

Casebase Number: G0015

Title of Payment: Jobseekers Allowance



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

Date of Final Decision:16/10/2009

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Date of Final Decision: 16th October, 2009

Keywords: Means—whether exceeded the weekly statutory limit—method of Assessment—self-employment—evidence of means or lack of—appeal partially allowed.

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

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Case Summary:

The Appellant applied for Jobseekers Allowance in 2008 and was refused on the basis that his means from self-employment as a taxi driver exceeded the means threshold for Jobseekers Allowance. The Appellant appealed the decision on the grounds that the Deciding Officer had used a subjective method of assessment of his means and had failed to fully consider the Appellant's submissions and the evidence available.

In making her determination, the Appeals Officer calculated the Appellant's income based on his tax returns for the two years before his claim. The Appeals Officer partially allowed the appeal.

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. The rules governing the means assessment are contained in Part 2 of the 3rd Schedule of the Social Welfare Consolidation Act 2005 (as amended). In the case of a person who is self employed the assessment is based on the income the applicant may reasonably expect to receive in the coming year. In the absence of sufficient evidence to substantiate the level of income in the coming year, the assessment will be based on the income actually received in the year prior to the date of the claim.

Background:

The Appellant had been employed as a taxi-driver since 2004. In 2008, the Appellant encountered difficulties in continuing to operate as a taxi-driver due to deteriorating economic conditions. The Appellant asserted that he could not sell his car or taxi-plate and he had remained self employed. The Appellant applied for Jobseekers Allowance in 2008 because of his income difficulties.

Based on the report of the Social Welfare Inspector, the Deciding Officer assessed the Appellant's means as €300 per week from self-employment. This amount was in excess of the statutory rate of Jobseekers Allowance, which in 2008 was €197.80. Therefore, the Deciding Officer refused the Appellant's claim. The Social Welfare Inspector, in making his recommendation on the claim to the Deciding Officer, had relied on information available to the Department from the Revenue Commissioners as to the Appellant's income for 2006, which had been €5,696, his own personal knowledge of the taxi industry, and the estimate of earnings of self-employed taxi drivers that the Social Welfare Inspector submitted was used by the local council for the purpose of making rent and home loans. The local council,

the Social Welfare Inspector submitted, used an estimate of €25,000 as to those earnings. The Deciding Officer had assessed the Appellant's gross income for 2008 as €15,600 and his weekly means as €300.

Date Appeal Taken:

21st January 2009

Date Appeal Heard:

16th July 2009

At 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. The Social Welfare Inspector also attended. The Appellant's solicitor sought clarification of the provision of the legislation which the Deciding Officer had relied upon to disallow the claim. The Appeals Officer explained that the rules for assessing Jobseekers Allowance are contained in Schedule 3, Part 2 of the Social Welfare Consolidation Act, 2005 (as amended). Under these rules, means from self-employment be calculated or estimated based on income which a person may reasonably expect to receive during the year after their claim. In the absence of other means of ascertaining it, the means are calculated based on the actual income received in the year immediately before the date of the claim. The calculation or estimation of income would have regard to changes during the period e.g. a downturn in business due to the recession.

The Appellant's solicitor challenged the method of assessment of means used by the Social Welfare Inspector. She submitted that the assessment of means is a subjective assessment. The assessment should be made by reference to the individual applicant's means. She submitted that the local authority used the estimate of earnings for self-employed taxi-drivers for a different purpose and that estimate was not relevant to the Appellant's claim. She submitted that evidence of the Appellant's tax return and assessment for 2006 had not been taken into account and that it should have been used as a guideline in determining the Appellant's income. The Appellant was asked about when he had ceased work as a taxi-driver. There had been some conflict in the submission on this. The Appellant's Grounds of Appeal stated that he had stopped work as a taxi-driver in February 2009. The Social Welfare Inspector's report stated that the Appellant had ceased work in November 2008. The Appeals Officer asked for evidence of the Appellant's cessation of the work. The Appellant gave evidence that when his car insurance had expired in April 2009 he had re-insured his car as a taxi. The Appellant submitted in his Grounds of Appeal that there was very little difference in price between insuring the car as a private car or as a taxi. The Appellant stated that there had been a dramatic decline in his earnings in 2007 and 2008. He submitted that this was due to changes in the costs involved, including those relating to changes in vehicle standards and the costs of maintenance of the car, the economic downturn, de-regulation and the consequent increased competitiveness of the business due to the increase of the number of taxis. The Appellant's solicitor submitted that as a self-employed person it had taken the Appellant some time to finally acknowledge that he would not earn money from the taxi business. The Appellant's solicitor took issue also with the Social Welfare Inspector's statement that the Appellant had not kept accounts for 2007 and 2008. The Appellant's solicitor referred to the Appellant's Form 11 Return Summary for 2007 as proof that the Appellant had kept accounts. The Social Welfare Inspector responded that the Appellant had had no evidence of accounts when he called, that the 2006 figures were out

