

Casebase Number: G0018

Title of Payment: Mortgage Interest Supplement



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

Date of Final Decision: 16th June 2009

Title of Payment: Mortgage Interest Supplement

Date of Final Decision: 16th June 2009

Keywords: Mortgage Interest Supplement application-rejection-re-mortgaged- documentary evidence-oral hearing-appeal successful

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

Casebase no.: G0018

Case Summary:

The Appellant applied for Mortgage Interest Supplement (MIS) in 2008. The Appellant had re-mortgaged her home for €90,000 in 2006. Her claim for MIS was rejected on two grounds. Firstly, lack of evidence to support claim that the re-mortgage was in part for the purpose of home improvements and secondly the Appellant was self employed. Her application was refused as MIS could only be considered in relation to interest payable on Appellant's home loan or loan in respect of bona fide repairs and improvements to her home. The Superintendent Community Welfare Officer (SCWO), having noted that the Appellant had previously made an application for MIS in 2003, when her mortgage was €20,400, made enquiries about her reasons for re-mortgaging. The Appellant stated that she had carried out some essential repairs/improvements to the house and had also utilised the money for business purposes. When she was asked to produce receipts or any documentary evidence of works carried out, the Appellant was unable to do so. In addition, the SCWO noted that the Appellant operated a small business for which part of the loan was utilised and this raised the question of assessment of means. At the oral hearing, the Appeals Officer was satisfied with the evidence provided supporting the client's assertion that she was engaged in part time work. It followed that the Appellant was therefore not precluded from receiving MIS. The application for MIS was partially granted and the Appellant received an award of MIS on the interest attaching to the sum of €18,296 only.

Summary of benefit(s) received:

Mortgage Interest Supplement (MIS) is a payment towards the amount of mortgage interest payable by the claimant in respect of his/her home. The rules that govern this entitlement are provided for by s. 198 of the Social Welfare Consolidation Act 2005 (as amended) and S.I. No. 412 of 2007 – Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 . The definition applicable to mortgage interest provides *'mortgage interest' means the proportion of any amount payable by a person to a mortgage lender which is for the time being attributable to interest payable under an agreement entered into by that person with the mortgage lender for the purpose of defraying money employed in the purchase, repair or essential improvement of the sole or main residence of that person or to pay off another loan used for that purpose but does not include interest payable in relation to such agreement by virtue of a delay or default in making a repayment under that agreement;*

Section 198 (6) of the Social Welfare Consolidation Act 2005 provides that:

"A person shall not be entitled to a supplement (...) during any period, where that person (...) is engaged in remunerative full-time work."

Article 6 (3) of S.I. 412 of 2007 defines full time work as “not less than 30 hours per week”

Background:

The Appellant is a single woman and self-employed. In 2003 she obtained approval for MIS when her mortgage was €20,400. In 2006, she re-mortgaged her home for € 90,000. The Appellant suffered difficulties with the mortgage repayments as she was unable to generate sufficient income from her business. The Appellant, a widow, was apprehensive about her employment prospects due to a named psychological disorder and, consequently, how she might be treated in a conventional workplace. As a result of this, the Appellant was confined to working as a sole trader and, due to deteriorating economic conditions; her earning potential was limited. The Appellant was in receipt of the Widow/Widowers Contributory Pension in addition to her limited self employment income. The Appellant was apprehensive about possible relocation from her place of residence on repossession of her home, primarily because of her disorder. She feared, that were she forced to relocate, she would suffer discrimination in relation to her disorder. The Appellant again applied for MIS in July 2008. When the SCWO made an enquiry about her reasons for re-mortgaging she stated that it was for the purpose of carrying out essential repairs/improvements on her home and also for business purposes. The Appellant was unable to produce receipts or any other documentary evidence of the works carried out. The SCWO refused the application on September 1st 2008, citing lack of documentation, in particular receipts, attesting that the mortgage had been used to carry out essential repairs/improvements in the home. The SCWO also noted that the Appellant operated a small business for which the mortgage had been utilised (at least in part) and this raised the question of assessment of means. The Appellant appealed the decision on September 5th 2008 to a HSE Appeals Officer, who affirmed the decision of the Superintendent Community Welfare Officer and dismissed the appeal. This decision was subsequently appealed to the Social Welfare Appeals Officer. A summary decision refusing the appeal was issued on the 10th February 2009. On the 27th March 2009, it was decided to reopen the appeal and grant an oral hearing. The Appellant sought advices from Northside Community Law and Mediation Centre (NCL&MC) and was represented thereafter. At the oral hearing, the Appellant submitted evidence that her net profit for 2006 amounted to €4,376 and €3,949 in 2007. This equated to an average of €75.94 per week. In addition, it was stated that the Appellant was in receipt of a Survivors Pension of €197.80 per week in 2008. No evidence was submitted by the Appellant to substantiate her claims that part of the re-mortgage was used for home improvements. Upon reviewing the available evidence, including the evidence supplied at the hearing, it was accepted that the Appellant was not engaged in full time employment and thus should not be excluded from claiming mortgage interest supplement on that basis. It was reaffirmed, however, that there was a lack of documentation/evidence to support the Appellant’s claims that some of the mortgage had been used for the purposes of repairs/improvements to her home. The Social Welfare Appeals Officer determined that the Appellant could be awarded MIS in respect of the original loan of €18,296 only (the sum outstanding on the previous mortgage which had been cleared by the appellant when she re-mortgaged). It was affirmed that the onus was now on the Appellant to clarify the relevant amount of interest to the HSE at which point a means test would be carried out to determine level of supplement.

Decision of Health Service Executive Appeals Officer: 4th December 2008

Date of oral hearing: 9th June 2009

Date of Social Welfare Appeals Officer's Decision: 16th June 2009

Our observations:

This case clearly demonstrates the importance of retaining receipts of repairs/improvements to the home, especially where it is foreseeable that difficulties may arise in relation to mortgage repayments. It appears that little or no consideration was given to the Appellant's disorder and the correspondence indicates that her part time work status, which she repeatedly emphasised, was largely overlooked or misunderstood up until her oral hearing. The Social Welfare Appeals Officer made his determination in accordance with the law and the evidence before him. That is, the amount of income from self employment was consistent with the Appellant's claim that her work was part time. However, the absence of evidence to substantiate her claims regarding home improvements prevented the Social Welfare Appeals Officer from allowing MIS in respect of any of the re-mortgaged amount.

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:**

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>

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