

Casebase Number: G0122

**Thematic Note of SWAO Case Studies:
One Parent Family Payment**



**Community
Law & Mediation**
NORTHSIDE

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Period of Analysis: 2009-2021

Theme: One Parent Family Payment

Period of Analysis: SWAO Annual Reports 2009-2021

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Casebase No. Case G0122

Summary of the relevant law:

The One Parent Family Payment (**OFP**) is a payment for persons under the age of 66 years old who are bringing children up without the support of a partner. The criteria for assessing the receipt of OFP are outlined below.

To qualify for OFP a person must meet the following criteria:

1. Aged under 66 years old;
2. Be the parent, step parent, adoptive parent or legal guardian of a child/children;
3. Their youngest child must be under the age of 7;

In certain instances, OFP will continue even after the youngest child turns seven. This occurs where the family is in receipt of;

3.1 Domiciliary Care Allowance (DCA);

- (a) If the individual claiming the OFP is in receipt of DCA for a child, they can also receive OFP until the child reaches the age of 16 or their entitlement to DCA ceases.
- (b) The individual will also get an Increase for a Qualified Child (IQC) for any other children in the family until they reach 18 (22 if in full-time education).

3.2 Blind Pension;

- (a) If the individual is in receipt of Blind Pension and also qualifies for OFP they are entitled to both payments (and any IQCs) until the child reaches the age of 16.

3.3 Carer's Allowance;

- (a) If an individual in receipt of OFP is providing full-time care to one of their children or an adult, they are entitled to claim half-rate Carer's Allowance alongside your OFP (and any IQC's) until their youngest child turns 16.

3.4 Recent Bereavement.

- (a) If an individual applies for OFP on the basis that they are parenting alone following the death of their spouse, partner or civil partner, they will be entitled to OFP for 2 years following the date of death regardless of how old their youngest child is. The individual's youngest child must be under the age of 18 in order to qualify for OFP in these circumstances.

4. Be the main carer of and live with the relevant child;
5. Must pass a means test;

To conduct a means test the Department of Social Protection will assess all sources of income which an individual applying for OFP is in receipt of. OFP will only be given to this person if their income is below a certain designated amount.

The income sources assessed in a means test are;

5.1 Cash Income

All cash income is taken into account for the means test bar;

- (a) Any payments made to an individual by the Department of Social Protection (except for Jobseeker's Allowance);
- (b) Certain allowances from the HSE or the Department of Education;
- (c) Payments under certain scholarships or training allowances;
- (d) Approved by the Minister of Health;
- (e) Compensation awards provided for by the State.

5.2 Capital

All capital is taken into account for the means test bar;

- (a) Selling your home to move to more suitable accommodation while receiving State Pension, Disability Allowance or Blind Pension to the value of €190,500;
- (b) Sale of your home where an individual has significant maintenance costs – such as nursing home costs to the value of €190,500;

5.3 Maintenance

Only half of an individual's income from maintenance will be assessed and deducted from your OFP. The person in receipt of maintenance can offset their housing costs against their maintenance income to the value of €95.23 per week.

5.4 Income from Work

The first €165 of an individual's gross weekly earnings is assessed for the purposes of a OFP means test. Half of the remainder of a person's gross earnings per week is then assessed. mSocial Insurance contributions, PRSI contributions or trade union subscriptions are not assessed.

6. Must live in Ireland and meet the habitual residence condition;

6.1 To satisfy the Habitual Residence Condition (HRC) you must:

- (a) Have the right to reside in the State **AND**
- (b) Show that you are habitually resident, having regard to all of your circumstances, including in particular the following which are set out in the legislation:
 - (i) the length and continuity of your residence in Ireland or in any other particular country

- (ii) the length and purpose of any absence from Ireland
- (iii) the nature and pattern of your employment
- (iv) your main centre of interest **AND**
- (v) your future intentions as they appear from all the circumstances

7. Must not be living with a spouse, civil partner or be cohabitating.

Additional Benefits

- 1. A person who receives OFP is entitled to avail of the Household Budget Scheme.
- 2. A person who receives OFP *may* also be entitled to additional benefits such as;
 - 2.1 Fuel Allowance;
 - 2.2 Working Family payment;
 - 2.3 Medical Card; and/or
 - 2.4 Rental assistance.

Key grounds of appeals by appellants:

Where an individual believes they have been erroneously refused OFP or they are unhappy about a decision of a social welfare Deciding Officer they can appeal this decision to the Social Welfare Appeals Office.

- 1. Cohabiting

Since 2012 there have been four appeals raised in relation to whether or not the person claiming OFP is actually cohabitating with another person.

As stated above, a person who is in a relationship and living with that person is not eligible for the OFP instead they must be widowed, separated, divorced, unmarried, have dissolved a civil partnership or be a prisoner's spouse or civil partner. Likewise, they must not be cohabitating or living with a person they are in a relationship with.

In the case of cohabitation, appeals arise where a person portends that they are not in a relationship and living with the relevant person. As in case 2016/318/36 the burden is on the Department is in this instance to establish that it is appropriate to withdraw that payment. In assessing cohabitation, as in case 2016/08 "no single criterion" will necessarily support or disprove a decision.

The burden of proof to prove cohabitation was set at being "highly probable".

- 2. Assessment of Means

Four appeals have been made arguing the Assessment of Means test since 2012. A person who has been assessed as having means in excess of €217.80 per week is not entitled to OFP. The individual claiming OFP may avail of certain exemptions to their assessed means.

As per case 2016/318/36 this point will ultimately be decided on whether or not the person claiming OFP has been able to show that their means does not exceed the statutory qualifying limit and this test seems to be applied quite strictly compared to other grounds of appeal which arise.

3. Child not in parent’s care

The person who is claiming OFP must reside with their qualified child on a full-time basis. A child who is in a detention facility, foster care system or share joint equal custody with the child/children’s other parent does not qualify. If an individual’s child is put into foster care or detained for any period of time the person must notify the DSP and cease OFP until they become the main carer that resides with the child again.

In Case 2017/10 however, an individual’s child was taken into foster care for a number of months during which time she continued to receive OFP. During this time she continued to have daily contact, to keep a house ready for the child and to pay for much of her child’s upkeep. While on appeal, it was determined that she did not have any right to the OFP as she was not living with the child for which she was receiving the payment it was held that in these circumstances it would be unjust to charge her overpayment.

4. Habitual Residence Condition: See Thematic Note on Right to Reside and Habitual Residence Condition (Thematic Note G0116)

5. Backdating: See Thematic Notes on Backdating Claims (Thematic Note G0114)

Observations on appeal outcomes:

Where a decision to refuse or withdraw OFP is being appealed, the Appeals Officer tends to look at the situation of the person as a whole rather than at any isolated criteria when making a decision.

For example, lifestyle evidence was of relevance in determining cohabitation. This includes shared household duties and finances. Similarly, when an appeal is based on habitual residence, the Appeals Officer considers the entirety of the individuals experience and lifestyle, which may prove habitual residence on balance. Future intentions seem to be a key factor in any decision taken by the Appeal Officer in relation to habitual residence.

