

Casebase Number: G0088

Title of Payment: Rent Supplement



**Community Law and Mediation Northside
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Date of Final Decision: 5 December 2016

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Keywords: Rent Supplement-Supplementary Welfare Allowance- Non-financially dependent child- Overpayment of Rent Supplement -Retrospective assessment- Appeal partially allowed

Organisation who represented the Claimant: Advice and Budgeting Service (**Dublin 10 and 20 MABS**).

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Case Summary:

This case relates to the appeal of a decision to retrospectively charge the Appellant for an alleged overpayment of Rent Supplement, due to the retrospective assessment of a contribution from another person in the household, the Appellant's daughter. This decision was made pursuant to Article 12(3) of the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (as amended), S.I. 412 of 2007. The Appellant, a Carer, resides with his two daughters and had been claiming Rent Supplement since February 2013.

The Appellant's Rent Supplement claim was reviewed in June 2016, and a revised decision was issued on 25 July 2016, notifying the Appellant that a Designated Officer (**DO**) had determined that his entitlement would be reduced and that this decision was to apply retrospectively. As a consequence of this decision, the Appellant was found to have been overpaid the sum of €1,091.70, an amount recoverable as a debt due to the Department of Social Protection (the Department).

The DO's decision was premised on the fact that Appellant's daughter was not a dependent during the period at issue, having reached majority and claiming Jobseekers Allowance (JA) in her own right. In accordance with the relevant regulatory provisions, when determining the amount of Rent Supplement to be paid to a claimant, an amount "reasonably attributable" to non-dependant household members is assessed as means. The DO in this case determined that the amount that the Appellant's daughter could "reasonably" pay towards the rent was €30 per week, and therefore the Appellant's Rent Supplement should have been reduced by this amount throughout the period at issue. The Appellant's daughter was not in receipt of JA when the Appellant first claimed Rent Supplement; however, the Department had not been advised by the Appellant that his daughter's circumstances had changed insofar as she was no longer a dependent, and was in receipt of JA.. The DO determined that the Appellant was to repay the overpaid amount, and that this repayment would be made by deducting €28.30 from the Appellant's Rent Supplement per week until the overpayment had been paid off.

The Appellant sought the assistance of MABS, and in August 2016 appealed the decision of the DO to the Social Welfare Appeals Office by way of a Notice of Appeal. A submission on behalf of the Appellant was lodged with the Social Welfare Appeals Office in December 2016.

It was submitted that the relevant section of the regulations was not prescriptive in so far as a DO has the discretion to determine what amount should be attributable to another party. In this regard it was contended that the statute does not prescribe that a DO must make a “minimum “ deduction of €30, and that there may be circumstances where it is reasonable to make a finding that the amount attributable to the other party is nil.

It was submitted that the DO did not have proper regard to the Appellant’s means, and the retrospective effect of the decision was neither fair nor warranted having regard to the circumstances of the Appellant, in particular his capacity to repay the overpaid amount. It was submitted that the effective date of the new decision is a matter that must be determined following due consideration of the relevant facts and circumstances of the case. In this regard it was contended that the DO failed to demonstrate that she had any regard to the Appellant’s circumstances as they presented on the date of issuing her decision and there was no evidence on record to indicate that the DO considered the extent to which a retrospective decision was in fact warranted or reasonable in this case.

It was further submitted in failing to provide an opportunity to submit a rebuttal, or advising on a right to appeal, the DO failed to adhere to the principles of natural justice and fair procedures by ‘acting as a judge in their own cause.’ This was argued to be an abuse of authority, and the DO was viewed by MABS as rushing to judgment, basing a finding on selective reasoning rather than providing the Appellant with the opportunity to submit facts in evidence relevant to the matter at issue.

The Appellant submitted that the decision requiring him to repay the overpaid amount that, according to the DO, his daughter should have been paying during the period between September 2015 and June 2016, was unreasonable having regard to his means. It was submitted that should he be held liable to repay the amount, he would be unable to pay his rent where it fell due. In this regard it was submitted the Department’s authority to recover any debts by way of a deduction from a person’s social welfare payment must be considered having due regard to the appellant’s financial circumstances in particular their capacity to pay.

