

Casebase Number: G0046

Title of Payment: Rent Supplement



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

Date of Final Decision: 26th February 2013

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Keywords: Social housing needs assessment – reckonable residency required for Non EEA Nationals-parent of an Irish child-decision reviewed-granted rent supplement

Organisation who assisted claimant: Northside Community Law and Mediation Centre (NCL&MC)

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Case Summary:

The Appellant applied to have his social housing needs assessed in order to qualify for Rent Supplement. The Appellant was advised that he was not entitled to have his social housing needs assessed as he did not have five years reckonable residency required for Non-EEA Nationals. Northside Community Law and Mediation Centre (NCL&MC) challenged this on the grounds that the Appellant satisfied the criteria under section 8 Circular 41/2012 which entitles the parent of an Irish child, who is financially and emotionally dependant on that parent, to be considered for social housing regardless of reckonable residency. Dublin City Council reviewed their decision and the Appellant was deemed eligible for social housing. He was subsequently granted Rent Supplement with retrospective effect.

Summary of Benefit(s) received:

Rent Supplement is paid to people living in private rented accommodation who cannot provide for the cost of their accommodation from their own resources. Access to Rent Supplement is conditional upon satisfying a number of conditions; means/income test, number of hours working if relevant, previous capacity to pay rent prior to change in circumstances and the cost of accommodation. One of the conditions in a significant number of cases is that a person must be assessed by a local authority as having a housing need. If a person's housing need has not been established by a local authority an applicant may be excluded from receiving Rent Supplement. You must also be found to be habitually resident in the state. As per Housing Circular 41/2012, in order to be considered eligible for social housing support a non-EEA national must be able to show 5 years reckonable residence with a valid stamp, or they must have any length of reckonable residence with a valid right to reside in the state for a future period which cumulatively amounts to 5 years.

Under section 8 a non-EEA citizen who is a parent of an Irish citizen child who can show that the child is financially and emotionally dependant on him/her, and has been granted a stamp 4 on the basis of being a parent of an Irish born child will be accepted for assessment without the need to satisfy the reckonable residence criteria. This amendment to section 8 in regard to the requirement to satisfy the reckonable residence criteria was introduced to ensure the legislation complied with the ruling of the Court of Justice of the European Union in the *Ruiz Zambrano* case in March 2011.

Background:

The Appellant, a non EU National, arrived in Ireland in 2006. His right of residence was granted in January 2012 on the basis that he was the parent of an Irish born child.

The Appellant made an application for social housing as required for his application for Rent Allowance. He was advised that as he did not have five years reckonable residency on his stamp 4, he was not entitled to have his application for housing needs assessed. In a letter dated the 5th of December 2012 it was stated *'You are not eligible as you have not submitted evidence of 5 year Reckonable Residence of Stamp 1, 3, 4 or 5 as endorsed on your Passport'*. The Appellant made an application for Rent Supplement. This was refused on the 16th January 2013 as he failed to provide a housing need assessment from his local authority. His claim was also rejected on the grounds that his rent was over the maximum rent limit. This matter of the cost of accommodation was resolved through negotiations with the landlord. The Appellant appealed the decision to refuse Rent Supplement to the Social Welfare Appeals Office on the 18th of January 2013, highlighting Dublin City Council's refusal to provide him with a housing needs assessment.

The Appellant sought the advices of NCL&MC after he submitted his appeal to the Social Welfare Appeals Office. NCL&MC wrote to Dublin City Council as regards their refusal to assess the Appellant's social housing need. NCL&MC submitted that the Appellant satisfied the criteria as outlined in Section 8 of Circular 41/2012 i.e. he is the father of an Irish child and this child is financially and emotionally dependant on him. Therefore the Appellant should be considered eligible for social housing. It was noted that the Appellant's permission to remain in the State was based upon his Irish child. Furthermore, he had also previously satisfied the Department of Social Protection's criteria for Jobseekers Allowance and had met the habitual residence condition. Dublin City Council reviewed the decision not to allow the Appellant to apply for housing. In a letter received on the 22nd February 2013 DCC informed the Appellant that he was eligible for social housing and was placed on the waiting list for social housing. This information was provided to the Rent Supplement Section of the Department of Social Protection by way of letter dated the 26th February. The decision to refuse Rent Supplement was revised, and the Appellant received Rent Supplement with retrospective effect.

Our observations:

This case mainly dealt with social housing provisions as implemented by Dublin City Council, but ultimately had a deciding effect on the Appellant's application for Rent Supplement. NCL&MC corresponded with the Community Welfare Officer to advise the office of the review of the Appellant's entitlement to a social housing need. NCL&MC were advised that the matter was resolved once the substantive issue of the housing needs assessment had been revised in favour of the Appellant. The impact of the refusal to assess a person's need / eligibility for social housing, has a greater impact than just the application for social housing, in that a person in these circumstances may be precluded from receiving Rent Supplement. The consequences are self evident in that a person will be unable to provide for their housing need and risk becoming homeless. Arguably, Social Welfare Law does provide discretion to decision makers to award a Supplement on an interim basis if the facts and circumstances of the applicant merit such an award. However, the construction of the statute and administrative guidelines are unlikely to elicit such positive discretion in the majority of cases. Refer. S. 198 of the Social Welfare Consolidation Act 2005 (as amended) and Article 38 of S.I. 412 of 2007 (as amended). In this case the matter was resolved without a need for legal proceedings on the basis that this Appellant was in a position to demonstrate that his child was financially and emotionally dependant on him as per Circular 41/2012. However the manner in which non Irish nationals can be refused access to housing is very questionable. Unlike Social Welfare Legislation which provides for a statutory habitual residence requirement, neither the Housing (Miscellaneous Provisions) Act 2009,

nor the relevant statutory instrument, SI 84 / 2011 authorise a local authority to refuse to accept an application on the grounds of nationality and/or residency. The scheduled form to SI 84/2011 requests provision of a Stamp 4 displaying 5 years residency however, it is submitted that such a cursory reference lacks sufficient authority legally for a local authority to refuse to accept and process an application for housing needs assessment.

This case deals with two separate albeit interconnected issues. The first being, Dublin City Council's refusal to assess the Appellant's housing need and secondly the Appellant's application for Rent Supplement with the Department of Social Protection. This case highlights the difficulties involved in dealing with two separate state bodies and systems to reach a single outcome.

For more information, useful links are;

- Citizens Information (Rent Supplement):
http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/supplementary_welfare_schemes/rent_supplement.html
- Department of Social Protection:
<http://www.welfare.ie/en/Pages/SWA---Rent-Supplement.aspx>
Housing (Miscellaneous Provisions) Act 2009:
- Dublin City Council (Rent Assessment)
<http://www.dublincity.ie/Housing/Pages/RentAssessment.aspx>
- SI 84 / 2011
<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CDEQFjAA&url=http%3A%2F%2Fwww.environ.ie%2Fen%2FDevelopmentHousing%2FHousing%2FRHLegislation%2FFileDownload%2C25575%2Cen.pdf&ei=ZvhjUa69JMqqhAejuYDAAg&usg=AFQjCNFstyZBxHq0JlfhX3zETrECJJeE9w&bvm=bv.44990110,d.ZG4>
- Housing Circular 41/2012
<http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,29412,en.pdf>

For *more information*, contact us at:

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