

Casebase Number: G0054

Title of Payment: Jobseekers Allowance



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

Date of Final Decision: 06/02/2014

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keywords: Alleged overpayment - recovery of overpayment - not pursued - decision of deciding officer

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

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Case Summary

This case involved the Department of Social Protection seeking to recover an alleged overpayment in respect of Jobseekers Allowance in the amount of €12,952.40. Northside Community Law and Mediation Centre (NCL&MC) submitted that the Department of Social Protection was not entitled to recover an overpayment unless the action was grounded upon a decision by a Deciding Officer, and reasons provided as to how the overpayment arose.

The department decided not to pursue the debt.

Key Arguments:

- The Department submitted that the Appellant owed a debt of €12,952.40 in respect of a Jobseekers Allowance (JA) overpayment.
- They submitted that the debt had to be repaid in full.
- They submitted that the overpayment would be recovered by way of weekly deductions from the Appellants on-going social welfare entitlements.
- The Department submitted that €32.80 would be deducted from the Appellants weekly payment until such time as the debt was repaid in full.

- NCL&MC submitted that the Appellant was not provided with a decision from a Deciding Officer in respect of the overpayment.
- NCL&MC submitted that the Department is not entitled to seek recovery of an overpayment unless it is grounded on the decision of a Deciding Officer and the reasons are provided as to how the overpayment arose.
- NCL&MC sought the original decision from the Deciding Officer of the Department setting out the circumstances of the overpayment alleged to have occurred between 01/06/1987 and 29/05/1990.

- NCL&MC proposed to seek a revision of the Deciding Officer's original decision by way of S 301 of the Social Welfare (Consolidation) Act 2005 on the grounds that during the relevant period the Appellant fulfilled all the conditions for entitlement to receive JA.
- Alternatively NCL&MC sought to appeal the original decision to issue the Appellant with an overpayment to the Social Welfare Appeals Office.
- NCL&MC submitted that the Appellant should not have his payments reduced by €32.80 weekly as to do so would amount to the Department acting without a valid legal basis.

Key Conclusions:

- Assistant Principal Officer at the Central Overpayments and Debt Management Unit advised that, *"Having regard to the particular circumstances of this individual case, it has been decided not to pursue the recovery of this overpayment"*.

Summary of Benefit(s) Received:

Jobseekers Allowance (JA) is a means-tested payment available to people who are unemployed, aged between 18 and 66 years of age and who are available for, capable of and genuinely seeking employment. Applicants must meet the habitual residence condition and applicants must be able to provide evidence of this to the Department of Social Protection.

Recovery of Overpayment:

Overpayments occur if a Deciding Officer issues a revised decision with retrospective effect. That is, new evidence, or a change in circumstances previously unknown to the Department may warrant the issuing of a revised decision which asserts that an applicant was entitled to a lesser, or no benefit, for a particular period. In the event that the revised decision is not challenged on appeal, or is upheld by an Appeals Officer, the debt falls to be recovered by Authorised Officers in the Department of Social Protection.

When seeking to recover a debt, an Authorised Officer is obliged to inform the debtor of, the reason(s) for the overpayment, the amount involved and the way the Department proposes to recover the amount that has been overpaid. A person is provided with the opportunity to comment on the method of recovery, and the Authorised Officer is required to consider these comments including, in particular, matters which relate to the person's capacity to pay. Please refer to Part 9 of the Social Welfare [Consolidation Claims, Payment and Control] Regulations 2007 [as amended].

Recent amendments to the Social Welfare Consolidation Act 2005 [as amended] provide Authorised Officers with the authority to recover up to 15% of a person's personal weekly rate of payment without consent. From 30th September 2013 deductions of up to 15% can be made from a person's earnings (under section 15 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013). An overpayment can also be taken from money that is held in a bank or other financial institution. It is also possible that a person may not be able to withdraw money from a bank account (for example) until the overpayment has been

repaid. A person must be notified in writing and provided with an opportunity to comment before recovery of the debt can commence.

Background:

The Appellant, a pensioner, received a letter from the Social Welfare Services Office on the 4th November 2013 stating that he owed the Department €12.952.40 from a Jobseekers Allowance overpayment dating back to the period 01/06/1987 to 29/05/1990. The Appellant did not respond to this letter. On the 2nd December 2013 the Appellant received a second letter from the Department stating that as he had failed to respond to their previous letter, they would begin deducting €32.80 from his on-going social welfare payments on the 3rd January 2014, in order to recover the debt arising from the overpayment. On the 3rd December 2013 the Appellant contacted NCL&MC.

