Casebase Number: G0134

Title of Payment: Carer's Allowance

Community Law and Mediation Northside

Northside Civic Centre

Bunratty Road

Coolock

Dublin 17

Date of Final Decision: 29 August 2022

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Organisation who represented the Claimant: Community Law and Mediation Northside (CLM)

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Case Summary:
This case relates to an appeal of the decision of the Deciding Officer of the Department of Social Protection (DSP) that there was an overpayment of the Carer's Allowance to the appellant.

Carer's Allowance is a means-tested social assistance payment available to people on low incomes who are full-time carers of another person. The person being cared for may need support due to disability, illness or age and they must require full-time care. There is a number of criteria which needs to be fulfilled in order for a carer to be found entitled and granted payment. In accordance with social welfare legislation, the carer is under a legal obligation to inform the DSP of any change in circumstances after they have been granted payment.

One of the qualifying conditions for this payment is that the person being cared for must not be living in a hospital, convalescent home or other similar institution.

The appellant in this case had been receiving Carer's Allowance since having been found eligible for the payment in March 2011. However, in June 2015, the DSP was notified that the person being cared for had been in long-term residential care since May 2013. Following this, the Directing Officer of the DSP notified the appellant that they were not entitled to receive payment for the period of 6 May 2013 to 17 June 2015. This gave rise to an overpayment of €25,037 and this would have to be recovered.

As the appellant genuinely believed that they were entitled to the payment during this period, and had not lied nor hidden information, this was found not to be fraud. If it was fraud, the appellant may have been criminally prosecuted and a reduction in the sum of the overpayment recoverable would not be available. However, regardless of the fact that this was not fraud, there was still deemed to have been an overpayment.

The Social Welfare Appeals Process in accordance with the Social Welfare (consolidation) Act 2005 as amended is as follows:

- s. 300 – Deciding Officer makes decision on social welfare application.
- s. 301 – Applicant can request that a Deciding Officer reviews a refusal.
- s. 311 – Applicant can appeal to the Social Welfare Appeals Office (SWAO) and an Appeals Officer makes a decision.
- s. 317 – Appellant can request a review of the Appeals Officer's decision.
- s. 318 – Appellant can request a review by the Chief Appeals Officer.
- s. 327 – Appellant can make a statutory appeal to the High Court.

The appellant took the following actions to challenge the Deciding Officer's decision.

On 1 July 2015, the client initially responded to the Deciding Officer of the DSP stating that they genuinely believed they were entitled to the payment during this period as they were still providing care. They also explained that they were already in a difficult financial situation.

On 19 April 2021, Money Advice and Budgeting Service (MABS) sent a letter on behalf of the appellant submitting that there had been no offset and that the appellant would have been entitled to

Supplementary Welfare Allowance (SWA) during that period. This was an unsuccessful argument for the following reasons.

Firstly, the Carer's Allowance overpayment could not be offset as the SWA was an allowance or social assistance payment. An overpayment can only be offset if the payment the appellant would have been eligible for was a benefit or social insurance payment. The difference being that an allowance is means tested whereas a benefit is a PRSI benefit from having worked previously.

Secondly, the appellant could only be held eligible if they had applied for SWA. They could then apply in 2021, however it could only be backdated by six months and so this would not apply to the period of concern. The Social Welfare Services Office decided to not revise the Deciding Officer's decision.

The appellant then appealed the decision to the Social Welfare Appeals Office (SWAO). The SWAO upheld the decision, dismissing the appeal, and held that discussion concerning the recovery of overpayment should be with the Debt Recovery Unit of the DSP. The SWAO also held that only the issue of the entitlement of the appellant to Carer's Allowance was under review. Issues such as other potential entitles, off sets and the appellant's financial situation was held to be outside the scope of the SWAO.

Therefore, on the 29 August 2022, the final decision was made by the SWAO that the appeal remained disallowed.

Key Conclusions:
The decision that there had been an overpayment of Carer's Allowance to the claimant was upheld. This was due to the fact that there had been a change in the circumstances of the appellant. The person being cared for was living in long-term residential care. However, it was a qualifying condition that the person being cared for was not living in a hospital, convalescent home or other similar institution.

This was not deemed fraud as the appellant had not outright lied about their circumstances and honestly believed they were entitled to the payment. However, the good faith of the appellant cannot excuse them of the recovery of their overpayment. The appellant described the difficulties they were facing at the time, including physical and mental health issues along with a tight financial situation. However, these conditions could not be taken into consideration in the appeals process.

Relevant Legislation:
The main piece of legislation relevant to this topic is the Social Welfare Consolidation Act 2005. There are some other relevant statutory instruments, which are outlined below.

Social Welfare Consolidation Act 2005
The Social Welfare (Consolidation) Act 2005 sets out the circumstances where an overpayment may arise and the liability of a person to repay an overpayment. Referring to sections 301, 302, and 305 to 338 of the Act, an overpayment is a debt owed to the DSP following the decision by a Deciding Officer that a claimant, for a specified period, was not entitled to receive, either in whole or in part, a benefit, assistance, or supplement.

There are different circumstances from which an overpayment can arise. A decision that there has been an overpayment because of fraud is made in accordance with Section 302(a) and 325(a) of the Act. This may give rise to criminal prosecution.

