Casebase Number: G0107

Title of Payment: Child Benefit and Supplementary Welfare Allowance

Community Law and Mediation Northside

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Dublin 17

Date of Final Decision: 18 December 2019

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Keywords: Child Benefit; Supplementary Welfare Allowance; habitual residence condition

Organisation who represented the Claimant: Community Law & Mediation

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Summary:

The Applicant moved to Ireland from her country of origin in September 2018 with her four children. She was separated from her husband and father of the children. Her applications for Supplementary Welfare Allowance ('SWA') and Child Benefit were refused in November 2018. At the time of the said applications, the Applicant had a right to reside in the State pursuant to a Stamp 4 permit and had previously reside in the State for a short period in 2003.

The Child Benefit and SWA applications were both refused on the basis that she had failed to satisfy the habitual residence condition, as required by section 246 of the Social Welfare Consolidation Act 2005 (the 'Act of 2005'). While she was found to have a right to reside in Ireland, the Community Welfare Officer was not satisfied that it had been established that she was habitually resident in Ireland.

Section 246 of the 2005 Act provides that it is a requirement for those applying for SWA and Child Benefit to be habitually resident in the State. Per section 246(4), a deciding officer or a designated person when determining whether a person is habitually resident in the State shall take into consideration all the circumstances of the case including, in particular, the following:

> *(a) the length and continuity of residence in the State or in any other particular country,*
> *(b) the length and purpose of any absence from the State,*
> *(c) the nature and pattern of the person's employment,*
> *(d) the person's main centre of interest, and*
> *(e) the future intentions of the person concerned as they appear from all the circumstances.*

The Applicant appealed the refusal and submitted evidence to the effect that she had left her country with the intention of settling in Ireland permanently, including evidence that she had travelled on a one-way ticket and that she had sold all her belongings and closed her bank account. This evidence notwithstanding, the refusal decision was upheld by an Appeals Officer in May 2019 on the basis that the Applicant had not secured employment or childcare.

The Applicant sought a further review before the Chief Appeals Officer, who under section 318 of the Act of 2005 may revise any decision of an Appeals Officer where it appears that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts.

Meanwhile, in July 2019, the Applicant applied for One Parent Family Payment. In September 2019 she was found to be habitually resident for the purposes of receiving the One Parent Family Payment, with the award backdated.

In her appeal to the Chief Appeals Officer, the Applicant submitted that the Appeals Officer had had sufficient evidence to conclude that she was habitually resident in the State, that it had been tacitly accepted that she had a settled intention to remain in Ireland, and that this evidence had been disregarded. It was also noted that the Applicant had been found to be habitually resident for the purposes of the One Parent Family Payment in September 2019, and it was submitted that the adverse

finding in relation to her Child Benefit and SWA application was contrary to the Department of Social Welfare's policy on consistency in decision-making on the basis that had been no significant change of circumstances in her case since that negative decision was taken.

In December 2019, the Chief Appeals Officer found that the Appeals Officer gave disproportionate weight to the challenges the Applicant faced in relation to childcare and housing inasmuch as it related to her stated intention to remain in Ireland. She found that the Appeals Officer did not duly consider the other factors which supported the claim. She also noted the finding of habitual residence in relation to the Applicant's application for One Parent Family Payment. For these reasons, the Applicant's appeal was allowed and the decision of the Appeals Officer was revised.

Key Conclusions:

Appeal allowed.

Summary of Benefits Received:

Supplementary Welfare Allowance

SWA is a means tested allowance made on a weekly basis to people who do not have enough income to meet their needs and those of their families/dependants. It can come in the form of a basic payment or a supplement in respect of certain expenses such as rent.

SWA is governed by Part III, Chapter 9, of the Act of 2005, section 192 of which outlines the habitual residency requirements in the following terms;

> A person shall not be entitled to an allowance…[other than exceptional needs payments or urgent needs payments under this Chapter unless he or she is habitually resident in the State.

Child Benefit

Child benefit is a non-means-tested payment to the parents or guardians of children under the age of 16, and children under the age of 18 in certain circumstances. Non-EU/EEA citizens must be habitually resident in Ireland to quality for child benefit.

Child benefit is governed by Part IV of the Act of 2005, section 220 of which provides:

> (1) Subject to subsection (3), a person with whom a qualified child normally resides shall be qualified for child benefit in respect of that child and is in this Part referred to as "a qualified person".
>
> (3) A qualified person, other than a person to whom section 219(2)(a), (b) or (c) applies, shall not be qualified for child benefit under this section unless he or she is habitually resident in the State at the date of the making of the application for child benefit.

As noted above, section 246 of the 2005 Act (as amended) provides the rules as apply to the question of habitual residence generally. It is a two-step process with requires not only a right of residence as per section 246(5) but also consideration of the five factors outlined in section 246 (4), namely:

> (a) the length and continuity of residence in the State or in any other particular country,
>
> (b) the length and purpose of any absence from the State,
>
> (c) the nature and pattern of the person's employment,
>
> (d) the person's main centre of interest, and

(e) the future intentions of the person concerned as they appear from all the circumstances.

For the purposes of determining whether a person has satisfied the HRC, the Department of Employment Affairs and Social Protection maintains guidelines for Deciding Officers. These are available here: https://www.gov.ie/en/publication/fc9c5e-operational-guidelines-for-deciding-officers-on-the-determination-of/?referrer=https://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx

Chief Appeals Officer's Decision:

The Chief Appeals Officer considered the two-part process of establishing habitual residence under the Act of 2005. Given that the Appeals Officer accepted that the Applicant had the right to reside in Ireland, the first stage of the test, their role became to carry out an assessment of the Applicant's habitual residence status pursuant to the five factors listed in section 246(4) of the Act of 2005. The Appeals Officer focused on two of these factors; the Applicant's centre of interest and her future intentions.

The Chief Appeals Officer noted that the Appeals Officer had found that the Applicant had lived in Ireland since September 2018, had engaged in employment training courses and was undertaking a certificate in data protection, was working part-time, and was seeking full time employment having worked as a lawyer in her country of origin. The Appeals Officer had also noted the Applicant's stated intention to remain in Ireland but was concerned about the challenges she faced in respect of childcare and housing. The Chief Appeals Officer concluded that the decision of the Appeals Officer had established a series of facts which supported a conclusion that the Applicant satisfied the habitual residence criteria at the date of her claim. The Appeals Officer's rejection of the Applicant's claim came from giving a disproportionate weight to the difficulties that the Applicant was facing in relation to securing childcare and housing, and did not considering the other factors in determining if the Applicant was habitually resident. This undue weighting of certain facts amounted to an error of law and the decision of the Appeals Officer was revised accordingly.

The Chief Appeals Officer also stated she also had to be cognisant of the One Parent Family Payment determination.

Observations:

This case illustrates that decision-makers assessing claims dependent on establishing a habitual residence of the applicant must consider the totality of factors in making such an assessment. The relevant provision requires for a determination to be based five factors of a general nature. The statutory criteria do not highlight any specific considerations that should be assigned extra weight. To assign undue or disproportionate weight to any fact or set of facts is contrary to the provision and an error of law.

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