

Casebase Number: G0069

Title of Payment: Rent Supplement



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

Date of Final Decision: 13/11/2013

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Organisation who represented the Claimant: Community Law & Mediation Northside (CLM)

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Case Summary:

This case relates to a decision to limit the amount of Rent Supplement payable to the Appellant to the sum available for a single person notwithstanding that he is a separated father and joint custodian of four children.

Following his separation from his wife in 2011 the Appellant returned to Dublin to live with his parents while his children continued to reside in the West of Ireland with their mother. In May 2012, the Appellant applied to Fingal County Council, as the relevant housing authority, for social housing and was assessed as having a housing need for himself and his four children. As no suitable accommodation was available, the Appellant was placed on a waiting list for the allocation of suitable social housing for a family of five.

The Appellant applied for Rent Supplement to enable him to secure suitable private rented accommodation for his family until the housing authority were in a position to offer him suitable accommodation. He identified suitable accommodation at a rate of €900 per month, the amount within the relevant Rent Supplement applicable to his family size as provided by the regulatory rent limits set out in S.I. 412 of 2007 as amended.¹

In April 2013, the Appellant sought assistance from CLM Northside having been denied Rent Supplement. The Appellant had appealed this decision but the Appeals Officer determined that the Appellant's housing need was that of a single person as the accommodation needs of his children were already met by the fact that they resided in the home of their mother. Accordingly, the Rent Supplement limit to be applied in the Appellant's case was €475 per month, the prescribed statutory limit in the case of a single person household.

CLM, on behalf of the Appellant, requested the Chief Appeals Officer of the Social Welfare Appeals Office (**SWAO**) review the decision of the Appeals Officer under section 318 of the Social Welfare (Consolidation) Act 2005, as amended (the **2005 Act**). CLM asserted that the Appeals Officer had erred in fact and law.

The Chief Appeals Officer, by way of decision dated November 2013, rejected CLM's arguments. The Chief Appeals Officer found that the Appeals Officer had not erred in law or in fact for the reason that the housing and basic needs of the Appellant's children were met

¹ The rent allowance limits have been amended by S.I. No. 340/2016, Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) (No. 1) (Rent Supplement) Regulations 2016 which came into effect on 1 July 2016.

by their primary carer, the children's Mother. The Chief Appeals Officer also found that as the Appellant received no increase on his primary payment in respect of his children, his children could not be regarded as "qualified" children within the meaning of the 2005 Act. Accordingly, the Appellant did not present as a claimant with dependent children for the purpose of Rent Supplement.

On 2 December 2013, the Appellant was granted leave to issue judicial review proceedings in respect of the Chief Appeals Officer's decision. In October 2014, Ms. Justice Baker of the High Court held in favour of the Appellant on the basis that the decision making process of the Department of Social Protection (the **DSP**) was flawed. Ms. Justice Baker ruled that while the Chief Appeals Officer had applied the correct legal test, that test had been applied overly narrowly to the facts when determining the extent to which the Appellant's children were in fact "qualified" children within the meaning of the 2005 Act.

The effect of the Judgement was to set aside the decision of the Chief Appeals Officer, thereby enabling the Appellant to make another application for Rent Supplement, taking into account his accommodation needs as a separated father with four dependant children. Please see Casebase report G0070 in respect of the High Court decision.

Summary of Benefit(s) Received:

Rent Supplement is a supplement payable under the Supplementary Welfare Allowance (**SWA**) scheme and is provided for in Chapter 9 of the 2005 Act. Payments made under the Supplementary Welfare Allowance are based on the principle that a person should have sufficient means to meet their basic needs, including housing needs.

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. For the purposes of welfare supplements, Section 189 of the 2005 Act provides for needs based payments as follows:

189. - Subject to this Act, every person in the State whose means are insufficient to meet his or her needs and the needs of any qualified adult or qualified child of the person shall be entitled to supplementary welfare allowance.

