

Casebase Number: G0016

Title of Payment: Mortgage Interest Supplement



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

Date of Final Decision: 30th September 2009

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Keywords: Mortgage Interest Supplement- application refused- house subject of court action-unable to meet repayments-joint ownership- appeal- disallowed.

Organisations who assisted claimant: Northside Community Law and Mediation Centre (NCL&MC) and Money Advice and Budgeting Service (MABS)

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Case summary:

The Appellant applied for Mortgage Interest Supplement (MIS) in late 2008 to assist her in making her mortgage repayments. The Health Service Executive (HSE) refused the claim on the following grounds; the house was the subject of a court action by the lending institution, the arrears were so substantial that it seemed the mortgage loan was not viable, the house was in joint ownership and any supplement would only be in respect of half of the loan and if the Appellant was to be awarded full ownership of the house through her court action, the HSE could not award a supplement for that increased mortgage interest liability. The Appellant appealed this decision. The Appeals Officer disallowed the appeal. The Appeals Officer refused the appeal on the grounds that at the time of entering into the mortgage agreement, the Appellant was unable to meet the repayments and in addition, due to the amount of the arrears, it was not reasonable to award the supplement.

Summary of benefit(s) received:

Mortgage Interest Supplement (MIS) is part of the Supplementary Welfare Allowance scheme. The Supplementary Welfare Allowance scheme is administered on behalf of the Department of Social Protection by the Community Welfare Services division of the HSE. Applications for MIS are made to the local Community Welfare Officer. MIS is a payment towards the amount of mortgage interest payable by the claimant in respect of his/her residence. The rules that govern this entitlement are set under Chapter 9 of Part 3 and Chapter 3 of Part 10 of the Social Welfare (Consolidation) Act 2005, as amended; Part 4 of Schedule 3 of that Act; and SI 412 of 2007, Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007, as amended. Article 38 of SI 412 of 2007 gives the HSE discretion to award a supplement to a claimant where it appears to the HSE that the circumstances of the case warrant such an award. Article 38(1) provides:

...The Executive may award a supplement in any case where it appears to the Executive that the circumstances of the case so warrant.

Background:

The Appellant applied in late 2008 for MIS. The Appellant had taken out the mortgage approximately eight years before this application. The mortgage was in the Appellant's name and in the name of a friend. At the time of the application the Appellants financial circumstances had deteriorated and as a result there were substantial mortgage payment arrears. The lender had initiated proceedings to repossess the house. Northside Community Law and Mediation Centre (NCL&MC) acted for the Appellant in helping her to get the house put into her sole name and to avoid repossession. The Appellant was also being

assisted by the Money Advice and Budgeting Service (MABS). Letters from NCL&MC and MABS to this effect were given to support the original application.

Date of decision of Community Welfare Officer:

9 January 2009.

Date appeal submitted:

3 February 2009.

Date of hearing:

No oral hearing was held in this case.

Date of decision of Appeals Officer:

30 September 2009.

At hearing:

There was no oral hearing of the appeal.

Decision:

Appeal disallowed.

Relevant evidence provided by the Health Service Executive:

- Report of Community Welfare Officer

Relevant Evidence provided by Appellant:

NCL&MC gave written submissions on behalf of the Appellant responding to each of the grounds identified in the HSE's decision refusing the claim.

- The Appellant submitted that the outcome of the legal proceedings in respect of the Appellant's house had yet to be determined. Until they were determined, the Appellant submitted, it was necessary for the HSE to consider the Appellant's needs as they stood. The Appellant submitted that, taking into account the changes in her circumstances which lead to the problems with repayments, the level of arrears should not stop the HSE paying the supplement.
- The Appellant submitted that she could have applied for MIS earlier and requested that the supplement be back-dated to the date when she could have applied, i.e. the date of the change in her circumstances.
- The Appellant submitted that there was no legal bar to paying the supplement on 100% of the mortgage. The house was in joint ownership and not a "tenancy in common". Joint ownership means that the two owners own the property together and must make decisions about it together etc. Tenancy in common is ownership with another person where each person owns a percentage of the property.
- The Appellant submitted that if the HSE only paid the supplement on 50% of the mortgage, it might be seen as a legal act of severance, which would change the joint ownership to a tenancy in common. This would not be in accordance with how the property was then legally owned.

- The Appellant submitted that, in any event, the Appellant was liable for the whole loan. Successful court proceedings to have the house put in the Appellant's sole name would not increase her liability in fact.
- The Appellant referred to s 198(1) of the Social Welfare (Consolidation) Act 2005 which provides that in the case of a person whose means are insufficient to meet his or her needs, regulations may provide for a weekly or monthly payment to supplement that person's income.
- The Appellant submitted that the supplements were for meeting actual needs. The Appellant referred to Art 38 of SI 412 of 2007 and submitted it provides that a supplement may be paid in any case where circumstances merit such a payment.
- The Appellant submitted that the principle of meeting need must be foremost in any decision to allow or refuse a payment.
- The Appellant submitted that it was reasonable to pay MIS to her.
- The written submission also noted that if the Appellant were to be made homeless, she would be placed in even greater need, which would result in a greater cost in the form of Rent Supplement.

Appeals Officer's reasons and conclusion:

The Appeals Officer disallowed the appeal. The grounds for this decision were that the HSE was of the view that the Appellant had not been in a position to meet the repayments on the mortgage at the time she entered into the mortgage agreement. As a result, the Appeals Officer stated, it was not reasonable to award a supplement having regard to the amount of arrears outstanding on the loan. The Appeals Officer stated that the following evidence demonstrated that the Appellant was not in a position to meet the repayments at the time of entering into the mortgage:

- (i) The Appellant had obtained the assistance of a family friend to sign the agreement. The Appeals Officer stated that it was understood that this was because the Appellant would not have been eligible for the mortgage based only on her own income.
- (ii) No repayments on the mortgage had been made since 2002. This meant that the mortgage arrears were high.
- (iii) Legal action by the lender was being taken to repossess the property.

Our observations:

This case demonstrates the relatively restrictive approach the HSE takes to the MIS scheme. Arguably, this approach, as applied in cases such as this one, betrays the scheme's essential purpose i.e. to relieve those who are experiencing extreme difficulty in meeting mortgage interest payments.

The case also demonstrates how ambiguities surrounding the securing of a loan can cause difficulties later. This is particularly the case when arrears build on the loan as the mortgagee may then have little or no recourse under social welfare legislation where the HSE or the Department of Social Protection take issue with the way the loan was secured and managed.

For more information on Supplementary Welfare Allowance (Mortgage Interest Supplement), useful links are:

- Citizens Information:
http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/supplementary_welfare_schemes/mortgage_interest_supplement.html
- Department of Social Protection Guidelines on Supplementary Welfare Allowance (Mortgage Interest Supplement):
http://www.welfare.ie/EN/OperationalGuidelines/Pages/swa_mort.aspx
- Social Welfare (Consolidation) Act 2005:
<http://www.irishstatutebook.ie/2005/en/act/pub/0026/index.html>
- Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007:
<http://www.irishstatutebook.ie/2007/en/si/0412.html>

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

Northside Community Law and Mediation Centre,
Northside Civic Centre, Bunratty Road, Coolock, Dublin 17
T: 01 847 7804 | E: info@nclc.ie | W: www.nclc.ie