The Appeals Officer determined the appeal by way of a summary decision, on the basis of the papers submitted. A decision was issued by way of letter dated 5th December 2016 whereby the appeal was partially allowed.

It was asserted by the Appeals Officer that it was reasonable of the DO to assess an amount attributable to the Appellant’s daughter of €30 per week, and this amount should have been deducted from the Appellant’s Rent Supplement payment. However, in the interests of *fairness and reasonableness*, account had to be taken of the fact that there had been no review of the Appellant’s claim during the period following the commencement of the claim in February 2013 to July 2016. Accordingly, the AO found that the decision of the DO should not apply retrospectively. Therefore, the effective date of assessment of an additional contribution towards housing costs should commence on 25 July 2016 thereby rendering the Appellant not liable for an overpayment of Rent Supplement.

Key Conclusions:

Appeal Partially Allowed:

“The relevant article which provides for the assessment of his daughter’s income is written in the imperative “shall”, therefore the designated person has no choice but to assess an amount relevant to the daughter’s income. With regard to the amount assessed there has to be a parity between young claimants living in the family home and those living outside the family home who must contribute the minimum €30 towards their housing costs in private accommodation. In this regard I find it entirely reasonable for the daughter to be assessed as contributing €30 per week.”

“I note that there is no evidence that the Department reviewed the claim between that time [February 2013] and the review in July 2016. Indeed there is no evidence of any contact from the Department in that period. I would suggest that there is a burden on both sides however, given the lack of a review in the interim it is reasonable to assume that appellant would not have had contacting the Department uppermost in his mind. I have decided in the interests of fairness and reasonableness that the effective date of assessing the additional income is 25 July 2016. For the avoidance of doubt this means that the appellant is not liable for the overpayment.”

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. Rent Supplement is paid to people living in private rented accommodation who cannot provide for the cost of their accommodation from their own resources.

Article 12(7) of the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007, as amended by S.I. 669 of 2016, provides:

(7) where a person, other than a qualified adult or a qualified child of the claimant, resides with the claimant other than as a sub-tenant, a designated person shall reduce the amount of the supplement payable, by such amount, in which the opinion of a designated person, is reasonably attributable to that other person.

Ordinarily a single person on social welfare is expected to make a “minimum” contribution of €30 per week towards their rent. With effect from 2nd January 2017 a person aged between 18 – 25, on a lower rate of social welfare, will be liable to make a minimum contribution of €10 per week towards their rent (S.I. 669 of 2016 refers).

Section 325 of the Social Welfare Consolidation Act 2005 outlines the authority of a designated officer to make a revised decision with retrospective effect:

“A revised determination of entitlement to a supplementary welfare allowance given by an employee of the Executive shall take effect as follows:

(b) where any supplementary welfare allowance will, by virtue of the revised determination, be disallowed or reduced and the revised determination is given in the light of new evidence or new facts (relating to periods before and after the commencement of this Act) which have been brought to the notice of the employee of the Executive since the original determination was given, it shall take effect from the date that the employee of the Executive shall determine having regard to the new facts or new evidence and the circumstances of the case;

(c) in any other case, it shall take effect from the date considered appropriate by the employee of the Executive having regard to the circumstances of the case.”

Key Arguments made on behalf of the Department of Social Protection:

- In making their decision, the DO relied on the fact that the Appellant’s daughter had been in receipt of a JA payment in the sum of €100 per week since September 2015, which was not assessed on the Appellant’s Rent Supplement claim. The Department relied on their authority under Article 12(3) of the 2007 Regulations to reduce the amount of Rent Supplement by an amount ‘reasonably attributable’ to a non-dependent person in the household. The amount assessed at €30 per week as a minimum deduction “reasonably attributable” to the Appellant’s daughter. Accordingly an overpayment had arisen in the amount of €1,091.
- The Department furthered that the Appellant did not inform them of the change in his household circumstances. The DO asserted that there is an onus on persons in receipt of social welfare payments to notify the Department of such changes, which in this instance the appellant did not.
- The DO also pointed to the Department’s authority under section 325 of the Social Welfare Consolidation Act to revise a previous decision where new facts come to their attention.
- The DO referred to the Department’s authority to deduct €28.20 per week off the Appellant’s Rent Supplement claim in line with the relevant statutory provisions regarding overpayments.

