

THE HIGH COURT

JUDICIAL REVIEW

[2016 No.744 J.R.]

BETWEEN

KRISTINA KOZINCEVA

APPLICANT

AND

THE MINISTER FOR SOCIAL PROTECTION

RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 21st day of December, 2017.**Background:**

1. The applicant, a Latvian national, is a person of no fixed abode who has for the last number of years resided with friends, in hostels, and, on occasion, in a DART station. Though homeless, the applicant secured part-time employment and is entitled to claim the job seekers allowance ("the allowance"). In order to correctly calculate the amount of allowance payable to the applicant she is required to provide the respondent with work docketts. The respondent administers payment of the allowance through a number of centres referred to as "Intreo" centres.
2. It would appear that the applicant presented to the Clondalkin Intreo centre office on or about 15th December, 2015 seeking to transfer her allowance from the Kings Inn Intreo centre as she had moved into the Clondalkin catchment area. The Kings Inn Intreo centre transferred the file on 18th January, 2016. The delay in transfer was due to the Kings Inn Intreo centre assessing the applicant's entitlement to the allowance from 20th May, 2015 to January 2016.
3. Subsequently, only two payments of the allowance issued from the Clondalkin Intreo centre. The respondent claims that this is as a result of the applicant being late in furnishing the requisite work docketts. The first payment of the allowance made on 24th March, 2016 was sent to the Clondalkin address given by the applicant. This covered the period from 6th January, 2016 to 27th March, 2016. When the applicant attended the Clondalkin Intreo centre on 21st September, 2016 she stated that she never received this cheque. The respondent subsequently reissued payment of the allowance by way of an electronic funds transfer. The second payment was issued on 8th April, 2016 and was for the period from 23rd March, 2016 to 5th April, 2016. This cheque was collected by the applicant at the Clondalkin Intreo centre.
4. Unfortunately, in February 2016 the applicant stated that she was forced to vacate the accommodation she had obtained in Clondalkin as she could no longer afford it and, for a period, moved into a friend's apartment in Lucan. Thereafter, the applicant was unable to stay with friends and stayed in hostels or emergency accommodation.
5. According to the respondent, on or about 5th April, 2016 a note was received from the applicant stating that she was now homeless and to hold any cheques for her in the Clondalkin Intreo centre. In a subsequent note on 16th April, 2016 the respondent was informed that the applicant was no longer residing at an address in the catchment area of the Clondalkin Intreo centre and had not been there for some time. This note was accompanied by docketts which the respondent regarded as being incomplete.
6. On 21st April, 2016 the applicant's payment of the allowance was suspended as she was no longer residing in a relevant catchment area. Attempts were made by Mr. Thompson, Assistant Principal, Clondalkin Intreo centre, to contact the applicant using the telephone number provided by her but to no success. The applicant's claim for the allowance was closed on 31st May, 2016 as, according to the respondent, there had been no further contact.
7. In June 2016 the applicant was advised that she would have to contact the homeless unit for single woman and foreign nationals in Gardner Street, Dublin 1. When she did, she was informed that the Gardner Street office could not process applications for the allowance and she was advised to try her local office. The applicant was then put on a supplementary welfare payment.
8. The applicant was given assistance by Mr. MacRitchie, a welfare appeals advocate, and her solicitor Ms. Eileen McCabe. Arising from this, on 29th August, 2016 two managers from the Clondalkin Intreo centre met with the applicant to discuss her case. The applicant was requested to provide details of all of the addresses that she had lived at since January 2016. This information was supplied by the applicant but was deemed by the respondent to be insufficient as she did not provide details linking her to the catchment area of the Clondalkin Intreo centre.
9. By letter dated 12th September, 2016 the solicitor for the applicant wrote to the Clondalkin Intreo centre stating, *inter alia*, the following:-

"my client is homeless and therefore cannot provide a permanent address for her jobseekers allowance claim. Please confirm that my client is entitled to claim jobseekers allowance in circumstances where she has no fixed abode..."

10. In response by letter dated 14th September, 2016 Mr. Michael Thompson, Clondalkin area manager stated:-

"Dear Eileen,

I refer to your letter dated 12th September, 2016 and your subsequent telephone call this afternoon.

I wish to confirm that Kristina's jobseekers allowance claim in Clondalkin Intreo centre has been closed since April 2016. We are unable to reopen this claim as evidence to confirm that she was living in the catchment has not been provided.

In order for Kristina to submit a new application for jobseekers allowance she would be required to provide evidence that

she is currently residing in the Clondalkin/Lucan/Newcastle area. To date this has not been provided.

If you require any further information please do not hesitate to contact me..."

11. I have set this letter out in full as it is central to the application herein.

12. The applicant claims that the terms of this letter of 14th September, 2016 constituted a decision on the part of the respondent to refuse the applicant the allowance, to which she is entitled, on the basis that she is "homeless".

13. By order of this Court of the 27th September, 2016 the applicant was granted leave to apply by way of an application for judicial review for, *inter alia*, the following reliefs:-

(i) An order of *certiorari* by way of judicial review quashing the decision of the respondent made on 14th September, 2016;

(ii) A declaration by way of judicial review that the decision to refuse job seekers allowance to the applicant based on homelessness is *ultra vires* the Social Welfare Consolidation Act 2005.