Section 188 defines the term qualified child as meaning:

188. - ...in relation to any beneficiary, any child, not being a qualified adult, who is dependent on that beneficiary for support...

and satisfies the relevant age requirements.

Section 198 of the 2005 Act, as amended, further provides:

198. - (1) Subject to this Chapter, in the case of a person whose means are insufficient to meet his or her needs, regulations may provide for a weekly or monthly payment to supplement that person's income.

The assessment of need is made on the basis of statutory provisions as set out in Section 198 of the 2005 Act and the relevant regulatory provisions as set out in the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (the **2007 Regulations**). Rent Supplement is specifically provided for in s.198(3E) of the 2005 Act in the following terms:

198. - (3E) Without prejudice to the generality of subsections (1), (2) and (3), and subject to subsections (3A), (3B), (3D) and (4), where regulations under this section provide for the payment of a supplement towards the amount of rent payable by a person in respect of his or her residence, the regulations shall prescribe the maximum amount of rent in respect of which such supplement is payable having regard to the family circumstances of the person to whom such supplement is payable and the location of the residence of that person.

The relevant rules governing the assessment of means for the purpose of SWA are set down in Part 4, 3rd Schedule of the 2005 Act (as amended)

Article 9(2) (as amended by Article 5 of the Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) (No. 5) (Rent Supplement) Regulations 2011 (S.I. 729 of 2011) provides:

9. - (2) It shall be a condition of any claimant's entitlement to a supplement under sub-article (1) that—

(i) A designated person is satisfied that –

...(ii) the residence is reasonably suited to the residential and other needs of the claimant, and

(iii) the rent payable by the claimant is just and proper having regard to the nature, character and location of the residence and, for this purpose, the appropriate maximum amount of rent in respect of which a supplement is payable for the period commencing on 1 January 2012 and ending on 30 June 2013² shall be—

(I) the monthly amount set out in Schedule 1 to the Regulations in respect of such class or classes of persons referred to in row (1) of the said Schedule,³ and

(II) the amount as determined by the Minister in respect of any other class or classes of persons,

² The time period in article 9(2) has been deleted by S.I. No. 604/2014, Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) (No. 5) (Rent Supplement) Regulations 2014 which came into effect 1 January 2015.

³ Schedule 1 was amended to refer to “qualified child” and “qualified children” in every place it previously referred to “child” and “children” by S.I. No. 604/2014 - Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) (No. 5) (Rent Supplement) Regulations 2014 which came into effect 1 January 2015.

having regard to the family circumstances and the location of the residence of such persons...”

S. 318 of the 2005 Act provides the Chief Appeals Officer with the authority to revise the decision of an Appeals Officer if the Appeals Officer is found to have made a mistake in the law or the facts of the case:

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.*

Key Arguments:

- The DSP contended that under the Supplementary Welfare Allowance Scheme, a Rent Supplement may be paid to persons who are in need of accommodation on a short-term basis where the rent is within the limit set out in the social welfare legislation. The relevant limit reflects the amount needed for “suitable” accommodation to meet the housing needs of a particular household size and composition. The limit at that time for self-contained accommodation for a single person was €475 per month. The DSP concluded that the accommodation needs of the Appellant’s children were already met in the home of their mother. Accordingly, the Appellant’s entitlement to Rent Supplement was limited to the sum available for a single person household.
- The Appellant submitted that the Deciding Officer and Appeals Officer erred in law and in fact because they failed to have proper regard to all relevant factors and because they considered a single factor to the exclusion of all other factors, particularly “*the residential and other needs*” of the Appellant and his “*family circumstances*”. The Appellant submitted that the error in law arose by referencing only the housing needs of the children when they are with their mother thereby rejecting the children’s need to be with their father. It was also submitted that in view of the geographical separation of the Appellant and his ex-wife that it was not possible for the Appellant to have open access to his children without appropriate accommodation.
- It was submitted that the mistake in facts arose in the Appeals Officer’s decision on the basis that the finding of the Appeals Officer was inconsistent with the decision of Fingal County Council who determined that the Appellant’s social housing need comprised a household with one adult and four children. Furthermore given the statutory authority of Fingal County Council to carry out a housing needs assessment their finding in respect of the Appellant’s housing needs should have been taken into account.
- It was submitted that in accordance with Section 3 of the European Convention on Human Rights Act 2003, the Social Welfare Appeals Office, as an organ of the State, is obliged to make decisions that are compatible with the Appellant’s rights under the European Convention on Human Rights (**ECHR**). The Appellant submitted that the decision of the Appeals Officer represented an unlawful interference with the Appellant’s right to family life and infringed on his rights under Article 8 (Right to Private and Family life) of the ECHR. It was submitted that the Appellant’s family life