of date and that Form 11 for 2007 was not acknowledged by ROS (Revenue Online Service) until 21st March 2009. The Appeals Officer invited the Appellant to submit evidence of accounts for 2007. The Appellant gave evidence of his operating costs. The Appellant stated that his income and expenditure was unvouched and that he did not have a profit and loss statement. The Appellant submitted that this would not be unusual in the taxi business. The Appeals Officer asked the Appellant to submit additional evidence to the Social Welfare Inspector and for the Social Welfare Inspector to send his comments on that evidence to the Appeals Officer and to the Appellant's solicitor. The Appeals Officer gave the parties four weeks to do this. The Social Welfare Inspector did not revise his calculation based on the further evidence given.

Decision:

Appeal PARTIALLY ALLOWED

Relevant Evidence put Forth by the Deciding Officer:

Social Welfare Inspector's report containing the recommendation on which the Deciding Officer had based her decision.

Relevant Evidence put Forth by Appellant:

Submissions on the grounds of the Appellant's appeal.

Appeal Officer's Reasoning and Conclusion:

The Appeals Officer noted that the Social Welfare Inspector, after the oral hearing, had requested the Appellant provide a detailed breakdown of expenses and deductions for 2007. The Appellant had responded but had not provided a detailed breakdown. The Social Welfare Inspector stated that the income details were not an audited profit and loss statement and so were of limited use to him. He referred, as before, to the local authority's assessment of the income of self-employed taxi drivers as being €600. The Social Welfare Inspector stated that he considered his assessment of the Appellant's means as being €300 per week was fair and reasonable. He stated that he did not wish to revise this recommendation. The Appeals Officer noted that he had been provided with no details of the basis upon which the local authority assessed the earnings of taxi-drivers. The Appeals Officer stated that, in these circumstances, he did not consider that that figure could be used to estimate the Appellant's income from self-employment. The Appeals Officer noted that the Appellant had submitted Form 11 Tax Summary Returns for 2006 and 2007 but that he did not have records for 2008. He noted that the Appellant had renewed his taxi licence and motor insurance as a taxi, had a permit to operate as a taxi driver from Dublin Airport, had not de-registered as self-employed and held a tax clearance certificate. The Appeals Officer stated that he was satisfied that the Appellant had continued to be self-employed as a taxi-driver after the claim. The Appeals Officer noted that the Appellant had an outstanding business loan and credit card debt.

The Appeals Officer stated that the onus is on a person claiming Jobseeker's Allowance to establish that he satisfies the conditions of the scheme. The Appeals Officer noted that based on the figures given by the Appellant, his net profit in 2006 was 54% of his gross income, and in 2007 his net profit was 17% of his gross income. The Appeals Officer considered that the "dramatic reduction" in the Appellant's profit margin in 2007 lacked credibility. The Appeals Officer considered that the 2006 figure of expenditure as 46% of gross income was a fair and reasonable basis for calculating the Appellant's net income for 2007. The Appeals Officer concluded that the Appellant's weekly means were to be assessed on the basis of net yearly income of €8,640 and not €15,600 as used by the Social

Welfare Inspector. This meant that the Appellant's weekly means were €166, giving the Appellant an entitlement to Jobseekers Allowance of approximately €38 per week.

Our Observations:

This case clearly demonstrates the difficulties which face those who are self-employed persons who, for whatever reason, have failed to keep proper accounts in respect to their income and expenditure, as required by law, when trying to avail of means-tested State supports. The key issue is the credibility of evidence relating to income.

The burden is on the applicant to demonstrate that they actually qualify for State supports rather than on the State to prove that they do not.

It is worth noting that social welfare legislation provides that the weekly means of a person for the purposes of Jobseeker's Allowance shall be calculated on the basis of all income in cash which a person may reasonably expect to receive during the year succeeding a claim. In the absence of other means of ascertaining it, the income actually received in the year prior to the claim will be used. In the case of self employment income is calculated with reference to turnover less business expenses.

For ***more information***, contact us at:

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