

Casebase Number: G0124

Thematic Note of SWAO Case Studies:

Back to Work Family Dividend



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Summary of the relevant law:

The Back to Work Family Dividend (BTWFD) is a weekly payment that is made to an individual who is a parent or guardian of a “**qualified child**” that ceases to claim or ceases to be entitled to claim a “**qualifying payment**” or a “**relevant payment**” from a “**qualifying scheme**” as they have commenced “**employment**” or “**self-employment**”.

Definitions:

A **qualified child** is:

- (a) A child that is under 18 years of age
- (b) A child aged 18 to 22 if they are in full-time education
- (c) The child must live with the individual receiving the BTWFD
- (d) The child must be resident in the State
- (e) The child must not be in legal custody:

Section 219(1) (d) of the 2005 Act states that a child will not be a qualified child if they are detained in a children’s detention school, undergoing imprisonment or in detention in legal custody.

Section 238(A) of the Social Welfare Consolidation Act 2005 (as amended) (“2005 Act”) defines a **qualifying payment** as:

- (a) Jobseeker’s benefit,
- (b) Jobseeker’s benefit (self-employed),
- (c) Jobseeker’s allowance, other than jobseeker’s allowance payable per section 148A of the 2005 Act

Section 238(A) of the 2005 Act defines a **relevant payment** as an allowance payable to an individual participating in a qualifying scheme where the person was in receipt of—

- (a) One-parent family payment,
- (b) Jobseeker’s allowance payable per section 148A

Section 238(A) of the 2005 Act defines a **qualifying scheme** as:

- (a) A scheme administered by the Minister and known as—
 - (i) Community Employment,

- (ii) Tús,
 - (iii) Rural Social Scheme,
 - (iv) Gateway, or
 - (v) The national internship scheme,
- (b) An approved course of training, or
- (c) Any other prescribed—
- (i) Scheme or programme of employment or work experience, or
 - (ii) Course of education, training or development

Section 238(A) of the 2005 Act defines **employment** as employment that is liable for PRSI contributions (*Insurable*) but does not include participation in a qualifying scheme.

Section 238(A) of the 2005 Act defines **self-employment** as insurable self-employment.

Entitlement to Dividend

According to *Section 238(B) of the 2005 Act*, a person who has not yet attained pensionable age shall be entitled to the BTWFD where this person ceases to claim or receive the aforementioned payments or exited a qualified scheme where immediately before this person ceases to claim or exit a scheme was in receipt of a qualifying/relevant payment.

Section 238(B)(a) of the 2005 Act states that an individual will be entitled to BTWFD if:

- (a) On or the 5th of January 2015 a person ceases to claim or be entitled to
- (1) Jobseeker's benefit, jobseeker's benefit (self-employed), jobseeker's allowance, a qualifying payment or a relevant payment, by reason of that person or, where appropriate, that person's spouse, civil partner or cohabitant
 - (A) Being in employment or self-employment
 - (B) Commencing employment or self-employment within 4 weeks of the date on which that person ceased to claim or ceased to be entitled to the payment concerned
 - (2) One-parent family payment by reason of
 - (A) That person being in employment or self-employment,
 - (B) That person commencing employment or self-employment within 4 weeks of the date on which he or she ceased to claim or ceased to be entitled to that payment
 - (C) The youngest child having attained the relevant age under section 172(1) and the claimant being in employment or self-employment at the date on which they ceased to claim or ceased to be entitled to that payment

Section 238(B)(b) of the 2005 Act states that an individual will be entitled to BTWFD if:

(b) Immediately before the date on which the person ceased to claim or ceased to be entitled to a benefit, allowance or payment specified in paragraph (a), the person was in receipt of

(1) An increase in jobseeker's benefit, jobseeker's benefit (self-employed), jobseeker's allowance or one-parent family payment in respect of at least one qualified child who normally resides with that person, or

(2) An increase in a qualifying payment or a relevant payment in respect of a child

Section 238(B)(c) of the 2005 Act states that an individual will be entitled to BTWFD if:

(c) In the case of—

(1) Jobseeker's benefit, jobseeker's benefit (self-employed), jobseeker's allowance, other than jobseeker's allowance payable in accordance with section 148A, or a qualifying payment,

(2) The person has, immediately before the date on which they ceased to claim or ceased to be entitled to the relevant payment, in any continuous period of unemployment been in receipt of such benefit, allowance or payment in respect of—

(A) Not less than 312 days of unemployment, of which not less than 156 days of unemployment have occurred in the 12 month period commencing immediately before that date

(B) A number of days such that when combined with days spent in receipt of the Covid-19 pandemic unemployment payment the total shall not be less than 312 days, of which not less than 156 days of unemployment have occurred in the 12 month period commencing immediately before that date.