In the case of a Section 318 review again all elements of the person’s life is taken into account and an evidence based approach was used.

Relevant Case Studies of the SWAO Annual Reports 2009-2020

A.	2009	
	N/A	
B.	2010	
	N/A	
C.	2011	
1.	2011/01 One Parent Family Payment – summary decision	Question at issue: Habitual Residence Condition
2.	2011/07 One Parent Family Payment – summary decision	Question at issue: Habitual Residence Condition
3.	2011/08 One Parent Family Payment & Supplementary	Question at issue: Habitual Residence Condition

	Welfare Allowance – oral hearing	
D.	2012	
1.	2012/15 One Parent Family Payment – oral hearing	Question at issue: Eligibility (cohabitation)
E-F.	2013-2014	
	N/A	
G.	2015	
	2015/06 One Parent Family Payment – oral hearing	Question at issue: Cohabitation
H.	2016	
1.	2016/08 One-Parent Family Payment – oral hearing	Question at issue: Cohabitation
2.	2016/09 One-Parent Family Payment – oral hearing	Question at issue: Assessment of means
3.	2016/318/36 One-Parent Family Payment – Section 318 review	Question at issue: Means and cohabitation
I.	2017	
1.	2017/09 One-Parent Family Payment – oral hearing	Question at issue: Eligibility (cohabitation and means)
2.	2017/10 One-Parent Family Payment – oral hearing	Question at issue: Overpayment / Child in care
J.	2018	
1.	2018/06 One Parent Family Payment – oral hearing	Question at issue: Eligibility (means)
K.	2019	
1.	2019/07 One-Parent Family Payment – oral hearing	Question at issue: Backdating
L.	2020	
1.	2020/05 One-Parent Family Payment – summary decision	Question at issue: Backdating
2.	2020/06 One-Parent Family Payment – summary decision	Question at issue: Eligibility (cohabitation)
M.	2021	
1.	2021/07 One-Parent Family Payment – summary decision	Question at issue: Date of award; backdating

A. 2009 – N/A

B. 2010 – N/A

C. 2011

1. 2011/01 One Parent Family Payment – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to One Parent Family Payment.

Background: The appellant was living in Ireland for four years at the time she made a claim for One Parent Family Payment. The Deciding Officer determined that she did not meet HRC and her claim was disallowed.

Consideration of the Appeals Officer: The Appeals Officer addressed each of the points cited by the Deciding Officer, as follows.

Length of time in Ireland: The Appeals Officer noted that there was evidence to confirm the date of the appellant's arrival in Ireland but that a question had been raised as to her continued residence during a (specified) period of four months in 2009. He noted also that the Social Welfare Inspector had not queried her means of support during that time. In the absence of any evidence to the contrary, he accepted that she had been in Ireland during the period at issue and, consequently, that she had been continuously resident since her arrival. In that context, he considered that residence in the State since 2007 would point to habitual residence.

Her centre of interest is not Ireland: The Appeals Officer noted that the appellant's daughter resided with her and was registered at school in Ireland. In his opinion, this indicated an intention to remain in Ireland for the foreseeable future and would confer an established centre of interest in the State.

She has no family ties to Ireland; only her daughter lives here with her: The Appeals Officer considered that the appellant's submission had dealt with her relationship with her parents and the fact that there was no longer contact between them. In addition, he noted that she was not married to the father of her child and that the Polish Courts had not given him parental authority over the child, enabling her to reside here without obligations as to access. He considered that the evidence in the case pointed to the child's father no longer being part of the family.

Property abroad: The Appeals Officer noted that the appellant denied that she had any property abroad and that this had been accepted by the Social Welfare Inspector. In addition, the Inspector had recorded details of an Irish bank account held in the appellant's name and reported that she had no other accounts. Future intentions to remain in Ireland are shortterm: In addition to his views as to her centre of interest, the Appeals Officer noted that the appellant had applied for Family Income Supplement (FIS), which he took to indicate a resumption of employment and an intention to remain here for a further period. No established record of employment in Ireland: The Appeals Officer noted that the Inspector had reported that the appellant had some 20 to 21 months of employment. Accordingly, he could not accept the Deciding Officer's contention in this regard. In conclusion, the Appeals Officer was satisfied that the appellant could be considered to be habitually resident in Ireland.

Outcome: Appeal allowed.

2. 2011/07 One Parent Family Payment – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to One Parent Family Payment.

Background: The appellant, a UK national of Irish parentage, was a divorcee with one child dependant. She came to live in Ireland in 2011, with no indication of any subsequent absence from the State. She was registered as self-employed in the UK.

Consideration of the Appeals Officer: The Appeals Officer made reference to the five factors outlined in the legislation. In coming to a decision, she assessed those factors, each of which she considered could contribute to establishing whether or not the appellant had satisfied the conditions for being considered habitually resident.

The Appeals Officer noted details of the appellant's circumstances, including the fact that she had lived all of her life in the Common Travel Area. She took account of the fact that she had been registered as self-employed in the UK. She noted that the appellant had relocated to Ireland to escape an abusive relationship and accepted contentions as to the seriousness of the abuse which had led to her fleeing the UK quickly and setting up home in Ireland. She did this with the assistance of her extended family. The Appeals Officer accepted that, given the circumstances, the appellant was unable to secure employment and indeed that it had not been a priority at that time. She observed that the appellant was now in a position to seek employment.

The Appeals Officer noted that the appellant did not own any property in the UK and that there was no indication that she had given up housing there. Indeed, the evidence indicated that prior to her moving to Ireland she had moved locations within the UK on a number of occasions, in line with her assertion that she had been trying to escape her ex-partner and that she had no fixed abode there. She noted also that the appellant had been assessed as having a housing need by the local authority in Ireland and that her name was on their housing list. In the meantime, she has a rental agreement on a property here and has been in receipt of Rent Supplement with effect from a date in 2011. She is also in receipt of Basic Supplementary Welfare Allowance, a fact which the Appeals Officer opined that contributed significantly to her being considered habitually resident.

In conclusion, the Appeals Officer observed that the appellant and her daughter have settled in Ireland and feel safe here, that she is attending counselling and has family support here. She concluded that the appellant has cut ties with the UK and that it was clear that she intends to make Ireland her home. In light of the foregoing, and on balance, she held that the appellant satisfied HRC and that her appeal should succeed.

Outcome: Appeal allowed.

3. 2011/08 One Parent Family Payment & Supplementary Welfare Allowance – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of claims to One Parent Family Payment and Supplementary Welfare Allowance (Basic Income).

Background: The appellant, a Traveller, had been living in the UK. In 2010, she and her three young children returned to live with her extended family in Ireland. She made a claim to Supplementary Welfare Allowance (Basic Income) which was rejected on HRC grounds. The reasons cited for that decision were that she had not supplied sufficient information as to why she left the UK, that her only status in Ireland was that of an EU Citizen and that she had declared herself to be welfare dependent by stating that she was not available for work as she was caring for her children. A claim made subsequently to One Parent Family Payment was rejected on the same grounds.

