

Casebase Number: G0056

Title of Payment: Mortgage Interest Supplement



Community Law and Mediation Northside
Northside Civic Centre
Bunratty Road
Coolock
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Date of Final Decision: 6th June 2013

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Keywords: Mortgage Interest Supplement-joint ownership- accessible mortgage interest-half the mortgage interest payable- Appeal-Oral Hearing

Organisation who represented the Claimant: Appellant represented herself with assistance from a submission by CLM Northside

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Case Summary:

The Appellant and her husband were in receipt of Mortgage Interest Supplement (MIS) from August 2005 until 31st January 2013. Following the breakdown of the Appellant's marriage a barring order was issued against her former spouse. The Appellant advised Community Welfare Services on the 31st January 2013 that her husband no longer resided with her in the family home. As a result, the MIS claim was reassessed.

When reviewing the MIS claim the Designated Officer based their assessment on half the interest payable, rather than the full interest charged as the Appellant's husband was named on the mortgage agreement and on the deeds of property. Half the interest payable amounted to €56.18 per week.

As is the case in all MIS claims, the claimant and any non-dependants residing in the home are required to make a minimum contribution. In this case the Appellant would have been assessed as having to pay at least €30 per week plus any means assessed, and her daughter would have been required to pay a further €30. The total figure of €60 exceeded the amount of interest the Designated Officer deemed eligible under the MIS scheme, consequently no MIS was payable.

The actual interest payable on the property was confirmed to be €112.36 per week.

The Appellant appealed the decision with a submission prepared by CLM Northside.

Key Arguments:

- Department contended the calculation of MIS was based on half the mortgage interest payable as the Appellant's husband was named on the mortgage agreement and on the deeds of property.
- Department contended that the minimum household contribution was deemed to exceed the accessible mortgage interest of €56.18 per week, and consequently the Appellant was not entitled to MIS.
- Appellant submitted that there is no basis in law to prevent the payment of a supplement on 100% of the loan in the case of a property held in joint ownership.
- Appellant submitted that a decision maker when applying the relevant statutory provisions that govern MIS must not make a determination that is contrary to the legal ownership of the property.
- Appellant submitted that in considering her accommodation needs, the cost of those needs and the nature of the change in her circumstances, there was no reasonable objection to the continued payment of MIS.

Key Conclusions:

[Appeal Allowed]

“The Appellant is entitled to Mortgage Interest Supplement in respect of the full rate of the mortgage paid on the family property”.

Summary of Benefit(s) Received:

Mortgage Interest Supplement [MIS] is a means tested payment payable to eligible persons to assist with the interest portion of the mortgage payments in respect of their sole or main residence. There are a number of conditions attached to the scheme: a person must show that the sole purpose of the loan was for the purchase, repair and/or essential improvement of their home, that they were in a position to meet the loan repayments at the time when the loan was entered into, and that that amount of interest payable is reasonable. A decision maker will also have regard to the amount of arrears outstanding on the loan in order to determine if it is appropriate to award a supplement.

In 2012 the scheme was amended, and all new applicants, in addition to the normal conditions, had to demonstrate that at the time of their application for MIS they had “engaged” with their lender and had entered into and complied with an alternative repayment arrangement for a period of not less than 12 months.

The amount of the supplement is calculated with reference to the interest actually paid by the claimant, that is, net of any reliefs due. A person is required to make a minimum contribution towards that interest payable, in addition to any means that may be assessed. All non dependent household members will also be assessed as making a minimum contribution. The minimum contribution for couples towards Mortgage Interest Supplement increased from €35 to €40 per week (since 1 January 2014). The minimum contribution for single people, including single people with children (currently €30), has not changed.

From the 1st January 2014 the scheme was closed to new applicants. All existing applicants will continue to receive the supplement subject to review. From 1st January 2018 no further MIS payments will be made.

Background:

The Appellant had two dependent children, and a non-dependant child and grandchild living with her. The Appellant’s husband left the family home as a result of a barring order. This change in circumstances led to a review of the Appellant’s MIS claim. Prior to the Appellant’s husband leaving the family home, MIS had been in payment for a period of seven years, since August 2005. On review the Designated Officer, determined that MIS, could only be paid in respect of half the interest payable. In referring to the means assessment, half the interest equated to €56.18 per week. As this amount was less than the Appellant’s minimum contribution, and that of her non-dependent child, no supplement was deemed payable. The full interest charged on the Appellants home amounted to €112 per week. Following the refusal of her MIS claim, the Appellant sought the advices of CLM Northside. CLM Northside prepared a submission for the purposes of appealing the decision to refuse the Appellant MIS and additionally sought an oral hearing of the case.

