

Casebase Number: G0063

Title of Payment: Rent Supplement



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

Date of Final Decision(s):

Appeal: 28th July 2014

Title of Payment: Rent Supplement

Date of Final Decision(s): 28th July 2014

Appeal: Allowed

Keywords: Rent Supplement - effective date of award - section 318 - appeal - allowed

Organisation who represented the Claimant: Kerry MABS

Casebase no: G0063

Case Summary:

This case relates to the effective date of award of the Appellant's Rent Supplement payment. The Appellant applied for Rent Supplement in August 2009. The Appellant claimed that she made an application to the Local Authority for a housing needs assessment at the same time, but the Local Authority did not register the Application until 19th October 2009. On the 8th March 2010 the Local Authority confirmed in writing that the Appellant was in need of, and eligible for, social housing, and they also advised that the assessment process had been completed on the 22nd January 2010. Rent Supplement was awarded from the Local Authority assessment completion date, 22nd January 2010, not the date of the application for Rent Supplement, or the date of application for a housing needs assessment (August/October 2009). As a consequence, the Appellant incurred significant rent arrears. The Appellant appealed this decision seeking arrears of Rent Supplement from the date of her application.

The Appeals Officer rejected the appeal on 8th May 2012 for the reason that under the Supplementary Welfare Allowance Scheme, Rent Supplement may be paid where a person is certified as having a housing need by the Local Authority, and as the Appellant's housing assessment was not complete until 22nd January 2010, she was not entitled to the payment prior to that date. On 2nd July 2014, Kerry MABS on behalf of the Appellant requested a review of the Appeals Officer's decision in accordance with section 318 of the Social Welfare Consolidation Act 2005, asserting that the Appeals Officer had made a mistake in the facts and the law as he failed to consider that the Appellant's housing need may be regarded as having commenced at the time of her application.

Kerry MABS asserted that section 198 [3F] [a] of the Social Welfare Consolidation Act 2005 [as amended] does not preclude the award of Rent Supplement from the date of application for a housing needs assessment, and furthermore the wide positive discretion afforded to a Designated Officer arguably compels the award of assistance where a prima facie need exists. It was asserted that the effect of the Appeals Officer's decision presented as being at odds with

the facts and the objective intent of the statute; namely, that a person has sufficient means to meet their basic needs, including rental costs.

The Appeals Officer reviewed his decision and on 28th July 2014 he issued a revised decision, finding that the Appeal should be allowed taking into account all of the circumstances of the case. As the Appeals Officer made a revised determination in this case, the Chief Appeals Officer did not have to address the matter under section 318 of the Act.

Key Arguments:

- The Appeals Officer contended that Rent Supplement could only be awarded with effect from the date a person is certified by a local authority as having a housing need.
- The Appellant submitted that the decision of the Local Authority should be regarded as taking effect from the date of her application as it must be presumed that her housing need persisted from that date.
- The Appellant asserted that if reference is made to the date the Local Authority make a decision, rather than the date of application, this reflects arbitrary administrative delay, not the facts relating to the person's housing need.
- The Appellant submitted that the relevant statute precludes the award of Rent Supplement in circumstances where a claimant has not been assessed by a local authority as having a housing need. However, the statute does not preclude a Designated Officer from determining an appropriate date of award once the Local Authority confirms a housing need. Providing the facts support the claim, that date could be the date the applicant first made a claim for Rent Supplement.
- The Appellant asserted that the facts relating to her need were evident on the date of her application for Rent Supplement, and as such the Designated Officer could have employed positive discretion to award a supplement on an interim basis in order that the Appellant avoid undue hardship consequent to the administrative delay on the part of the local authority.

Key Conclusions:

[Appeal Allowed]

This appeal is with regard to the payment of rent allowance, prior to the date the appellant was found to have a housing need, by the Council. I have reviewed my decision following the correspondence received in July 2014 from MABs in support of the

appellant. On foot of this re-examination of the case, and taking into account all of the circumstances of the case, I am allowing the appeal.

Appeals Officer, 28th July 2014

Summary of Benefit(s) Received:

Rent Supplement is a means tested payment and is subject to a number of conditions that are set out in primary and secondary legislation. The supplement is paid to people living in private rented accommodation who cannot provide for the cost of their accommodation from their own resources. Subject to meeting other conditions, a person may qualify for a Rent Supplement if their only income is a social welfare payment and/or limited income from part time employment/self employment. Subject to certain exceptions, a person cannot receive Rent Supplement if they are working over 29 hours per week.

Section 198 [3F][a] of the Social Welfare Consolidation Act 2005 [as amended] provides:

(3F) A person shall not be entitled to a payment referred to in subsection (3) unless, on the making of the application, the Executive is satisfied that the person is a bona fide tenant, and has been –

(a) Assessed by a housing authority pursuant to section 9 of the Housing Act 1988 (as amended by section 75 of the Health Act 2004) as having a housing need

Article 38 of the Social Welfare [Consolidated Supplementary Welfare Allowance] Regulations 2007 [as amended], SI 412 of 2007 provides:

38. (1) Notwithstanding the foregoing articles, the Executive may award a supplement in any case where it appears to the Executive that the circumstances of the case so warrant

Background:

The Appellant has three children and is in receipt of One Parent Family Payment. She applied for Rent Supplement in August 2009. According to the Appellant, she made an application for a Housing Needs Assessment at the same time as her Rent Supplement claim, but this application was not registered as received by the Local Authority until 19th October 2009.