Parties attending oral hearing: The appellant and a Community Development Officer.

Report of oral hearing: The appellant confirmed that she was a Traveller, and a member of a community which has a long history of a connection to the particular area in Ireland where they live. She described her family connections with the area going back generations. She said she was born there but moved to England with her parents as a child. She reported that they were frequent visitors to the area for family occasions over the years and that they lived in a caravan and moved from place to place both here in Ireland and in the UK. She said she had received little formal education as the family was always on the move.

The appellant recalled living with her partner for a number of years; they have three children under the age of 10 years. She reported that they moved from place to place in a mobile home, and said that her children did not remain in any one school for long. She indicated that her partner was prone to violence and that there had been some problems over the years, at which times she had relied on her parents and family for support. However, she said that her parents and wider family had moved back to Ireland in the last few years, and she was left with no immediate family in England. She drew attention to a report which she had submitted, written by a police unit in the UK, which made reference to an assault which she had sustained. She stated that this had been carried out by her partner and his family and that, as a result, she had fled the UK and joined her family in Ireland. She submitted evidence that her children were enrolled in the local school, and that she was staying in a local authority halting site but was not paying the rent. She said that she had no income and was dependent on her family and the local St Vincent de Paul charity. She confirmed that she had been in receipt of welfare payments in the UK but that her Income Support and Child Benefit had ceased.

The Community Development Officer spoke of his concern for the appellant's welfare and that of her children. He advised that the HSE social worker assigned to the case was anxious to support the appeal but had been unable to attend the hearing. He asked that the Appeals Officer might contact him. He reported that the appellant was in a dire situation and said that if she could get a better life in the UK, she would have returned there months ago. In conclusion, he submitted that her continued residence here in very poor circumstances was evidence of her commitment to remain and create a stable home.

Further evidence: In response to the request made at oral hearing, the Appeals Officer spoke on the phone with the social worker in the case. He confirmed being involved with the family and described the difficulties they encountered, including having insufficient food due to lack of money.

Consideration of the Appeals Officer: The Appeals Officer noted that in the case of both claims, the reasons for concluding that the appellant did not meet HRC relied strongly on

the short duration of her residence in the State and her lack of employment. He made reference to the five criteria outlined in the legislation, as follows.

Length and continuity of residence in the State or another State: The Appeals Officer observed that where a person is resident for only a short time in a particular country, then the nature of that residence must be examined to determine if the facts indicate that they have changed their habitual residence to the new country. He noted that a short period in a new country does not automatically mean a person cannot be habitually resident there; the rebuttable presumption provided for in legislation envisages that a person may make a case to say they are habitually resident from the time of first taking up residence. Having examined the facts of this case, he noted that the appellant's children were in the State and were enrolled in school, that the appellant had extensive extended family and strong familial connections to the area where she was living, and that she had a proven reason for moving from the UK and settling there. He observed that her traditional lifestyle did not tie her to a particular area: a person in her situation can move from one country and quickly establish residency in another as she has no property or material ties anywhere. In this case, he considered that the presence here of her children and extended family was extremely important and indicated that she was habitually resident notwithstanding the relatively short duration of her time here.

The length and purpose of any absence from the State: The Appeals Officer noted that the evidence provided at the hearing indicated that the appellant has resided here continuously since her arrival. He noted also that the evidence indicated frequent visits to Ireland, over the years, due to family connections. However, he considered that the evidence presented at the hearing indicated that the appellant was not here for a short visit as may have been case in the past.

The nature and pattern of a person's employment: The Appeals Officer noted that the appellant was not in a position to take up employment and that references had been made to this fact in both decisions before him. However, he took the view that there have always been people who come to the State on account of life events but are not in a position to work for a variety of reasons, and that due regard must be given to their overall circumstances when determining if their residence is habitual. He took the view that if a person had never worked in the country in which they lived formerly, it was an overly harsh interpretation of the HRC legislation to conclude that they were not habitually resident in this State by virtue of not having worked here. In such cases, he considered that less weight should be given to a person's employment status, where it is evident that there are valid reasons for their absence from the labour market; the person's main centre of interest, as evidenced by the other considerations governing their lives, takes on more significance.

The person's main centre of interest: Having heard the appellant's evidence at the hearing, the Appeals Officer concluded that her centre of interest was in Ireland, and that her strong family ties with the area were indicative of a stable and durable residence here.

Future Intentions from all the available evidence: The Appeals Officer was satisfied on the basis of the evidence available that the appellant's future intentions were in Ireland. In all the circumstances, the Appeals Officer held that the appeal should succeed.

Outcome: Appeal allowed.

D. 2012

1. 2012/15 One Parent Family Payment – oral hearing

Decision under appeal: entitlement in period specified with overpayment assessed - reason(s) stated:- As you aware, this allowance is not payable to a person who is cohabiting, that is, living with another person as husband and wife. I am satisfied that you were cohabiting with [person named] from at least [specified date] and I have decided that you were not entitled to One Parent Family Payment from this date. As you continued to cash your One Parent Family Payment up to and including [specified date], you have incurred an overpayment amounting to €125,000. This decision has been made in accordance with Section 302 (b) of the Social Welfare (Consolidation) Act, 2005.

Overpayment: €125,000, reduced subsequently to €98,000.

Background: Following a review of her One Parent Family claim, awarded initially as Deserted Wife's Benefit, the question of the appellant's continued entitlement was referred for investigation. In connection with the investigation, she was interviewed by a Social Welfare Inspector who took the view ultimately that she had been cohabiting with a person named. The Deciding Officer disallowed her claim, in line with the decision outlined above. The Deciding Officer also wrote to the appellant and advised as to the amount of the overpayment assessed, inviting her to comment on methods of repayment. In her response, the appellant asserted that the circumstances of her case were not examined fully and that her entitlements should be off-set against the overpayment. She made an appeal against the decision, stating that the person named was merely a tenant who contributed to the household bills. The person in question sought to confirm this by providing a statement to the effect that he was paying maintenance from his Jobseeker's Allowance.

The amount of the overpayment was adjusted subsequently to take account of periods for which the person named would have been entitled to claim the appellant as an adult dependant on his Jobseeker's Allowance payment.

At oral hearing: the appellant was accompanied by a friend. The Social Welfare Inspector attended at the request of the Appeals Officer, as did the Deciding Officer.

The Deciding Officer outlined the decision under appeal and stated that she had relied upon the Social Welfare Inspector's report. In relation to the person named in the decision as cohabitant, the Inspector had noted the following prior to interviewing the appellant:

- he was listed on the electoral register at the same address as the appellant
- he had a car and motorbike and both were registered at the appellant's address
- he was a registered as a tenant by the local authority at the appellant's address

The Inspector read from his report, and stated that he had interviewed the appellant on a date [specified]. He said that she had accepted that the person named in the decision had lived at her address since his own marriage had broken up. She acknowledged that he contributed to the household and she said that he was the father of her child. The Inspector stated that the appellant had not claimed an increase in her payment in respect of the child

and that she had offered no explanation for this. He opined that it was likely that the couple had been cohabiting since 1999.

