



Community Law & Mediation

Title of Payment: Disability Allowance

Date of Final Decision:

Keywords: Disability Allowance; Means Test; Non-Cash Benefit; Mortgage Repayments; Legislative Interpretation; Equal Treatment of Similar Applicants; Precedent Decisions; Judicial Review; Regulation 142; Regulation 143

Organisation who represented the Claimant: Citizen's Information

Casebase No.: G0111

Case Summary:

This case is that of *Margaret Bracken v. Minister of Employment Affairs and Social Protection* [2018] No.165 J.R (2020 IEHC 394). It was heard with the case of *Deirdre Brennan v Minister for Employment Affairs and Social Protection* [2018] No.76 J.R. **Casebase Report No. G0112** details the latter decision.

This case concerned an application to quash the respondent's (the Minister for Employment Affairs and Social Protection's) decision to take into account the applicant's ex-partner's mortgage repayments on the house in which the applicant resides when assessing the applicant's means in the context of her application for disability allowance.

The applicant resides in a house which is in the sole name of her ex-partner, and on which her ex-partner pays a mortgage repayment in the amount of €647 each month. The applicant lives in the house with her son, who is also the child of her ex-partner. She pays no rent and her residency is not the subject of a tenancy agreement.

The applicant was granted disability allowance in August 2017, but in determining her means as part of this application, the respondent took into account the monthly mortgage repayment made by the applicant's ex-partner. The applicant appealed this decision to the Social Welfare Appeals Office and in doing so relied in part on a previous decision of the Chief Appeals Officer in 2015, in which an applicant in similar circumstances had only 50% of the relevant mortgage repayment taken into account (the "Precedent Decision"). The Social Welfare Appeals Office refused the appeal in November 2017, which decision the applicant then sought to have reviewed by the Chief Appeals Officer. The Chief Appeals Officer subsequently refused to revise the decision of the Social Welfare Appeals Office, by way of a written decision issued on 21 December 2017. The applicant then sought to judicially review this refusal in the High Court.

Before the High Court, the applicant argued that she was not challenging the legislation but instead the respondent's interpretation of the legislation, which she said was irrational and arbitrary. She argued that the respondent failed to treat similar applicants equally and this is demonstrative of a fixed and inflexible policy. Additionally, no adequate interpretation was provided by the respondent in relation to the difference between 'housing costs' and 'net cash value'. The core issue was the proper interpretation of the phrase "*the net cash value to the (applicant) of her annual housing costs actually incurred and paid by a liable relative insofar as the cash value exceeds €4,952 per annum*" contained in Regulation 142 of the 2007 Regulations, and monthly mortgage payments do not come within the meaning of non-cash benefit.

The respondent argued that the statutory provisions allow both cash income and any non-cash benefits which a claimant may reasonably be expected to receive during the year, whether as contributions to the expenses of the household or otherwise to be taken into account. Non-cash benefits include the net cash value to the relevant claimant of his or her annual housing costs actually incurred and paid by a liable relative. Mortgage repayments do come within the meaning of non-cash benefit.

The Court's decision focused on the question of statutory interpretation and ultimately found that giving the contentious words their ordinary meaning, the respondent had correctly interpreted the legislation and mortgage repayments come within the definition of housing costs and the meaning of non-cash benefits. The Court further found that adequate and understandable reasons had been provided by the Respondent.

The Court therefore refused the applicant's application to quash the respondent's decision.

Key conclusions:

Mortgage repayments come within definition of 'housing costs' and within the meaning of a non-cash benefit, and will be taken into account when determining a claimant's means.

Summary of Legislative Provisions:

The legislative provisions considered in this case regarding the calculation of means and assessment of maintenance and non-cash benefits in relation to a disability allowance claim are found in the Social Welfare Consolidation Act, 2005 (the "2005 Act") and the Social Welfare (Consolidated Claims Payments and Control) Regulations, 2007, S.I. No. 142 of 2007 (the "2007 Regulations").

The rules for calculating means are set out in Schedule 3 of the 2005 Act. Part 1 of Schedule 3 defines housing costs as follows:

"housing costs" means rent or repayment of a loan entered into solely for the purpose of defraying money employed in the purchase, repair or essential improvement of the residence in which the person is, for the time being, residing".

Part 2 of Schedule 3 sets out the rules in relation to the assessment of maintenance and non-cash benefits, for the purpose of deciding an applicant's rate of disability allowance. Rule 1(2) provides as follows:

“all income in cash and any non-cash benefit that may be prescribed which the person or his or her spouse civil partner or cohabitant may reasonably expect to receive during the succeeding year, whether as contributions to the expenses of the household or otherwise but-

(a) Excluding the amounts at reference 1 to 19 in Table 2 to this Schedule and

(b) Excluding-

(i) In the cases that may be prescribed, any moneys received by way of a maintenance grant,

(ii) Any moneys received by way of maintenance payments (including maintenance payments made to or in respect of a qualified child) in so far as those payments do not exceed the annual housing costs actually incurred by the person subject to the maximum amount that may be prescribed, together with one half of the amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any)”

The 2007 Regulations provide at Regulations 142 and 143 for the assessment of non-cash benefits and for maintenance arrangements respectively:

“142. The non-cash benefits prescribed for the purposes of Rules 1(2) of Part 2, 1(2) of Part 3 and 1(2) of Part 5 of Schedule 3 to the Principal Act shall be –

The net cash value to the person of his or her annual housing costs actually incurred and paid by a liable relative insofar as the cash value exceeds €4,952 per annum.

