

**Casebase Number: G0106**

**Title of Payment: Working Family Payment**



Community Law and Mediation Northside

Northside Civic Centre

Bunratty Road

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Dublin 17

Date of Final Decision: 8 February 2019

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**Keywords:** Working Family Payment; Family Income Supplement; Evidence

**Organisation who represented the Claimant:** Doras Luimní and Community Law & Mediation (CLM)

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**Summary:**

The Applicant, a British citizen, moved to Ireland from the UK in 2015 with his wife, a third country national, and their eight children.

He applied for Family Income Supplement in May 2017. In June 2017, his application was refused on the basis that his employment was not genuine. He appealed this decision, but it was returned to the Department for review. A social welfare investigation concluded that his employment was fraudulent. On 1 January 2018, Family Income Supplement was reclassified as Working Family Payment.

In April 2018, the Applicant was made redundant. The Department's negative decision was affirmed on review and then, following an oral hearing, affirmed on appeal. The Appeals Officer found that the Applicant had not produced sufficient documentary evidence of his full-time remunerative employment.

In July 2018, the Applicant sought a review of the decision of the Appeals Officer under section 318 of the Social Welfare Consolidation Act 2005 by the Chief Appeals Officer (CAO). On the Applicant's behalf, CLM submitted that the manner in which the Applicant's claim for WFP had been investigated by the Department was unfair, arguing that the inspector had placed undue weight on the visits that he had made to the Applicant's place of work where he had not directly observed the Applicant working. CLM noted that, on one of these visits, the Applicant was present. On occasions when the inspector had concluded that the Applicant was not present, he had only walked past the Applicant's place of employment. CLM further submitted that at the meeting held between the inspector and the Applicant, the inspector had never raised his concerns with the Applicant. CLM also submitted that the inspector's conclusion was inconsistent with documentary evidence provided by the Applicant he was in full-time remunerative employment, and that the Applicant could not be held responsible for a failure to produce evidence of his employment after he had ceased to be employed by the business in question in April 2018.

The CAO found that the scope of the appeal under section 318 was confined to the decision of the Appeals Officer and could not look into the investigation concluded by the social welfare inspector. She therefore upheld the decision of the Appeals Officer on the basis that there had been no error in law.

In January 2019, the Applicant issued judicial review proceedings seeking to quash the decisions of the Appeals Officer and the CAO. These proceedings were adjourned to facilitate consideration of an appeal to the CAO under section 317.

**Key Conclusions:**

Appeal refused and judicial review proceedings initiated, appealed again and allowed.

**Summary of Benefit Received:**

Working Family Payment (WFP) (formerly known as Family Income Supplement (FIS)) is a weekly tax-free payment available to employees with children. It gives extra financial support to people on low pay. A person must be an employee to qualify for WFP and cannot qualify if he or she is self-employed.

The legislative basis for WFP is provided by sections 227, 228, 232(2)(c) of the 2005 Act, and Regulation 175 of the Social Welfare (Consolidated Claims, Payment and Control) Regulations 2007 (SI 142 of 2007). In order to avail of WFP, a person must be “engaged in remunerative full-time employment as an employee”, “which is expected to continue for a period of a minimum of 3 months, and the number of hours worked per fortnight is not less than 38”.

Section 317 of the Act of 2005 provides:

*317. (1) An appeals officer may at any time revise any decision of an appeals officer—*

*(a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given, or*

*(b) where—*

*(i) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and*

*(ii) it appears to the appeals officer that there has been any relevant change of circumstances which has come to notice since that decision was given.*

*(2) In subsection (1)(b)(ii), the reference to any relevant change of circumstances means any relevant change of circumstances that occurred before, or occurs on or after, the coming into operation of the Social Welfare and Pensions (No. 2) Act 2013.*

Section 318 of the Act of 2005 provides:

*318.—The Chief Appeals Officer may, at any time, revise any decision of an appeals officer, where it appears to the Chief Appeals Officer that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts.*

### **Decision of the Chief Appeals Officer:**

Following the institution of judicial review proceedings, the appeal was considered by the CAO again, this time under section 317. The CAO allowed the appeal on the basis that the Appeals Officer should not have expected the Applicant to provide evidence of his employment after he had left that employment, and noted that the P45 issued to the Applicant upon leaving his employment supported his claim to have been in remunerative full time employment at the material time.

### **Observations**

This case illustrates the important differences in the scope of appeals to the CAO under sections 317 and 318. It may be necessary in certain cases to invoke both sections so that both errors of law and errors of fact can be examined and corrected.

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