Key Arguments made on behalf of the Appellant

- The facts of the case were not in dispute with regards to the rent charged and the household circumstances during the period at issue. What was at issue was the extent to which the DO’s decision should have retrospective effect having regard to the facts and circumstances of the Appellant and the relevant statutory provisions.
- On behalf of the Appellant it was submitted that while Article 12(3) of the 2007 Regulations provided the DO with the authority to reduce Rent Supplement by an amount ‘reasonably attributable’ to any other person on the threshold, the article did not prescribe the amount.

Accordingly, it was submitted that the statute did not place an obligation on a decision maker to make a “minimum” deduction of €30 per week. It was argued that a decision maker should take account the particular circumstances of the household to the extent that it may in fact be appropriate to assess a contribution of nil where there was no reasonable prospect of the claimant securing the contribution from the relevant household member.

- It was argued that the Appellant had acted in good faith: he had not wilfully concealed information from the Department of Social Protection, and he had had a reasonable expectation that his affairs were in order, as his own means did not change during the relevant period.
- The Appellant submitted that, although a DO has the authority to revise a previous decision where new facts come to their attention, the effective date of the new decision is a matter that must be determined following due consideration of the relevant facts and circumstances. Here, it was argued, the DO did not demonstrate any regard to the circumstances as presented on the date the issuing of the decision. Nor was there evidence that the DO considered the extent to which a retrospective decision was warranted or reasonable.
- It was asserted that in failing to provide an opportunity for the Appellant to submit a rebuttal, or advising him of his right of appeal, the DO failed in her duty to adhere to the principles of natural justice and fair procedures. This was argued to be an abuse of authority and the DO was viewed by MABS as rushing to judgment in their own cause, basing a finding on selective reasoning rather than providing the Appellant with the opportunity to submit facts in evidence relevant to the matter at issue.
- It was submitted that to assess the Appellant with a financial liability for an amount reasonably attributable to another person after the fact was neither rational nor fair if the facts with respect to the Appellant’s means did not support this position. In hindsight the Appellant was not overpaid Rent Supplement during the relevant period as the amount he received was consistent with his financial need for support
- It was argued that assessing a contribution after the fact is not reasonable as the premise on which the assessment is made can only reasonably be applied on a contemporaneous basis. Further, to make an assessment retrospectively is to place an unreasonable financial burden on the Appellant in circumstances where legally he has not in fact been overpaid monies under the Supplementary Welfare Allowance Scheme.

Decision of Appeals Officer: 5 December 2016. Appeal Partially Allowed.

Chief Appeals Officer’s reasoning and conclusions:

First, the Appeals Officer considered whether it was reasonable for the Appellant’s daughter to be assessed as contributing €30 per week. The relevant legislation in this instance is the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations, in particular Article 12(3). The

Appeals Officer paid particular attention to the language of this article, stating:

“The relevant article, above, which provides for the assessment of his daughter’s income is written in the imperative “shall”, therefore the designated person has no choice but to assess an amount relevant to the daughter’s income. With regard to the amount assessed there has to be a parity between young claimants living in the family home and those living outside the family home who must contribute the minimum €30 towards their housing costs in private accommodation. In this regard I find it entirely reasonable for the daughter to be assessed as contributing €30 per week.”

The next issue to be considered was the effective date of the decision. Here the Appeals Officer stated:

“there is an onus on the claimant to inform the Department of any changes in circumstances. This is notified to the claimant at the time of making the claim, which in this case February 2013. I note that there is no evidence that the Department reviewed the claim between that times and the review in July 2016. Indeed there is no evidence of any contact from the Department in that period. I would suggest that there is a burden in both sides however, given the lack of a review in the interim it is reasonable to assume the appellant would not have had contacting the Department uppermost in his mind.”

The Appeals Officer therefore concluded that “in the interests of fairness and reasonableness the effective date of assessing the additional income is 25 July 2016. For the avoidance of doubt this means that the appellant is not liable for the overpayment.”

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/Rent-Supplement.aspx>

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

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