143. (1) Subject to sub- article (2) the maximum amount prescribed for the purposes of Rule 1(2)(b)(ii) of Part 2 Rule1(2)(b)(i) of Part 3 and Rule 1(2)(b)(ii) of Part 5 of schedule 3 to the Principal Act shall be €4,952.”

Decision

Ms. Justice Creedon first set out the applicant’s and respondent’s arguments in the case. The applicant’s key arguments were as follows:

- The interpretation of the phrase *“the net cash value to the (applicant) of her annual housing costs actually incurred and paid by a liable relative insofar as the cash value exceeds €4,952 per annum”* contained in Regulation 142 of the 2007 Regulations, was the core issue in the case, and the use of the terms ‘cost’ and ‘value’ by the legislature in the one provision leads to the inference that the Oireachtas was aware of the distinction to be drawn between the cost of housing paid for by a relative and the net cash value of the same. Monthly mortgage repayments do not come within the meaning of non-cash benefit.
- As her ex-partner is the sole owner of the house, he derives significant benefits from those repayments and therefore the full amount should not have been taken into

account in assessing her means. To ignore her ex-partner's beneficial interest in the property is therefore both irrational and arbitrary.

- The decision was inconsistent with the Precedent Decision and she was not provided with adequate reasons.

The respondent's key arguments were as follows:

- Contrary to the applicant's claims that she was not challenging the relevant legislative provisions, her arguments were in fact an attack on the legislation under the guise of attacking the relevant decision.
- Mortgage repayments come within the meaning of non-cash benefit to the applicant. The statutory provisions allow both cash income and any non-cash benefits which a claimant may reasonably be expected to receive during the year, whether as contributions to the expenses of the household or otherwise, to be taken into account. Non-cash benefits include the net cash value to the relevant claimant of his or her annual housing costs actually incurred and paid by a liable relative. Such payments have a net cash value to a claimant as the housing costs which the claimant would otherwise have to meet are being paid entirely by that liable relative.
- The applicant's argument in respect of 'net cash value' is essentially that it is incumbent on a deciding officer in assessing what the benefit is to the person seeking the payment, to subtract or 'net out' any benefit to the liable relative. What is meant by assessment of means, is the impact to the person of the benefit, and there is nothing in the legislation which allows for the setting off of some notional benefit to a liable relative as part of the means assessment.
- The respondent is not required to take into account any benefit the applicant's ex-partner derives from the mortgage repayments.
- The Precedent Decision was not in fact a binding authority or a precedent decision and was in fact an incorrect interpretation of the statutory provisions.

Having detailed each of the above arguments, the Court's decision focused on the question of legislative interpretation. The Court examined the meaning of 'housing costs' and found that applying the literal approach to statutory interpretation and giving these words their ordinary meaning:

"this definition is not confined to the cost of renting or purchasing a property, but clearly encompasses rent, repayment of a mortgage entered into for the purchase of a property and repayment of a mortgage entered into for the repair or essential improvement of a property. The legislative intention in defining "housing costs" is clear. The mortgage repayments being made by the applicant's ex-partner clearly come within the definition of "housing costs".

Regulation 142 provides that the 'non-cash benefits' shall be, *"the net cash value to the person of his or her annual housing costs actually incurred and paid by liable relative insofar as the cash value exceeds €4,952 per annum"* and that therefore mortgage repayments do come within the definition of housing costs and the meaning of non-cash benefits.

Similarly, the court ascribed the words 'net cash value' their ordinary meaning, and found that the full amount of the mortgage repayments were correctly used in the assessment of the means and non-cash benefits for the purpose of deciding the applicant's rate of disability allowance.

The Court found that applying the literal approach to interpretation of the legislation did not lead to any ambiguity or absurdity and reading the provisions as a whole, with their purpose in mind, i.e. to determine income for the assessment of means, it was further satisfied with the respondent's interpretation of the legislation. On the basis that the respondent had correctly interpreted the legislation, the Court found that the applicant's other arguments – that the respondent engaged in an arbitrary system of implementation or was engaging with a fixed and inflexible policy, fell away.

On the adequacy of reasons provided in the impugned decision of the Chief Appeals Officer, the Court looked back at the history of decisions preceding that decision. The Court also noted the extensive caselaw which had been opened to the Court on the requirement to give reasons. It referred in particular to caselaw which underlined the principle that an administrative decision affecting the rights and obligations of person must set out the essential rationale on the basis of which the decision is taken and unless that is so then the constitutional right of access to the courts could be rendered ineffective. The Court found however that the key issue in the case was the question of interpretation in relation to mortgage repayments, and that in the earlier Appeals Office decision the reasons for taking into account the full amount of the mortgage had been adequately set out, and these reasons were fully understood by the applicant when seeking her review.

The Court therefore found that the reasons provided by the respondent were sufficient, understandable and expressed in such a fashion as would allow the applicant to seek appropriate legal advice.

On the basis of the above, the Court declined to quash the decision of the respondent.

Observations:

This case establishes the principle that as mortgage repayments paid by a relative on a property in which a claimant resides provide a cash value to a claimant, as such claimant would otherwise have to pay housing costs, those mortgage repayments will be taken into account when determining the means of a claimant.

This decision also shows the Court's preference for giving words their ordinary meaning, reading legislative provisions as a whole and taking into account the purpose of legislation.