

Casebase Number: G0025

Title of Payment: Supplementary Welfare Allowance



Northside Community Law and Mediation Centre
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Bunratty Road
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Date of Final Decision: 30th October 2004

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Keywords: Unaccompanied minor- non EEA state- no proof of age-excluded from SWA- appeal disallowed

Organisation who assisted claimant: The Legal Aid Board

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Case Summary:

The Appellant, an unaccompanied minor, arrived in Ireland from a non-EEA State in 2003 and presented herself at the Office of the Refugee Applications Commissioner (ORAC). She was unable to prove her age but was assessed as being under 18 years of age. Her case was referred to the Health Board and she was placed in a hostel for those under 16 years of age. The Health Board referred the matter back to ORAC and the Appellant was re-assessed, via interview, to be over 18 years of age and from this point onwards treated as an adult. She was taken out of the care of the Health Board and removed from the hostel. As an “adult”, the Appellant was excluded from the provisions of the Child Care Act 2007 but still considered a minor for the purposes of Social Welfare entitlements. She was refused Direct Provision and she was excluded from receiving Supplementary Welfare Allowance (SWA) on the basis that she was in full-time education. The Appellant appealed the refusal of SWA. Alternatively she sought to be treated as a homeless child and have the necessary arrangements made in order to provide her with suitable accommodation. Her appeal was disallowed and she was excluded from getting SWA on the basis that she was in full-time education.

Summary of Benefit: Supplementary Welfare Allowance (SWA) is a means tested payment, the rules of which are governed set out in Chapter 9 of the Social Welfare Consolidation Act 2005, as amended. In particular Section 189 states that: “Every person in the State whose means are insufficient to meet his or her needs (...) shall be entitled to supplementary welfare allowance.” This mandate is qualified by exceptions as stated in Section 190 of the above-mentioned Act: “A person shall not be entitled to receive SWA while attending a course of study within the meaning of Section 148, other than in the circumstances and subject to the conditions that may be prescribed.” The Appellant did not appear to be eligible for SWA due her status as a full-time student. Section 148 defines “course of study” as: “A full time day course or study, instruction or training at an institution of education”. School is included in the definition of institution. The Executive or Deciding Officer, who reviews applications for SWA, has the discretion to override a refusal based on full-time student status in cases of exceptional circumstances, as stated in Section 190(3) of the Social Welfare Consolidation Act 2005, as amended. On these grounds the Appellant appealed the Decision to refuse her application for Social Welfare Allowance.

Background:

The Appellant arrived in Ireland from a non-EEA State in 2003 and presented herself to the ORAC. As an unaccompanied minor, she was not eligible to make a Refugee Application on her own behalf or to seek legal aid for that matter. She was referred to the local Health Board (Social Work Team for Separated Children) under the provisions of the Refugee Act 1996 (as amended) and the Child Care Act 2007 (as amended). She was placed in a hostel for children under 16 years of age. The Appellant remained in the care of the local Health Board for seven months and during this time neither the Appellant nor the Health Board made an asylum application. In January 2004, the Health Board requested that ORAC re-assess the age of the Appellant as they were of the opinion that the Appellant was over 18 years of age. ORAC re-assessed the Appellant's age by way of a brief interview. She was assessed as being over eighteen years of age and was taken out of the care of the Health Board. Since then the Appellant had been living in private rented accommodation with acquaintances. She had been attending school since September 2003. She was refused Direct Provision and she was excluded from receiving SWA on the basis that she was in full-time education.

The Appellant, represented by the Legal Aid Board, appealed the HSE decision to refuse the SWA payments in January 2004. Since then she had not received any social welfare assistance. The appeal was disallowed on the basis that as she was a minor and not entitled to any such assistance. As a result the Appellant found herself in the situation where she was being treated as an adult by ORAC – thereby excluded from the provisions of the Child Care Act 2007 (as amended) and completely unsupported in her asylum application. At the same time, she was being treated as a minor by the Health Board and Social Welfare offices in relation to Social Welfare entitlements. The family with whom the Appellant resided decided to move and consequently the Appellant was unable to continue to reside with them. She was in need of urgent accommodation. The Refugee Integration Service offered the Appellant accommodation outside her town which would require her to leave her school which she had been attending full time since 2003. On that basis the Appellant had to reject this accommodation. The Appellant sought to have her Social Welfare payments reinstated. She also requested she be taken into voluntary care by the Health Board under Section 4 of the Child Care Act 1991; or alternatively to be treated as a homeless child and to make whatever arrangements are necessary in order to provide her with suitable accommodation, in accordance with Section 5 of the Child Care Act. Her appeal was disallowed and she was excluded from getting SWA on the basis that she was in full-time education. She received hostel accommodation in 2005 and began receiving Direct Provision payment of €19.10 from the date of her residency in the accommodation. She sought back-dated payment of Direct Provision she would have received if she had been offered suitable accommodation in 2004. This was also refused.

Date Appeal Taken:

14th July 2004

Date Appeal decided:

28th July 2004

At Hearing:

No oral hearing

Decision:

Appeal DISALLOWED

Relevant Evidence put Forth by the Social Welfare Appeals Office: There was no further evidence provided by the Superintendent Community Welfare Officer. The decision was

based on the application submitted by the Appellant, the records and the circumstances of the case.

Relevant Evidence put Forth by Appellant:

In her appeal the Appellant stated that from the period of February 2004 to May 2005 she had not received any payment from the State. She also produced the letter of refusal of the Direct Provision Payment, and the offer of accommodation outside the town where she was attending school.

Appeal Officer's Reasoning and Conclusion:

The Community Welfare Officer and the Superintendent Community Welfare Officer assessed the Appellant's case and stated that the Appellant could have had her case referred to the Refugee Integration Agency (RIS) in order to meet the Appellants accommodation needs. Upon rejection of this offer she could apply for a basic payment from the Community Welfare Officer. Notwithstanding the above she would still have to prove that she was habitually resident in the state at the time of the application in order to be eligible for SWA. If this was confirmed, the Appellant would be entitled to a payment of €19.10. The decision rejecting the Appellant's appeal was based on the fact that the Asylum Seekers Unit provides such services to clients resident in designated accommodation centres and that the Appellant was paid appropriately while residing in such centres. Therefore no payment was considered to be outstanding.

Our Observations:

As at the time of the appeal the Appellant continued to be a full-time student, she did not appear to be entitled under the statute to payment or accommodation. Indeed, the fact that she is receiving accommodation at all is surprising, considering the provisions of Section 189 of the Social Welfare Consolidation Act 2005. It appears that the Community Welfare Service Officer applied the exceptional circumstances rules laid out in Section 190(3) of the Social Welfare Act, which allows Community Welfare Officers to make exceptions to the full time education exclusion and granted €150 to the Appellant towards clothing costs .

For more information on Supplementary Welfare Allowance

- **Citizens Information:**
http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/supplementary_welfare_schemes/supplementary_welfare_allow.html

- **Department of Social Protection:**
<http://www.welfare.ie/EN/Schemes/SupplementaryWelfareAllowance/Pages/BasicSupplementaryWelfareAllowance.aspx>

- **Social Welfare (Consolidation) Act 2005:**
<http://www.irishstatutebook.ie/2005/en/act/pub/0026/index.html>

- **Childcare (Amendment) Act 2007:**
<http://www.irishstatutebook.ie/2007/en/act/pub/0026/index.html>

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