was subjected to arbitrary interference by the DSP on the basis that the Appellant was recognized as a family unit by the relevant statutory housing authority, Fingal County Council, but the DSP had denied him the rights that should flow from that recognition. To ensure the effective implementation of his right to family life this entailed awarding an appropriate amount of Rent Supplement suitable to his family needs.

- Finally, it was submitted that the DSP was obliged to take into account the best interests of the children. Therefore it was contended that to regard the Appellant as a single person with no dependents was to frustrate the needs of his children to know their father, and the Appellant's right to act as a parent. Accordingly it was submitted that in order to facilitate access to his children, the Appellant must be able to provide suitable accommodation appropriate to his family size.

Key Conclusions:

Appeal Disallowed

“Any supplementary welfare allowance payment is subject to section 189. It is clear from this section, that it is the needs of any “qualified child” which must be taken into account when determining eligibility for a payment. In this case the Deciding Officer (DO) and the AO considered that, as the housing and other basic needs of the children were met by their primary carer and the appellant received no increase in respect of those children on his primary social welfare payment, they were not dependant of the appellant for support and could not be regarded as a qualified children within the meaning of section 188.

In the circumstances it is the housing and other needs of the appellant and not his children which were taken into account in deciding the case.

...

I do not find any error of fact or law in the Appeals Officer's decision and therefore find no basis for a revision of the decision.”

Chief Appeals Officer, 13th November 2013

For the full decision of the Chief Appeals Officer in a redacted form please click on the accompanying document entitled the Review of Appeals Officer's Decision.

Background:

The Appellant separated from his wife in 2011 and returned to Dublin in January 2012 to increase his prospects of securing employment. Under the terms of the separation agreement it was agreed that the Appellant and his ex-wife would share joint custody of their four children. The Appellant's ex-wife lived in the West of Ireland where the children were enrolled in school. The Appellant moved in with his parents until such time as he could secure suitable accommodation for his family.

Upon returning to Dublin in 2012 the Appellant made an application to Fingal County Council for social housing. Fingal County Council determined that he and his four children, who were

residing with their mother outside of Dublin, were eligible for social housing and were placed on the housing waiting list.

The Appellant applied for Rent Supplement to enable him to secure suitable private rented accommodation for his family until the housing authority were in a position to offer him suitable accommodation. The Appellant sourced a three-bedroom house for himself and his four children. The rent charged for this property was within the relevant rent limit of €900 per month.

The Appellant's application for Rent Supplement was refused on 16 August 2012 on the basis that rent of €900 per month was in excess of the €475 per month limit for a single person household. In addition, it was asserted that the Appellant failed to submit ID and bank statements.

On 11 September 2012 the Appellant appealed the decision of the Designated Officer to the Social Welfare Appeals Office. By way of a summary decision, issued to the Appellant on 27 December 2012, the appeal was disallowed.

Decision of Appeals Officer: 27.12.2012

Appeal DISALLOWED

Appeals Officer's Reasoning and Conclusions:

"Under the Supplementary Welfare Allowance scheme, a rent supplement may be paid to persons who are in need of accommodation on a short-term basis where the rent required is within the limit set out in social welfare legislation. The limit varies according to the area in which they live and the number of people sharing the accommodation. In the appellant's case, that limit for self-contained accommodation is €475 per month. Having carefully examined the evidence in this case, I have concluded that the appellant's rent exceeds the maximum amount provided for in social welfare legislation. The accommodation needs of the appellant's children are already met in the home of their mother."

