

**Casebase Number: G0032**

**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: 5<sup>th</sup> August 2011

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**Keywords:** Habitual residence condition - evidence of continuous residence - means - appeal allowed

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

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**Case Summary:**

After separating from her spouse, the Appellant applied for the One-Parent Family Payment. She was refused as she was not deemed to be habitually resident in the State. The Deciding Officer (DO) stated that there was no evidence of the Appellant's continuous residence and means of support in the State. Also, the DO was of the opinion that the Appellant's centre of interest was not Ireland, as she had lived elsewhere for most of her life and she had no apparent family ties in Ireland. This decision was appealed. The Appellant submitted evidence to support her assertion, that she was habitually resident in Ireland. The Appeals Officer was satisfied that the facts in this case supported the Appellant's claim to be habitually resident in the state. The Appeals Officer issued a summary decision in this case.

**Summary of Benefit(s) and the Law:**

One Parent Family Payment is a payment to an individual bringing up a child without the support of a partner. To receive this payment an applicant must satisfy a means test and be **habitually resident** in the State. The law in relation to One Parent Family Payment is set out *in Part 3 Chapter 7, of the Social Welfare (Consolidation) Act 2005* as amended and *Chapter 3, Articles 124- 130 of Part III of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (SI No, 142 of 2007)* as amended. In practice, **Habitual Residence** means that you have a proven close link to Ireland. The term also conveys permanence - that a person has been here for some time and intends to stay here for the foreseeable future. Proving you are habitually resident relies heavily on fact.

- *Section 246 of the Social Welfare Consolidation Act 2005, as amended by Section 30 of the Social Welfare and Pensions Act 2007 and Section 15 of the Social Welfare and Pensions (No. 2) Act 2009 - sets out the legislation with regard to determining whether the habitual residence condition is satisfied. Section 246 of the Social Welfare Consolidation Act 2005 (as amended) provides; "For the purpose of each provision of this Act...it shall be presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless the person has been present in the State or any other part of the Common Travel Area for a continuous period of two years ending on that date." ..... "Other part of the Common Travel Area" means the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.*
- Section 30 of the Social Welfare and Pensions Act 2007 states; "Notwithstanding the presumption in subsection (1), a deciding officer or the Executive, when determining whether a

*person is habitually resident in the State, shall take into consideration all the circumstances of the case including, in particular, the following:*

- *The length of continuity of residence in the State or in any other particular country;*
- *The length and purpose of any absence from the State;*
- *The nature and pattern of the person's employment;*
- *The persons main centre of interest; and*
- *The future intentions of the person concerned as they appear from all the circumstances."*

- Section 15 of the Social Welfare and Pensions (No.2) Act 2009 provides; *Notwithstanding subsections (1) to (4) and subject to subsection (9), a person who does not have a right to reside in the State shall not, for the purposes of this Act, be regarded as being habitually resident in the State*

**Background:**

The Appellant, a Nigerian national, moved to Ireland in September 2008 to live with her then husband (an EU national) who had resided in Ireland since 2003. The couple had a son in May 2009 and separated in June 2009. The Appellant was granted a residence card (Stamp 4 Family Visa) valid for a period of 5 years on the 21st June 2009. The Appellant made an application for the One-Parent Family Payment on 21st July 2009. This claim was refused on 9th July 2010 as the Deciding Officer (DO) was of the opinion that the Appellant was not "habitually resident in the State." It was held that there was no evidence of her "continuous residence and means of support in the State" from her time of arrival until April 2009, and also that the Appellant's centre of interest was not in the State, as she had spent most her life outside the State and had no family links in Ireland. The Appellant sought advices of Northside Community Law and Mediation Centre (NCL&MC) and was represented thereafter. The Appellant appealed this decision on 20th July 2010 to the Social Welfare Appeals Office and also sought a review of the decision by the DO. The DO confirmed the refusal to grant the payment. It was noted in this decision that while the Applicant contended that she had been attending a course in Whitehall College of Further Education, the DO had evidence (a letter from FÁS) confirming that she did not attend the course. This was considered to be indicative of the Appellant's unwillingness to gain employment in the State. The Appellant continued with her appeal on the basis that the DO had erred in both fact and law in denying the claim.

