

Casebase Number: G0074

Title of Payment: Jobseekers Allowance



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Date of Final Decision: 31 July 2015

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Appeal Allowed. Decision of the Appeals Officer revised in the Appellant's favour.

Keywords: Jobseeker's Allowance – Maintenance - Means Assessment- Joint Ownership – Non-Cash Benefits – Section 318

Organisation who represented the Appellant: Kilkenny MABS

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Case summary:

The issue in this case concerns the statutory rules governing the assessment of maintenance and non-cash benefits for the purpose of deciding the Appellant's rate of Jobseekers Allowance (JA). The Appellant is separated with 3 dependant children.

By way of decision, dated 01/04/2014, a Deciding Officer determined that the Appellant had weekly means of €167, and was therefore entitled to Jobseekers Allowance at the rate of €110.40 per week for herself and her three dependant children. It was decided that the Appellant had weekly means of €12.34 from employment and means of €154.31 from maintenance.

The assessment of means from maintenance was based on the mediation agreement between the Appellant and her former spouse. Under the terms of the agreement, the Appellant's former spouse paid the following:

- €1,300 monthly mortgage payments [including insurances],
- €250 per month maintenance, and
- €200 per month towards the children's extracurricular activities.

The Deciding Officer found the Appellant's total assessable income from maintenance to be €403.85 per week. This equates to the sum of all the contributions (mortgage payments, contribution towards the children's activities and cash maintenance) multiplied by 12 and then divided by 52. The Deciding Officer then subtracted the statutory disregard of €95.23, and divided the remaining amount by two to arrive at a means figure of €154.31.

The Appellant appealed this decision on the grounds that the only income she received from her former spouse was the maintenance payment in the amount of s €250 per month.

By way of summary decision (without an oral hearing), the Appeal was disallowed on 10/11/2014. The Appellant was unrepresented at Appeal.

The Appellant then sought the assistance of Kilkenny MABS. In April 2015, Kilkenny MABS, on behalf the Appellant, made a submission to the Chief Appeals Officer in accordance with s. 318 of the Social Welfare Consolidation Act 2005, asserting that the Appeals Officer in this case had erred in fact and law.

The Chief Appeals Officer reviewed the Appeals Officer's decision, and on 31/07/2015 she revised the decision in favour of the Appellant. The Chief Appeals Officer found that the Appellant's means from maintenance should be assessed as €55 per week, not €154.

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. To qualify for JA, an applicant must satisfy a means test. The rules governing the assessment of means are set out in Part 2 of the 3rd Schedule 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. The amount of JA a person receives is reduced by the amount of means assessed in accordance with the relevant statutory provisions.

The relevant statute provides for the assessment of means from maintenance and specified "non-cash" benefits.

In the case of income from maintenance, the statute provides for a maximum amount to be disregarded in the case of a claimant who has housing costs. The excess of that amount is assessed at half. The maximum statutory disregard is €4,952 per annum, €95.23 per week.

"Non cash" benefits, as distinct from maintenance, refers to the "net cash value" to the claimant of having his or housing costs paid for by a liable relative; i.e. a former spouse. A maximum of €95.23 per week (€4,952 per annum) of the claimant's housing costs, paid by a liable relative, may be disregarded.

The rules with respect to the assessment of means from maintenance and non cash benefits are the same in the case of claims for Jobseekers Allowance, Disability Allowance, Carers Allowance, Farm Assist, Disability Allowance, One Parent Family Payment, State Pension (Non-Contributory), Blind Pension, Widow's, Widower's and Surviving Civil Partner's (Non-Contributory) Pension, and Guardian's Payment (Non-Contributory).

Key arguments:

On behalf of the Appellant, MABS asserted the following:

- The Appeals Officer failed to properly take into account that payment of the mortgage costs is of direct benefit to Mr X [the Appellant's former spouse] as he is the joint owner of the property, and he is jointly and severally liable to discharge any

debts on the property. It follows that attributing the full benefit of the mortgage payments to the Appellant is contrary to the facts.