On behalf of the appellant, the person who had accompanied her submitted that the overpayment was excessive and not proportionate. He asserted that the appellant had allowed the person named to stay in her home out of sympathy and that there had been no stability in those early years. He also sought copies of the reports relied upon by the Deciding Officer and asked that the hearing be adjourned so that the appellant could respond in full to the case against her.

The hearing was adjourned.

The appellant sought and was given copies of all documents, as well as a copy of the Department of Social Protection's Operational Guidelines on Cohabitation (www.welfare.ie/en/Pages/Cohabitation.aspx).

At the re-convened oral hearing: the same parties attended. The appellant confirmed that she had examined all of the evidence supporting the decision under appeal. She insisted that she had been truthful in her dealings with the Department. She said she did not have means and was struggling to live. It was pointed out that an Inspector had reported in 1998 that there was no cohabitation. The appellant argued that she did not grasp the issue involved and had since regulated her position as regards social welfare entitlements. This was clarified to mean that she was now being paid as a qualified adult dependant on the social welfare payment of the person named.

The Deciding Officer advised that the appellant had notified the Department in 1997 that her cousin had moved in with her. This turned out to have been the person named. She stated, however, that the effective date which had been specified in the decision had been determined with reference to the date on which the person named had been included as a tenant by the local authority. The Inspector contended that the reference to his being the appellant's cousin represented a deliberate misleading statement as evidenced by the appellant's initial failure to disclose to him that the person concerned was living at her address. He reported that when asked directly, she had then admitted that the person named was living there.

On behalf of the appellant, her friend submitted that the reference to her cousin was a 'Dublin saying' and was not indicative of an effort to mislead. He asserted that the appellant had had a difficult life and had not gained financially, and he went on to say that he could not understand how such a huge overpayment had arisen.

Comment/Conclusion: The Appeals Officer summarised the evidence supporting the decision that the appellant had been cohabiting with the person named, as follows:

- the appellant admitted that they had been living together since 1997
- he was included as a tenant by the local authority in 1999
- he is listed there on the electoral register and his car is registered there
- the appellant and the person named lived as a couple and they have a child
- the appellant now admits that the person named is the child's father
- the appellant did not disclose the child's birth and forewent the child increase on her One Parent Family Payment

- the appellant and the person named are registered on the child's birth certificate as resident at the same address
- the appellant admitted that she was now cohabiting with the person named and had been included as a dependant on his social welfare payment
- the appellant admitted that he had been contributing to the household, both rent and childcare
- the couple had been together since 1998, at least, and this indicated stability
- the appellant said that she reared the children on her own, he did not help but she added that he was no different from a lot of men in that regard

The appellant has sought to be treated as a couple for social welfare purposes and the overpayment assessed was reduced by allowing the deduction of the social welfare rate for a couple over the period of the overpayment when the person named was not working.

The Appeals Officer considered that the only reasonable conclusion was that the appellant and the person named had been living together as a couple in an intimate and stable relationship since the date specified in the decision. He concluded that the appellant and her partner would have been entitled to Family Income Supplement in 2004 and 2005, and calculated that that notional entitlement would have been €940 per annum for both years. He determined that this amount should be deducted from the overpayment.

Decision of the Appeals Officer: The appeal is disallowed.

Note on reason(s) for decision: Having carefully examined the evidence in this case, including that presented at oral hearing, I have concluded that it has been established that the appellant [person named] have been cohabiting since [specified date]. The evidence indicates that they share finances and household duties, that they shared responsibility for the care of their child, and that the length of the relationship points to a degree of stability in their relationship as a couple. In the circumstances, I must conclude that the decision regarding cohabitation is correct and I regret that the appeal cannot succeed.

E. 2013 – N/A

F. 2014 – N/A

G. 2015

1. 2015/06 One Parent Family Payment – oral hearing

Oral Hearing Question at issue: Cohabitation in relation to a claim in payment

Background: The appellant had been in receipt of One Parent Family Payment since 2010 and in 2014, her claim was reviewed. A Social Welfare Inspector's report noted that a car which was registered to a (named) person had been observed outside her home, along with a pair of men's work boots. She interviewed the appellant, who denied that the person concerned lived there. She acknowledged that she had been on holiday with her children and partner (the person named) but said that he did not live with her. Details of the appellant's means were reviewed also. The Inspector confirmed subsequently that the appellant's partner owned another house which had been let. She contacted him and he

confirmed that he owned the house and said that he lived there occasionally, while also living with his elderly parents. Images taken from the social media website, Facebook, showing the appellant and her children with the person named, on a date in 2012, were included in the Inspector's report.

The Deciding Officer wrote to the appellant, informing her of the Inspector's report and inviting her comments prior to making a decision, in line with the requirements of natural justice. In her reply, the appellant stated that when she attended an interview with the Inspector, she panicked on learning that her claim was being investigated and gave incorrect information regarding the duration of her relationship. She said that her partner stayed at her house on occasion but that they had only recently come to view their relationship as more permanent. She stated that he had not contributed in any way to her mortgage or the upkeep of her home, and that she had to rely on an insurance protection policy to help pay her mortgage when she lost her job. She stated that her G.P. could confirm that she and her children attended as a family unit. Ultimately, the claim was terminated on grounds that she was cohabiting and therefore disqualified for receipt of One Parent Family Payment.

In a letter of appeal, the appellant stated that she lives at a specified address, while her partner owns and lives in his own home at another address. She said that she was finding it very difficult to cope since her payments ceased. In support of her appeal she submitted: copies of her partner's P60 forms, his insurance, motor tax, and NCT details, bank statements and documents from Irish Water, the Revenue Commissioners and the local sports club – all indicating his stated address. In addition, she submitted bank statements, phone and electricity bills, as well as other correspondence in her own name, at her home address.

Oral hearing: The appellant was accompanied by a family member. The Inspector attended at the Appeals Officer's request, and outlined the details of her report. She stated that while her investigation confirmed that his car was registered at his stated address, she was of the opinion that the appellant's partner did not reside there and that this had been confirmed by the tenant who was currently renting the property. She said that the appellant had misinformed her as to the duration of the relationship and she noted that when she called the person named on the phone, he told her that he was at home, in the appellant's house.

The appellant stated that she and her partner did not live together as a couple, and never had. She acknowledged that she may have been untruthful regarding the duration of their relationship, saying that they had been dating since 2012, but that it was only in recent months that they realised it was serious and only then that she introduced him to her children as her partner. She added that he had stayed overnight on occasions when her children were away and, referring to the nature of his work, said that he was away from home quite a lot. She said that he does not provide any care/maintenance for her children and that her siblings do so when required. She reiterated that the mortgage on her home and all utility and household bills are met solely by her. She added that while they were on holiday, he had parked his car at her house for security reasons.

