

Casebase Number: GO103

Title of Payment: Supplementary Welfare Allowance (Rent Supplement)



Community Law and Mediation Northside

Northside Civic Centre

Bunratty Road

Coolock

Dublin 17

Date of Final Decision: 13 September 2016

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Keywords: Rent Supplement; Fair procedures; Burden of proof

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

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Summary:

This case relates to a review of a decision by the Department of Social Protection (the **Department**) to disallow the Appellant supplementary welfare allowance in the form of rent supplement.

The Appellant had been in receipt of rent supplement in respect of a rental property in Dublin. On the basis of a report by a Social Welfare Inspector to the effect that he was actually cohabiting with the mother of his child at a different address, in May 2016 his rent supplement was suspended. On 5 July 2016, a decision was made that he was not entitled to rent supplement because he had not established that he was residing at the property.

The Appellant appealed on the basis that he had never cohabited with the mother of his child and that this had been made clear to the Social Welfare Inspector. He submitted that, in fact their relationship had ended in April 2016, before even his rent supplement had been suspended. Evidence to this effect was submitted in support of the appeal, and in submissions made by FLAC on his behalf, the Appellant observed that he had never been provided with a copy of the Social Welfare Inspector's report upon which the decision to disallow his rent supplement had been based. It was submitted that this amounted to a breach of his constitutional right to fair procedures as incorporated into the Department's own Guidelines on Decision-making and Natural Justice.

On 13 September 2016, the Social Welfare Appeals Office allowed the Appellant's appeal on the basis that there was no evidence that the Appellant was cohabiting with his child's mother such as would establish cohabitation in accordance with the Department's own Guidelines on Cohabitation. Neither, the Appeals Officer observed, was there any evidence that the Appellant was absent from his address. Finally, the Appeals Officer noted that the Appellant had not been afforded an opportunity to be heard in relation to the allegations against him before a decision had been taken to suspend his rent supplement. Accordingly, the Appellant's rent supplement was reinstated, and arrangements were made to pay the appropriate arrears.

Key Conclusions:

Supplementary Welfare Allowance (Rent Supplement) reinstated and arrears paid.

Summary of Benefit Received:

Rent supplement is a means-tested payment for certain people living in private rented accommodation who cannot provide for the cost of their accommodation from their own resources. It is paid as a form of Supplementary Welfare Allowance under section 198 of the Social Welfare Consolidation Act 2005. It is distinguishable from the Housing Assistance Payment in that, in accordance with the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2000, as amended, it is available only to persons who cannot afford their rent because of a substantial change in their circumstances which occurred after they started renting.

Under Article 11 of the 2007 Regulations, as amended, a person may lose his or her entitlement to rent supplement if he or she ceased to reside continuously in the residence in respect of which that supplement has been awarded.

The Department's Guidelines on Cohabitation provide that where an entitlement may be disallowed, limited or withdrawn, on the basis of cohabitation, the onus is on the Department to establish that cohabitation exists. The criteria to be considered in assessing whether persons are cohabiting are:

- The duration of the relationship;
- The basis on which the couple live together;
- The degree of financial dependence of either adult on the other and any agreements in respect of their finances;
- The degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;
- Whether there are one or more dependent children;
- Whether one of the adults cares for and supports the children of the other; and
- The degree to which the adults present themselves to others as a couple.

The Department's Guidelines on Decision-making and Natural Justice note that every claimant is entitled to have their claim considered in accordance with the principles of natural and constitutional justice and in the context of determinations of entitlement under the social welfare legislation that includes:

1. The right to know the information, upon which a decision is being made,
2. The opportunity to comment upon any reports or documents being used in reaching the decision and to present his or her case,
3. The right to know the reasons for any adverse decision,
4. The right to have all relevant evidence considered and irrelevant evidence not taken into account,
5. To have the decision made by an impartial person whose discretion has not been fettered and
6. Where it is necessary for a fair determination of the issues, an oral hearing.

Arguments made on behalf of the Appellant:

It was argued on the Appellant's behalf that he had never been provided with a copy of the Social Welfare Inspector's report upon which the decision to suspend, and then to disallow his rent supplement had been based. It was submitted that this amounted to a breach of his constitutional right to fair procedures as incorporated into the Department's own Guidelines on Decision-making and Natural Justice.

Arguments on behalf of the Department of Social Protection:

No evidence that the Appellant was no longer resident at his address or that he was cohabiting with his former partner was submitted by the Department.

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

Date of Final Decision: 13 September 2016

Appeal Officer's (AO) reasoning and conclusions:

On 13 September 2016, the Social Welfare Appeals Office allowed the Appellant's appeal on the basis that there was no evidence that the Appellant was cohabiting with his child's mother such as would establish cohabitation in accordance with the Department's own Guidelines on Cohabitation. Neither, the Appeals Officer observed, was there any evidence that the Appellant was absent from his address. Finally, the Appeals Officer noted that the Appellant had not been afforded an opportunity to be heard in relation to the allegations against him before a decision had been taken to suspend his rent supplement.

Observations

This case illustrates the danger of making a decision on a person's entitlement to social welfare on the basis of information which has not been put to them. Had the Appellant been fully informed of the basis for the deciding officer's decision in advance, the errors of fact and misunderstandings could have been remedied.

The case also illustrates the value and utility of the Departmental Guidelines. The Guidelines on assessment of cohabitation and on natural justice in decision-making established clear parameters for the appeal decision without the necessity for recourse to case law.

For further information:

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

<http://www.welfare.ie/en/Pages/Cohabitation.aspx>

<http://www.welfare.ie/en/Pages/Decision-Making-and-Natural-Justice.aspx>

For *more information* contact us at:

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