

Casebase Number: GO104

Title of Payment: One Parent Family Payment



Community Law and Mediation Northside

Northside Civic Centre

Bunratty Road

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Dublin 17

Date of Final Decision: 18 January 2017

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Keywords: One Parent Family Payment; New evidence; Separated Spouse

Organisation who represented the Claimant: Free Legal Advice Centres (FLAC)

Casebase No. Case G0104

Summary:

This case relates to a review by the Deputy Chief Appeals Officer of a decision by an Appeals Officer to affirm a Departmental decision disallowing the Appellant's One Parent Family Payment (**OPFP**) on the basis of a finding that she was married.

The Applicant applied for and was granted OPFP in 2002. Her claim was reviewed by the Department in 2009 on the basis of information to the effect that the Applicant had described one of her children's father as her 'husband' in her application for international protection. On 5 October 2011, a Deciding Officer revised the original decision in accordance with section 302(1) of the Social Welfare Consolidation Act 2005, concluding that the Applicant was married and that she had not disclosed this fact to the Department. The Deciding Officer concluded that the Applicant had been overpaid OPFP for the entire period of her claim, and that she owed the Department in excess of €75,000.

The Applicant appealed against this decision, but her appeal was dismissed on 9 January 2013. In August 2016, she applied for a review of the Appeals Officer's decision in accordance with sections 317 and 318 of the Act of 2005. In support of her application, the Applicant submitted a sworn document from the man in question saying that they had never been married, together with official documentation to this effect from their country of origin.

On 18 January 2017, the Deputy Chief Appeals Officer considered the application first pursuant to section 317; that is, whether the Appeals Officer's decision was erroneous in light of new evidence or new facts. She was satisfied that the new documentary evidence submitted by the Applicant rebutted the Appeals Officer's finding that she was married. On the basis of this finding, the Deputy Chief Appeals Officer reviewed the Appeals Officer's decision and allowed the Applicant's appeal against the decision to disallow her entitlement to OPFP. The Deputy Chief Appeals Officer directed that, in implementing her decision, the Department should review the Applicant's entitlement to OPFP as if the decision to disallow her payment on 5 October 2011 had not been made, and in particular, to determine whether she was entitled to any payment for the period since that date.

Key Conclusions:

Appeal decision reviewed and appeal allowed.

Summary of Benefit Received:

One-Parent Family Payment is a means-tested payment which is made to men or women who are caring for a child or children without the support of a partner. The main provisions relating to One-Parent Family Payment are contained in Part 3, Chapter 7 of the Social Welfare Consolidation Act

2005, as amended, and Part III, Chapter 3, Articles 124-130 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007 (SI 142 of 2007), as amended.

Section 317 of the Act of 2005 provides:

317. (1) An appeals officer may at any time revise any decision of an appeals officer—

(a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given, or

(b) where—

(i) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and

(ii) it appears to the appeals officer that there has been any relevant change of circumstances which has come to notice since that decision was given.

(2) In subsection (1)(b)(ii), the reference to any relevant change of circumstances means any relevant change of circumstances that occurred before, or occurs on or after, the coming into operation of the Social Welfare and Pensions (No. 2) Act 2013.

Section 318 of the Act of 2005 provides:

318.—The Chief Appeals Officer may, at any time, revise any decision of an appeals officer, where it appears to the Chief Appeals Officer that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts.

Arguments made on behalf of the Appellant:

The Free Legal Advice Centres (FLAC) submitted on the Applicant's behalf that she had described herself as married in her asylum application only because she expected her child's father to marry her. In the event, she said that his promises in this regard had been unfulfilled. In support of this submission she referred to a sworn document from the man in question saying that they had never been married, together with official documentation to this effect from their country of origin.

The Applicant further submitted that in disallowing her claim for OPFP on the basis of a finding that she was married, the Department and the Appeals Officer had applied the wrong legal test for eligibility. She pointed out that under section 173 of the Social Welfare Consolidation Act 2005 and Article 125 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, as amended, OPFP may also be paid to separated spouses. In this regard, the Applicant submitted that the Department and the Appeals Officer were obliged by section 302(a) of the Act of 2005 to consider whether any alleged false statement on her part actually related to her entitlement to OPFP. She noted that a Social Welfare Inspector who had investigated her case had found no evidence that she was cohabiting with anyone.

Arguments on behalf of the Department of Social Protection:

The decision to disallow the Applicant's claim to OPFP was based on a description of her family circumstances the Applicant had given to the Office of the Refugee Applications Commissioner as part of her application for international protection. It is not clear how this information was obtained by the Department of Social Protection.

Date of Oral Hearing: N/A - Summary decision.

Date of Final Decision: 18 January 2017.

Appeal Officer's (AO) reasoning and conclusions:

On 18 January 2017, the Deputy Chief Appeals Officer considered the application first pursuant to section 317; that is, whether the Appeals Officer's decision was erroneous in the light of new evidence or new facts. She was satisfied that the new documentary evidence submitted by the Applicant rebutted the Appeals Officer's finding that she was married. On the basis of this finding, she reviewed the Appeals Officer's decision and allowed the Applicant's appeal against the decision to disallow her entitlement to OPFP.

Observations

This case illustrates the value of the mechanism available under section 317 as a way to establish entitlements where the initial claim has failed for lack of evidence. This may be of particular importance where a claim has been made, and an appeal prosecuted, by a person who has not had the benefit of legal advice or representation.

This case also illustrates the importance of cultural sensitivity in social welfare decision-making. The need for such sensitivity is particularly acute when family relationships are being assessed. The case demonstrates that decision-makers should bear in mind that family structures — and even modes of describing relationships — which are familiar in this country are not necessarily universal.

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