**Summary decision:**

The NCL&MC, in a submission on behalf of the Applicant, made a number of arguments to demonstrate that the Appellant did in fact meet the criteria to be found habitually resident in the State. It was noted that the Appellant has lived in Ireland continuously since her arrival in 2008, as had her son who was born in Ireland three years previously. The Appellant had not returned to her native country since her arrival and has resided in the State continuously, uninterrupted and without any absences since September 2008. It should be noted that ECJ case-law makes clear that a Member State cannot specify a period of time to determine habitual residence. As regards the contention that the Appellant has no family ties in this State. The Appellant submitted that she had moved here in 2008 to be with her then husband and father of her children. He had been resident in the State since 2003 and is still resident in the State. Furthermore, the Appellant has a sister who had been resident in the State for 13 years and has three Irish-born children. It was acknowledged that the DO made the decision without knowledge of this fact as the Appellant had not provided these facts on the application form. As regards the determination that the Appellant had "no work record in Ireland," it was

stated that the Appellant had undertaken a four year course in her home country and had, since arriving in Ireland, undertaken further education in her area of interest. While a letter from FÁS did state that she had not attended a course, she had attended a different course at Whitehall College of Further Education. Finally, it was submitted that the Appellant has a strong desire to secure employment in Ireland and details of efforts to secure such were presented.

It should be noted that while this appeal was being pursued the Appellant was also appealing a decision denying her claim for Child Benefit on the same grounds. A Deciding Officer made a revised decision with regard to the Child Benefit claim on the basis of submissions made by NCL&MC on the Appellant's behalf.

**Date of the decision:** 5th August 2011

**Outcome of the Appeal:** Appeal Allowed.

**Relevant Evidence submitted by the Appellant:**

The submission, submitted on behalf of the Appellant, included documentation to support her arguments that she had completed an educational course and had obtained work experience in order to increase her employment prospects in the State. The documents included;

- A certificate from the educational facility where she had successfully completed a course in further education; and A supervisor's report deeming her 'excellent' in all applicable criteria for the work pursued and a brief account of her work.

**Our observations:**

The additional evidence provided by the Appellant relating to her family ties in the State and her completion of a further education course made a significant impact on her application. The DO was not aware of these factors when denying the Appellant's claim. This case highlights the importance of providing the DO with all relevant documentation at the earliest possible stage in order to give the clearest outline of a claimant's personal circumstances.

In considering the original reasons for refusal, it is striking that in rejecting the Appellant's claim the DO chose to adopt a prescriptive approach that is not consistent with the legislation. Specifically, it was asserted - "The length and continuity of residence in the State prior to appellant's application for One Parent Family Payment, does not support approval for habitual residence." This assertion by the DO suggests that there is a specific duration of residence required in order that a person might establish their habitual residence. This is not the case. Rather, the law requires all the circumstances of an applicant's residence to be examined with particular attention to five factors (refer to *Summary of Benefit and Law* above). In summary, there is no checklist of circumstances to be satisfied in order for a person to be found Habitually Resident. Instead, it is the totality of a person's circumstances that must be examined in order to assess if on balance that person's main centre of interest lies in this state.

**For more information on One Parent Family Payment and Habitual Residency useful links are:**

• **Citizens Information:**

[http://www.citizensinformation.ie/en/social\\_welfare/social\\_welfare\\_payments/social\\_welfare\\_payments\\_to\\_families\\_and\\_children/one\\_parent\\_family\\_payment.html](http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_to_families_and_children/one_parent_family_payment.html)

• **Department of Social Protection:**

<http://www.welfare.ie/en/operationalguidelines/pages/onefpf.aspx>

- **Social Welfare (Consolidation) Act 2005:**

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

- **Social Welfare and Pensions Act 2007:**

<http://www.irishstatutebook.ie/2007/en/act/pub/0008/index.html>

- **Social Welfare and Pensions Act No. 2 2009:**

<http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0043.pdf>

- **Guidelines for Deciding Officers on the determination of Habitual Residence:**

<http://www.welfare.ie/EN/OperationalGuidelines/Pages/habres.aspx>

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

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