The Inspector stated that, based on her investigation, she considered that it had been established that the appellant was cohabiting with the person named although she acknowledged that she had seen his car only once parked at the appellant's home.

Conclusions: The Appeals Officer noted that when a person applies for a social welfare payment, the burden of proof lies with them to show that they meet the conditions of entitlement. However, once a claim is in payment, if consideration is to be given to withdrawing the payment, the burden of proof shifts and rests with the Department to establish that a change/withdrawal is appropriate.

He noted the provisions of the governing legislation, as follows: Section 175 of the Social Welfare (Consolidation) Act, 2005 prescribes that a ‘qualified parent shall not, if and so long as that parent and any person are cohabiting as husband wife, be entitled to and shall be disqualified for receiving payment of one-parent family payment. Section 15 of the Social Welfare and Pensions Act, 2010 inserted the following definition into Section 2 (1) of the Act of 2005 – *‘cohabitant’ means a cohabitant within the meaning of section 172(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010.*

Section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 prescribes –*‘for the purposes of this Part, a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other’.* It goes on to provide that all the circumstances of the relationship must be considered and, in particular, the following:

- (a) the duration of the relationship;
- (b) the basis on which the couple live together;
- (c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;
- (d) 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;
- (e) whether there are one or more dependent children;
- (f) whether one of the adults cares for and supports the children of the other; and
- (g) the degree to which the adults present themselves to others as a couple.

The Appeals Officer noted that the evidence submitted in support of the decision to terminate the appellant’s claim on grounds of cohabitation included reference to her partner’s car and a pair of men’s boots having been observed outside her home, her partner’s house being rented out to a long-term tenant, his other stated residence at his parent’s home not having been confirmed, and the appellant having misinformed the Inspector as to the duration of their relationship.

The Appeals Officer noted that while the appellant and her partner may present themselves as a couple within their community, there were no obvious financial links with each other, no children from the relationship, and the care and support of her children was provided by the appellant and her family. He considered that whilst an issue of credibility may arise in the case, he was not satisfied that the Department had proven cohabitation and, in the circumstances, concluded that it would be unreasonable and unfair to uphold the decision.

Outcome: Appeal allowed.

H. 2016

1. 2016/08 One-Parent Family Payment – oral hearing

Question at issue: Cohabitation

Background: The appellant's baby was born in 2015 when she and her partner were living together. Subsequently, she made a claim for One-Parent Family Payment, stating that they had separated and that she was parenting alone. The claim was rejected on grounds that she and her partner were living together as cohabitants.

Oral hearing: The appellant was unaccompanied and the Social Welfare Inspector attended by request. The Appeals Officer referred to the Deciding Officer's statement that he had relied on the Inspector's report in determining that the qualifying criteria were not met and he asked for an outline of the details.

The Social Welfare Inspector reported that he had made an un-notified call to the appellant's home and interviewed her in connection with her claim. He stated that he had also interviewed her some eight months previously in connection with a Jobseeker's Allowance claim. That payment had been awarded at a reduced rate, based on an assessment of means derived from her partner's income from employment. The Inspector stated that, at the time, the appellant had sought a review of the assessment on the basis that her partner had to pay maintenance in respect of a child from an earlier relationship and that this should have been taken into account in determining means. He advised, however, that no adjustment had been made to the assessment and he noted that the appellant had made a claim for One-Parent Family Payment some months later. In his report to the Deciding Officer, he opined that the appellant and her partner had decided to separate after she received an unfavourable decision in connection with her Jobseeker's Allowance claim. He noted that the appellant had stated that she was receiving maintenance of €100.00 per week.

In response, the appellant stated that her former partner had been paying maintenance in respect of two children from a former relationship, and not one as the Inspector had stated. She contended that there was no concrete proof of cohabitation and asserted that there had been a lot of speculation. She went on to say that she considered this to have been a defamation of her character.

The appellant submitted that she and her partner had personal issues following the birth of their child in 2015. She stated that he had not been a good parent and had not helped out at home. She said that she had relied on the support of her parents, including the provision of 58 financial assistance. She insisted that the separation had not been just for financial reasons and asserted that she was only guilty of not having had a perfect relationship.

Consideration: The Appeals Officer sought to determine whether the appellant could be held to meet the relevant qualifying condition for receipt of One-Parent Family Payment, having been disqualified on grounds of cohabitation. He noted the provisions of the governing legislation relating to cohabitation, outlined in Section 2(1) of the Social Welfare Consolidation Act 2005:

'cohabitant' means a cohabitant within the meaning of section 172(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

and the disqualification at Section 175 in relation One-Parent Family Payment:

A person referred to in section 173(1) shall not, if and so long as that person is a cohabitant, be entitled to and shall be disqualified for receiving payment of OneParent Family Payment.

The Appeals Officer made reference also to Guidelines on Cohabitation which the Department of Social Protection has issued for the information of Deciding Officers. He noted that this outlines the criteria by which cohabitation might be assessed and indicates that no single criterion can necessarily support a decision. He examined the evidence in the case by reference to the criteria set out in the Guidelines, including the following: the duration of the relationship, the basis on which the couple lives together, and the degree of financial inter-dependence. He noted that the appellant was emphatic in her assertion that she was not cohabiting with effect from the date specified. He noted also that the evidence submitted by the Department was circumstantial, relating to the appellant and her partner having separated after an unfavourable decision in relation to Jobseeker's Allowance, while the appellant had outlined a number of reasons for their separation. He concluded that the evidence did not establish a basis for determining that the appellant and the person named were a couple living in a *'committed and intimate'* relationship at the time of her claim for One-Parent Family Payment.

Outcome: Appeal allowed.

2. 2016/09 One-Parent Family Payment – oral hearing

Question at issue: Assessment of means

Background: In separating from her spouse, the appellant received €140,000 as her share of the proceeds of the sale of the family home. Normally, that money would fall to be assessed as means in determining eligibility for One-Parent Family Payment using the formula for assessing capital outlined in social welfare legislation. However, it was not included in the means assessment initially as the appellant had stated that the funds were to be used to purchase a new home for herself and her children. Under Guidelines issued to Deciding Officers by the Department of Social Protection, a period of three to six months is generally allowed for the completion of a house purchase in such circumstances. As no purchase had been made following the expiry of that period, the capital which the appellant retained was assessed as means with effect from a specified date and she made an appeal against the decision.

Oral hearing: The Appeals Officer outlined the manner in which capital is assessed and advised as to the allowances normally made where a capital sum is to be used to purchase a home. He noted that in the appellant's case the normal period allowed to complete a purchase had expired some time ago. The appellant accepted that this was the case but said she hoped she might be facilitated a little longer until she could get back on her feet. The appellant advised that she has a child with special needs who is attending school in the local area and receiving support services there. On that basis, she indicated that she was very reluctant to move too far. She outlined details of a number of properties she had been

involved in trying to purchase since she separated. She spoke of having been involved in a protracted process to purchase a particular house but said it had fallen through ultimately. She submitted supporting documentary evidence. She referred to a deposit she had put on a house more recently, in an area close to where she was living, but advised that the sale had also fallen through.