Limitations

(a) Not more than one BTWFD shall be paid in respect of a couple

(b) A person shall not be entitled to the BTWFD if their partner is in receipt of any benefit or assistance other than those specified in *Section 238(B)(3)*

(c) A person must be habitually resident in the state

(d) A person or person's partner receiving injury or illness benefit will only be paid the BTWFD for 36 days. The BTWFD payment will be suspended on the 36th day of the injury or illness benefit claim.

Duration and Rate of Dividend

Section 238(C) of the 2005 Act states that the BTWFD is paid for a maximum period of 104 weeks.

Section 238(D) of the 2005 Act states that for the first 52 weeks of this period, the individual shall receive the following:

(a) €42 per week per child (up to a maximum of 4 children) for children under 12.

(b) €50 per week per child (up to a maximum of 4 children) for children over 12.

Section 238(D) further states that for the second 52 weeks of this period, the individual shall receive half of what was initially paid to them during the previous year:

(a) €21 per week per child (up to a maximum of 4 children) for children under 12.

(b) €25 per week per child (up to a maximum of 4 children) for children over 12.

Limitations

Section 238(D)(2) of the 2005 Act states that:

(A) The weekly rate of back to work family dividend payable shall not include an amount in respect of a child to for any period during which that child

(1) Is treated as a qualified child/adult for the purposes of an increase in any benefit, an increase in any assistance or a continued payment for qualified children.

(2) Is treated as a child/adult for the purposes of an increase in any qualifying payment or any relevant payment which corresponds to an increase in benefit or assistance.

(3) Is in receipt of any benefit to or any assistance in their own right, or participates in a qualifying scheme

Increase for a Qualified Child (or adult) (IQC)

An IQC is an extra amount payable to an individual on certain existing social welfare payments that have a dependent child. To get an IQC your child must be a **qualified child/adult**. You may get full or half-rate IQC if your spouse has an income between €310 and €400 per week.

An individual claiming the BTWFD must have been receiving an IQC on their **previous qualifying/relevant payment or benefit** in order to be entitled to the BTWFD. The BTWFD is paid at the same rate as the IQC on the claimant's prior benefit.

Rates of IQC

(a) €42 (full rate) and €21 (half rate) per week per child for children under 12.

(b) €50 (full rate) and €26 (half rate) per week per child (up to a maximum of 4 children) for children over 12.

Key grounds of appeals by appellants:

There have been two case studies in the Social Welfare Appeals Office (SWAO) Annual Reports regarding the BTWFD. Both of these concern the individual's eligibility to the dividend. The appeals were both disallowed based upon the SWAO lacking the ability to waive statutory requirements provided for in the 2005 Act.

This has been displayed in the outcome of **Case 2015/17**. The SWAO disallowed this appeal on the basis that the individual was not habitually resident in the State and was providing employment contributions to another EU State. The SWAO cannot consider any social contributions paid to another State, whether in the EU or not. The SWAO cannot interpret the legislation in a way that could be received as not in its plain meaning. Currently there are a minimal number of exceptions to the habitually resident condition in the current legislation.

The requirement for the person claiming BTWFD to have been receiving an IQC on their entitlement before receiving the dividend was appealed in **Case 2021/09**. The appeal was disallowed on the basis that the SWAO cannot interpret the legislation in a manner contrary to its basic meaning. Appeals based upon this argument are likely not to succeed. The SWAO will not accept that a child that would qualify for an IQC, but has not been claimed for by the parent or guardian of this child on their prior benefits as being a qualified child. Therefore, the SWAO deems that this individual does not meet the criteria for the BTWFD.

Observations on appeal outcomes:

There is yet to be a successful appeal presented to the SWAO Annual Report case studies. The legislation surrounding this benefit is extensive.

According to *S238(B)(5)*, a person not habitually resident in the State shall not be entitled to the BTWFD. The requirement of the individual claiming the BTWFD to be habitually resident in the state is enshrined in the majority of entitlements allowed for by the 2005 Act, with the exceptions of particular groups of people. Therefore, an appeal on this ground is likely to be unsuccessful. The SWAO has stated, in **Case 2015/17**, that under EU regulations, family benefits may only be claimed in the State in which the individual claiming is employed and to which they pay social insurance contributions. This case was of particular interest as the appellant was working in Northern Ireland. The appellant had argued that employment in Northern Ireland was not stated to be out of the scope of the scheme as there was no reference to his particular situation in the legislation. The appeal was dismissed on the grounds that although there was no reference to the appellant’s exact situation in the legislation, the appellant was not paying PRSI to the state and therefore did not qualify for the BTWFD.

