Casebase Number: G0004

Title of Payment: Supplementary Welfare Allowance

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

Date of Final Decision: 20th February 2006

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Keywords: SWA refused- habitual residence condition-appeal- status reconsidered-appeal allowed

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

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Case Summary:

Applicant claimed basic Supplementary Welfare Allowance in June 2005 which was refused on the grounds that she was not habitually resident in this State. She filed an appeal and her status of habitual residency was re-considered by a Social Welfare Appeals Officer. The appeal was allowed.

Summary of Benefit(s) Received:
Applicant sought Basic Supplementary Welfare Allowance which is a means-tested weekly allowance paid to people that do not have enough means to meet their needs and those of their qualified adult or any qualified children. Appellant applied for Unemployment Assistance and Disability Benefit, but was denied because she did not satisfy the habitual residence requirement. She also applied for Supplementary Welfare Allowance on 21 June 2005, and was denied benefits on 31 August 2005, on the grounds that she did not meet the statutory definition of a habitual resident.

Background:
Appellant was born in an African country, and lived there until 1987, when she moved to a mainland EU state. Her Mother and siblings were there as well. She eventually attended college, completing her studies in 2004. She left the mainland EU state for Ireland in September 2004 in order to avoid an arranged marriage. She has not left Ireland since that time, and is no longer in contact with her family. She had set up job interviews and sent in resumes before she arrived, but had trouble securing employment. She found temporary employment around the Christmas season of 2004, and then became a full-time care assistant at a nursing home in April 2005. However, after she was diagnosed with a degenerative back condition, she was dismissed in June 2005. Her back condition made it difficult for her to obtain work and perform the necessary duties, although she was able to secure some part-time work.

Relevant Evidence put Forth by Social Welfare Services:

- Letter of 31 August 2005 disallowing the Appellants‟ original claim;
- Habitual Residence Condition Questionnaire of Appellant; and
- Ancillary Habitual Residence Questionnaire of Appellant.

Relevant Evidence put Forth by Appellant:

- Letter of appeal dated 18 September 2005;

- Letter from part-time employer confirming employment and stating Appellant's good standing and willingness to work;
- Letter of Appellant in support of her claim;
- Correspondence confirming job applications and rejections (2);
- Contract of employment with nursing home; and
- Letter from Medical Centre confirming back injury of Appellant.

Date Appeal Taken: 18 September 2005
Date Appeal Heard: 13 December 2005

At Hearing:
Appellant was accompanied by a Solicitor from the Northside Community Law and Mediation Centre (NCL&MC). A Health Service Executive, from the office that disallowed Appellant's first appeal, was also present. The issue on appeal was explained, and Appellant's history was given, including her previous claims, her means and expenses, her family and educational history, as well as her attempts to find employment in Ireland and her work history. The Health Service Executive outlined the reasons for disallowing the appeal, citing the criteria used to determine that she was not a habitual resident. Appellant's solicitor commented that the different letters disallowing the claim contained contradictory statements, and stressed the need for a clear test to determine habitual residency.
Decision:
Appeal ALLOWED

Appeal Officer's Reasoning and Conclusion:
Appellant's statements were credible; she had severed ties with her family, and Ireland was now her main centre of interest. Additionally, Department guidelines have been modified in accordance with EU law provisions to treat EU workers as Irish nationals in regards to SWA claims. In consideration of all the circumstances, Appellant is habitually resident in Ireland.

Our Observations:
Contested Issue: The contested issue in this appeal was the criteria used to determine when an Appellant can be deemed to be habitually residing in the State of Ireland. When the original claim was denied, the Deciding Officer used a five-part test to determine habitual residence: 1. the length and continuity of residence, 2. length of absence from Ireland, 3. nature and pattern of employment, 4. applicant's main centre of interest, and 5. future intention of applicant concerned as it appears from all the circumstances. Next, the Officer states that the most important factors are the length, continuity and general nature of actual residence, rather than intention.
Relevant Evidence: It appears that the Appeals Officer was influenced by Appellant's testimony in support of her case, including her assertions that she was no longer in contact with her family, that she had never left Ireland and her attempts to find employment.
Other: It seems that the Appeals Officer was swayed by the credibility of Appellant. The Report states that the criteria used to deny the appeal "were in accordance with the guidelines issued by the Department," yet the appeal was allowed due to recent modifications of the guidelines that now view workers from the EU the same as Irish nationals. If the Appeals Officer failed to apply the law properly the decision would be subject to Judicial Review premised upon a breach of fair procedures and/or error of Law. It

is also interesting to note that, although this case had a favourable outcome for Appellant, it does not give a clear test for determining habitual residency.

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