

Casebase Number: G0034

Title of Payment: Jobseekers Allowance



Northside Community Law and Mediation Centre
Northside Civic Centre
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Coolock
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Date of Final Decision: 25/09/2012

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Keywords: Means—failure to disclose—whether Appellant genuinely seeking employment—appeal disallowed.

Organisation who assisted claimant: Northside Community Law and Mediation Centre (NCL&MC)

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Case Summary:

The Appellant was refused Jobseekers Allowance (JA) on the grounds that he had not shown how he maintained his household and met his financial commitments prior to making his claim for Jobseekers Allowance. In addition, the Deciding Officer (DO) was of the opinion that the Appellant had not made consistent efforts to obtain suitable employment. A revised decision was requested under S.317 of the Social Welfare Consolidation Act 2005. The appeal was disallowed on the basis that Appellant had not disclosed his means at the time of his application and the Appeals Officer (AO) was satisfied that the DO was correct in his findings that the Appellant was not genuinely seeking employment.

Summary of Benefit(s) received:

Jobseekers Allowance (JA) is a means-tested payment available to people who are unemployed and who are available for, capable of and genuinely seeking employment. This payment is paid by the Department of Social Protection. To qualify for JA, the applicant must satisfy a means test. The rules governing the means test are contained in Part 2 of the 3rd Schedule of the Social Welfare Consolidation Act 2005 (as amended). The amount of JA received depends on the income level of the applicant. The Department of Social Protection examines all sources of income including the income of a spouse, civil partner or cohabitant. Means assessed include cash income, including benefits received and property owned. A Social Welfare Inspector may interview an applicant about their income and may ask for supporting documents, such as bank statements or accounts. This may involve a visit to the applicant's home. The decision on means is made by a separate Deciding Officer. An applicant will be informed how exactly means were assessed. This assessment may be appealed to the Social Welfare Appeals Office. As noted above an applicant must be able to show that they are making genuine efforts to secure employment. The applicant must provide examples of such steps which may include;

- Making oral or written applications for work
- Looking for information on the availability of employment from employers, advertisements and employment agencies
- Taking up reasonable training opportunities
- Acting on the advice given by a Job Facilitator, a FÁS adviser or other placement agency such as the Local Employment Service (LES)
- Taking positive, well advised steps towards establishing yourself in self-employment such as researching possible areas of self-employment

- Preparing business plans for a self-employment project and Attending relevant "start your own business" courses or seeking information, advice or guidance in relation to any of these steps

Background:

The Appellant made an application for Jobseekers Allowance (JA) on the 8th April 2010. The Appellant was unable to provide evidence of any financial means other than his spouse's disability entitlement. The Appellant is unemployed and the household is dependant on his wife's disability entitlement. It was asserted by the Appellant that his daughter had contributed €200 to the household expenses during the relevant period. The case was referred to a Social Welfare Inspector (SWI) for investigation. In a report dated 31st January 2011, the SWI assessed the household's annual income at €16,161 and estimated household annual expenses for the year 2009 at €20,253. The SWI noted that he did not find it credible that the Appellant could have sustained his outgoings with his declared financial resources in 2009. The Appellant's application for JA was refused on the grounds that he had not shown how he maintained his household and met his financial commitments with his limited resources. Furthermore it was decided that he had not made consistent efforts to obtain suitable employment. This decision was appealed and refused on the 9th June 2011. This decision was again appealed on the 11th July 2011. The Appellant sought the advice of Northside Community Law and Mediation Centre (NCL&MC) and was represented thereafter. NCL&MC submitted a request, on behalf of the appellant, for a revised decision under Section 317 of the Social Welfare Consolidation Act 2005 which provides that: *An appeals officer may, at any time revise any decision of an appeals officer, where it appears to the appeals officer that the decision was erroneous in the light of new evidence or of new facts brought to his or her notice since the date on which it was given, or where it appears to the appeals officer that there has been any relevant change of circumstances since the decision was given.*

NCL&MC, in a submission to the SWAO dated the 15th June 2012 and in an additional submission dated the 16th August 2012, submitted that the DO had erred in his decision to refuse JA and provided new evidence to support the Appellant's case. It was submitted that the Appellant's outgoings should be assessed at €16,499.39, and that there were a number of errors in the SWI's report in regards to the calculation of the Appellant's means.

- The report estimated an annual UPC/NTL bill of €1,133.88. NCL&MC submitted evidence demonstrating that the annual cost was actually €699.39.
- NCL&MC submitted that it was incorrect to include the annual cost of both Eircom and UPC/NTL in the assessment of the Appellants means. The Appellant switched to a full UPC/NTL package in March 2009 and did not pay for both UPC/NTL and Eircom services concurrently.
- NCL&MC criticised the statements made by the SWI regarding the Appellant's UPC/NTL bill, namely that the package was "high end." It was submitted that it was in fact a significantly cheaper option.
- NCL&MC submitted that the SWI erred in including annual estimation for ESB and Bord Gas services. It was submitted that the Appellant switched services in 2009 and was not paying both concurrently.