If there is an absence of fraud, the decision is made under Section 302(b) of the Act. In this instance, the DSP may consider the issues and circumstances which gave rise to the overpayment. These circumstances can be raised in an appeal of the decision. The appellant may also appeal the date the

overpayment is deemed to have arisen. A revision of the effective date of the overpayment can result in a reduction of the sum recoverable.

Other circumstances such as double cashing, impersonation and cashing after death are set out in Sections 336, 336(a) and 336(b) of the Act.

S.I. No. 349/2005 – Social Welfare (Recovery of Overpayments) Regulations 2005
Statutory Instrument No. 349/2005 sets out rules on how the DSP can recover overpayments.

Provision of Information
The person who received the overpayment must be informed of the factors which gave rise to the overpayment, the amount, and the proposed method of recovery. They must also be afforded an opportunity to bring notice of any views they have on the assessment, proposed method of recovery or circumstances they consider relevant to the Department or Health Service Executive as appropriate. This must be done before a decision can be made on the recovery of the overpayment.

Means of Recovery
The Minister or the HSE, subject to these regulations, will attempt to recover overpayments in full. They will decide the way the overpayment is recovered. This may be by lump sum or part payments. They will also decide the rate.

Determining Means of Recovery
The Minister should take into account the amount of the overpayment and the circumstances in which it arose. They should also consider any facts or circumstances relevant to the recovery that have come to the notice of the Department or HSE.

Recovery of Overpayment by Means of Deduction from Social Welfare Payment
Overpayment may be recovered by withholding all or part of any benefit under section 30(1) or any assistance under section 118(1) due to the claimant. Otherwise, deductions may be made from payments having regard to the ability of the claimant to repay and the total amount to be recovered.

Proceedings
The Minister or HSE reserves the right to recover overpayments by proceedings taken under statute or simple contract debt in any court of competent jurisdiction.

Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007
Article 245 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 sets out the circumstances surrounding the reduction or cancellation of the sum to be repaid and includes off-sets for alternative payments.

Operational Guidelines: Management of Customer Overpayments and Recovery of Customer Debt
The DSP's operational guidelines on the management of customer overpayments and recovery of customer debt provides explanations of the legislation surrounding overpayments.

Key Arguments:
Arguments made on behalf of the appellant.

1. *Offset*
   MABS argued that the decision made by the Deciding Officer did not allow for any offset. Offsetting is where the amount of an overpayment to be repaid may be reduced by the amount of any other social welfare payment which the person would otherwise have been entitled to. It was submitted that the appellant would have been entitled to a SWA payment during the period of May 2013 to June 2015 when the overpayment arose. Therefore, it was requested that the SWA

payment be backdated to May 2013 and the overpayment be set off.

2. *Financial Hardship and Honest Belief*
   The appellant argued in their appeal that they were going through financial hardship and explained the damage this would cause for them. They explained that every penny was spent on bills and that they were only €17 better off a week. They also shared that they had been caring for 8 to 9 years and had only been collecting Carer's Allowance for the last 4 years. They had been suffering from depression and Hepatitis C. They argued that they honestly believed they were still entitled to the payment as they were still providing care every day even though the caree was not living with them anymore. They did not lie nor attempt to conceal their change in circumstances. It was put forward that the appellant would not have put themselves in this situation for the sake of an extra €17 a week.

Arguments made on behalf of the respondent.

1. *As Regards Offset*
   The Deciding Officer found that there was no clear evidence of the appellant's entitlement to a SWA payment during the relevant period. As an application for the payment had not been made, there was no proof of entitlement. The Deciding Officer recommended that the appellant could apply for the payment if they so wished. However, this could only be backdated six months and so would not apply for May 2013 to June 2015.

2. *As Regards Financial Hardship and Honest Belief*
   The Social Welfares Appeals Office held that their decision related only to the appellant's entitlement to Carer's Allowance. The appellant's circumstances regarding physical and mental health at that time were considered however they were found not to relate or alter the appellant's entitlement to the payment. Therefore, these grounds were found irrelevant to the decision.

Decision of the Social Welfare Appeals Office
The Social Welfare Appeals Office decided that the appeal remain disallowed. An offset could not be applied as there was no proof of entitlement to another payment for the period in question. The circumstances of the appellant, including their depression, Hepatitis C and financial hardship, were found not to relate to their entitlement to Carer's Allowance. Ultimately, it was held that the appellant was not entitled to Carer's Allowance during May 2013 to June 2015, giving rise to an overpayment.

Date of final Decision: 29 August 2022

Observations:
Upon receiving a letter from the Department of Social Protection notifying one that they have been found unentitled to a payment giving rise to an overpayment, they may appeal this decision. The appellant may have circumstances which would allow an appeal, for example, the person receiving care was temporarily moved out of the home in order to make adaptations to the house. The determining factor, however, is whether the appellant had an underlying entitlement at the time. If the appellant's circumstances do not directly relate to this entitlement, as in this case, the appeal will likely not be allowed.

It is important to note that even is the appeal is disallowed, it is always open to the appellant to seek a reduction in the sum or cancellation of the overpayment recoverable, for example where there is no ability to pay. The appellant in this case was successful in doing so.

For further information:

gov.ie - Social Welfare Appeals Office (www.gov.ie)

Social welfare overpayments (citizensinformation.ie)

For ***more information*** contact us at:

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