

Casebase Number: G0083

Title of Payment: Family Income Supplement (FIS)



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Date of Final Decision: 28 September 2016

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Organisation who represented the Claimant: Cork MABS (MABS)

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Case Summary:

This case relates to an application by the Appellant for Family Income Supplement. The appellant had been employed and was awarded FIS in August 2012. This payment was renewed for 52 week periods in accordance with governing legislation and on 6 August 2015 a renewal for a further 52 weeks was approved. On 16 October 2015 the appellant lost his job. He applied for Jobseekers Benefit which he received. He then secured a new job on 9 November 2015 and made a new application for FIS in respect of his new employment.

The Appellant's application was refused. The Deciding Officer (**DO**) considered that the appellants' previous FIS claim was still in existence: *"FIS is a 52 week payment so once it is approved the rate remains the same for the 52 weeks...Your current FIS claim is due to expire on 24/08/2016."*

The Appellant sought help from MABS who requested that the Deciding Officer review and revise her decision on the grounds that the DO had effectively linked two separate FIS claims. The DO wrote to MABS on 6 January 2016 reaffirming her decision. On 12 January 2016, the Appellant appealed the DO's decision to the Social Welfare Appeals Office (**SWAO**) on the grounds that as his entitlement to FIS ceased when his employment ended, his new application should have been assessed as an entirely new claim.

By way of summary decision dated 22 March 2016 the Appeals Officer denied the appeal on the basis that the appellant's claim for renewal of his FIS payment in August 2015, in respect of his former job, was connected to his application for FIS in relation to his employment in November therefore once awarded, the FIS rate payable remains the same for the 52 week period so the appellant would have to wait until August 2016 to secure an increase on his payment.

On 1 September 2016 Cork MABS requested a review of the Appeals Officer's decision in accordance with section 318 of the Social Welfare (Consolidation) Act 2005 as amended on the basis that the Appeals Officer erred in law and in fact in failing to consider the appellant's new application for FIS in November 2015.

Key Conclusions

Appeal allowed

“My interpretation of this provision is that when [the appellant] ceased employment...in October 2015 he also ceased to be a person engaged in remunerative full-time employment as an employee, for the purposes of section 227 of the Social Welfare Consolidation Act, 2005 and consequently his entitlement to FIS ceased...”

...I find that the Appeals Officer failed to consider [the appellant’s] entitlement to FIS based on a new application submitted by him in November 2015 which was decided on by a Deciding Officer of the Department (notifications of 7th December and 6th January 2016 refer) and has erred in law and in fact...”

*Chief Appeals Officer
28 September 2016*

Summary of Benefit(s) Received:

Family Income Supplement (FIS) is a weekly payment for working families with dependent children, including one-parent families. To be eligible for FIS a person must be employed at least 38 hours every fortnight, and must have at least one qualified child under the age of 22 in full time education. That child must be regarded as normally residing with the applicant.

The main rules governing the payment of FIS are set out in Part 6 of the Social Welfare Consolidation Act 2005 (as amended), and the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (as amended), S.I. 142 of 2007.

s. 227 of the Social Welfare Consolidation Act 2005 (as amended) defines a family for FIS purposes as follows:

“Family” means –

- (a) a person who is engaged in remunerative full-time employment as an employee,
- (b) where that person is living with or wholly or mainly maintaining—
 - (i) his or her spouse,
 - (ii) his or her civil partner, or
 - (iii) his or her cohabitant, that spouse, civil partner or cohabitant, and
- (c) a child or children;

Key Arguments:

- The Respondent asserted that the Appellant’s two periods of employment, separated by a period of unemployment, were linked for the purposes of determining the Appellant’s entitlement to FIS.
- The Respondent argued that the decision to award FIS to the client in August 2015 should continue to have effect in respect of the Appellant’s new employment. The Respondent based this reasoning on Article 196 (4)(c) of the Social Welfare (Consolidated, Claims, Payments and Control) Regulation 2007, as amended which states that an application received within 4 weeks of the end of a previous claim is payable from the end of that previous claim.