14. Subsequent to the proceedings herein there was an exchange of correspondence. By letter dated 10th November, 2016 the Chief State Solicitor, on behalf of the respondent, wrote stating that the respondent did not make any decision on 14th September, 2016 or otherwise determining that the applicant was not entitled to job seekers allowance by reason of homelessness or otherwise. This letter refers to a previous letter of 24th October, 2016 wherein the applicant was invited to submit evidence of days worked from April 2016 to the present so that the respondent could process same to assess if the applicant was due any back payments. In response, the solicitor for the applicant, by letter dated 16th November, 2016, enclosed the forms as requested and stated, *inter alia*, the following:-

"Ms. Kozinceva remains homeless and has advised me that as the most constant part of her life is her work in Stillorgan, she would be most grateful if her claim could now be dealt with by the nearest Intreo office, which is in Dun Laoghaire..."

15. Subsequently the applicant was paid the allowance and any back payments that had arisen. However, the applicant alleges that there is a shortfall and thus is entitled to damages and compensation for same.

Statutory requirements for payment of the allowance:

16. The relevant statutory provisions for payment of the allowance are to be found in s. 141 of the Social Welfare Consolidation Act 2005. Of particular relevance is s. 141(9) which provides:-

"A person shall not be entitled to job seeker's allowance under this section unless he or she is habitually resident in the State..."

Issue to be determined:

17. At para. 10 above, I have set out the letter from the respondent dated 14th September, 2016. The applicant claims that the terms of this letter constitute a decision on the part of the respondent to refuse the applicant the allowance, to which she is entitled, on the basis that she was "homeless".

Submissions of the applicant:

18. It is submitted that the decision to refuse the applicant the allowance on the grounds of her being homeless is *ultra vires* and unlawful.

19. It is also submitted that there was a failure on the part of the respondent to provide sufficient reasons for refusing the allowance in the decision of 14th September, 2016. In support of this, the applicant relies upon *Mallak v. the Minister for Justice* [2012] 3 IR 297, where Fennelly J. states:-

"[68] In the present state of evolution of our law, it is not easy to conceive of a decision maker being dispensed from giving an explanation either of the decision or of the decision making process at some stage. The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded.

[69] Several converging legal sources strongly suggest an emerging commonly held view that persons affected by administrative decisions have a right to know the reasons on which they are based, in short to understand them..."

20. Given the events subsequent to the proceedings whereby the applicant was given the allowance the issue of "mootness" arises. In response, the applicant submits that, despite having the opportunity to do so, the respondent has not denied that the impugned policy will continue into the future to effect all persons seeking to apply for the allowance whilst homeless.

21. Finally, the applicant has identified a financial loss to the order of some €3,000 arising out of the withholding of the allowance to which she was entitled.

Submissions of the respondent:

22. The respondent submits that the letter of 14th September, 2016 does not contain a decision that is capable of being quashed. This letter, according to the respondent, simply confirms the action of closing the applicant's earlier claim for payment of the allowance and does not amount to any determination of a new claim by the applicant. The contents of the letter do not determine the applicant's entitlement to the allowance but rather states that her claim did not fall within the catchment area of the Clondalkin Intreo centre.

23. The respondent denies that there was any decision to refuse the applicant the allowance on the ground that she was "homeless". As evidence of this, the respondent relies upon the fact that the applicant was paid the allowance once she established that she did fall within the catchment area of an Intreo office. Reliance is placed upon the letter from the applicant's solicitor, Ms. McCabe, dated 16th November, 2016, which is set out at para. 14 above.

24. The respondent also relies on, what it says, was a failure by the applicant to furnish the necessary dockets to show the earnings from her employment so that the necessary adjustments could be made to the amount of allowance payable to her.

25. Given the fact that the allowance has now been paid the respondent maintains that the issue is now "moot".

26. Finally, the respondent submits, on a technical point, that the letter of 14th September, 2016 refers to a decision of April 2016 and the time provided for by O. 84 of the Rules of the Superior Courts to make this application commenced in April 2016 not September 2016 and that consequently the application herein is out of time.

Decision:

27. There is no dispute but that if the applicant had been denied the allowance on the grounds that she was homeless that such would be *ultra vires* and unlawful. However, in my view this is not the situation here.

28. Section 141(9) provides that a person is not entitled to the allowance "unless he or she is habitually resident in the State..." It is a sad fact that a person can be, like the applicant, "habitually resident in the State" but still "homeless".

29. It is not unreasonable that to administer payment of the allowance there is a requirement that the recipient be residing within the catchment area of a particular centre responsible for payment. What appears to be required is residency and not necessarily a fixed home address.

30. This was clearly the situation of the applicant in early 2016 when, although homeless, she was "resident" in the catchment area of the Clondalkin Intreo centre and was paid the allowance. This situation was repeated in November/December 2016 when the applicant, still unfortunately homeless, was now within the catchment area of the Dun Laoghaire Intreo centre and was duly paid the allowance.

31. It would appear, based on the affidavit of Michael Thompson, Assistant Principal, Clondalkin Intreo centre, that the decision of April 2016 not to pay the applicant her allowance was due of a failure to submit the requisite work dockets, although this was not referred to in the letter of 14th September, 2016. In my view, the contents of said letter cannot be construed so as to amount to a decision that the applicant was not entitled to the allowance because she was "homeless".

32. It seems to me, that the respondents acted appropriately in seeking to give what assistance they could to the applicant given her circumstances. I refer to the meeting which took place on 29th August, 2016 whereby the applicant was requested to provide details of all of the addresses that she had lived in since January 2016. This information was provided by the applicant but, unfortunately, did not give sufficient details linking her to the catchment area of the Clondalkin Intreo centre. Hence the letter of 14th September, 2016.

33. Therefore, by reason of the foregoing, I cannot conclude the applicant was refused the allowance on the basis of her being homeless. It follows that the applicant is not entitled to the reliefs sought herein.