The appellant went on to outline her efforts to improve her qualifications so that she could secure employment. Having completed a course in a particular area of interest, she had obtained a FETAC qualification and was actively looking for work.

The Appeals Officer asked about the apparent depletion of the capital from €140,000 to €101,000. The appellant acknowledged that she had been dipping into the capital and said that the amount had been reduced even further since her One-Parent Family Payment had been terminated. She undertook to provide a recent bank statement. She went on to say that she was aware that she has been effectively priced out of the market but hoped to get full-time employment which would put her in a better position to buy a house.

Consideration: The Appeals Officer noted the appellant's efforts to purchase a home from the capital derived from the sale of the former family home and the fact that she had been unable to use the capital in the time allowed. He noted also that the capital sum had been depleted over time and that she was unlikely now to be able to buy a property. However, he concluded that the Department had been more than reasonable in disregarding her capital for a period in excess of that provided for in the Guidelines. In the circumstances, he concluded that the point had been reached where the legislation on the assessment of capital must be applied in determining her means.

Outcome: Appeal disallowed.

3. 2016/318/36 One-Parent Family Payment – Section 318 review

Question at issue: Means and cohabitation

Grounds for review: The appellant denied being in a relationship with the nominated person while receiving One-Parent Family Payment and she alleged errors of fact, as follows:

- The information provided by the Social Welfare Inspector was incorrect,
- The Appeals Officer did not conduct the appeal hearing in a fair manner.

Background: The appellant had been awarded One-Parent Family Payment in 2002 when she had one qualified child. In the context of a review, it emerged that she had another child for whom she had not sought payment. An investigation indicated that she was registered as the joint owner of a property since 2001. Ultimately, it was held that she had failed to show that her means did not exceed the statutory qualifying limit and that she had been in a cohabiting relationship with a nominated person who was the joint owner of the property at issue. Accordingly, payment was terminated. A revised decision was applied with effect from the date of claim and an overpayment of some €135,000 was assessed.

The Appeal: The Appeals Officer indicated that she considered the evidence advanced by the Department to be more convincing and concluded that the appellant had not been eligible for receipt of One-Parent Family Payment from the date of claim on grounds that she had failed to show that her weekly means were below the appropriate limit as she had failed to declare her joint ownership of a property with a nominated person. In addition, the Appeals Officer held that the appellant had failed to show that she was not cohabiting with that person. Accordingly, the appeal was disallowed.

Review: I examined the means and cohabitation aspects of the decision separately.

Means: I noted the appellant's assertion that she had not been asked to show that her means were below the specified limit and could see no evidence to suggest that such a request had been made but not complied with. It was not clear to me what the import of her interest in the property was in relation to her claim for One-Parent Family Payment and this was not detailed at all by the decision-makers. There was no exploration as to what legal and practical control the appellant could exercise such that she could sell or derive a profit from the property. It is clear that if she lived at the property and was cohabiting with the nominated person, as upheld by the Appeals Officer, then the question as to means did not arise as she would have been disqualified for One-Parent Family Payment in such circumstances.

Cohabitation: In a situation where an existing payment is being reviewed, the onus is on the Department to make a satisfactory case for a disallowance. In this particular case, given the lengthy period at issue and the significant financial consequences of a revised decision for the appellant, an evidence-based case was required, indicating that it was highly probable that the appellant was residing with the nominated person during the entire period in question in 'an intimate and committed relationship', as provided for in the governing legislation. In putting together such a case, the Department must, at a minimum, have followed its own Guidelines on Investigating Cohabitation. Those Guidelines list the criteria by which cohabitation may be assessed and I examined the evidence in this case with reference to each of those criteria, as follows:

Duration of the relationship: The appellant was clear in her contention that she had not cohabited with the nominated person in the period at issue. The only evidence to the contrary was circumstantial.

Basis on which the couple live together: The appellant jointly owned a property since 2001 and her car, registered at her parents' address, had been observed outside that property on five occasions in 2014. The Appeals Officer noted that there was no other evidence and that the appellant had stated that she allowed the nominated person to take her car as it had a baby seat.

Degree of financial interdependence: The nominated person paid some maintenance in respect of the children. Apart from this, there was no evidence pointing to any degree of financial interdependence.

Degree and nature of any financial arrangements between the adults: The appellant and the nominated person were joint owners of a house. There was no evidence of any other financial arrangements between them.

Dependent children: There were two dependent children.

Care and support for children of the other adult: This did not arise.

Degree to which the adults present themselves as a couple: There was no evidence.

In this case, the appellant had been in receipt of a payment for many years and this was withdrawn following a review. In the circumstances, the burden of proof was clearly on the Department to establish that cohabitation existed and not on the appellant to prove the contrary. I note that the Appeals Officer considered that the evidence advanced by the Department was more credible and convincing than that put forward by the appellant and that the Officer concluded the appellant had failed to show that she was not cohabiting with the nominated person. This was clearly an error of law. In misdirecting themselves on this point, I could only conclude that the Appeals Officer had placed an unreasonable burden of proof on the appellant such as to render the appeal hearing unfair. The Department, in its guidelines on cohabitation, accepts that *'where an entitlement may be disallowed, limited or withdrawn, the onus is on the Department to establish that cohabitation exists'*. I am of the view that the Department did not meet the requirements set out in its own guidelines to establish that cohabitation existed and that the Appeals Officer did not give sufficient weight to this fact and to the other evidence provided by the appellant, as outlined above, in support of her position.

Revised decisions and overpayments: I addressed the legislative provisions relating to revised decisions outlined in Chapter 1 of Part 10 of the Social Welfare Consolidation Act 2005. The 'effect of revised decisions by Deciding Officers' is clearly laid out in Section 302 and prescribes in mandatory terms when and in what circumstances a revised decision is to take effect. There are potentially significant consequences flowing from these provisions, such as in the appellant's case where an overpayment of some €135,000 had been raised. The Department's Guidelines on Revised Decisions and Their Date of Effect state that a decision should include reference to:

- The relevant provision in the legislation under which payment is being allowed, disallowed, or reduced;
- The sub-section of Section 302 of the Social Welfare Consolidation Act 2005 being applied in determining the effective date of the revised decision.

The Department's Guidelines on Overpayment Recovery state that:

An overpayment is created where a Deciding Officer or a Designated Person makes a revised decision under Section 302 or Section 325 of the Social Welfare Consolidation Act 2005 and the effect of the decision is to reduce a person's entitlement retrospectively.

I could find no evidence to indicate that the revised decision was made with reference to any of the provisions in Section 302, nor could I see where the appellant had been advised of the amount of the overpayment. This combination of failures is an error in law and in my view a serious denial of the appellant's right to natural justice and fair procedures. The Appeals Officer did not direct her attention to the provisions and the obligations arising from this section in their consideration of the appeal. In light of all of the above

considerations I concluded that the Appeals Officer had erred in law and, in the circumstances, revised the decision.