- The Respondent asserted that the conditions attached to the previous FIS claim should also attach to the claim for FIS in November 2015. This means that the rate of FIS would be linked to the remuneration for the Appellant's previous employment.
- The Appellant contended that there is no statutory basis to link a FIS claim with a previous FIS claim where there is a period of registered unemployment between the two claims.
- The Appellant argued that the Appellant ceased to be entitled to FIS once he became unemployed and claimed Jobseekers Benefit, therefore the rate at which he had been receiving FIS in respect of his former employment had no bearing on the rate of FIS payable in respect of his new employment. This is because he was not seeking an increase in the rate of FIS rather he made an entirely new application for FIS in respect of his new employment. In other words, his previous FIS claim did not continue so the conditions attached to that discontinued claim were of no relevance.
- The Appellant asserted that the Respondent incorrectly relied on Article 196 of the Regulations above as linking the two payments as the purpose of this provision is to allow continuity of a FIS claim where there may be a time gap in the renewal process. This provision, it was contended, exists to ensure administrative flexibility and clarity. It is not intended to link entirely separate claims and it was submitted that its effect would be absurd and illogical in that it would result in the Appellant being entitled to FIS from the date on which he became unemployed and claimed Jobseekers Benefit.

Decision of Appeals Officer:

Appeal DISALLOWED

Appeals Officer's reasoning and conclusions:

The Appeals Officer's decision was made on a summary basis, that is, without an oral hearing and was rejected for the following reason:

"the appellant's FIS claim, made on 27.8.2015, based on his earnings at the time, from his P60 in respect of the 2014 years and in accordance with FIS legislation. Once awarded, FIS amount remains the same for the 52 week period, rate of €244.00 per week from 27.8.2015 to 24.8.2016. As appellant is better off financially on casual jobseeker's benefit at the rate of €277.10, there is no decision to appeal."

Date of final Decision: 28 September 2016

Decision of Chief Appeals Officer:

Appeal ALLOWED

Chief Appeals Officer's reasoning and conclusions:

The Chief Appeals Officer revised the decision of the Appeals Officer and allowed the appeal. She highlighted specifically section 227 of the Social Welfare (Consolidation) Act 2005, as amended and interpreted this provision as meaning that when the Appellant ceased to be a

person engaged in remunerative full-time employment as an employee, he then ceased to be eligible for FIS therefore his entitlement ceased. The Chief Appeals Officer rejected the reliance of the Appeals Officer on the relevant provision in relation to the rate of the payment:

“any other conclusion, such as relying on the provision that once awarded the rate of FIS remains the same for 52 weeks, would mean that a person could continue to be entitled to FIS for the remainder of 52 week period even in circumstances where employment ceased.

For this reason I find that the Appeals Officer failed to consider [the Appellant’s] entitlement to FIS based on a new application submitted by him in November 2015 which was decided on by a Deciding Officer of the Department... and has erred in law and in fact...”

Observations:

This case involved the incorrect interpretation and application of the relevant statutory provision. What is notable in this case is the scope for error when dealing with complex statutory interpretation. The Chief Appeals Officer in revising the decision of the Appeals Officer in favour of the Appellant found that the statutory provision applied by the Deciding Officer and the Appeals Officer was incorrect.

It is submitted that neither the Deciding Officer who undertook the review of the initial Deciding Officer’s decision nor the Appeals Officer appear to have scrutinised or questioned the legal basis for the original decision. As a consequence, the Appellant was required to pursue a review under Section 318 of the 2005 Act to have the matter resolved and receive the payment which was he was entitled to receive.

This case highlights the need for competent advice when a claimant receives a decision that is dependant on the correct application and interpretation of complex and technical statutory provisions. What is of most concern in this case, is that despite clear written arguments being made to show that the Department’s interpretation of the statute was incorrect, the Deciding Officer and the Appeals Officer rejected the Appellant’s claim by simply repeating the assertions of the initial decision maker and providing no reasoned rebuttal of the case put forward by the Appellant.

Finally, this case serves to emphasize the importance of the role of the Chief Appeals Officer under section 318 of the 2005 Act in cases where an Appeals Officer has made a mistake in the law or the facts.

For further information:

http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_to_families_and_children/family_income_supplement.html

<http://www.welfare.ie/en/Pages/Family-Income-Supplement.aspx>

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