

Casebase Number: G0105

Title of Payment: Child Benefit



Community Law and Mediation Northside

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Date of Final Decision: 10 January 2019

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Keywords: Child Benefit; habitual residence condition

Organisation who represented the Claimant: Community Law & Mediation

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Summary:

The Applicant moved to Ireland from the UK in 2015 with her husband, a British citizen, and their eight children. She applied for Child Benefit from September 2015.

She was awarded Child Benefit for six of her children from September 2015 to November 2015. This was reviewed on the basis of an allegation that her husband's self-employment was fake, that he was not therefore exercising EU free movement rights, and that, as a consequence, she was did not satisfy the habitual residence condition in section 246 of the Social Welfare Consolidation Act 2005 because she was not lawfully in the State as the family member of an EU worker. This decision was upheld on appeal.

Child Benefit was reinstated in November 2016 when her husband entered employment, but again, this was reviewed in March 2018 on the basis that his employment between June 2017 and March 2018 was not genuine. In April 2018, her husband was granted Jobseekers' Allowance, and it was accepted that he was habitually resident at that time. Her claim for Child Benefit was reinstated from April 2018 onwards, but the Department sought repayment of the Child Benefit which, it said, had been overpaid between June 2017 and March 2018. The Applicant appealed the overpayment decision on the basis that she had, in fact, been habitually resident and that, in any event, her husband's employment had actually been genuine.

Key Conclusions:

Appeal allowed.

Summary of Benefit Received:

Child Benefit is a monthly payment to the parents or guardians of children under 16 years of age. It is paid for children under 18 years of age if they are in full-time education, full-time training or have a disability and cannot support themselves. Child Benefit is not paid for any child dependant aged 18 or older, even if they stay in education or training.

The legislative basis for Child Benefit is provided by Part 4 of the 2005 Act, and Regulation 159, 160, 161, 178, 179, 181, 188, 192, 193, 196, 197, 198, 199, 200, 201, 202, 206, 211, 242, 243, 244, 246, and 247 of the Social Welfare (Consolidated Claims, Payment and Control) Regulations 2007 (SI 142 of 2007). In order to avail of Child Benefit the Qualified Person must either be habitually resident, or exempted from the habitual residence condition by virtue of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

Section 246(1) and (4) of the Act of 2005 provides:

(1) A requirement, in any of the provisions specified in subsection (3), for a person to be habitually resident in the State means that—

(a) the person must be habitually resident in the State at the date of the making of the application, and the person must remain habitually resident in the State after the making of that application in order for any entitlement to subsist,

(b) the person is a worker or a self-employed person, residing in the State pursuant to article 7 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (2 O.J. No. L 158, 30.4.2004, p. 77.), from—

(i) a Member State, or

(ii) a member state of the European Economic Area,

(c) the person is a family member of a person referred to in paragraph (b),

(d) where a person referred to in paragraph (b) ceases to be such a worker or such a self-employed person, the person must be habitually resident in the State immediately after the date of such cessation, and must remain habitually resident in the State in order for any entitlement to subsist, or

(e) where a person referred to in paragraph (b) ceases to be such a worker or such a self-employed person, a family member of such a person must be habitually resident in the State immediately after the date of such cessation, and the family member must remain habitually resident in the State in order for any entitlement to subsist

(4) A deciding officer or the Executive a designated person, when determining whether a person is habitually resident in the State resident in the State for the purposes of this Act, shall take into consideration all the circumstances of the case including, in particular, the following –

(a) the length and continuity of residence in the State or in any other particular country,

(b) the length and purpose of any absence from the State,

(c) the nature and pattern of the person's employment,

(d) the person's main centre of interest, and

(e) the future intentions of the person concerned as they appear from all the circumstances.

Appeals Officer's decision:

On 10 January 2019, the Appeals Officer allowed the appeal, finding that the Applicant was indeed habitually resident from June 2017. Having regard to the facts and the statutory criteria, the Appeals Officer found there was little to differentiate the Department's finding that the Applicant's husband was habitually resident in April 2018 from the situation which pertained with respect to her in June 2017.

The Appeals Officer observed that the Departmental decision that the Applicant was not habitually resident from June 2017 seemed to rest on the outcome of the earlier review rather than on the Applicant's actual circumstances. She noted that when a payment is withdrawn, the onus rests on the Department to set out the reason the habitual residence condition was not met. She found that this had not been done in the Applicant's case. Accordingly, she was satisfied that the Applicant's centre of interest was in the State in June 2017 and that the habitual residence condition was satisfied.

In February 2019, the Applicant's husband's appeal against the finding that his employment between June 2017 and March 2018 had not been genuine was allowed by the Chief Appeals Officer under section 317 of the Act of 2005. This decision is the subject of Casebase Report No. G0106.

Observations:

This case illustrates the superficial approach sometimes taken in decisions relating to the habitual residence condition. Here, there was a failure to engage in any meaningful way with the statutory criteria

or the Applicant's factual circumstances. The Appeals Officer's decision affirms that when a payment is withdrawn, the onus is on the Department to demonstrate that the person affected is no longer entitled to the social welfare entitlement.

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