The Appellant sought the advices of CLM upon receipt of the decision dated 27 December 2012. On 15 May 2013, pursuant to section 318 of the 2005 Act, CLM, on behalf of the Appellant, requested a review of the Appeals Officer's decision by the Chief Appeals Officer on the basis that the Appeals Officer had erred in fact and law.

By written submission, CLM, on behalf of the Appellant, argued that in order to comply with section 198(3E) of the 2005 Act, the Appeals Officer should have had proper regard to all relevant factors, including *"the residential and other needs"* of the Appellant and his *"family circumstances"*. It was argued that the Appeals Officer had erred in law by referring exclusively to the housing needs of the children when they were with their mother and thereby rejecting the children's need to be with their father and the reasonable expectation of the Appellant that any meaningful access to his children must include their residence with him. In addition, it was submitted that in view of the geographical separation of the Appellant and his ex-wife, it was not possible for the Appellant to have open access to his children without appropriate accommodation.

CLM further contended that the Appeals Officer's findings with respect to the facts did not present as consistent with that of Fingal County Council. Fingal County Council had determined that the Appellant's social housing needs comprised a household with one adult and four children. CLM asserted that in view of the statutory authority of Fingal County Council in the matter of the Appellant's housing needs its assessment should have been taken into account. Accordingly, the decision of the Appeals Officer to effectively reject the Appellant's housing need as determined by Fingal County Council must be regarded as constituting a mistake on the facts.

Finally, it was argued that the decision of the Appeals Officer represented an unlawful interference in the Appellant's family life and infringed on his rights under Article 8 of the ECHR.

Article 8 of the ECHR provides:

- 1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The ECHR has been incorporated into Irish law by the European Convention on Human Rights Act 2003. CLM argued that under section 3 of that Act the Social Welfare Appeals Office, as an organ of the State, is obliged to make decisions that are compatible with the Appellant's rights under the ECHR. It was submitted that the Appellant and his children had been recognised as a family unit by the relevant statutory authority (Fingal County Council). In these circumstances, the Appeals Officer erred when upholding the decision of the Designated Officer, a decision which CLM submitted constituted an arbitrary interference by the State insofar as the Appellant and his children were denied the rights that should have flowed from the recognition of their housing need by the local authority designated with that statutory responsibility.

It was further submitted that the DSP was obliged to take into account the best interests of the Appellant's children. To regard the Appellant as a single person with no dependents frustrated the needs and best interests of his children to know their father, and the Appellant's right to act as their parent. To have access to his children, the Appellant must be able to accommodate them. CLM argued that the Appeals Officer's decision interfered in the Appellant's family life that could not be justified by the facts or the law.

Date of final Decision: 13.11.2013

Decision:

Appeal DISALLOWED

Chief Appeals Officer's reasoning and conclusions:

In relation to the argument that the Appeals Officer must have proper regard to all relevant factors including *“residential and other needs of the claimant”* and *“the family circumstances of the person to whom such a supplement is payable”*, the Chief Appeals Officer stated that any supplementary welfare allowance payment is subject to section 189 of the 2005 Act. Section 189 entitles persons to supplementary welfare allowance where their means are insufficient to meet the person’s needs and the needs of a *“qualified child”* where relevant. *“Qualified child”* is defined in section 188 of the 2005 Act as *in relation to “any beneficiary, any child, not being a qualified adult, who is dependent on that beneficiary for support..”*

The Chief Appeals Officer determined that the Appellant’s children were not *“qualified”* children because they were not dependent on the Appellant for support. The Chief Appeals Officer came to this conclusion on the basis that the housing and basic needs of the children were met by their primary carer, their Mother, and the Appellant received no increase in respect of his children on his primary social welfare payment.

