

**Casebase Number: G0078**

**Title of Payment: One Parent Family Payment**



Community Law & Mediation Northside  
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Date of Final Decision: 15 March 2016

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**Keywords:** One Parent Family Payment (**OPFP**) – Over-payment – Debt owed to the Department of Social Protection - Appeal

**Organisation who assisted claimant:** Community Law & Mediation Northside (**CLM**) and Dublin North East MABS

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### **Case summary**

The case concerns an overpayment of the One Parent Family Payment (**OPFP**).

The Appellant was awarded the OPFP in 1995 (or Lone Parent's Allowance as it then was), following separation from her husband. From 1996-1999 the Appellant worked on a Community Employment (**CE**) scheme. In August, 1999, the Appellant commenced full time employment. The DSP were not aware of this change in her circumstances until an investigation into her claim was carried out in 2003. A revised decision was issued in 2004 (the **2004 Decision**) in accordance with sections 248 and 249 of the Social Welfare Consolidation Act 1993 (the **1993 Act**).<sup>1</sup> The DSP asserted that the Appellant's means exceeded the relevant statutory limit during the period April 1999 to August 2003; that is, due to the increase in her income, the Appellant ceased to be entitled to the OPFP. As a consequence of this revised decision, an overpayment in the amount of €20,153.56 was assessed as a debt due to be repaid to the DSP. The Appellant did not appeal the 2004 Decision or make any repayment in respect of her debt liability.

In 2015, the Appellant claimed Jobseekers Allowance (**JA**). JA was awarded at the rate of €122 per week. The Appellant's rate of payment payable at a reduced rate due to her means from an occupational pension in the amount of €66 per week. In and around April, 2015, the DSP began deducting €28.20 per week from the Appellant's JA payment for the purpose of repaying her outstanding debt. Accordingly, the Appellant received €93.80 per week JA after deductions of €66 means from her occupational pension and €28.20 in respect of her debt repayment.

In June 2015 the Appellant approached CLM for help. In October 2015, CLM, on behalf of the Appellant, sought a revision of the 2004 Decision pursuant to s.301 and s. 302 of the Social Welfare Consolidation Act 2005 (as amended). CLM contended that the DSP had erred with respect to the facts when determining the period in which the overpayment occurred. The DSP had determined that the Appellant's increase in means took effect from April 1999, whereas CLM asserted that the Appellant's circumstances changed in August 1999 when she commenced full time employment; accordingly, in

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<sup>1</sup> Please note that the Social Welfare Consolidation Act 1993 was repealed by the Social Welfare Consolidation Act 2005 (the **2005 Act**). Sections 248 and 249 of the Social Welfare Consolidation Act 1993 was repealed and replaced by sections 301 and 302 of the 2005 Act.

issuing a revised decision the decision should take effect from the date when the Appellant's means from employment increased, not before.

With respect to repayment of the debt, with the assistance of Dublin North East MABS, CLM challenged the DSP's statutory authority to deduct €28.20 a week from the Appellant's social welfare payment. CLM asserted that the maximum involuntary deduction allowable is 15% of the rate of social welfare payable to the claimant. In this case, that amount equated to 15% of €122 per week. CLM further asserted that the amount of any weekly debt repayment should reflect the Appellant's ability to repay the debt on a sustainable basis. In light of the Appellant's personal and financial circumstances, CLM proposed that the Appellant repay the debt at the rate of €2 per week.

In December 2015, a Deciding Officer revised the 2004 Decision, accepting CLM's assertion that no overpayment occurred prior to August 1999 when the Appellant commenced full time employment. Accordingly, the debt due to the DSP was reduced from €20,153.56 to €19,118.71. In addition, the DSP agreed to a repayment plan of €2 a week in light of the Appellant's personal and financial circumstances.

