

Casebase Number: G0089

Title of Payment: One Parent Family Payment



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

Date of Final Decision: 23 January 2017

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Keywords: One Parent Family Payment-Overpayment- Debt owed to the Department of Social Protection - Retrospective assessment – Appeal – Intreo Centre

Organisation who represented the Claimant: Kerry MABS (**MABS**)

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Case Summary:

This case relates to a review of a decision made in 2004 to retrospectively charge the claimant for an overpayment of the One Parent Family Payment (**OPF**), and the decision eleven years later to commence recovery of that overpayment by way of involuntary deductions from her Jobseekers Benefit claim.

In October 2015 the claimant sought the assistance of Kerry MABS (**MABS**). In accordance with the provisions of the Freedom of Information Act, 2014, MABS wrote to the Department of Social Protection (the Department) on her behalf, requesting all records relating to the decision that had the effect of raising the debt.

Based on the record, it was evident that the claimant was in receipt of the OPFP for a number of years and was subject to periodic reviews by the Department. There were communications from the claimant to the Department in respect of relevant changes in her circumstances, such as the take up of employment and the educational status of her children. In 2003 the Department conducted an earnings review, and found that the claimant's earnings had exceeded the statutory limit with effect from 5 April 2001. In March 2004 the Deciding Officer (**DO**) issued a revised decision that had the effect of raising an overpayment in the amount of €12,606.52. The reason for the decision being that the claimant's means from employment increased during the relevant period, an increase that she allegedly failed to disclose to the Department. Following a request for a review of the decision by the claimant, the DO confirmed her decision by way of letter in June 2004. The claimant did not appeal the decision of the DO; and, other than a letter issued by the Department in 2006 seeking recovery of the debt, there was no further action by the Department until 2015, at which time the Department decided to commence recovery of the debt by way of involuntary deductions from her Jobseekers Benefit payment.

The record revealed that, contrary to the Department's assertion, the claimant did in fact advise of her change in employment status and earnings, having written to the Department on 16 November 2000. In her letter she provided information with respect to her employment and earnings, and she also enclosed her "Lone Parent Payment Book" for reassessment. She further advised that she had previously notified the Department on 28 July 2000 of her change in circumstances to which she received no response. On receipt of the claimant's letter in 2000 the matter was referred to a Social Welfare Inspector (**SWI**) for review. The SWI in his report, dated 19 December 2000, referred to the

claimant having means of IR£156.57, derived from earnings in the amount of IR£1,853.87 per month. On receipt of the SWI's report, the DO issued a revised decision on 12 January 2001. When making this decision, the DO referred to the claimant having means of IR£40.79, not IR£156.17 as found by the SWI. This suggested that the DO mistakenly treated the *means* figure of IR£156.17 as though earnings, and then proceeded to apply the relevant formula in order to arrive at an alternative means figure of IR£40.79. In summary, rather than deducting IR£156.17 from the claimant's OPFP, the Department mistakenly deducted IR£40.79 thereby overpaying the claimant.

In 2015 the Department commenced recovery of the stated debt which amounted to €12,019.62 by way of involuntary deductions from her social welfare payment. The Department did not notify the claimant prior to making the deductions. An Authorised Officer (**AO**) on behalf of the Department twice asserted by way of letters in June and July 2016 that the Appellant had yet to commence debt repayment. However, due to the aforementioned involuntary deduction it appears that the Department erred in such an assertion.

On 7 January 2016, MABS wrote to the local Intreo Centre in Tralee asserting that the DO had erred in her decision of 2004 when stating that the claimant had not previously notified the Department about her change in circumstances. The record clearly contradicted the Department's assertion.

MABS further submitted that while their client was overpaid, the cause was Departmental error, not an omission or bad faith on their client's part. Accordingly, the DO should have considered these facts and any other relevant information when determining whether a retrospective decision was warranted in this case.

MABS submitted that in view of the facts and circumstances of the case the debt should be cancelled in accordance with the powers conferred on an Authorised Officer by s 342 of the Social Welfare Consolidation Act 2005 (as amended) (the 2005 Act), and Article 246 (1) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (as amended), S.I. 142 of 2007. Finally, MABS submitted that if a decision was not made to cancel the debt, the matter should be referred to a DO for review and the issuing of a revised decision.

