



**Community
Law & Mediation**

Title of Payment: One Parent Family Payment

Date of Final Decision: 5 August 2020

Keywords: One Parent Family Payment; Means Test; Mortgage Repayments; Adequacy of Reasons; Arbitrariness; Equal Treatment of Similar Applicants; Precedent Decisions; Legislative Interpretation; Judicial Review; Regulation 142; Regulation 143.

Organisation who represented the Claimant: Citizens Information

Casebase No. G0112

Case Summary:

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

Casebase Report No. G0111 details the latter decision.

The case concerns a challenge to the decision by the Minister for Employment Affairs and Social Protection (the “**Respondent**”), when assessing the means of Ms Brennan (the “**Applicant**”) for the purposes of determining the amount of her One Parent Family Payment, to use the full value of monthly mortgage repayments made by her ex-partner.

The applicant was a nurse, working as a homemaker, who lived with her two young children in the home she had jointly bought with her ex-partner. Her ex-partner met the mortgage payments (€1161.36 / month).

The Applicant applied for a One Parent Family Payment. On 2 February 2015 the Deciding Officer determined that the full mortgage repayments being made by the Applicant’s ex-husband should be taken into account in assessing the means of the applicant. On review, this decision was upheld. (This meant that the applicant was entitled to receive a One Parent Family Payment of €190 / week.)

The Applicant appealed the Deciding Officer’s Decision to the Social Welfare Appeals Office. In her appeal, she relied on a previous decision of the Chief Appeals Officer

dated 31 July 2015 (the “**Precedent Decision**”). The Precedent Decision concerned a similar applicant in whose case only 50% of the mortgage repayment was taken into account when assessing her means. The Precedent Decision included the statement that *“given the joint ownership of the property and liability of both parties to discharge the debts/bills on the property it is reasonable that half the mortgage and associated payments should be disregarded.”* The Applicant maintained that, as her house was in joint names, her ex-partner derived a benefit from the mortgage payments, and so only half of the payments should be used in the assessment.

On 26 July 2017 the Social Welfare Appeals Officer dismissed the applicant’s appeal. Notwithstanding the Precedent Decision, the Social Welfare Appeals Officer considered that: *“In this case the legislation ... provides for the assessment of housing costs paid by the liable relative. I have sympathy with the arguments put forward ... However, in my view the legislation does not allow the payments being made to be qualified in such a way as to discount from the means assessment the benefit which the ex-partner derives from those payments. In the circumstances the full value of the mortgage payments being made must be used in assessing the appellant’s means.”*

The Applicant appealed the dismissal of her appeal to the Chief Appeals Officer. On 7 November 2017 the Chief Appeal Officer dismissed this appeal. The Chief Appeals Officer stated: *“While previous decisions do not create precedents the appeals office endeavours to be consistent in its decision making. Having reviewed the decision that I am now referred to I am of the view that while I gave the benefit of a more favourable calculation in that particular case there was in fact no precise rule which allowed for that more favourable treatment. While that decision was made by me in good faith I do not consider that in the absence of a specific rule in the governing legislation permitting the application of a more favourable calculation it would be appropriate for me to apply the same consideration in Ms. Brennan’s case”.*

The applicant applied to the High Court for judicial review of the Chief Appeal Officer’s decision. The issue for the High Court was *“one of statutory construction and 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” and whether the decision of the respondent taken on review was taken within the proper meaning of Regulation 142 of the 2007 Regulations”.*

The High Court dismissed the judicial appeal, finding that the Respondent had correctly interpreted the statute.

Key conclusions:

When assessing an applicant’s means for the purpose of calculating a One Parent Family Payment, the Department for Employment Affairs and Social Protection is entitled to take into account mortgage repayments made by a liable relative. Legislation provides for a portion of the mortgage repayments to be disregarded (at the relevant time,

€4952) and the the remainder halved. However, the legislation does not provide, as the applicant contended, that only half the mortgage repayments should be used in the assessment of means on the basis that the liable relative making the repayments is a joint owner and therefore deriving a benefit from making the repayments.

Summary of Benefits Received:

Legislative background

The One Parent Family Payment is provided pursuant to Chapter 7 of the Social Welfare Consolidation Act 2005 (the “**2005 Act**”). The rules relating to this benefit are in Chapter 7 and Schedule 3, Part 5 of the 2005 and the Social Welfare (Consolidated Claims Payments and Control) Regulations, 2007 S.I. 142 of 2007 (the “**2007 Regulations**”).

Schedule 3 of the 2005 Act is entitled *Rules as to Calculation of Means*. Part 1 provides:

““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;”

Schedule 3, Part 5, Rule 1 states (**emphasis added**):

1. Subject to paragraphs (2) and (3), in calculating the means of a person, account shall be taken of the following:

.....

*“(2) all income in cash (including, in the case of widow's (non-contributory) pension, widower's (non-contributory) pension, surviving civil partners (non-contributory) pension, guardian's payment (non-contributory) and one-parent family payment, **the net cash value of such non-cash benefits as may be prescribed**), and the income received by a qualified child or qualified children that may be prescribed which the person may reasonably expect to receive during the year succeeding the date of calculation, but—*

(a) excluding ...

(b) excluding

.....

*(ii) in the case of blind pension, widows (non-contributory) pension, widower's (non-contributory) pension, surviving civil partners (non-contributory) pension, or one-parent family payment, any moneys received by way of a maintenance payment (including maintenance payments made to or in respect of a qualified child) insofar as they 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 any***

amount of maintenance payment in excess of the amount disregarded in respect of housing costs actually incurred (if any)."

....

The 2007 Regulations state:

Assessment of means — non-cash benefits

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—

(a) 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, and

....