Outcome: Decision revised and appeal allowed.

I. 2017

1. 2017/09 One-Parent Family Payment – Oral hearing

Question at issue: Eligibility (cohabitation and means)

Background: The Department disallowed the appellant's claim for One Parent Family Payment (OFP) payment on the grounds that the appellant had failed to show that she was not cohabiting or that her means were below the maximum rate of €217.80 weekly.

Oral Hearing: The appellant attended the hearing with a representative. The Social Welfare Inspector (SWI) was also in attendance, at the request of the Appeals Officer. The SWI read out her report which concluded that the appellant did not reside at her parents' address as she had claimed. This contention followed from a visit to her parents' address by the SWI in relation to the appellant's sister's claim for Jobseeker's Allowance. The appellant was not listed as residing at the address on the appellant's sister's claim at that time. The SWI submitted that the appellant had moved to a large rented house and must have been in a position to pay the costs of living there and on that basis must have been receiving financial assistance from her son's father in this regard. The SWI submitted that the appellant was asked to provide details of her son's father's income as she was benefitting from this income and that these details had not been provided.

The appellant submitted that she was resident at her parent's address having moved out of the rented accommodation following the breakdown of the relationship with her son's father. She submitted that she had no means and was being financially assisted by her parents. She was receiving weekly maintenance of €30 from her son's father who she stated now lived with his parents. The appellant's representative at the hearing confirmed that to his knowledge the appellant's son's father resided at his parents' address. The appellant submitted that she had been unable to meet her loan repayment to the Credit Union and that at times she had needed to get food parcels from a local food bank. This was confirmed by her representative.

Consideration: The Appeals Officer considered the evidence available. The Department was of the view that the appellant did not reside in her parents' address and was being supported by the father of her son. The evidence available did not however support this conclusion. From the evidence available the Appeals Officer concluded that the appellant resides at her parents' address and is not living in a cohabiting relationship and that her means are well below €217.80 weekly.

Outcome: Appeal allowed.

2. 2017/10 One-Parent Family Payment Oral hearing

Question at issue: Overpayment whilst child in care

Background: The Department made a revised decision that the appellant was not entitled to One Parent Family Payment (OFP) for an approximately 15 month period from September 2015 to December 2016 when her son was in foster care. As a result of this decision, an overpayment of almost €15,000 was assessed against the appellant. In appealing the decision, the appellant stated that her son was only ever under interim care orders of 28 days duration and that every month she expected the order to be lifted. During the care period the appellant received help for significant health issues. She states she had daily access to her son and continued to buy all his clothes and food and paid for any extracurricular activities at his crèche whilst he was in care.

Oral hearing: The appellant attended the hearing with a representative from her local Citizens Information Centre (CIC). The appellant, who is in her mid-twenties and has an almost three year old son, developed mental health and alcohol/drug problems soon after the birth of her child. She took part in a one-month treatment programme in January 2015 during which time her son was cared for by her mother. However she relapsed and her son was taken into care in September 2015. He was placed into the care of the appellant's brother and his wife. In November/December 2015 the appellant once again had to go into a treatment centre and remained there for a few months.

Every month the appellant went to court to try to get her son returned as he was only on 28 day interim orders. She stated that both the HSE and Tusla were aware that she was in receipt of OFP. She maintained that during all that time she continued paying for essentials for her son and also had to continue paying rent on their house as every month she expected him home. She remained her son's legal guardian and saw him every day except when she was away for treatment. From summer 2016 he began staying for overnights in her house and was officially returned to her in January 2017. She is claiming OFP since his return to the family home.

The CIC representative did not consider that it was appropriate for the Department to raise an overpayment considering that the appellant would have been on an alternative social welfare payment if she had not been receiving OFP, as she had no other income. The CIC representative also pointed out that the appellant had received the notice of overpayment just after her son had resumed living with the appellant and this had a very negative effect on her well-being.

Consideration: The Appeals Officer was satisfied from the evidence that the Department was correct and that the appellant had no right to continued payment of OFP once her son was taken into care. Based on the oral hearing it was equally clear that the appellant never set out to defraud the Department or to claim anything to which she was not entitled. As she was keeping a home for her son to return to and generally had daily contact with him, she incorrectly, believed that she was still entitled to payment of OFP. The Appeals Officer also noted that the appellant had continued paying for much of her son's upkeep and, as the representative of the CIC pointed out, the appellant would clearly have had an entitlement to a different payment such as Disability Allowance if the OFP had been stopped.

The Appeals Officer noted the very difficult circumstances for both the appellant and her young son. The Appeals Officer considered that a decision with retrospective effect with the consequence of raising an overpayment would be grossly unfair on the appellant. While the Appeals Officer upheld the Department's decision that the appellant had no entitlement

to OFP he decided that the application of Section 302(b) of the Social Welfare Consolidation Act 2005 was appropriate and determined that the decision should take effect from 7 December 2016. In those circumstances no overpayment arose.

Outcome: Appeal allowed.

J. 2018

1. 2018/06 One Parent Family Payment – oral hearing

Question at issue: Eligibility (means)

Background: The appellant was in receipt of Jobseeker's Allowance since August 2010 and had been assessed as having 'nil' means for the purposes of that payment and was in receipt of an increase in respect of one child. She applied for One Parent Family Payment which was disallowed by the Department on the grounds that she failed to show her means were below the limit appropriate to her family circumstances. The source of means was considered by the Department to have derived from her partner's income with whom the Department suspected she was cohabiting.

Oral hearing: The appellant and the Social Welfare Inspector attended the oral hearing of the appeal. The Appeals Officer noted that the Social Welfare Inspector had indicated in his report that he suspected that the appellant was in a cohabiting relationship with the father of her child. The Appeals Officer noted that the Social Welfare Inspector collated some evidence regarding possible cohabitation, including details of the appellant's partner's vehicle being parked outside her house on the date of interview. The Appeals Officer noted that no subsequent observations or follow up visits were conducted. The appellant stated that the child's father called each week to see his child.

Consideration: The Appeals Officer outlined that the conditions to be satisfied for payment of One Parent Family Payment are outlined in social welfare legislation and include an assessment of means. He noted that while observations of a vehicle at a person's house might give an indication of possible cohabitation he was not satisfied that cohabitation had been established in this case. The Appeals Officer was of the view that the Department's own guidelines on establishing cohabitation had not been followed. The Appeals Officer concluded that the observed vehicle could legitimately be at the appellant's house for the purpose of visiting his child as contended by the appellant. The Appeals Officer also considered it was significant that since One Parent Family Payment was disallowed the appellant had continued to receive Jobseeker's Allowance at full rate for herself and her child. In the Appeals Officer's view this suggested that the Department was satisfied with regard to the appellant's means being assessed as 'nil' and as a single person for the purposes of this payment. The Appeals Officer also noted that the child's father was in receipt of Jobseeker's Allowance at his own address which would indicate that the Department was satisfied with regard to his address.