With respect to the CLM’s assertion that there was an inconsistency between the decisions of Fingal County Council and that of the Appeals Officer with regard to the Appellant’s housing needs and those of his children, the Chief Appeals Officer stated that no legislative right arises from a social housing assessment by a local authority. The Chief Appeals Officer reasoned that Rent Supplement must be decided according to the statutory provisions governing the scheme. Under the terms of the Rent Supplement scheme, it is a requirement that a person establish a threshold of need in form of a Housing Needs Assessment by a local authority. This assessment, and the decision of a local authority, does not in itself confer a right to a specific level of supplementation under the statutory provisions governing Rent Supplement. The Chief Appeals Officer found that the relevant statutory provisions provide for supplementation according to the needs of the applicant and their *“qualified children.”* Accordingly, because the Appellant did not have any *“qualified children”*, the Appellant’s eligibility for Rent Supplement was correctly determined by the Deciding Officer and Appeals Officer by reference to his accommodation needs as a single person household.

The Chief Appeals Officer was silent with respect to CLM’s assertion that the decision frustrates the needs of the children to know their father and the right of the Appellant to act as a parent to his children, other than to restate her finding that there had been no error in law in view of the relevant statutory provisions governing the Rent Supplement scheme.

The Chief Appeals Officer found that the Appeals Officer had made no error in fact or law, accordingly there was no basis for a revision of the Appeals Officer’s decision.

Observations:

The decision of the Chief Appeals Officer is significant as it concerns the extent to which the housing needs of persons who are separated with dependant children should be met when seeking financial assistance towards the cost of rent under the SWA scheme. In this regard the Appellant asserted that his need for support should be determined with reference to his status as a father with shared custody of four children. The Appellant’s claim that his needs should be assessed with reference to his dependant children was confirmed by the relevant local authority when it was determined that appropriate social housing would be of a size to accommodate the Appellant and his children.

By contrast, the Chief Appeals Officer held that under the relevant statutory provisions governing the SWA scheme, there was no requirement that supplementation be provided to house the Appellant's children with him if those children were already physically accommodated with their other parent. Furthermore, the Chief Appeals Officer held that as the Appellant was not in receipt of a payment for his children, those children could not be regarded as part of his household for Rent Supplement purposes.

Put plainly, the Chief Appeals Officer found that under the terms of the Rent Supplement scheme, the DSP had no obligation in this case to provide supplementation to reflect the facts pertaining to the separation and joint custody arrangements between the relevant parties.

Oral Hearing

It is relevant that the decision by the Appeals Officer in the first instance was made on a summary basis; that is, without an oral hearing. It was put forward by CLM that if there was any doubt, the matter should have been referred for hearing in order for the Appellant to be provided with the opportunity to present his case in accordance with the rights of fair procedures and natural justice.

Subsequent Proceedings

The Appellant subsequently applied for leave to issue judicial review proceedings in respect of the Chief Appeals Officer's decision of 13 November 2013. Leave was granted on 2 December 2013. The Appellant sought review on two grounds. Firstly, that the Chief Appeals Officer erred in law as to the proper test to be applied in considering the Appellant's application for Rent Supplement. And secondly, that the enabling legislation failed to properly vindicate the Appellant's constitutional and Convention rights and whether in the circumstances the legislation is constitutional.

Justice Baker granted relief in favour of the Appellant by way of decision dated the 30th October 2014 on the basis of the first ground, that the Chief Appeals Officer had erred in law. Justice Baker held that the Chief Appeals Officer took *"an overly narrow view of the test of the needs of the children for the purpose of the proper consideration of whether they are qualified within the meaning of the scheme."*

Justice Baker's decision is available at <https://cases.legal/en/act-uk2-77780.html>.

Please note, following the Judgement by Justice Baker an amendment was made to the regulations governing Rent Supplement. S.I. 604 of 2014 amended S.I. 412 of 2007 to the extent that an explicit reference to a child being a "qualified child" was inserted where relevant. The rules pertaining to Rent Supplement now explicitly refer to a household comprising a claimant and his or her "qualified" child/ren.

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>

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