

Casebase Number: G0039

Title of Payment: Jobseekers Allowance



Northside Community Law and Mediation Centre
Northside Civic Centre
Bunratty Road
Coolock
Dublin 17

Date of Final Decision: 29th June 2012

Title of Payment: Jobseekers Allowance

Date of Final Decision: 29th June, 2012

Keywords: Means—whether exceed statutory limit—property valuation—section 317—appeal allowed.

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

Casebase no G0039:

Case Summary:

This case deals with a refusal of Jobseekers Allowance on the basis that the Appellant's means were in excess of the weekly statutory limit. In this case the means were derived from two properties. This case is also linked with case report G0039(1).

The decision was appealed on the grounds that valuation of the properties was too high and it followed that the means figure was incorrect. Initially the appeal was refused; however, upon receipt of documentation proving the overvaluation, the Appellant's appeal was allowed under Section 317 of the Social Welfare Consolidation Act 2005. Please see report G0039(1) for the outcome of the case on appeal under Section 317.

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. The rules governing the means assessment are contained in Part 2 of the 3rd Schedule of the Social Welfare Consolidation Act 2005 (as amended) and the relevant regulatory provisions as provided for in S.I. 142 of 2007 (as amended). In the case of a person who is self employed the assessment is based on the income the applicant may reasonably expect to receive in the coming year. In the absence of sufficient evidence to substantiate the level of income in the coming year, the assessment will be based on the income actually received in the year prior to the date of the claim. A property owned by an applicant (other than the home which they are residing in) is generally assessed on a capital value basis. The capital value of the property is then subject to rules that determine the amount of means that should be apportioned to an applicant on a weekly basis. The capital valuation is net of any outstanding mortgage on the property.

Rule 1 (1) of Part 2, 3rd Schedule of the Social Welfare Consolidation Act 2005 (as amended) provides:

1. In the calculation of the means of a person for the purposes of Chapters 2, 3, 10 and 11 of Part 3, account shall be taken of the following—

(1) other than in the circumstances and subject to the conditions and for the periods that may be prescribed, the weekly value of property belonging to the person or to his or her spouse (not being property personally used or enjoyed by the person or his or her spouse or a farm of land leased by either the person or his or her spouse) which is invested or otherwise

put to profitable use or is capable of being, but is not, invested or put to profitable use and the weekly value, calculated—

Background:

The Appellant applied for JA in 2010. The Appellant was registered as a sole trader in construction and plastering but asserted that he had been unable to get work since October 2009 due to the downturn in the economy. The Appellant resided with his parents, both of whom were unemployed. The Appellant owned two properties, one in the UK that was mortgaged, and one in Ireland. The Social Welfare Inspector (SWI) assessed the Appellant's means at €310 per week, having attributed a capital value to both properties. This figure exceeded the statutory rate of €196, applicable at the time. The SWI did not assess means from self-employment as the means from capital, if correct; this disqualified the appellant from JA. The Deciding Officer (DO) accepted the findings of the SWI. Accordingly, the Appellant was deemed ineligible for JA on the basis of means from capital. The Appellant sought the advices of Northside Community Law and Mediation Centre (NCL&MC) and was represented thereafter. The Appellant appealed this decision on the grounds that the capital valuation of the properties was too high.

Date of Appeal hearing: 28th September 2011

Date of AO Decision: 14th November 2011

Outcome of Appeal: Disallowed

Date of revised decision under s. 317: 29th June 2012

Outcome of Appeal: Allowed

Oral Hearing:

The Appellant submitted that the assessment of his means was incorrect. The Appellant disputed the valuation of his Irish property (a site), asserting that the valuation of €79,000 was too high in view of the recession and the ensuing drop in demand for property for development purposes. With regard to the UK property, the Appellant asserted that he had tried to sell the property in 2007 for £149,950 and that the property was currently let. No evidence was submitted to corroborate the Appellant's assertion that the gross capital value attributed to his UK property was incorrect. The SWI found that the property had a gross capital value of £144,950 which he ascertained through a Google search of another property in the area. The assessable amount was £144,950 less the outstanding mortgage of £117,799. The Appeals Officer (AO) provided the Appellant with the opportunity to submit further written evidence following the hearing. The evidence was to include; up to date information in respect of both properties, and evidence in respect of the Appellant's self employment in 2008 and 2009.

Decision of the AO:

There was a slight delay in submitting the information given that certain documents were sought from Estate Agents in the UK, and as a result his appeal was disallowed. The AO determined that as the Appellant's means from property exceeded the statutory figure, he did not need to consider the question of any remuneration from the Appellant's self employment. In the absence of evidence to the contrary, the AO accepted the findings of the SWI and the decision of the DO; that is, the Appellant derived means of €310 from a capital valuation of two properties. This decision was made by the AO on the 14th of November and issued to the Appellant by way of letter dated 1st December 2011.

Observations:

Please see case summary and observations in case report G0039(1), which is linked with this case, for our observations on the full outcome of this case.

For *more information*, contact us at:

Northside Community Law and Mediation Centre,
Northside Civic Centre, Bunratty Road, Coolock, Dublin 17
T: 01 847 7804 | E: info@nclc.ie | W: www.nclc.ie