In January 2017 the claimant was notified by Intreo that her overpayment had been cancelled.

Key Conclusions:

Overpayment cancelled.

Claimant notified by way of letter dated 23 January 2017 by an Authorised Officer of the Intreo Centre, Tralee.

"I refer to a submission made on your behalf by a MABS officer regarding an overpayment that was held against you on the Department of Social Welfare database. In view of that submission I am pleased to inform you that the overpayment has been cancelled."

Summary of Benefit(s) Received:

OPFP is a means tested payment and is subject to a number of conditions that are set out in primary and secondary legislation. OPFP is for men and women under 66 who are bringing children up without the support of a partner (not cohabiting) and are 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.

- Part 3, Chapter 7, of the Social Welfare (Consolidation) Act 2005, as amended.
- Part 3, Chapter 3, Articles 124 to 130 of Part III of the Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007 (S.I. No. 142 of 2007) as amended.

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.

Decision of the DO June 2004:

In June 2004 the DO reviewed the claim and re-examined the overpayment in light of points raised by way of letter from the claimant to the Department in April 2004. The DO did not change her decision, and the claimant did not appeal. The claimant remained liable for the debt in the amount of €12,606.52. ,

Decision of the Authorised Officer (AO) January 2017

AO determined that the overpayment should be cancelled.

Arguments made on behalf of the Appellant:

- It was argued that the Appellant had acted in good faith: she had not concealed information from the Department and had a reasonable expectation that her affairs were in order by

virtue of the fact that she had twice notified the Department of her change in circumstances. In her letter of November 2000 the Appellant notified the Department of her new employment and enclosed her Lone Parent Payment Book for review and reassessment.

- It was further submitted that the DO did not demonstrate any regard to the circumstances as presented on the date of the issuing of the decision. Nor did she consider the extent to which a retrospective decision was warranted or reasonable.
- MABS argued that the overpayment was caused by Departmental error, stemming from the decision of the DO in January 2001 whereby the DO found that the claimant had means of €40.76 not €156.17. It was submitted that in these circumstances the claimant should not be held liable for the debt as she had properly advised the Department of her earnings and acted with a reasonable expectation that her affairs were in order.
- It was submitted that to assess the claimant with a financial liability for a debt over 11 years after the fact was neither rational nor fair, and had caused unnecessary distress to the claimant. Further, it was asserted that it is not unreasonable to expect that an official would examine the record to ascertain if it is in fact appropriate to pursue debt recovery action before imposing involuntary deductions from a person's social welfare payment. Should such a review have occurred, an official could have legitimately determined that the debt should be cancelled.

Arguments made on behalf of the Department by an Authorised Officer

- The decision made by the DO requiring the claimant to repay the debt amount of €12,606.02 to the Department was based on the increased remuneration to the Appellant through her employment which the Department allegedly had no prior notice of. Pursuant to s. 213 (10) of the 1993 Act, if the means of a recipient of social welfare increases, s/he is required to notify the Department.
- OPFP is means tested, taking account of any means from employment or savings. The claimant's weekly earnings of €593.56 exceeded the statutory limit for entitlement to OPFP. It was further submitted by the Department that the claimant's average weekly earnings for tax year ended 31 December 2001 were €669.31, which also exceeds the statutory limit for entitlement to OPFP.
- The Department suspended the claimant's payment with effect from 4 April 2001 under s. 227(2) of the 1993 Act, and requested the Appellant return her allowance book to the Department. The DO pointed to the increased means of the claimant while in employment and her alleged failure to notify the Department of such an increase.
- The DO relied on S. 249(b) of the 1993 Act, now 302 (b) of the 2005 Act, to provide the authority to issue her revised decision which had the effect of making the claimant liable to repay a debt in the amount of €12,606.02.

Authorised Officer's (AO) reasoning and conclusions

The AO decided that on the basis of the Submission forwarded by MABS that the overpayment should be cancelled.

For further information:

https://www.flac.ie/download/pdf/overpayments_guide_2015.pdf

<https://www.welfare.ie/en/Pages/Overpayment-Recovery---Guidelines-on-the-Recovery-of-Debt-by.aspx>

http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_to_families_and_children/one_parent_family_payment.html

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

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