However, in issuing the revised calculation of the overpayment, an error was made with respect to accounting for the full 52 weeks of the OPFP transitional rate that would have been payable from the date in August 1999 when the Appellant's means from employment exceeded the relevant statutory limit. Based on the calculations of the DSP, 33 weeks of the transitional rate of payment were accounted for, not 52. CLM reverted to the Deciding Officer on this point. The Deciding Officer rejected CLM's assertion and on February 2, 2016, CLM submitted an appeal to the Social Welfare Appeals Office. On 15 March, 2016, the Deciding Officer revised her determination to reflect the Appellant's entitlement to OPFP at the transitional rate for 52 weeks from the date her circumstances changed in August 1999. This had the effect of further reducing the Appellant's debt liability to €17,991.20.<sup>2</sup>

### **Key Arguments**

- CLM, on behalf of the Appellant, contended that her income did not exceed the statutory permitted amount for receipt of the OPFP until the date in August 1999 when she commenced full time employment. Accordingly, the Appellant was not overpaid the OPFP from April 1999 as asserted by the DSP.
- It was asserted that the DSP's authority to recoup monies by way of deduction from the Appellant's social welfare payment is limited by statute to a maximum of 15% of the rate of social welfare payable to the Appellant. In this case, that amounted to 15% of €122. Furthermore, it was asserted that in determining the amount to be recovered weekly, there is no statutory minimum rate of debt repayment. On the contrary, the statute provides that account should be taken of the individual's ability to repay when determining the rate of debt repayment. In this case it was asserted that the Appellant could only repay the debt at the

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<sup>2</sup> It should be noted that the transitional rate payment has been revoked for all persons who cease to be entitled to OPFP on or after 5 January 2012.

rate of €2 per week as she would have insufficient means to meet her basic needs if she paid at a higher rate.

- CLM submitted a revised estimate of the amount of the overpayment based on the Appellant's circumstances changing in August 1999, not April 1999. The revised estimate provided that the debt should be reduced by the transitional rate of payment that would have been awarded for 52 weeks commencing on the date when the Appellant took up full time employment.

### **Key Conclusions**

On 17 December, 2015, the Deciding Officer revised the 2004 Decision as follows:

The overpayment period commenced in August 1999, not April 1999, and the debt owed was reduced accordingly.

On 15 March, 2016, the Deciding Officer revised the 2004 Decision further, as follows:

The Appellant was entitled to the OPFP at the transitional rate of payment for a 52 week period, commencing on the date in August 1999 when the Appellant commenced full time employment.

As a result of the revised decision in March 2016, the debt due to the DSP amounted to €17,991.20; reduced by €2162.36 from €20,153.56.

### **Summary of Benefit(s) Received**

The OPFP is a payment for men and women under 66 who are parenting alone. In order to receive this payment a person must satisfy a means test, be parenting alone (not cohabiting) and be habitually resident in the state. In the case of claimants who were previously in a relationship based on marriage, or a civil partnership, the claimant must be separated for at least 3 months and demonstrate that they have made efforts to seek maintenance. In the case of a relationship that is not based on marriage/civil partnership, a claimant may be required to demonstrate that they have made reasonable efforts to seek maintenance as a condition of ongoing entitlement. A prisoner's partner may receive the OPFP providing their partner is in custody, or has received a sentence, for at least six months at the time of making a claim.

Prior to 5 January 2012, upon becoming ineligible for OPFP due to an increase in means from employment, payment would continue to be made at half the previous rate payable for a period of 52 weeks; referred to as the "transitional rate". The transitional rate of payment has been revoked for all persons who cease to be entitled to OPFP on or after 5 January 2012.

The statutory provisions that apply to the retention of the OPFP at the transitional rate, applicable to the period at issue, are set out in Article 83A of the Social Welfare (Consolidated Payments Provisions) Regulations 1994 (as amended by Article 6 of the Social Welfare (Consolidated Payments Provisions) (Amendment) (No. 10) (One Parent Family Payment) Regulations, 1996 (S.I. No. 426/1996);

- (1) Where a person entitled to one-parent family payment ceases to be so entitled by virtue of her gross earnings exceeding the amount specified in section 158(3), she shall, notwithstanding the provisions of the said section, continue to be entitled to the said payment, calculated in accordance with sub-article (2), for a period of 12 months commencing from the date on which, but for this article, she would have ceased to be so entitled*  
*Provided that she continues to satisfy the conditions for entitlement other than that specified in section 158(3)*
- (2) In the case of a person to whom sub-article (1) applies, one-parent family payment shall be payable at an amount equal to 50 per cent of the weekly rate payable to the qualified parent immediately before the day on which, but for this article, the qualified parent would have ceased to be entitled to the payment...*

The relevant statute governing the recovery of overpayments is set down in Part 11 of the 2005 Act and Part 9 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (as amended), S.I. 142 of 2007.

