

Casebase Number: G0065

Title of Payment: Blind Pension



Community Law and Mediation Northside
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Bunratty Road
Coolock
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Date of Final Decision: 17/12/2014

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Organisation who represented the Claimant: North Donegal MABS

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Case Summary:

This case concerns a blind person who first applied for the Blind Pension in April 1994 when he was 18 years old. At the time of application the Appellant was assessed by a Social Welfare Inspector (SWI) as having nil means, therefore the Blind Pension was awarded at the full rate with effect from 22 April 1994. When the Appellant initially applied for this payment, he was living at home with his parents and his mother acted as his agent by collecting his weekly payment from the Post Office.

In 1997 the Appellant moved out of home and commenced an 18-month training course at a “Rehab Training Centre”. In 1998 a SWI investigated the Appellant’s claim and reported that he was participating in a telephonist-training course that was due to end in May 1999.

No further review of the Appellant’s payment was carried out until 2014. On 30 May 2014 the investigating SWI submitted a report to a Deciding Officer (DO) of the Department of Social Protection (DSP), advising that the Appellant was employed by the National Council for the Blind in Ireland (NCBI) and that he had gross income of €2,993.25 per month. In the course of the investigation the Central Records System was accessed by the DSP and the resulting report showed that the Appellant had earnings and reckonable contributions since 2003.

On 11 June 2014 a DO issued a revised decision stating that the Appellant was not entitled to the Blind Pension from 1 January 2007 to 12 June 2014; and, as a consequence of this revised decision, was liable for an overpayment of €72,826.60. A debt recovery letter to this effect was issued to the Appellant on the same date.

The Appellant submitted notice of appeal to the Social Welfare Appeals Office on 23 June 2014, and North Donegal MABS submitted more detailed grounds of appeal on his behalf on 1 September 2014. MABS also requested that an oral hearing be held.

MABS asserted that in view of the circumstances that gave rise to the overpayment it was neither proportionate nor reasonable to issue a revised decision with retrospective effect, the consequences of which were clearly devastating to the client. It was further asserted that the relevant statutory provisions governing the assessment of means provided that

“any moneys from a charitable organisation” are excluded in the means test; accordingly, it was arguable that moneys the Appellant received from the NCBI, a charitable body, fell within the scope of this statutory income disregard.

On 22 October 2014 an oral hearing was held. A Money Advisor from North Donegal MABS attended on behalf of the Appellant. A family member also accompanied the Appellant. Two members of staff represented the DSP.

On 17 December 2014 the Appeals Officer decided that the Appellant was not entitled to Blind Pension from January 2007, rejecting the assertion that moneys received in the form of remunerative employment could be regarded as falling within the scope of the statutory provision that allows for the disregard of moneys from charitable organisations. However, the Appeals Officer did accept that the circumstances that gave rise to the overpayment were such that it was not appropriate that the DSP’s decision take effect retrospectively. Accordingly, while the Appeals Officer found that the Appellant was not entitled to the Blind Pension from 2007, it was decided that the decision should take effect from 12 June 2014. As a consequence of the Appeals Officer’s decision, the Appellant was not liable for an overpayment of €72, 826.60.

Summary of Benefit(s) Received:

Blind Pension is a weekly, means tested payment awarded to blind and visually impaired people who are habitually resident in Ireland. The payment is made by the Department of Social Protection. To qualify for the Pension, verification of visual impairment from ophthalmic surgeon must be supplied.

The main statutory provisions governing the award of Blind Pensions are set out in Chapter 5, Part 3 of the Social Welfare Consolidation Act 2005 (as amended) - “the Act”. The rules pertaining to means are set out in Part 5, 3rd Schedule to the Act (as amended). Additional rules are provided in the relevant articles as set out in the Social Welfare (Consolidated, Claims, Payments and Control) Regulations 2007 (as amended), S.I. 142 of 2007. In accordance with the relevant statutory provisions specified sources of income, or potential income, are not taken into account in the means test. These may be summarised as follows:

- A payment from the DSP received by another member of the household
- The value of the first €20,000 of capital assets (for example, savings)
- Money received from a recognised charitable organisation (excluding public or local authority)
- The maintenance element of a student grant paid to applicant, a qualified adult or child dependent(s) for certain courses
- Income up to a certain limit from rehabilitative employment
- Income from rehabilitative training
- Domiciliary Care Allowance
- Child Benefit, Supplementary Welfare Allowance or foster care allowances
- Mobility Allowance

Key Arguments:

- The Appellant contended that the retrospective effect of the DO's decision was inappropriate and unreasonable in this instance; and as such the revised decision, if justified, should have issued with effect from a current date in order that the Appellant not be assessed with an overpayment.
- The Appellant asserted that he understood that his claim was in order throughout the period in question, and that he did not wilfully conceal any material fact from the DSP.
- The Appellant asserted that he understood that the Blind Pension by its nature as a 'pension', was payable on the basis of his sight loss. Accordingly, he had an expectation that his supported employment as a telephonist with the National Council for the Blind of Ireland [NCBI] had no bearing on his continued eligibility to the payment.
- The Appellant contended that his expectation that his affairs were in order throughout the relevant period was not unreasonable in view of the fact that both his training and employment were part of a known state sponsored programme to support and employ people who are blind as telephonists in government departments. Accordingly, the Appellant understood that he was acting properly by participating in this programme, and that if there were any issues with his payment this would have been made known to him, particularly in view of his dependance on the support of the bodies responsible for the programme.
- The Appellant further asserted that the DSP's administration of his claim supported the mitigating factors he was advancing as grounds of appeal. In particular, he asserted that it was relevant that there had been no communication or review of his claim for 16 years. This presented as at odds with the control provisions one would ordinarily expect to be in place in the case of means tested payments in order to reduce the risk of a claimant incurring a large overpayment.
- The Appellant stated that the NCBI were a charitable organisation and therefore his earnings from his supported employment should be regarded as falling within the scope of exempted means under the relevant statutory provision.
- The Respondent asserted that the Appellant had an obligation to notify the DSP of a change in circumstances and that in this case they had not been informed that the Appellant had taken up employment or had changed address.
- The Respondent contended that the exclusion in relation to moneys from charities related to grants only, and not to earnings from insurable employment.

Background:

This case concerns a blind person who first applied for the Blind Pension in April 1994 when he was 18 years old. At the time of his application the Appellant was assessed by a Social Welfare Inspector (SWI) as having nil means, therefore the Blind Pension was awarded at the full rate with effect from 22 April 1994. When the Appellant initially applied for this payment, he was living at home with his parents and his mother acted as his agent by collecting his weekly payment from the Post Office.

In 1997 the Appellant moved out of home and commenced an 18-month training course at a "Rehab Training Centre". In 1998 a SWI investigated the Appellant's claim and reported that he was participating in a telephonist-training course that was due to end in May 1999.

No further review of the Appellant's payment was carried out until 2014. On 30 May 2014 the investigating SWI reported to a Deciding Officer of the Department of Social Protection that the Appellant was employed by the National Council for the Blind in Ireland (NCBI) and that his gross income was €2,993.25 per month. On 5 June 2014 the Central Records System was accessed by the DSP and the resulting report showed that the Appellant had earnings and reckonable contributions since 2003.

On 11 June 2014 a DO issued a revised decision stating that the Appellant was not entitled to the Blind Pension from 1 January 2007 to 12 June 2014, and as a consequence of this revised decision, was liable for an overpayment of €72,826.60. A debt recovery letter to this effect was issued to the Appellant on the same date.

The Appellant submitted notice of appeal to the Social Welfare Appeals Office on 23 June 2014, and North Donegal MABS submitted more detailed grounds of appeal on his behalf on 1 September 2014. MABS also requested that an oral hearing be held.

Written submission made by North Donegal MABS in support of the Appellant's grounds of appeal, 01/09/2014

MABS, on behalf of the Appellant, submitted that a revised decision should not have been issued with retrospective effect given the particular circumstances of the Appellant.