- It was submitted that there are two alternative reasoned methods that could be applied to the assessment of the mortgage payments as “non cash benefits”. Either, the value of the mortgage payments is apportioned between the parties; or, the “benefit” to the Appellant be assessed as nil given that Mr. X as a joint owner may legally be regarded as benefiting wholly from making the payments.
- MABS conceded that apportioning what amounts to a share value to each party is legally imperfect, as it does not properly reflect the joint and several mortgage liability and joint ownership. However, regardless of the method used, the fact of Mr. X’s beneficial interest in the property cannot be ignored, as to do so creates an irrational and inequitable outcome. More particularly, the Appellant’s weekly income is less than the basic Supplementary Welfare Allowance rate, and therefore by definition insufficient to meet her basic needs and those of her children. Furthermore, MABS submitted to attribute a share value to each party is not inconsistent with departmental policy in respect of other questions of joint property ownership, such as joint bank accounts.
- With respect to assessing a nil means value from the mortgage payments, MABS relied on a case decided by an Appeals Officer which also concerned the question of the value of non-cash benefits made by a former spouse. The case is published on the Social Welfare Appeals Office Website: *One Parent Family Payment Case 10*. The full case can be accessed at:
http://www.socialwelfareappeals.ie/pubs/cases/family_opfp10.html
- With respect to the contribution by Mr. X towards the children’s activities, as specified in the mediation agreement, it was asserted that as this contribution was made by way of direct payment to the relevant service provider it could not be regarded as the Appellant’s income. It was further asserted that this contribution does not fall within the scope of the statutory definition of cash income, maintenance or non-cash benefits. Accordingly, a nil means value should be attributed to the contribution made by Mr. X towards the children’s activities.
- MABS asserted that the Appeals Officer erred in law in the methodology he employed to determine a means value from the Appellant’s maintenance and non-cash benefits. It was asserted that in accordance with the relevant statutory provisions, the value of each source of means must be assessed separately in the first instance, this assessment to include the application of any rule to allow for a disregard where relevant. The total means are therefore the sum of the means value attributed to each source, in this case maintenance and non-cash benefits. The Appeals Officer erred by treating the Appellant’s means from maintenance and non-cash benefits as a single source of means. In so doing, the Appeals Officer failed

to properly adhere to rules as provided in Part 2, 3rd Schedule of the Social Welfare Consolidation Act 2005 [as amended] and Articles 142 and 143 of the Social Welfare (Consolidated Claims, Payments and Control) Regulation 2007 (as amended).

Background:

The issue in this case concerns the statutory rules governing the assessment of maintenance and non-cash benefits for the purpose of deciding the Appellant's rate of Jobseekers Allowance (JA). The Appellant is separated with 3 dependant children.

By way of decision, dated 01/04/2014, a Deciding Officer determined that the Appellant had weekly means of €167, and was therefore entitled to Jobseekers Allowance at the rate of €110.40 per week for herself and her three dependant children. It was decided that the Appellant had weekly means of €12.34 from employment and means of €154.31 from maintenance.

The assessment of means from maintenance was based on the mediation agreement between the Appellant and her former spouse. Under the terms of the agreement, the Appellant's former spouse paid the following:

- €1,300 monthly mortgage payments [including insurances],
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- €200 per month towards the children's extracurricular activities.

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The Appellant appealed this decision on the grounds that the only income she received from her former spouse was the maintenance payment in the amount of s €250 per month.

By way of summary decision (without an oral hearing), the Appeal was disallowed on 10/11/2014. The Appellant was unrepresented at Appeal.

The Appellant then sought the assistance of Kilkenny MABS. In April 2015, Kilkenny MABS, on behalf the Appellant, made a submission to the Chief Appeals Officer in accordance with s. 318 of the Social Welfare Consolidation Act 2005, asserting that the Appeals Officer in this case had erred in fact and law.

MABS submitted that the relevant rules distinguish between the rule to be applied to the assessment of means from “non-cash benefits” and the rule that applies to the assessment of means from maintenance. Specifically, Rule 1[2], Part 2, 3rd Schedule to the Act 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

...

(2) all income in cash and any non-cash benefits that may be prescribed which the person or his or her spouse, civil partner or cohabitant may reasonably expect to receive during the succeeding year, whether as contributions to the expenses of the household or otherwise, but—

...