Section 301 of the 2005 Act provides that a Deciding Officer may revise the decision of another Deciding Officer in circumstances where there has been an error in the facts or the law and/or where there has been a relevant change in circumstances.

Section 302 of the 2005 Act provides a Deciding Officer with the authority to determine from what date a decision should take effect in view of the facts and circumstances of a particular case.

## **Background**

The Appellant was awarded Lone Parent Allowance (the predecessor of the OPFP) in August, 1995, following separation from her husband earlier that year. From 1996-1999 the Appellant worked on a CE Scheme, and her income from CE was duly assessed against her OPFP. In August 1999, the Appellant commenced full time employment which brought her income above the statutory limit permitted for receipt of OPFP.

On 11 August, 2003, the Appellant was advised by the DSP that her OPFP entitlement was being reviewed, and that her payment was suspended on the basis of information that the Appellant was earning more than permitted under the OPFP scheme. Further communications to this effect were issued in September and October 2003.

On 8 June, 2004, a Deciding Officer issued a revised decision with effect from April 1999. This decision was issued in accordance with sections 248 and 249 of the 1993 Act. The Deciding Officer determined that the Appellant was entitled to the OPFP at the transitional (half) rate during the period April, 1999, to April, 2000, and that the Appellant had not been entitled to the OPFP during the period April, 2000, to August 2003. As a result, the Appellant had been overpaid in the amount of €20,153.56. The Appellant did not appeal the decision of the Deciding Officer, nor did she enter into an arrangement to repay the overpayment. According to the DSP records the Appellant received follow up letters

regarding the overpayment and stating that the DSP were considering proceedings to recover the overpayment in 2004 and 2006. The Appellant did not respond, and the DSP took no further action until 2015.

In March, 2015, the Appellant signed on for Jobseekers Allowance. The Appellant was at this time a single woman in her early sixties. On receiving her application for JA the DSP issued a demand to the Appellant with respect to her obligation to repay the debt due to the DSP. On 16 April, 2015, the Appellant was informed that the DSP would begin recouping the debt by way of deductions at source from the Appellant's JA.

The Appellant was in receipt of €66 per week from an occupational pension. This income was assessed in full against her JA entitlement. Therefore, the Appellant's rate of payment, after means deduction, amounted to €122 per week (€188 less €66). The DSP determined that a further €28.20 should be deducted from her payment for the purpose of repaying the debt due to the DSP. After deductions for means and debt repayment the Appellant received €93.80 per week JA. The figure of €28.20 equated to 15% of the Appellant's payment before means deduction.

In June 2015, the Appellant contacted CLM for assistance. In accordance with the provisions of the Freedom of Information Act 2014, CLM wrote to the DSP on the Appellant's behalf, requesting all records relating to the decision which had the effect of raising the debt. While the Appellant did not dispute that she owed monies to the DSP, it was necessary to obtain the record in order to determine the extent to which the facts and evidence supported a finding that the Appellant owed in excess of €20,000. CLM also referred the Appellant to Dublin North East MABS for the purpose of determining the Appellant's financial capacity to enter into agreements to pay her creditors, including the DSP. Thereafter CLM and MABS worked together to assist the Appellant.

For the purpose of determining the Appellant's financial ability to make repayments to creditors, MABS worked with the Appellant setting out her expenditure in a Standard Financial Statement (SFS). It was plain from the Appellant's itemised expenditure that in order to meet her basic needs (food, heat, light etc.), repayments to the DSP at the rate of €28.20 per week were not sustainable on an income of €188 per week (€122 JA + €66 occupational pension). It was the opinion of MABS and CLM that based the evidence of essential expenditure, repayment at the rate of €28.20 per week would cause hardship to the extent that the Appellant would be living in acute poverty.

On 21 October, 2015, CLM, on behalf of the Appellant, submitted a letter to the DSP, with the relevant evidence, asserting that the Deciding Officer had been mistaken as to the facts regarding when the Appellant's income exceeded the relevant statutory threshold for eligibility for OPFP. CLM also challenged the amount of the deduction being taken to repay the overpaid amount.