On 8th March 2010 the Local Authority decided that the appellant was eligible for social housing and referred to the completion of the housing needs assessment on 22nd January 2010.

Rent Supplement was awarded from the assessment completion date, 22nd January 2010, not from the date on which she had presented with a housing need; i.e. 19th October 2009 or the

earlier date of 28th August 2009 when she first claimed Rent Supplement. The Appellant consequently incurred significant rent arrears, which ultimately caused the Private Residential Tenancies Board (PRTB) to issue a Determination Order on 21st March 2012 for the purpose of recovering these arrears on behalf of the landlord.

The Appellant appealed to the SWAO seeking arrears of Rent Supplement from the date her housing need commenced.

The Appeals Officer rejected the appeal on 8th May 2012 for the following reason:

Under the Supplementary Welfare Allowance Scheme, a rent supplement may be paid where a person is certified as having a housing need by the Council. In this case the appellant has been paid from the date that the Council issued this certification and as such I regret that appeal cannot succeed.

On 2nd July 2014 Kerry MABS on behalf of the Appellant requested a review of the Appeals Officer's decision in accordance with s. 318 of the Social Welfare Consolidation Act 2005, asserting that the Appeals Officer had failed to consider that the Appellant's housing need in fact commenced when she made an application for Rent Supplement and persisted from that date.

It was asserted that the Appeals Officer's decision was neither rational nor reasoned as it referred to the completion of an administrative process, not the facts. That is, the effective date of award did not correspond with the date the Appellant declared her housing need to the Community Welfare Services and the Local Authority. It was further asserted that section 198 [3F] [a] of the Social Welfare Consolidation Act 2005 [as amended] does not preclude the award of Rent Supplement from the date the applicant presents with a need, providing that the Local Authority has subsequently confirmed that housing need. In this regard it must be presumed that the person's housing need persists from the date of application to the date of the decision; that is unless information is provided to the contrary.

Finally, it was asserted that the effect of the decision was at odds with the objective intent of the statutory provisions governing the award of payments under the Supplementary Welfare Allowance scheme; namely, that a person has sufficient means to meet their needs, including accommodation costs. In these circumstances a Designated Officer is arguably compelled to exercise positive discretion to mitigate against the risk of unreasonable hardship; in this, a Designated Officer may elect to award a supplement to a person on an interim basis. The Appellant cited the statutory provisions as set out s.198 of the Social Welfare Consolidation Act 2005 [as amended], and Article 38 of the Social Welfare [Consolidated Supplementary Welfare

Allowance] Regulations 2007, S.I. 412 of 2007, which allows for the award of supplements in exceptional circumstances such as where a need warrants such an award.

The Appellant presented clear evidence demonstrating that she had experienced harm and undue hardship as a consequence of the Appeals Officer's decision, having incurred rent arrears that led to legal proceedings to recover the monies owing to the landlord.

On 28th July 2014 the Appeals Officer revised his decision, allowing the appeal having taken into account all of the circumstances of the case.

Effective date of Designated Officer's Decision: 22nd January 2010

Date of Appeals Officer's Decision: 8th May 2012

Date of Appeals Officer's Revised Decision: 28th July 2014

Observations:

What is of concern in this case is the dismissal of the basic factual premise of the Appellant's claim by both Designated Officer and Appeals Officer. Here the facts established that a housing need existed in the form of rental costs on a particular date. An arbitrary and irrational distinction was subsequently drawn between the date that the Appellant applied for Rent Supplement and a housing needs assessment, and the date on which the Local Authority completed the assessment process and issued a decision. The legislation does not make a distinction in this regard – it merely states that an applicant must have been assessed by a local authority as having a housing need.

If a person presents as having a housing need on a certain date then it must be presumed that the need persists from that date unless there is evidence to the contrary. Whereas, the date a Local Authority makes a decision may be weeks or months after the application date, thereby reflecting administrative delay, not an alternative date from which the claimant's housing need may be regarded as having commenced. Referring to a comparable situation in the case of an application for a social welfare payment, a person may complete and submit a legitimate claim to the Department of Social Protection on a specific date. Delays in processing that claim may result in a decision not being issued for some months. In these circumstances, if a person is found to be eligible for a payment, the Deciding Officer will implement the decision with effect from the date of application, not the date of the issuing of the decision. This is logical, as a person's entitlement cannot be presumed not to exist during the period required to process the claim, unless there is evidence to the contrary.

For further information:

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

<http://www.welfare.ie/en/Pages/SWA---Rent-Supplement.aspx>

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

Community Law & Mediation,
Northside Civic Centre, Bunratty Road, Coolock, Dublin 17
T: 01 847 7804 | E: info@communitylawandmediation.ie | W:
www.communitylawandmediation.ie