(b) excluding—

.....

(ii) any moneys received by way of maintenance payments (including maintenance payments made to or in respect of a qualified child) in so far as those payments do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one-half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any),

In accordance with Rule 1 [2] above, account shall be taken of “all income in cash and any non-cash benefits that may be prescribed”. When applying this rule, potential means from maintenance are expressly excluded from consideration at subsection [2][b][ii]. The exclusion, as set out in subsection [2][b][ii], directs that means from maintenance be determined with reference to half the amount of maintenance received in excess of the housing costs “actually incurred” by the claimant, subject to a prescribed “maximum amount”. The relevant regulatory provision that applies to maintenance is set out in Article 143 [1] of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 [as amended], which provides:

143. (1) Subject to sub-article (2), the maximum amount prescribed for the purposes of Rule 1(2)(b)(ii) of Part 2, Rule 1(2)(b)(i) of Part 3 and Rule 1(2)(b)(ii) of Part 5 of Schedule 3 to the Principal Act shall be €4,952.

With respect to means from non-cash benefits, as distinct from means from maintenance, reference must be made to Rule 1(2) above, and Article 142 (a) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 [as amended], which provides:

Assessment of means – non-cash benefits.

142. The non-cash benefits prescribed for the purposes of Rules 1(2) of Part 2, 1(2) of Part 3 and 1(2) of Part 5 of Schedule 3 to the Principal Act shall be –

(a) the net cash value to the person of his or her annual housing costs actually incurred and paid by a liable relative insofar as the cash value exceeds €4,952 per annum, and

In summary, in order to assess the Appellant's total means from maintenance and non-cash benefits, two distinct rules must be applied to determine the means value from each source.

The Appellant's means from maintenance

It was submitted that the maintenance payments of €250 per month are monies received by the Appellant and as such fall within the statutory definition of *maintenance payments*, as provided for in the preliminary definitions of the 3rd Schedule of the Act;

“maintenance payments” means any payment received under or pursuant to any maintenance arrangement that may be prescribed;

In assessing means from maintenance, Rule 1 (2)(b)(ii), Part 2, 3rd Schedule of the Act and Article 143 (1) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (as amended), provides that an amount of up to €4,952 yearly (€95.23 per week) may be disregarded where a claimant has “actually incurred” housing costs equal to or greater than this amount. Half of any excess is assessed as means.

- As the Appellant in this case is jointly liable for the mortgage of €1,300 per month on the family home the maximum disregard of €95.23 may be applied. Accordingly, as the Appellant's maintenance payments equate to €58 weekly, she may be regarded as deriving nil means from maintenance as this amount is less than the corresponding weekly amount that may be disregarded.

The means value of the €200 monthly contribution towards the children's activities.

The Appellant's former spouse directly pays the suppliers of the goods/services provided to his children. Accordingly, it was submitted that the €200 contribution made by Mr. X to fund his children's extra curricular activities is not a “payment received” by the Appellant, and therefore cannot be assessed as having a means value under the statutory provisions governing the assessment of means from maintenance. Nor can this contribution be assessed as “income in cash” as it is not receivable by the Appellant or within her control.

- In summary, it was asserted that there is no basis in fact or law to attribute a means value to the Appellant from this contribution. The contribution is neither maintenance nor cash, nor does it fall within the scope of “non cash benefits” as the assessment of “non-cash benefits” is limited to contributions made by a liable relative towards a claimant's housing costs.

- Accordingly, it was submitted that the Appellant derives nil means from the contribution made by Mr. X towards his children's extra curricular activities.

The Appellant's non – cash benefits, the Mortgage payments made by her former spouse.

The non-cash benefits in this case refer to the mortgage payments made by the Appellant's former spouse under the terms of the mediation agreement. These payments were assessed by the Deciding Officer and the Appeals Officer as having a "net cash value" of €1,300 monthly, €300 weekly. This figure equates to the full cost of the mortgage and the associated insurances.