It was evident from the record that during the period April, 1999, to August, 1999, the Appellant was on a CE Scheme and this was known to the DSP. The Appellant experienced no change in her financial circumstances until August, 1999, when she ceased CE and commenced full time employment. Accordingly, any overpayment period commenced in August 1999, not April 1999 as asserted by the DSP. CLM submitted a breakdown of a revised figure with respect to the amount owing to the DSP.

With respect to the rate of repayment, CLM asserted that the DSP had exceeded their statutory authority when determining the maximum recoverable rate.

Section 341(7)(a) of the 2005 Act (as amended by s.13 of the Social Welfare Act 2012) provides that;

*'[T]he weekly amount of any benefit or assistance to be deducted for the purposes of the recovery of any benefit, assistance, supplement or payment in accordance with subsection (7) shall not, without prior written consent of the person liable to repay the overpayment, exceed 15 per cent of the weekly rate of benefit or assistance to which the person concerned is or becomes entitled.'*

CLM argued that because the DSP deduction of €28.20 exceeded 15% of €122, the rate of assistance to which the Appellant was entitled, the deduction was contrary to s.341(7)(a) of the 2005 Act. It was submitted that the maximum recoverable rate, without the Appellant's consent, was in this case €22.80 per week.

And further, CLM submitted that the DSP's authority to recover 15% of the rate of a person's payment is not unfettered. Article 245(1)(ii) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (as amended) provides that an officer authorised to recover a debt must have due regard 'to the total amount to be recovered and the person's ability to repay.' Accordingly, the facts and circumstances with respect to a person's capacity to pay must be considered before determining a weekly rate of repayment, the maximum recoverable rate not to be applied as though the minimum rate of repayment.

It was submitted that in the Appellant's circumstances the maximum sustainable rate of repayment amounted to €2 per week. In proposing this rate of repayment, CLM relied on the evidence of the Appellant's financial needs and the statutory principal underpinning the Supplementary Welfare Allowance (SWA) scheme; specifically, that a person is regarded as having insufficient means to meet their needs if their income is below the relevant SWA rate. In this case, the relevant SWA rate is €186 per week. Accordingly, by that measure, the Appellant's ability to repay the debt amounted to €2 per week, the difference between the SWA rate and her weekly income of €188.

**Revised Decision of Deciding Officer: 17 December 2015**

Decision by way of revision of the 2004 Decision by the Deciding Officer

**Deciding Officer's Reasoning and Conclusions:**

The Deciding Officer revised the 2004 Decision with regard to the effective date from which the overpayment had been assessed. As a result the overpaid amount was reassessed as beginning in August, 1999, rather than April, 1999, and was accordingly reduced to €19,118.71.

In addition, the DSP agreed to a revised repayment schedule of €2 per week in light of the report submitted by MABS with the CLM letter on 28 October, 2015, regarding the Appellant's financial circumstances.

However, the Deciding Officer held that deducting €28.20 per week from the Appellant's benefit was within the DSP's statutory authority. Referring to s.341(7)(a) of the 2005 Act, the Deciding Officer held that *"the Department is entitled to deduct 15% of the weekly benefit or allowance to which the person is or becomes entitled. Schedule 4, Part 1 of the [2005] Act determines the weekly rate of Jobseekers Allowance as €188. In the circumstances the Department is correct in applying the 15% to the €188."*

On 8 January, 2016, the Deciding Officer issued the schedule showing the revised calculation of the Appellant's overpayment. The schedule took into account that the Appellant had been entitled to OPFP for the period April, 1999 to August 1999. However, the schedule only allowed for the OPFP payable at the transitional rate for 32.7 weeks from August 1999, rather than 52 weeks.

On 12 January, 2016, CLM wrote to the DSP asserting that the Appellant was entitled to 52 weeks OPFP at the transitional rate of payment from the date her earnings exceeded the relevant statutory limit; that is, the date she commenced full time employment in August 1999. The statutory provisions applicable to the period at issue are set out in Article 83A of the Social Welfare (Consolidated Payments Provisions) Regulations 1994 (as amended by Article 6 of the Social Welfare (Consolidated Payments Provisions) (Amendment) (No. 10) (One Parent Family Payment) Regulations, 1996 (S.I. No. 426/1996)).<sup>3</sup>

On 2 February, 2016, the Deciding Officer rejected CLM's assertion that the 52 week transitional payment period commenced in August 1999. The Deciding Officer asserted that the "date upon which [the Appellant] commenced on the CE Scheme [April 1999] is the relevant date from which the overpayment arose" for the purpose of determining for how long the Appellant was entitled to the transitional rate payment.