On the 10th December 2013 NCL&MC requested the Appellant's file under the Freedom of Information Acts from the Debt Management Office of the Department of Social Protection. On the 12th December 2013 NCL&MC wrote to that office setting out the reasons why the Department's actions in relation to the recovery of the alleged overpayment were without a sound legal basis.

NCL&MC submitted that the Appellant had not been provided with a decision from a Deciding Officer of the Department in respect of the overpayment. NCL&MC further submitted that the Department is not entitled to seek to recover an overpayment unless it is grounded upon a decision from a Deciding Officer and reasons are provided as to how the overpayment arose. NCL&MC advised that the Appellant disputed the alleged overpayment which occurred over 23 years previously. NCL&MC submitted that the Appellant should be furnished with the decision from the Deciding Officer setting out the circumstances under which the overpayment arose, and that without such a decision the Department does not have a legal basis to enforce the debt.

NCL&MC requested that the decision should be provided to the Appellant to enable him to challenge the basis of the decision. NCL&MC were instructed by the Appellant to seek a revision by way of Section 301 of the Social Welfare Consolidation Act 2005 in respect of the original decision to issue the Appellant with an overpayment on grounds that during that period the Appellant fulfilled all the conditions of entitlement to receive Jobseekers Allowance. In the alternative NCL&MC were instructed to appeal the original decision to issue the Appellant with an overpayment, to the Social Welfare Appeals Office. Accordingly, NCL&MC submitted that the Department should not seek to reduce the Appellant's weekly payment by €32.80 and further submitted that if the Department did reduce the Appellant's payment it would be acting without a valid legal basis.

On the 13th December 2013 the Department of Social Protection issued a letter to NCL&MC advising that the comments made by NCL&MC in their letter dated 12th of December, had

been forwarded for the attention of the Jobseekers Unit in Coolock, they further advised that the weekly deductions due to start on the 3rd of January 2014 would be suspended pending a response from the Coolock Office. On 17th January 2014, the Assistant Principal Officer at the Central Overpayments and Debt Management Unit sent a letter to NCL&MC advising that they were considering the contents of the letter sent by NCL&MC on 12th December, and that they would be in a position to respond within 2 weeks. On 6th February 2014 a letter was issued to NCL&MC from the Assistant Principal Officer at Central Overpayments and Debt Management Unit advising that "Having regard to the particular circumstances of this individual case it has been decided not to pursue the recovery of this overpayment".

Date of written submission from NCL&MC:
Decision of the Assistant Principal Officer:

12th December 2013
6th February 2014

Our Observations:

An overpayment is created where a Deciding Officer or a Designated Officer makes a revised decision under Section 302 or Section 325 of the Social Welfare Consolidation Act, 2005 (as amended) and the effect of the decision is to reduce a person's entitlement retrospectively. Such a decision may be appealed to the Social Welfare Appeals Office.

In the event that the debt falls due to the Department, an Authorised Officer should commence the debt recovery process. Specifically, they must propose, in writing, a method of recovery and provide the debtor with the opportunity to bring to the Department's notice any factors relevant to the proposal.

In circumstances where the Department fail to act to recover a debt within a reasonable time frame this raises questions with regard to the legal authority of any subsequent action. That is, it could be argued that the Department have in effect ceded their authority due to their failure to act. Furthermore, by failing to act the debtor is placed at a disadvantage as time and circumstances may render the person less able to service the alleged debt or, it may also be the case that the person disputes the existence of the debt. In either event the Department should demonstrate the legitimacy of the stated debt by providing the decision of the Deciding Officer.

A claimant in these circumstances should seek a copy of their file under the Freedom of Information Acts.

This affords the person an opportunity to rebut the findings made against them. In this case, when the Appellant sought the decision of the Deciding Officer in order to establish the bones fides of the Department's position, the Department decided not to pursue the alleged overpayment.

For more information on Social Welfare Overpayments and on Jobseekers Allowance, useful links are:

- <http://www.welfare.ie/en/Pages/Overpayment-Recovery---Guidelines-on-the-Recovery-of-Debt-by.aspx>
- http://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/claiming_a_social_welfare_payment/recovery_of_social_welfare_overpayments.html
- <http://www.welfare.ie/en/Pages/Jobseekers-Allowance.aspx>

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