It was submitted that the Appellant believed that his Blind Pension was payable on the basis of his blindness and that this expectation was not unreasonable given the name of the payment and the fact that it is called a pension, a description which is associated with payments made as of right on a long term basis. In these circumstances the Appellant believed that his employment had no impact on his eligibility to the pension.

MABS asserted that the validity of the Appellant's position was reinforced by the fact that the DSP did not communicate with the Appellant for a 16-year period.

MABS asserted that it was relevant that the Appellant's training and employment was under a state employment programme for persons who are blind. This dedicated training programme provided participants with the skills necessary to progress to a Telephonists Panel, a panel from which members were placed by the NCBI in government departments to work as telephonists. As a participant on this programme, the Appellant trusted that his circumstances were entirely consistent with government policy, and as he was reliant on others to bring to his notice relevant information, he had no reason to believe that he was acting incorrectly. The Appellant's dependence on support organisations was further emphasised by the fact that while on the course the training centre acted as his agent. His participation was one of almost institutionalised progression to the Telephonist Panel from which he was eventually employed in government departments as a telephonist, most recently at the offices of the Department of Social Protection. In these circumstances, and given the fact that the DSP did not communicate with him for 16 years, it was not unreasonable that the Appellant believed that his affairs were entirely in order.

It was stated that in view of the facts in the case it was evident that the Appellant acted in good faith and that at no time did he knowingly mislead the DSP.

MABS also argued that appropriate review and control mechanisms should have been in place in order to help prevent the risk of a claimant inadvertently incurring such a substantial overpayment. Arguably, in this case had the DSP conducted any routine review of the Appellant's claim, his change in his circumstances would have come to the DSP's notice on a much earlier date. The DSP has access to a central records system containing information from both the Revenue Commissioners and the Social Welfare system and it appeared from FOI records sought in relation to the Appellant that this system was not checked until 5 June 2014. It was therefore asserted that the absence of any timely review of the Appellant's claim by the DSP should have been considered by the DO as a factor mitigating against the making of a decision with retrospective effect. It was further contended that the manner of the DSP's communication was wholly inappropriate; at the time of his claim and review the Appellant received written communication in large print, communication that he could not access independently because he was blind.

Finally, MABS contended that the Appellant should have been assessed with nil means from his employment with the NCBI as provided for by Rule 1[2] [a] of Part 5 of the 3rd Schedule of the Social Welfare Consolidation Act 2005 (as amended), which provides that "amounts at references 1 to 19 in Table 2" are excluded in the means test.

Reference 11 provides:

any monies received from a charitable organisation, being a body whose activities are carried on otherwise than for profit (but excluding any public or local authority) and one of whose functions is to assist persons in need by making grants of money to them;...

The NCBI is a registered charity recognised by the DSP as falling within the scope of reference 11 of Table 2, therefore MABS concluded that the Appellant's earnings did not fall to be assessed as means for the purposes of determining eligibility for the Blind Pension as the provision makes no distinction between money given in the form of remuneration or money given as part of a grant or charitable donation.

Date of oral hearing: 22/10/2014

At Hearing:

The Appellant was represented at the oral hearing by an officer from North Donegal MABS and was also accompanied by his father.

Relevant evidence put forth by the Department of Social Protection at Oral Hearing:

- The DSP was represented by a Deciding Officer and an Assistant Principal Officer;
- The DSP representatives stated that the DSP had not been informed that the Appellant had taken up employment or had changed his address;
- The DSP representatives referred to the Appellant's legal obligation to inform the DSP of any change in circumstances - Part 6 of the claim form refers: *I have given all the details about my means and I undertake to notify the department within 3 months of any increase in means.*;
- It was submitted that the exclusion of monies from charities related to grants and not to earnings from insurable employment and that the NCBI would have other employees who were in receipt of means based payments.
- The DSP did confirm that there was no accusation of wrongdoing in this case; the overpayment was being raised as a result of a retrospective decision made in accordance with s. 302(b) of the Act, not s. 302(a); the latter provision referring to circumstances where a claimant acts so as to knowingly mislead the DSP by withholding information or providing false information.

Relevant evidence put forth by Appellant at Oral Hearing:

- MABS orally restated arguments that had been advanced in written submissions.