As regards income, it was submitted that the spouse's income from Illness Benefit and the Appellant's daughter's contribution of €200 per week met the household's yearly outgoings for 2009. It was noted that the SWI report stated;

It is clear from the above information that client's declared household outgoings in 2009 were nearly twice his spouse's income, which would seem to imply that, for the above figures to "balance", client's daughter would have been paying out nearly 2/3 of her 2009 income in order to help meet the cost of domestic outgoings. It was submitted that, having regard to the correct calculation of outgoings, the household outgoings did not amount to double his spouse's income. NCL&MC noted the failure on the part of the SWI to interview the Appellant's daughter to corroborate the Appellant's assertions. It was submitted that it is usual for "low income" families to pool income in order to meet outgoings and therefore not unusual for the daughter to contribute to the household. As regards the issue of genuinely seeking employment, it was submitted that the SWI erred in his assessment that the Appellant was not genuinely seeking work and that the Appellant had made consistent attempts to find work matching his particular skill set. It was submitted that the Appellant had sought employment with a number of different employers in various different areas. The Appellant was limited in his attempts to seek employment due to his lack of computer skills. Many employment opportunities required online applications. It was noted that although the Appellant had attempted to enrol on a FAS computer course, he was unable to do so as he was not in receipt of JA. It was also submitted that the Appellant had been offered a position as a maintenance worker but this was conditional on him being eligible for the Back to Work Scheme which is available only for those who are in receipt of JA. In a letter dated the 3rd July 2012, the AO informed the Appellant that his appeal was to be re-opened by way of oral hearing.

Date of Appeal taken: 9th Jun 2011

Date of Appeal heard: 4th September 2012

At Hearing: The grounds for refusal and the subsequent appeals were outlined. The SWI outlined again the appellant's financial outgoings and noted that they had been reduced from €20,253.80 to €18,473.88 as the mortgage repayments had been reduced. NCL&MC again emphasised that it was normal for a daughter to contribute financially to the family. As regards the issue of the refuted "high end" NTL/UPC package, it was pointed out that the Appellant had changed their package to a cheaper option in March 2009. Evidence to this effect was provided. At hearing a phone bill was produced by the Appeals Officer, paid in full, covering the disputed rental period. This bill showed the Appellant appeared to have been paying two service providers concurrently, contrary to earlier statements. It was noted that the Appellant was in receipt of JA in 2006 and had signed on for it again in 2008. It was submitted that the appellant received €200.00 per week from his daughter but when asked, the appellant was unable to clarify how she was paid weekly, by cheque or direct into her bank account. The Appellant highlighted his attempts to participate in FAS courses but was refused as he was not on JA. He looked for work via personal phone calls. However it was noted that the Appellant did not look for anything that was advertised and that he had produced no documentary evidence to show that he had looked for employment at the time or since applying for JA. The Appellant submitted that he was due to start a Computer Course on the 27th September 2012.

Decision: The Appeal was disallowed

Appeals Officer's reasoning and Conclusions: In a decision dated the 25th September 2012, the appeal was disallowed as the AO was satisfied that the Appellant *"has not provided any further new evidence to the hearing that would warrant a change in the appeal decision issued to him on the 9th June 2011."* The AO was satisfied that the decision of the DO was correct and in line with social welfare legislation. The AO considered that the Appellant had not fully disclosed his means at the time of his application and that he is not genuinely seeking employment, as he has not shown that he had made consistent efforts to obtain employment. The AO noted that there was an issue of credibility particularly surrounding the circumstances of the UPC/NTL and Eircom bills. He noted that although the Appellant submitted that his daughter contributed to the household income in 2009, he provided no documentary evidence to substantiate this claim and was unable to verify how his daughter was paid. It was however accepted that his daughter was willing to sign an affidavit to confirm the Appellant's claim.

Our observations:

This case highlights the burden of proof placed on the claimant when seeking a means tested payment. There is no requirement on the part of the Department of Social Protection to accept the bona fides of a claimant simply because there is no evidence to the contrary. Rather, the claimant must prove to the satisfaction of the DO that they have "nil" means. In the absence of sufficient evidence the Department of Social Protection may choose to apply a "default" position whereby they assert that the claimant has either failed to disclose means or failed to supply sufficient documentary evidence. This case also highlights the difficulty of proving retrospectively that an applicant was genuinely seeking work. This difficulty was exacerbated by the fact that the Appellant lacked computer skills and for the most part his search consisted of oral enquires.

A central issue in this case was the issue of credibility. The Appellant lacked documentary evidence to demonstrate his attempts at seeking employment and also lacked documentary evidence to substantiate the claim that his daughter had been contributing to the household income. For this reason the credibility of the Appellant in giving oral evidence was crucial. The inconsistencies and conflicting accounts in relation to the Appellant's annual outgoings clearly damaged the Appellant's credibility.

For more information on Jobseekers Allowance, useful links are:

- **Citizens Information:**
http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/uneemployed_people/jobseekers_allowance.html
- **Department of Social Protection:**
<http://www.welfare.ie/en/schemes/jobseekersupports/jobseekersallowance/Pages/ja.aspx>
- **Social Welfare Consolidation Act 2005:**
<http://www.irishstatutebook.ie/2005/en/act/pub/0026/index.html>

- **Social Welfare (Consolidated Claims, Payments, and Control) Regulation 2007, S.I. 142 of 2007:** <http://www.irishstatutebook.ie/2007/en/si/0142.html>

For ***more information***, contact us at:

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