It was submitted that as the family home is jointly owned by the Appellant and her former spouse, and both parties are jointly liable for the costs of the outstanding mortgage, it is evident that Mr. X retains a beneficial interest in the property, and in discharging the debt held against the property he is protecting his property interest. In these circumstances, attributing the net cash value of the full mortgage payments to the Appellant is wholly inconsistent with the facts as the Appellant is not the sole beneficiary.

It was submitted that while apportioning a value to each party is legally imperfect, as it does not properly reflect the joint and several mortgage liability and joint ownership of the property, it does recognise the fact that payment of the mortgage is not of sole benefit to the Appellant. Moreover, such an approach would not be inconsistent with Departmental policy in other areas where the joint ownership of property might cause an inequitable effect. Specially, Departmental guidelines with respect to accounts held in joint names refers:

Assessing joint accounts

Where an account is held jointly with another person, legally the entire asset is owned by each of the parties, and may be assessed in full against each. An exception to this is where the second party is unaware that his or her name has been added to the account.

In practice, however, consideration should be also given to the following factors and the assessment may be limited where it is considered appropriate to do so.

<http://www.welfare.ie/en/Pages/Means-Assessment.aspx#sect1>.

It was submitted that in order for the assessment of the value of the Appellant's "non cash benefits" to be appropriate, the assessment must recognise that two parties benefit from the mortgage payments, and the Appellant does not in fact derive any cash benefit in terms of a contribution to her daily and weekly living costs with respect to food, heat, light clothing etc.

Applying this reasoning, it was submitted that the benefit attributable to the Appellant from the mortgage payments made by her former spouse should be assessed as half of the payments, or €150 weekly.

In applying the relevant rules, reference should be made to Rule 1(2) of Part 2 of the 3rd Schedule of the Social Welfare Consolidation Act 2005 and Article 142 (a) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (as amended), which provides:

(a) the net cash value to the person of his or her annual housing costs actually incurred and paid by a liable relative insofar as the cash value exceeds €4,952 per annum, and

Accordingly, the following means should be attributed to the Appellant from the non-cash benefits derived from her former spouse's payment of the mortgage.

Net cash value weekly	€150	[half the total mortgage payment]
Less maximum statutory disregard	€95.23	
Total means	€54.77	

In the alternative, it was submitted that an assessment of nil means could be applied by adopting the Appeals Officer's approach in another case which is published on the Appeals Office website - *One Parent Family Payment Case 10*.

The Appellant in the particular case was assessed by a Deciding Officer with a means value from payments made by her former spouse in respect of household outgoings; these included mortgage payments, some utility bills, a joint life insurance policy and various loans. In his deliberations the Appeals Officer referred:

While it would appear that the appellant was getting a substantial amount of maintenance from her ex-spouse, the reality is that she is barely making ends meet. An analysis of the direct debit payments made by her ex-spouse indicates that he was not making those payments exclusively for the benefit of the appellant. He still shared ownership of the house and the loans payable are in both their names. ...

The reality is that the appellant is not receiving any maintenance for day to day expenses for food, clothes etc. Instead she has been getting some benefit from payments made by her ex-spouse but at the same time he had a self-interest in continuing to make at least some of these payments. ...Having regard to the circumstances of the case, and in particular to the fact that appellant was not getting any direct financial maintenance from her ex-spouse which could have been put to use as she chose [e.g. to purchase essentials like food, clothes etc.] The Appeals Officer felt that it would be inappropriate to assess as maintenance all the payments her ex-spouse had been making. Essentially, as payments made by her ex-spouse were made indirectly, she had no control over the spending of what was being classed as maintenance.

http://www.socialwelfareappeals.ie/pubs/cases/family_opfp10.html

In making a finding, the Appeals Officer determined that means should be assessed with reference to contributions that were of benefit to the Appellant alone. In the case in question, this referred to specific utilities and half of the life insurance policy.

MABS asserted that the Appeals Officer's reasoning in respect of *Case 10* as referred, was rational and well reasoned, as the alternative, the assessment of the full value of the contributions, presented as contrary to the facts and rendered the law absurd in its effect. In this case, it was asserted that assessing the mortgage payments in full creates such an absurdity as it does not reflect the true facts nor the objective intent of the law which must be to determine the extent to which a person can meet their household expenses without assistance from the State.