Date of final Decision (Decision of Appeals Officer): 17th December 2014

While the Appellant was not entitled to Blind Pension given his level of earnings, for the reasons outlined, I consider the decision to disallow his payment should be made applicable from the date payment was stopped, 12 June 2014, rather than January 2007

Appeals Officer's reasoning and conclusions:

I decide that the Appellant is not entitled to Blind Pension from 12 June 2014 on the grounds his means exceed the statutory limit.

...I do not accept the contention made on behalf of the Appellant that his earnings from NCBI should be excused from assessment on the basis they represent monies from a charitable institution. The exclusion in the legislation is clearly designed to exclude from assessment monies that are charitable in nature, a grant, donation or minor subvention, something that is not regular or in return for services rendered etc. The Appellant occupied a full time regular paid post as a telephonist providing services to the department in the offices responsible for administering his Blind Pension. He had a contract of employment, was paid a regular wage on which he was liable for payment of income tax, PRSI and USC and accordingly such payments cannot be regarded as charitable in nature.

Though there was a very clear warning on the claim form informing applicants they should advise the department of any changes in means within three months, consideration must be given to the Appellant's age and degree of cognizance at the time (18 in 1994), that no review was carried out by the department between 1998 when he was on the training course and 2014 and that there appears to have been no intention to deceive on his part given his place of employment was in the department's offices that administered Blind Pension. While the Appellant was not entitled to Blind Pension given his level of earnings, for the reasons outlined, I consider the decision to disallow his payment should be made applicable from the date payment was stopped, 12 June 2014, rather than January 2007.

Observations:

This case highlights the important role of the Appeals Office in adjudicating on decisions by the DSP that may have potentially devastating affect on claimants – namely; the raising of a substantial debt liability in the case of a retrospective decision.

In this case the Appeals Officer found that the Appellant was not entitled to the Blind Pension for the period as specified by the DSP, and that as a consequence the Appellant had in fact been overpaid. The Appeals Officer rejected MABS' assertion that the Appellant's means fell within the scope of statutory provisions which exclude means from charitable bodies. However, the Appeals Officer did accept the Appellant's pleadings in mitigation, that he had not acted to mislead the DSP, and that the DSP had not reviewed his claim in a timely manner. So, while the DSP's decision was found to be correct in fact and law, the Appeals Officer did not find that it was appropriate that the decision should take effect retrospectively.

The Appeals Officer in this case carefully balanced the legal obligation of a claimant to notify the DSP of any change in circumstances with the corresponding responsibility of the DSP to act proportionately and reasonably in circumstances where a claimant does not do so. The Appeals Officer emphasised the need for a decision maker to consider the particular circumstances that give rise to an overpayment in a given case and for that decision maker to consider the extent to which those circumstances warrant the making of a retrospective decision, and the raising of a substantial overpayment.

This decision is important as it demonstrates the importance of a claimant advancing mitigation as grounds of appeal in a case where the facts are not in dispute, and the need for the DSP to use appropriate discretion before deciding to raise an overpayment against a claimant in the first instance. The Social Welfare Appeals Office Annual Report 2013 is informative in this regard:

Where the Deciding Officer is satisfied that there was no fraudulent intent on the person's part, they have discretion under the law as to the date from which the revised decision takes effect having regard to the circumstances of the case.

This has implications for the amount of the overpayment that is assessed against the person. In my 2011 annual report I reported that it was not immediately obvious to Appeals Officers that sufficient consideration was given by Deciding Officers to the circumstances of individuals cases in determining the date from which a revised decision should take effect. This issue continues to present as a problem

Page 22, 23 Social Welfare Appeals Office Annual Report 2013

For further information:

Refer to various Annual Reports from the Social Welfare Appeals Office which address the matter of overpayments. These reports can be accessed at:

<http://www.socialwelfareappeals.ie/pubs/annreps/annrep14.pdf>

Information on the Blind Pension may be accessed at:

http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/disability_and_illness/blind_persons_pension.html

<http://www.welfare.ie/en/Pages/Blind-Pension---SW-76.aspx>

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