

Casebase Number:

Title of Payment: One Parent Family Payment



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

Date of Final Decision: 17th May 2004

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Keywords: Refusal of One-Parent Family application—interpretation of 'live apart' under the Principal Act—whether Appellant truly separated from spouse—issue of credibility—appeal allowed.

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

Case Summary:

The Appellant was refused One Parent Family Payment and she appealed this decision, Her Appeal was allowed.

Summary of Benefit(s) Received:

The Appellant arrived in Ireland in 2000. She applied for One Parent Family Payment in September of 2000 but was denied. She appealed this decision in April of 2001 and again in May of 2002. She appealed once more in March of 2003. After initially being denied, the decision was overruled by an Appeals Officer in May of 2004. She was awarded the benefit from March of 2003. During the period from 2000 to 2004 Appellant received some Supplementary Welfare Allowance.

Background:

The Appellant is from Nigeria and came to Ireland as an asylum seeker while pregnant in 2000. In May of 2000, she stated on her asylum application that she was seeking asylum because of the political riot taking place in her home town. She claimed she and her partner were on opposite sides of the feud. She claimed all her property was burned and she fled for her safety. In September of 2000, a Deciding Officer denied Appellant's claim for One Parent Family Payment because he determined the separation between the spouses was of a geographical nature only, i.e. that the marriage tie was not broken. **He stated the legislation requires that the couple 'continue to live apart' to qualify for the benefit;** however, 'live apart' is not further defined in the statute. He references case law, without providing specific citations, which he claims provides that the absence of a statutory definition requires 'lived apart' be construed as meaning **something more than mere physical separation**. The mental and intellectual attitude of the parties is also of considerable relevance. As a result, parties who are physically separated may, in fact, maintain their full matrimonial relationship. The Deciding Officer based his decision on a SWI report from August of 2000 in which the appellant was recorded as stating that she and her spouse would resume their relationship if he could find the money to come to Ireland. The claim was therefore disallowed on the grounds that the appellant was not a separated spouse. The Appellant appealed this decision April 10, 2001 on the grounds she was never legally married. On October 15, 2001 this appeal was disallowed on the ground that Appellant failed to attend the scheduled oral hearing. Appellant wrote to the Social Welfare Appeals Office in May of 2002 to enquire as to the status of her appeal. She claimed to never have received notice of the hearing or decision from October 2001. She lodged a request May 14, 2002 to reopen her case. As evidence of her marital status, Appellant provided a sworn

affidavit from her mother that the Appellant was not legally married to the father of the children, that the father was threatening the Appellant, and that the Appellant and father fall on different sides of an ethnic war in Nigeria. The affidavit also stated the children remaining in Nigeria were previously staying with an uncle and were now staying with her (the Grandmother). Appellant claimed cohabitating adults would be referred to as 'spouse' even when a legal or civil marriage had not taken place. She also stated that she had been misquoted in the original SWI report and that she had no contact or intentions of future contact with her ex partner. On May 20, 2003 Appellant received a decision that stated once again that she did not qualify as she was not a separated spouse. The Deciding Officer indicated that due to discrepancies in her past applications, she did not believe the applicant. Social Welfare pointed to the conflicts in this report and her previous interview and asylum application where she referred to her partner as husband. In June of 2003 Appellant further furnished a divorce decree from Nigeria. On June 2nd, a second SWI report took place to clear up the discrepancies; Whether contact had been made, why a divorce was necessary if Appellant had never been married. Appellant continued to claim she had not had contact with the father since moving to Ireland, that there had been no legal marriage, but that it was customary in her country to call the father of one's children/cohabitant a spouse, and that legal marriage wasn't required to obtain a divorce in Nigeria. Appellant also furnished as evidence a sworn affidavit from her uncle to clarify a few typographical discrepancies in the divorce decree. On August 28, 2003 Appellant was informed that the May 20, 2003 decision would stand. The Officer stated, 'I do not believe that the papers you have now sent are valid divorce papers'. Appellant appealed this decision on September 9, 2003. In addition to her previous arguments, Appellant pointed out that as she was legally in the country since 2001, she could have gotten the father a visa as they were being issued to separated couples from her country. Oral hearing was held March 30, 2004 summarizing all the evidence brought to date. In a decision dated May 17, 2004, the Appeals Officer granted the appeal, awarding One Parent Family Payment from March of 2003 when the appeal was filed. The Appeals Officer refused to revise the decision of the previous Appeals Officer prior to that time.

Evidence Put Forth by Social Welfare Services:

- SWI Report
- Second SWI Report
- Asylum Application

Evidence Put Forth by Appellant:

- Affidavit Sworn by Mother
- Divorce Decree
- Affidavit Sworn by Uncle to clear up typographical errors in Divorce Decree

At Hearing:

The two Social Welfare Interviewers testified that their SWI reports were accurate as to the replies of the Appellant and not exaggerated. Appellant's Solicitor argued that discrepancies may be due to language/cultural barriers. She further argued that Appellant lived alone with her four children, had done so for a long time, had a divorce decree, received no maintenance, and had no idea where her ex partner was. Therefore, the facts and reality of her case did not support the Department's argument that she her separation was of a 'geographical nature' only. Appellant further argued that it was inappropriate for the Deciding Officer to judge the authenticity of the Nigerian Divorce Decree without seeking

legal advice. This, she stated, was a function of the High Court. The High Court is the only public body with the authority to recognize foreign divorce. She stated that under the proper procedure, Appellant should have had the opportunity to apply to the Circuit Family Court to have the divorce recognized.

Decision:

Appeal ALLOWED

Date Appeal Taken:

9 September 2003

Date Appeal Heard:

2 March 2004

Appeal Officer's Reasoning:

The Appeals Officer first took note in the discrepancies in Appellant's story over the years. He also took note of Appellant's Solicitor's argument that it was incorrect for the deciding officer to decide the authenticity of the Divorce Decree without seeking legal advice. Last he notes there was no submission of cohabitation and there was no evidence to suggest contact with the spouse in the four years since Appellant arrived in Ireland. While sceptical as to the general credibility of the applicant, the Appeals Officer came to the conclusion that the appellant is a separated spouse in the context of the legislation as there was no evidence to suggest contact in recent times. The appeal was allowed as of the date of her claim in March of 2003. The Appeals Officer refused to revise the decision of the previous Appeals Officer, stating it to be correct at the time.

Appeal Officer's Conclusion:

Appeal Allowed. The Appellant is a separated spouse and therefore entitled to a One Family Payment from March 2003.

Observations:

The contested issue in this appeal was whether Appellant met the legislative definition of a separated spouse under the One Parent Family Payment Scheme. The Social Welfare Department's argument focused on the interpretation of the phrase 'live apart' to require more than geographic separation. The Department continued to rely on Appellant's referral in the 2000 interview of her ex partner as 'spouse' despite the passage of four years, the lack of evidence of contact, and Appellant's explanation of the cultural and language differences involving marriage and cohabitating relationships in Nigeria. The Department did not seek outside or legal experts to refute or further investigate the possible differences between the Irish and Nigerian systems. The Deciding Officers simply disbelieved Appellant because they saw discrepancies in the history of her case. Appellant's Divorce Decree was summarily dismissed as a forgery based solely on the Deciding Officer's opinion. This procedure signals a challenge for non-nationals seeking welfare payments, even when they are legally entitled to such payments. If a Deciding Officer's unfamiliarity with foreign procedures such as marriage and divorce can be used as grounds to refuse payment without further investigation, a high onus is placed on foreign applicant's to provide evidence that may be difficult to obtain and is more than that required of Irish nationals.

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

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