On 23 February, 2016, CLM submitted a Notice of Appeal on behalf of the Appellant, challenging the restriction of the Appellant's entitlement to OPFP at the transitional rate to 32.7 weeks from August 1999.

**Final Revised Decision of the Deciding Officer: 15 March 2016**

Decision by way of Revision of the decision of 17 December 2015 by the Deciding Officer

**Deciding Officer's Reasoning and Conclusions:**

The Deciding Officer revised the overpayment calculation in accordance with the estimates submitted by CLM except for the period from 24 August, 2000, to 17 January, 2001, in which the conversion rate from IR£ to € was incorrect in CLM's submission.

The Deciding Officer accepted that there had been an error with respect to the facts and determined that the Appellant was entitled to OPFP at the transitional rate of payment for 52 weeks from August 1999; the date when the Appellant commenced full time employment and her income exceeded the

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<sup>3</sup> It should be noted that the transitional rate payment has been revoked for all persons who cease to be entitled to OPFP on or after 5 January 2012.

statutory threshold for receipt of the OPFP. Thereafter, during the period August 2000 to the date of suspension in 2003, the Appellant was not entitled to the One Parent Family Payment.

The Appellant's debt liability was reduced from €20,153.56 to €17,791.20.

The DSP accepted CLM's proposal that the Appellant's ongoing rate of repayment should be €2 per week, not €28.20. The DSP did not however accept CLM's assertion that the maximum recoverable rate is 15% of the rate payable to a claimant.

### **Observations**

This case principally concerns the DSP's debt recovery powers and the importance of checking the facts and circumstances that gave rise to the debt in the first instance.

Prior to 2012, the DSP's involuntary debt recovery powers were restricted insofar as involuntary deductions at source from a person's social welfare payment could not have the effect of rendering the household income below the relevant SWA rate. The SWA rate being the measure in the social welfare code below which a person is regarded as having insufficient means to meet their basic needs. That measure still exists in law; however, amendments to the 2005 Act in 2012 provide a derogation from this principal. From 2012, officers in the DSP have the authority to recover a debt by way of involuntary deductions from a person's social welfare payment up to a maximum rate of 15% of the relevant payment. In determining the amount to be recovered, the regulations require that an officer should have due regard to a person's circumstances and ability to pay. However, as decisions with respect to debt repayment are made by Authorised Officer's, not Deciding Officers, a claimant has no right of redress by way of appeal to the Social Welfare Appeals Office in the event that the repayment rate is unsustainable.

In this case, while it was evident that the DSP made an error with respect to the amount owing, the revised decision ultimately does not change the fact that the Appellant will likely be repaying the debt for many years.

This case also highlights the disparity between the legal and policy framework that applies to debt settlement in the case of social welfare debt when compared to other debts. Put plainly, the DSP's involuntary debt recovery powers are at odds with the affordability test that would ordinarily apply in the case of debt settlement. In this regard we refer to the Reasonable Living Expenses relied on by the Insolvency Service of Ireland.

It is also very relevant that the DSP's authority to recover a maximum of 15% of a person's social welfare payment effectively defeats the statutory principal that a person shall have sufficient means to meet their basic needs, those basic needs determined with reference to the SWA rate applicable to the household size.

**For further information:**

**Insolvency service of Ireland.** <https://www.isi.gov.ie/>

**CLM and FLAC Guides to Overpayments:** <http://www.communitylawandmediation.ie/sub-page-1/clm-and-flac-guides-to-social-welfare-overpayments.998.html>

[http://www.welfare.ie/en/Pages/278\\_One-Parent-Family-Payment.aspx](http://www.welfare.ie/en/Pages/278_One-Parent-Family-Payment.aspx)

[http://www.citizensinformation.ie/en/social\\_welfare/social\\_welfare\\_payments/social\\_welfare\\_payments\\_to\\_families\\_and\\_children/one\\_parent\\_family\\_payment.html](http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_to_families_and_children/one_parent_family_payment.html)

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