

**Casebase Number: G0048**

**Title of Payment: Jobseekers Allowance**



Northside Community Law and Mediation Centre  
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Date of Final Decision: 4<sup>th</sup> May 2010

**Title of Payment:** Jobseekers Allowance

**Date of Final Decision:** 4th May, 2010

**Keywords:** Refusal of Jobseekers Allowance - means - insufficient evidence - statutory conditions - appeal disallowed

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

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### **Case Summary:**

The Appellant in this case was refused Jobseekers Allowance [JA] on two occasions. In both decisions the Deciding Officers asserted that the Appellant's means could not be determined due to his failure to supply specific documentation relevant to his financial circumstances. The Appellant appealed both decisions. The Appeals Officers upheld the respective decisions of the Deciding Officers. In both cases oral hearings were held. The decision that is the subject of this report relates to the second claim. The Deciding Officer disallowed the claim on 19<sup>th</sup> of June 2009. NCL&MC, on behalf of the applicant, appealed this decision on the 8<sup>th</sup> of July 2009, and an oral hearing was held on the 23<sup>rd</sup> of February 2010.

The Appeals Officer disallowed the Appeal on 4 May 2010 for the following reason:

*Having considered all of the evidence in this case, both on file and at the oral hearing, I do not consider that the appellant has demonstrated that he fulfils the statutory conditions as to means and consequently I disallow his appeal*

### **Key Arguments**

- Appellant submitted that he satisfied the statutory conditions as to means and therefore should be entitled to Jobseekers Allowance
- Appellant submitted that his failure to supply requested documentations/explanations should not prejudice his claim that he satisfied the statutory conditions as to means, since he had tried and could not provide the documentations/explanations due to poor record-keeping.

### **Key Conclusions**

- As Jobseekers Allowance is a means tested payment, the Department of Social Protection will only pay JA once the statutory conditions as to means have been satisfied.
- Where insufficient documentation/explanation is provided regarding means, the Department of Social Protection may consider this absence of information a failure to disclose means, and this will in turn lead to a decision that an Appellant has failed to satisfy the statutory conditions as to means.

- Undue delay in providing requested documentation/explanation may raise suspicion as to the Appellant's credibility.

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

Jobseekers Allowance [JA] is a means-tested payment available to people who are unemployed and who are available for, capable of and genuinely seeking employment. Applicants must be able to provide evidence of this to the Department of Social Protection.

The main rules governing the assessment of means are contained in Part 2 of the 3<sup>rd</sup> Schedule of the Social Welfare Consolidation Act 2005 (as amended).

To determine an applicant's level of means, and apply the relevant rules, the Department require information relevant to the person's financial circumstances. In particular, the Department require evidence to support a person's claim that their financial circumstances have changed to the degree that they require assistance from the State.

Of relevance are the regulatory provisions which place a burden on a claimant to furnish evidence "as may be required by an officer of the Minister, for purposes of deciding the claim...." Article 181 [1] and 188 of the Social Welfare [Consolidated Claims, Payment and Control] Regulations 2007 [as amended]. S.I 142 of 2007.

**Background**

The Appellant had been in receipt of JA since 1994. In May 2006, a Social Welfare Inspector [SWI] commenced a review of the Appellant's entitlement. During the review, the SWI found that the Appellant had built a new house while he was a JA recipient. The Appellant asserted that his new home was built on the grounds of his former dwelling, which he had sold. The Appellant also stated that while waiting for the sale of his former dwelling, he had received a loan from a building society to help finance the building of the new home. Documents pertaining to this were requested from the Appellant in order to verify his claims, (specifically, receipts relating to costs of building the dwelling, proof of the main loan arrangement with the Building Society, and bank statements).

The Appellant failed to provide some of the documents requested and on March 2008, the Deciding Officer disallowed the Appellant's JA claim on the ground that means would be incalculable without the information sought. The Appellant appealed this decision in March 2008 and in February 2009, following an oral hearing; the appeal was disallowed on the grounds that 'the appellant failed to show that he fulfils the statutory condition as to means.'

The Appellant reapplied for JA in April 2009. Prior to this, he submitted bank statements as requested, but could not supply the original loan document from the building society, nor the architect's cost plan report for the new house. The Appellant asserted that the reason for the inability to supply the cost plan was that the responsible architect could not be

located; with respect to the loan agreement, the appellant maintained that the original loan document was being retrieved from a warehouse held by the building society and, accordingly, would take some time to locate. Regarding the bank statements submitted, explanations were sought with regard to lodgements into his bank account. That Appellant asserted that some of the funds had come from family/friends and other deposits related to the re-lodgement of funds withdrawn for building materials and not spent when materials were unavailable. These explanations were deemed unsatisfactory primarily because there were no receipts to substantiate the claims. The DO disallowed the JA claim on the 19<sup>th</sup> of June 2009 on same grounds as the former DO's decision.

