

Social Welfare (Miscellaneous) Provisions Bill 2010

Submission – 15 June 2010

Free Legal Advice Centres & Northside Community Law Centre



Prepared by Ciara Murray - Public Information Consultant

Summary

Our submission examines the proposed amendments to Jobseekers Allowance, Supplementary Welfare Allowance and the One Parent Family Payment.

Jobseekers allowance – Section 17. Proposal to reduce a person’s Jobseekers Allowance if they do not take up appropriate training. This section of the Bill proposes to add an additional condition to those already applicable to the retention of Jobseekers Allowance (see 2.1). The wording used in the Bill may lead to arbitrary decision making where administration is based on an inflexible interpretation of the law rather than a fair approach tailored to the circumstances of each individual (2.2).

Supplementary Welfare Allowance – Section 18. Proposal to reduce a person’s Supplementary Welfare Allowance if they do not take up appropriate training.

Section 18 of the Bill is inappropriate as it undermines the purpose of the Supplementary Welfare Allowance scheme which is to provide a minimum income where a person does not have the means to meet their basic needs. This includes a situation where a person is appealing a decision to reduce their Jobseekers Allowance if they do not take up appropriate training as proposed by Section 17 of the Bill.

We would also question the appropriateness of initiatives like this where there is very high unemployment and an inadequate number of training schemes.

One Parent Family Payment – Section 24. Proposal to abolish the One Parent Family Payment for those with children aged over 13. If fit for work a single parent with a child aged 13 or older will apply for Jobseekers Allowance rather than continue to receive the One Parent Family Payment. This assumes that parents with children over the age of 13 have no childcare responsibilities. There is a risk that such parents may be refused a payment as childcare commitments will restrict their availability for work.

The Bill also creates a distinction between a lone parent who is raising their child without the support of a partner due to the breakdown of a relationship and a person who has become a lone parent through bereavement. The legislation makes a ‘special provision’ for those who are bereaved. We contend that reform of the Widowed Parent Grant may be a more appropriate response to support the specific needs of families in this situation.

Recommendations The proposed reforms will cause inequity between different categories of parents and may result in certain families falling further into poverty. Furthermore, there is potential for the new provisions to increase administration costs by asking officials to identify appropriate training for those on the Live Register and the one parent families who may now be categorised as unemployed. From the claimant’s perspective there will no doubt be confusion and a likely increase in appeals.

We recommend that Sections, 17, 18 and 24 of the Social Welfare (Miscellaneous) Provisions Bill 2010 be deleted.

1.0 Introduction

In this submission we assert that the proposals to amend the conditions governing Jobseekers Allowance, Supplementary Welfare Allowance and the One Parent Family Payment are unnecessary and regressive.

Rather than develop a coherent policy response to the unemployment crisis, the proposed reforms seek to potentially restrict access to basic income supports for people with no alternative source of income. Furthermore, the requirement that lone parents seek Jobseekers Allowance as an alternative income support fails to address the continuing childcare needs of these families. This is the case due to cost of childcare and the conditions applicable to Jobseekers Allowance. In order to receive Jobseekers Allowance a claimant must not place unreasonable restrictions on their availability for work. Consequently, a person who declares that they are only available for part-time work due to childcare responsibilities may be refused a payment.

The Minister has also elected to make a 'special provision' for those who are bereaved arguing that their unique change in circumstances should be addressed in the conditions that govern the One Parent Family Payment. This represents a distinction between single parent households which is regressive from a policy perspective. We submit that a more appropriate mechanism to address the needs of those who are bereaved would be through the reform of existing supports such as the Widowed Parent Grant.

2.0 Sections 17 and 18 Reduction in the rate of Jobseekers Allowance and Supplementary Welfare Allowance when a person fails to take up training

Sections 17 and 18 of the Bill propose to reduce a person's Jobseekers Allowance or Supplementary Welfare Allowance by €46 if that person fails, 'without good cause', to take up an offer of training.