CLM Northside submitted that there was no basis in law to prevent the payment of a supplement on 100% of the loan in the case of a property held in joint ownership. CLM

Northside argued that to not award a supplement in respect of the full loan was contrary to the legal ownership of property. Specifically the decision to consider a claim in respect of half the loan could be viewed as an act that severs the joint ownership by apportioning a percentage share to each party, which would only be appropriate in the case of a tenancy in common where each party holds equal shares.

CLM Northside further submitted that pursuant to Article 12 (1) of the Social Welfare (Consolidated Supplementary Allowance) Regulations 2007, which the Designated Officer had relied on in making the decision to refuse the Appellant MIS, the supplement must be determined by reference to a claimant's "needs". CLM Northside submitted that by deciding that a supplement could only be awarded in respect of half of the loan, the Designated Officer was in effect denying the fact of the Appellant's needs; her legal liability to maintain the full cost of her home.

The relevant statutory provisions governing the award of MIS provide discretion to Decision Makers when examining the facts before them. CLM Northside submitted that in reviewing the Appellant's claim, foremost in the decision making process should have been the question of what was appropriate and reasonable in view of the Appellant's circumstances, her needs and the needs of her family. CLM Northside submitted that the appropriate course of action would have been to maintain payment of MIS subject to review and to the Appellant seeking legal advices in regard to her separation and the joint ownership of the property.

Finally CLM Northside submitted that the full interest charged at €112 per week was modest, and that by any measure a supplement amounting to approximately €52 per week was not an unreasonable cost.

An oral hearing was granted and held on the 6th June 2013. At the hearing the Appellant represented herself. She stated that her husband's name was still on the mortgage, and that the bank had refused to remove his name from the mortgage, therefore technically he still had a claim on the property. However, the Appellant stated that her husband was willing to remove his name from the property deeds and as such he would not be liable to contribute towards the mortgage. She stated that she had applied for Free Legal Aid for the purpose of settling the terms of the separation, which would also include the issue of removing her husband's claim on the property. Owing to the barring order, the Appellant stated she was not in contact with her husband, and that he was not paying maintenance or contributing in any way towards the mortgage. She stated that he was in receipt of a social welfare payment and Rent Supplement.

The Appellant advised that she was struggling to meet her mortgage repayments, and that as she had the sole responsibility of meeting these repayments, she needed the assistance of MIS. The Appellant advised that the lender had agreed to interest only payments from May 2013. The hearing concluded at this point.

Date of Oral Hearing: 6th June 2013
Date of Final Decision: 6th June 2013, [Appeal Allowed]

Appeal Officer's Reasons and Conclusions:

"Having considered all the evidence in this case, including that adduced at the oral hearing, I have concluded that the Appellant is entitled to Mortgage Interest Supplement in respect of the full rate of the mortgage interest paid on the family property."

The Appeals Officer in her report stated that in reaching this conclusion she had noted the contentions of the Department, however the evidence was such that the Appellant had the sole responsibility for the payment of the mortgage on the family home. If the Appellant was not estranged from her husband she would have retained an entitlement to the full mortgage interest supplement. The Appeals Officer accepted that the Appellant's husband should be liable to contribute towards the mortgage, but that as he was in receipt of Jobseekers Allowance and Rent Supplement as his only source of income, he was not in a position to contribute towards the mortgage repayments. The Appeals Officer stated that given the circumstances of the case, it was *"not in the interest of natural justice"* to penalise the Appellant and her children and consequently the appeal succeeded.

Observations:

Since the 1st January 2014, the Mortgage Interest Supplement scheme is closed to new entrants. This measure does not affect current claimants immediately (people who were getting Mortgage Interest Supplement before 1st January 2014), but the scheme will be wound down for these claimants over a 4-year period. The Mortgage Interest Supplement Scheme will be phased out by 2018. Therefore, the most appropriate way in which borrowers who are experiencing short-term mortgage difficulties can be supported is through engagement with their lender under the Mortgage Arrears Resolution Process (MARP).

The Mortgage Arrears Resolution Process (MARP), laid out in Provision 18 of the Central Bank's Code of Conduct on Mortgage Arrears (CCMA), is a process whereby lenders and borrowers are expected to work together to come to an alternative payment arrangement when a borrower is in default of his/her mortgage repayment and has accrued arrears. The MARP applies in three instances: (i) when a borrower is in pre-arrears, (ii) already in arrears or (iii) when an existing alternative payment arrangement breaks down. The 4 steps of the MARP are: communication; financial information; assessment; and resolution.

For further information:

http://www.ibrc.ie/Repayment_Difficulties/Mortgage_Customers/Mortgage_Customer_Information/IBRC_MARP_Brochure.pdf

http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/supplementary_welfare_schemes/mortgage_interest_supplement.html

<http://www.welfare.ie/en/Pages/Mortgage-Interest-Supplement---Qualifying-Conditions.aspx>

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

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