The Appellant lodged an appeal in July 2009. The Appellant attended the Law Centre and was provided with representation thereafter. An oral hearing was held in February 2010. In May 2010 the Appeals Officer disallowed the appeal for the following reasons:

*Having considered all of the evidence in this case, both on file and at the oral hearing, I do not consider that the appellant has demonstrated that he fulfils the statutory conditions as to means and consequently I disallow his appeal*

#### **Oral hearing**

An oral hearing took place at the Social Welfare Appeals Office. The Appellant was represented by a solicitor from Northside Community Law and Mediation Centre (NCL&MC).

The AO set out the background to the case. The AO referred to the review conducted by the Department, initially in 2007, and their efforts to establish how the Appellant had built a house despite being on JA since 1994. The AO outlined the explanation provided by the Appellant to date. The AO summarised the question at issue as being primarily concerned with the stated failure of the Appellant to satisfactorily account for financial transactions relating to the building of his house.

The contentions of the Appellant can be summarised as follows:

- Appellant submitted that he satisfied the statutory conditions as to means and therefore should be entitled to Jobseekers Allowance.
- Appellant submitted that his failure to supply requested documentations/explanations should not prejudice him from satisfying the statutory conditions as to means, since he had tried and could not provide the documentations/explanations due to poor record-keeping.

At the hearing the Appeal's Officer sought an explanation for deposits made to the Appellant's bank account during periods when he was unemployed and in receipt of JA. The Appeals Officer expressed the view that the Appellant's explanations were "rather vague".

The Appellant asserted that some deposits originated from family and friends and others related to monies returned to the account, as they had not been spent on building materials.

The Appeals Officer found that the Appellant's explanation for his financial transactions was not satisfactory. The Appeals Officer referred:

*As I was not satisfied with appellant's explanation as to his financial transactions and as it seemed possible that he was not making a full disclosure of all his means despite his contention to the contrary...*

The Appeals Officer requested that the Appellant submit additional bank statements. On receipt of these records the Appeals Officer sought explanation for further "regular deposits" made to the account. The Appellant did not provide an explanation or offer further evidence.

**Date Appeal taken:** 8<sup>th</sup> July 2009

**Date Appeal heard:** 23<sup>rd</sup> February 2010

**Decision of the Appeals Officer :** 4<sup>th</sup> May 2010 [Disallowed]

#### **Appeal Officer's Reasoning and Conclusions:**

In a decision dated 4<sup>th</sup> May 2010, the appeal was disallowed on the grounds that

*Having considered all of the evidence in this case, both on file and at the oral hearing, I do not consider that the appellant has demonstrated that he fulfils the statutory conditions as to means and consequently I disallow his appeal*

In reaching this conclusion, the Appeals Officer considered that the Appellant explained some of the transactions in his account "in rather vague terms" and commented on "the absence of some form of accounts detailing bank lodgements and withdrawals together with the source and destinations of such transactions". The Appeals Officer was also concerned about certain regular deposits in the appellant's bank account during periods when he was claiming JA and noted that although explanation regarding these lodgements had been sought, with sufficient time allowed to provide the necessary information, the Appellant had failed to do so.

The Appeals Officer considered that the Appellant could not be found to satisfy a "means" test.

#### **Our Observations**

This case is principally about credibility. Between 1994–2006 the Appellant's sole source of income was JA. During this same period he had built a house. The Appellant claimed that

he financed the building of the house through the sale of his previous home, a loan from a building society and some borrowings from family members. In order for this account to have sufficient credibility the Appellant has a burden to supply evidence to substantiate his claims. The AO must be satisfied that the Appellant's explanation is probable.

In this case, it is the absence of information regarding sources of money and how it was spent that, in the Department's view, prevented the client from being able to support his position. A claimant is required to prove that they are without means, and if there is information to the contrary then this must be explained. In summary, while there may be no evidence of income at the time of making the claim, the absence of such evidence will not necessarily satisfy a Decision Maker that the claimant is without means if their prior circumstances cannot be adequately explained.

**For more information on Jobseekers Allowance, useful links are;**

- **Citizens Information**

[http://www.citizensinformation.ie/en/social\\_welfare/social\\_welfare\\_payments/unemployed\\_people/jobseekers\\_allowance.html](http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/unemployed_people/jobseekers_allowance.html)

- **Department of Social Protection Operational Guidelines**

<http://www.welfare.ie/en/Pages/Jobseekers-Allowance.aspx#condavailwork>  
<http://www.welfare.ie/en/Pages/Decision-Making-and-Natural-Justice.aspx>

- **Irish National Organisation of the Unemployed**

<http://www.inou.ie/welfare/rights/unemployed/jobseeker/jobseekersallow.html>

- **Social Welfare Consolidation Act 2005**

<http://www.irishstatutebook.ie/2005/en/act/pub/0026/index.html>

- **Social Welfare (Consolidated Claims, Payments, and Control) Regulation 2007**

<http://www.irishstatutebook.ie/2007/en/si/0142.html>

For *more information*, contact us at:

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