In *Case 10*, the Appeals Officer decided not to attribute a means value to the Appellant from the benefit of the mortgage payments made. The rationale being that the Appellant's spouse, as joint owner, may be regarded as benefiting wholly from making the payments. This approach is consistent with the legal position of joint ownership.

MABS contended that if the Appeals Officer's reasoning in *Case 10* were to be applied in this case, the Appellant would have to be assessed as having nil means from the mortgage payments made by Mr. X. More specifically, the Appellant would be regarded as have no "non cash benefits" falling within the scope of Rule 1(2), Part 2, 3rd Schedule to the Act and the relevant regulatory provisions as provided by Article 142 (a) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (as amended).

Rationally, if the reasoning of the Appeals Officer in *Case 10* were applied there must be consistency in the application of the rules to the facts. For this reason, the Appellant's means from maintenance would have to be assessed without the benefit of the disregard for housing costs "actually incurred", as the housing costs would be regarded as wholly incurred and paid for by Mr. X.

In summary, MABS asserted that the Appellant's means from non-cash benefits, the mortgage payment, could be assessed using two alternative methods of assessment:

1. The Appellant should be regarded as deriving half the benefit of the mortgage payments made by her former spouse, her means from non-cash benefits to be assessed as follows:

Net cash value weekly	€150	[half the total mortgage payment]
Less maximum statutory disregard	€95.23	
Total means	€54.77	
2. In the alternative, the Appellant should be assessed as deriving nil means from any mortgage payments made. Using this approach the Appellant's means from maintenance would be €29 per week. This figure equates to the weekly maintenance of €58 divided by 2.

Date of final decision: 31st July 2015

Appeal allowed. Decision of the Appeals Officer revised in the Appellant's favour.

Chief Appeals Officer's reasoning and conclusions:

The Chief Appeals Officer set out the background to the case and a summary of the grounds for review submitted by MABS on the Appellant's behalf. The following are the findings of the Chief Appeals Officer set out full.

“ The legislation governing entitlement to Jobseeker's Allowance is contained in Chapter 2 of Part 3 of the Social Welfare Consolidation Act 2005. Section 140(2) provides that references to means shall be read as references to means as calculated in accordance with the rules contained in Part 2 of Schedule 3.

For ease of reference I am setting out below the relevant provisions of Part 2 of Schedule 3 of the 2005 Act and have inserted the amounts prescribed in the 2007 Regulations¹ where applicable.

1. In the calculation of the means of a person for the purposes of Chapters 2, account shall be taken of the following -

(1)...

(2) all income in cash and any non-cash benefits [the net cash value to the person of his or her annual housing costs actually incurred and paid by a liable relative in so far as the cash value exceeds €4,952 per annum²] that may be prescribed which the person or his or her spouse, civil partner or cohabitant may reasonably expect to receive during the succeeding year, whether as contributions to the expenses of the household or otherwise, but—

...

(b) excluding—

(i) in the case that may be prescribed, any monies received by way of a maintenance grant,

(ii) any moneys received by way of maintenance payments³ (including maintenance payments made to or in respect of a qualified child) in so far as those payments do not exceed the annual housing costs actually incurred by the person subject to the maximum amount [of €4,952⁴], together with one-

¹ The Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, S.I. 142 of 2007.

² Article 142 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, S.I. 142 of 2007.

³ Article 143(2) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, S.I. 142 of 2007 provides that the maintenance arrangements prescribed for the purpose [of this rule] shall be all forms of formal and informal arrangements whether procured by way of Court Order or otherwise.

⁴ Article 143(1) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, S.I. 142 of 2007.

half of any amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any),

Before dealing with the question of methodology used by the Appeals Officer I will first address the issues relating to what constitutes means.

The first issue relates to the contribution of €200 by Mr.X towards the children's activities. [MABS] on behalf of [the Appellant] contends that this is not provided in the form of cash, maintenance or non-cash benefits and therefore should not be assessed with a means value. [MABS] states that the contribution is not within the control of [the Appellant] and that ordinarily Mr. X would pay the 'supplier' directly of whatever goods or services the children avail of.

I am of the view, that having regard to the provisions outlined above, that this contribution does not come within the meaning of income in cash nor is it a non-cash benefit. This amount therefore should be excluded from the assessment of means.