Having examined the evidence in this case including that presented at oral hearing, the Appeals Officer was of the opinion that there was insufficient evidence to uphold the decision that the appellant had failed to show that her weekly means were below the appropriate limit. The Appeals Officer concluded that the appellant's means should be

assessed at 'nil' in accordance with the assessment of means for her Jobseeker's Allowance claim.

Outcome: Appeal allowed.

K. 2019

1. 2019/07 One-Parent Family Payment – oral hearing

Question at issue: Back-dating

Background: The appellant applied for One-Parent Family Payment in October 2018 in respect of her son who was born in January 2018 and payment was awarded from the date of application. In her application the appellant requested payment to be backdated to February 2018 the month after her son was born. The Department refused the application to back date the claim to February 2018 on the grounds that the appellant did not make the claim in the manner prescribed in the governing legislation and she did not demonstrate that there was a good reason for the delay in making her claim.

Oral Hearing: The appellant stated that she was overwhelmed when her son was born as he did not sleep and that she was up most days for 18-20 hours. She had to change accommodation at short notice and was exhausted much of the time. The appellant's GP stated in a letter that the appellant struggled with the reality of single motherhood. The appellant stated that at the time her child was born she was not aware of the One-Parent Family Payment and had not been informed by anyone of her entitlement to the payment. The Appeals Officer noted that on the application form the appellant stated in response to the relevant questions that she and her partner separated in August 2018. The appellant could not explain her response other than to state that she had made a mistake and was not good with dates.

Consideration: The relevant legislation in relation to the prescribed time for making a claim for One-Parent Family Payment is contained in Section 241(2) of the 2005 Act. Section 241(3) of the Act also provides for the backdating of a claim for up to 6 months where a person can show that there was good cause which precluded the submission of an application at an earlier date. The legislation does not provide for claims to be backdated for periods in excess of six months unless it can be shown that the delay in making a claim was due to incorrect information being supplied to a person by the Department or where the person can show that he or she was incapable of submitting a claim from the date when entitlement arose up to the date of application, by virtue of illness or incapacity.

While the appellant's GP stated that she struggled with the reality of single motherhood it did not indicate any illness or incapacity which would have prevented the appellant from submitting a claim at an earlier date. The Appeals Officer noted the appellant's evidence that she was not aware of One-Parent Family Payment when her son was born. The Appeals Officer concluded that the primary responsibility in making a claim rests with the claimant. The Department raises awareness of potential entitlements to its schemes through appropriate advertising of the existence of its schemes.

The Appeals Officer found no evidence of incorrect information being supplied to the appellant by the Department or any other service. In those circumstances the Appeals Officer concluded that the appellant had not established there was good cause for the delay in making her claim.

Outcome: Appeal disallowed.

L. 2020

1. 2020/05 One-Parent Family Payment – summary decision

Question at issue: Backdating

Background: A claim form for additional children on the appellant's One-Parent Family Payment claim was received in the local Intreo Centre in April 2020. The claim was in respect of the appellant's twin children who were born in December 2019. The increase for the two additional qualified children was awarded from April 2020. The increase was not awarded from December 2019 as the appellant did not submit her claim within three months of the birth of her children.

The appellant sought backdating of the increase on the grounds that she was hospitalised for a period of time after her children were born. She stated that she called to the Intreo Centre a number of times and the One-Parent Family Payment section was closed. She stated that it is difficult to get out and about with three young children. The Deciding Officer stated the appellant could have requested to have an application form sent to her in the post. The appellant stated that she did not realise this.

Consideration: Section 241(3) of the 2005 Act provides for backdating of a claim for an increase for up to six months where a person can show that there was good cause for the delay in making the claim.

The Appeals Officer having considered the circumstances of the case, in particular the appellant's health issues and that she was caring for two infant children, was satisfied that the appellant had shown good cause for the delay in making her claim for an increase in respect of her additional children and allowed backdating to December 2019.

Outcome: Appeal allowed.

2. 2020/06 One-Parent Family Payment – summary decision

Question at issue: Eligibility (cohabitation)

Background: The appellant's application for One-Parent Family Payment was refused by the Department on the basis that she had failed to show that she was not cohabiting with another person. In her application the appellant included the liable relative of her child as part of her household profile. She attached a personal statement in which she said their relationship had ended but they were still living at the same address for financial reasons. She said they shared the bills and rent, and she stated he paid a specified amount of maintenance.

The Social Welfare Inspector reported that the appellant and the father of her son had been living at the address since August 2016. The report stated that he was in receipt of Family Income Supplement (now known as Working Family Payment) from November 2016 to November 2019 when the appellant commenced employment. It said based on the household expenditure form completed by the appellant they had shared the cost of all household bills 50/50 except the grocery bill. It said they both cooked their own meals. It said they each had minded their son when the other was working and there were childcare arrangements if both worked at the same time.

In appealing the decision, the appellant stated that she considered herself a lone parent as while she had physically lived with her ex-partner it was for financial reasons and particularly the issue around availability and affordability of housing. She outlined that it was the best situation for their son's health and welfare. She stated her ex-partner had lived in a different room and shopped and cooked for himself.

Consideration: In order to qualify for One-Parent Family Payment, a person must be a 'qualified parent' and must not be a cohabitant.

The Appeals Officer noted that when a person makes a claim for a social welfare payment, the onus is on the person to show that they meet the conditions of the scheme. The Appeals Officer concluded that the evidence pointed to a cohabiting relationship and was not satisfied that the appellant met the conditions of the scheme.

Outcome: Appeal disallowed.

M. 2021

1. 2021/07 One-Parent Family Payment – summary decision

Question at issue: Date of award, backdating.

Background: The appellant was in receipt of One Parent Family Payment since September 2010. The appellant failed to apply to the Department to have a child born in 2019 added to her payment. During a review of the appellant's payment in 2021, the Department noticed this and advised the appellant to apply. The appellant's payment was adjusted to include the additional child and payment was back dated by six months to October 2020, the maximum period allowed in legislation.

The appellant asked that the payment be backdated to the time that the child was born, saying that she thought that when the child was born and registered, that the child would be automatically added to her One Parent Family Payment. The Department did not allow backdating to 2019 as the application was only received in April 2021.

The Department had sent a form to the appellant in 2019, as part of a regular process of confirmation of the appellant's circumstances. By coincidence, this was shortly after the child in question was born. The appellant filled in this form fully but omitted to include the child born in 2019 in the list of her children.

Consideration: Article 186 of the 2007 Regulations provides that claims can only be backdated further than the six months normally allowed, in two specific circumstances:

- Where incorrect information is given by the Department causing a late application, or
- If the applicant is so incapacitated that they or an agent could not apply.

The Appeals Officer concluded that neither of the two circumstances applied in the appellant's case.

Outcome: Appeal disallowed.

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