To be successful in an appeal to the BTWFD, the appellant must have been claiming an IQC on their **previous qualifying/relevant payment**. The SWAO has stated that as per *S238(B)(1)(b)*, an individual seeking to claim BTWFD must have been receiving an IQC on their benefit immediately before claiming. In **Case 2021/09**, the appellant had attempted to claim BTWFD but was not receiving IQC on her Jobseeker’s Benefit. The appellant had two dependent children who would qualify under the conditions set in the legislation. Still, as she had not been receiving an IQC before ceasing to claim the benefit, she did not satisfy the conditions to receive BTWFD. To be successful in appealing an entitlement to BTWFD, the appellant must have been in receipt of a benefit or a qualifying scheme with an IQC on their entitlements before appealing. There is no ability to qualify after this payment has ceased.

Relevant Case Studies of the SWAO Annual Reports 2009-2020

A-F.	2009-2014	
	N/A	
G.	2015	

1.	2015/17 Back to Work Family Dividend – summary decision	Question at issue: Eligibility
H-L.	2016-2020	
	N/A	
M.	2021	
1.	2021/09 Back to Work Family Dividend – summary decision	Question at issue: Eligibility

A. 2009 – N/A

B. 2010 – N/A

C. 2011 – N/A

D. 2012 – N/A

E. 2013 – N/A

F. 2014 – N/A

G. 2015

1. 2015/17 Back to Work Family Dividend – summary decision

Question at issue: Eligibility

Background: The Back to Work Family Dividend scheme was introduced in January 2015, and intended as an income support in circumstances where people who have children cease to claim social welfare payments and seek to rely on income from employment or self-employment. It is paid in the form of a financial support, or dividend, payable over a two year period and determined with reference to a person’s entitlement to an increase in payment in respect of a qualified child, calculated at the point where they cease to claim a social welfare payment and subject to a minimum payment for each child.

In the case at issue, the appellant’s claim was disallowed on grounds that his employment took place in Northern Ireland and that he was not eligible under the terms of the scheme. In setting out his grounds of appeal, he asserted that no reference had been made in the guidelines to advise that such employment was outside the scope of the scheme.

Consideration: The Appeals Officer referred to the governing legislation which provides that ‘employment’ in the context of this payment means ‘insurable employment’ as an ‘employed contributor’. He noted that employed contributors are those persons working in the State under a contract of service (employees) and making contributions to the Social

Insurance Fund and, accordingly, that this excludes persons working in Northern Ireland. In addition, he observed that under EU Regulations, family benefits such as the Back to Work Family Dividend may be claimed only in the State in which the worker is employed and to which he or she pays social insurance. Accordingly, the Appeals Officer concluded that the appellant did not qualify for payment under the scheme.

Outcome: Appeal disallowed.

H. 2016 – N/A

I. 2017 – N/A

J. 2018 – N/A

K. 2019 – N/A

L. 2020 – N/A

M. 2021

1. 2021/09 Back to Work Family Dividend – summary decision

Question at issue: Eligibility – No Increase for a Qualified Child on previous claim.

The appellant was in receipt of Jobseeker's Benefit but did not qualify for an increase for a qualified child. Her claim for Back to Work Family Dividend was disallowed on the grounds that she was not in receipt of an increase for a qualified child when her Jobseeker's Benefit claim ceased. In her appeal the appellant submitted that she had two dependent children, and that according to the information on the Citizens Information website she met all the conditions for receiving payment of the Back to Work Family Dividend.

Consideration: Section 238B (1)(b) of the Act provides that entitlement to Back to Work Family Dividend is subject to a person being in receipt of an increase for a qualified child on either a Jobseeker's Benefit, Jobseeker's Benefit (Self-employed), Jobseeker's Allowance or One-Parent Family Payment claim, immediately before the date on which the person ceased to claim or ceased to be entitled to the benefit.

The Appeals Officer concluded that as the appellant was not in receipt of an increase in respect of a qualified child when her Jobseeker's Benefit payment ceased, she did not satisfy the conditions for receipt of the Back to Work Family Dividend.

Outcome: Appeal disallowed.

For *more information* contact us at:

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