributions were the same in both claim forms; however her claim was granted the second time. Appellant stopped receiving the Allowance after some time, and re-applied in October of 1996. At this time, the allowance was granted again. In 2005 she then commenced her participation in Community Employment Scheme and in the same year she received notification that she no longer qualified for Deserted Wives Allowance as her means exceeded the statutory limits. After she terminated her employment, she received a re-instatement of her Deserted Wives Allowance. Appellant pursued an appeal of her denial of benefits arguing that the denial was discriminatory. Under many other benefits, including Unemployment Assistance, Disability Allowance, and Invalidity Pension, one can participate in a Community Employment Scheme and still receive benefits. She argued that since Deserted Wives Allowance is a benefit only given to women, and these women are not allowed to pursue Community Employment, the Allowance is discriminatory in effect.

**Relevant Evidence put Forth by Social Welfare Services:**

There was no evidence put forth by Social Welfare. Decision was taken based on applicant's file and record.

**Relevant Evidence put Forth by Appellant:**

Letter setting forth appellant's case.

Copies of original application forms from 1977-1996

**Date Appeal Taken:**

September 8th 2005

**Date Appeal Heard:**

Appeal's Officer did not hold an oral hearing.

**At Hearing:**

The Appeals Officer decided the case from on the basis of the written evidence.

**Decision:**

Appeal DISALLOWED.

**Appeal Officer's Reasoning and Conclusion:**

Appeal's Officer concluded that means from any employment is assessable for Deserted Wives Allowance. When applicant participated in a Community Employment Scheme her means exceeded the limit allowed. Once the employment ceased the Allowance was re-instated. In respect of the discrimination issue claimed by the appellant the Social Welfare Officer did not have jurisdiction to deal with the discrimination claim and referred the matter to the Department for Social and Family Affairs.

**Our Observations:**

There are two notable issues in this case:

Appellant challenged the denial of her allowance on the basis of discrimination. Almost all appeals concern whether or not the appellant meets the requirements of the statutory definitions used for the benefit; however there is no examination as to whether the definitions are just. Furthermore the fact that the Social Welfare Appeals Officer did not have jurisdiction on this matter indicates the narrow remit of the Appeals Officers Jurisdiction in reaching a decision regarding the discrimination issue. The Chief Appeals Officer could, prior to the Appeals Officer hearing the case, have (1) certified that the ordinary appeals procedure was inadequate and direct that the complaint be heard in the Circuit Court, pursuant to section 307 Social Welfare Consolidation Act 2005. (2) It may have been open to the Appeals Officer to have referred the matter to the Chief Appeals Officer, with a view to the Chief Appeals Officer referring the question to the High Court, pursuant to section 306 Social Welfare Consolidation Act 2005. (3) It may have been open to the Appellant to appeal the decision of an Appeals Officer on a question of law to the High Court, pursuant to section 327 Social Welfare Consolidation Act 2005. It is of further significance to potential Appellants wishing to use the High Court route, that Order 90 Rule 6 of the Rules of the Superior Courts states that costs will only be awarded (for or against an Appellant) by special order. Therefore this avenue provides a potentially less risky route than Judicial Review, where costs will normally be awarded against the person who loses the case. If an Appellant wishes to pursue this matter further he or she has the option to seek Judicial Review on the basis that the allowance is discriminatory. Additionally, since the Deserted Wives Allowance is no longer given to new applicants, the discriminatory effect will be phased out of the system eventually.

There is a notable inconsistency between the Department's decision regarding Appellant's first and second application for Deserted Wives Allowance which was made in 1977 and 1978. Both applications were identical in regards to her assets and income and the level of maintenance her husband was providing. The reason that was given for the first application was that her husband had not wilfully refused or neglected to contribute towards the support and maintenance of her and her children, an incorrect assessment, as the applicant was unaware of her husband's whereabouts and she could not pursue maintenance from him. The second claim was successful, although the forms contained exactly the same information.

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