The second issue relates to the treatment of the monthly payment of €1,300 in respect of the mortgage. [MABS] on behalf of [the Appellant] contends that the Appeals Officer had failed to properly take into account that the payment of mortgage costs is of direct benefit to Mr. X as he is joint owner of the property and that the full value should not be attributed to [the Appellant].

I am of the view that given the joint ownership of the property and liability of both parties to discharge debts/bills on the property it is reasonable that half the mortgage (and associated payments) should be disregarded.

The remaining issue to be addressed relates to the aggregation of cash received and cash value of non-cash benefits, including the application of one disregard in relation to housing costs.

Rule 1.(2), Part 3, Third Schedule and Articles 142 & 143, SI 142/07 prescribe the disregards to be applied in relation to *"all income in cash and any non-cash benefits"* as follows:

- (i) Cash income: Exclusion of moneys received by way of maintenance payments where they do not exceed the annual housing costs, subject to the maximum amount that may be prescribed for this purpose, together with one half of the excess. Article 143, SI 142/07 prescribes the maximum amount for this purpose as €4,952; and
- (ii) *"...account shall be taken of the following.."* ...any non-cash benefits that may be prescribed. Article 142, SI 142/07 prescribes this as *"the net cash*

value to the person of his or her annual housing costs actually incurred and paid by a liable relative insofar as the cash value exceeds €4,952 per annum”

Following on the above:

- (i) [The Appellant’s] housing costs could be assessed as ½ mortgage plus ½ premiums for mortgage protection and building & contents insurance. However, I have no figures in relation to the cost of the insurance premiums. In the absence of these costs, I conclude that half the mortgage of €1,300 per month ($€1,300/2 = €650$, or €150 per week, represents [the Appellant’s] housing costs. The cash maintenance of €250 per month, or €57.69 per week, clearly comes in well below the maximum threshold of €95.23 ($€4,952/2$) and therefore should be assessed at nil.
- (ii) The cash value of non-cash benefit, i.e. [the Appellant’s] half of the mortgage payment, is €650 per month, or €150 per week, assessed as follows: ($€150 - €95.23 = €54.77$)

Having reviewed the file and having regard to the specific circumstances in this case and the legislative provisions governing the calculation of means, I revise the decision of the Appeals Officer under section 318 of the Social Welfare Consolidation Act and have allowed the appeal as outlined above.

Accordingly, I decide that [the Appellant’s] weekly means assessment is €54.77, rounded to €55.00.”

Observations:

With respect to the means value attributed to the mortgage payments, the Chief Appeals Officer accepted MABS assertion that attributing the whole value of the payments to the Appellant was not reasonable. The Chief Appeals Officer elected to attribute what amounts to a share value to the Appellant and her former spouse, rejecting MABS alternative reasoning that an assessment of nil means be applied.

The Chief Appeals Officer further accepted that the Appeals Officer erred by applying one housing disregard to the aggregate of the cash maintenance received and the cash value of the mortgage payments [the non cash benefits]. Put simply, in circumstances where a claimant receives maintenance and non-cash benefits [housing costs paid by a liable relative], a disregard of up to €95.23 should be applied to each source of means separately. That is, the statutory disregard of up to €95.23 may be applied twice in circumstances where a claimant has housing costs; and he or she receives cash maintenance and “non cash benefits” in the form of housing costs paid by a liable relative. Any amount in excess of the

statutory disregard is assessed at half in the case of maintenance, and in full in the case of “non-cash benefits”.

What is notable in this case is the scope for error when dealing with complex statutory construction. The Chief Appeals Officer in revising the decision of the Appeals Officer in favour of the Appellant found that the statutory construction applied by the Deciding Officer and the Appeals Officer was incorrect. What is of concern to CLM is the number of claimants who may have been similarly adversely affected by such an interpretation.

In a case of this nature, due to the technical complexity of the statute, a claimant is unlikely to be able to effectively challenge the Department’s position without access to competent independent legal advice. The Appellant in this case only obtained an effective remedy when Kilkenny MABS acted on her behalf.

For *more information*, contact us at:

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