Maintenance arrangements

143. (1) Subject to sub-article (2), the maximum amount prescribed for the purposes of Rule 1(2)(b)(ii) of Part 2, Rule 1(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.

....

The respondent also referred to the Regional Director's office Circular 01/08 entitled "*Mortgage Payments Paid by Liable Relative*", issued on 2 January 2008.

Assessment of the applicant's means

The Respondent calculated the applicant's weekly means as €86.39, as follows:

- The weekly maintenance payment of €268 was calculated by reference to a monthly mortgage payment as follows: $€1161.36 \times 12 \div 52 = €268$.
- The weekly disregard of €95.38 ($€4,952 \div 52 = €95.23$) was applied in accordance with Article 142 of the 2007 Regulations.
- The assessable amount of €172.77 was halved in accordance with Rule 1(2)(b)(ii) of Part 5 of Schedule 3 of the 2005 Act to arrive at weekly means of €86.39.

Decision:

Engaging with the literal approach to statutory interpretation and giving these words their plain and ordinary meaning, the Court found that the Respondent had, at each stage, correctly interpreted the statute. Further, the Respondent did not engage in an arbitrary system of implementation which failed to treat similar applicants equally, or engage with a fixed and inflexible policy, or base its interpretation on administrative convenience.

The Applicant had argued that the core issue in the proceedings 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.”*

Turning to the term, *“net cash value”*, the Court noted that it is not specifically defined in the legislation. However, the term *“housing costs”* is defined. The definition of *“housing costs”* 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 Court rejected the argument that it could not have been the intention of the Oireachtas that whatever the amount of the mortgage repayments / annual rent in any lease, that that amount would always and precisely equate to *“housing costs”*. The legislative intent was 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”* prescribed shall be *“(a) 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”*. Accordingly, the mortgage repayments also came within the meaning of *“non-cash benefit”* as set out in Regulation 142.

Rule 1 of Schedule 3, Part 5 of the 2005 Act, and Regulation 142 of the 2007 Regulations, when read in their entirety, set out how maintenance is to be assessed by calculating the income of the applicant in accordance with the terms of the provisions. Ascribing the words *“net cash value”* their ordinary meaning, the Court was satisfied that the respondent’s interpretation was correct and that the full amount of the mortgage payments was correctly used in the assessment of maintenance and non-cash benefits for the purpose of deciding the applicant’s rate of One Parent Family Payment.

The Court was satisfied that, when the provisions were read as a whole, with their purpose in mind (i.e. to determine income for the purpose of assessment of maintenance) the respondent’s interpretation was correct. There was nothing in the legislation to allow the decision maker to set off any purported benefit to the *“liable relative”* based on their joint ownership of the property or any other basis.

Given the Court’s finding that the respondent correctly interpreted the legislation, the arguments that the respondent engaged in an arbitrary system of implementation which failed to treat similar applicants equally, or that the respondent in its interpretation was engaging with a fixed and inflexible policy or basing its interpretation on administrative convenience, fell away.

As to adequacy of the reasons given, the Court cited the test set out by Murray CJ in *Meadows v. Minister for Justice* [2010] 2 I.R. 701; [2011] 2 I.L.R.M.157 and concluded that the Respondent adequately set out the rationale for its decision, namely that the

legislation provides that the full amount of the mortgage repayments had to be taken into account and the Precedent Decision was not in accordance with the provisions of the legislation.

Observations:

This judgment contains useful references to authorities on statutory interpretation. Several authorities were opened to the Court but the Court focused on two of them in its conclusions.

The first authority was *DB v Minister for Health* [2003] 3 I.R. 12: “... *the starting point should be the literal approach - the plain ordinary meaning of the words used. The purposive approach may also be of considerable assistance, frequently, but not invariably, where the literal approach leads to ambiguity, lack of clarity, self-contradiction, or even absurdity. In the interpretation of a section it is also necessary to consider the Act as a whole*”.

The second authority was *A.W.K (Pakistan) v. The Minister for Justice and Equality, Ireland and the Attorney General* [2020] IESC 10: “*The main elements of a literal approach are now so well described that individual authority for what follows is hardly necessary. The most basic obligation of such an exercise is to determine the intention of parliament, to assess what the legislative wishes are. Whilst some may say that even such phraseology is in itself ambiguous, at least one aspect of any uncertainty in this respect, can be immediately resolved. It is that which the court is searching for, to identify the objective intention of the legislature as a whole, and not any subjective intention which it, or its members may have. ... The most appropriate way to achieve this objective is by reference to the words used by the Oireachtas itself: when given their ordinary and natural meaning, the outcome should best reflect the plain intention of that body. The text published is the basic material involved because it is the most pre-eminent indicator of intention.*”

The judgment also contains useful references to authorities on the requirement that decision makers provide adequate reasons. A number of authorities were opened but the Court found it most useful in its conclusions to cite *Meadows v. Minister for Justice* [2010] 2 I.R. 701; [2011] 2 I.L.R.M.157: “*An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context. Unless that is so then the constitutional right of access to the courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective.*” The Court was satisfied that the impugned decision (i.e. that of the Chief Appeals Officer on 7 November 2017) adequately set out the rationale for the decision, namely that the legislation provides that the full amount of the mortgage repayments being made by the liable relative in

this case has to be taken into account in the assessment of the applicants means and that the Precedent Decision was not in accordance with the provisions of the legislation.

The judgment also contains useful references to authorities on the requirement that public authorities avoid blanket (fixed or inflexible) policies (the applicant having contended that the impugned decision implied a blanket policy regardless of value or rational connection to the cost of housing). The authorities formed part of submissions but were not considered in detail in the Court's conclusions. Given its finding that the Respondent correctly interpreted the legislation, the Court considered that the Respondent in its interpretation had not engaged with a fixed and inflexible policy or based its interpretation on administrative convenience.