We accept that a jobseeker must show that he or she is genuinely seeking work as a condition for receiving an income support. Furthermore, efforts to seek employment should include accessing suitable training and education to increase a person's chances of obtaining a job. However, we are concerned that the wording of the proposed amendments may lead to inconsistent and arbitrary decision making. This is the case due to the considerable discretion afforded to Deciding Officers interpreting terms such as 'without good cause'.

We also contend that the proposed amendments are unnecessary in view of the existing legal provisions which govern the operation of unemployment supports. For this reason we have examined the proposed amendments alongside the existing legislation.

2.1 Current legislative provisions

2.1.1 Jobseekers Allowance

Under the current legislation, jobseekers must be available, capable and genuinely seeking employment¹. In order to assess if a person meets these conditions the existing regulations stipulate that a person must show that they have taken and continue to take reasonable 'steps' to secure employment². Two of the steps include:

- (c) *availing of reasonable opportunities for training which is suitable in his or her circumstances.*
- (d) *acting on advice given by an officer of the Minister, An Foras Áiseanna Saothair or other placement service concerning the availability of employment,*

Article 16 (2), Social Welfare (CONSOLIDATED CLAIMS, PAYMENTS AND CONTROL) Regulations 2007. S.I.142 2007

The interpretation of the regulatory conditions employs a common sense approach and the wording is sufficiently balanced so as to provide decision makers with the necessary guidance to make fair decisions. If a person is found not to be available, capable and genuinely seeking employment they can be disqualified from receipt of a payment.

2.1.2 Supplementary Welfare Allowance

The purpose of the Supplementary Welfare Allowance scheme is to provide a basic minimum income for someone who does not fit into a particular welfare category, usually on a temporary basis. Payment of Supplementary Welfare Allowance is not contingent on a person being a jobseeker. It operates essentially as a 'safety net' in the event that a person has no other source of income or where he or she is awaiting the outcome of an appeal.

Section 195 (b) of the Principal Act of 2005 already provides the Health Service Executive the discretion to refuse payment of Supplementary Welfare Allowance if a person does not satisfy the jobseeking criteria applicable to Jobseekers Allowance. This provision is generally only used in a case where a Deciding Officer has determined that a person has failed to meet the conditions for receipt of Jobseekers Allowance and that person has also lost an appeal against the decision of the Deciding Officer. However, even in these circumstances there may be mitigating factors that justify payment to allow a person to meet their basic needs and these should be assessed in each case.

¹ Social Welfare Consolidation Act 2005 (as amended) Sections 62 (5) and 141(4)

² Articles 15 and 16, Social Welfare (CONSOLIDATED CLAIMS, PAYMENTS AND CONTROL) Regulations 2007. S.I.142 2007

2.2 The consequences of the proposed legislation

The wording of the proposed amendments is ambiguous and confers considerable discretionary powers on decision-makers. We submit that such discretion can lead to inconsistent and arbitrary decision-making. In this event there would be inevitable administrative difficulties and unreasonable hardship for jobseekers and their families.

2.2.1 Decision-making

Section 17 of the Bill provides, in addition to all existing requirements, that an 'officer of the Minister' may oblige a person to take part in 'appropriate' training. The claimant cannot refuse to take part in that training unless they can show 'good cause' for so doing. Or, more accurately, they can refuse to take part in a training course but will have the potential sanction of a reduced payment imposed on them.

Section 17 141A (b) of the Bill further requires a person *to avail himself or herself of any reasonable offer of training.*

The emphasis is on the Deciding Officer's interpretation of what constitutes an 'appropriate' offer. Without a definition of what will be deemed 'appropriate' or what will be considered 'good cause' for refusing an offer, the decision will be based on the decision maker's subjective views thereby creating inconsistencies.

Sound interpretation is dependent on the careful consideration of the facts and circumstances in each and every case. As a consequence, there are two distinct difficulties with the proposed amendments:

- The fair administration of these changes could potentially be very time consuming causing further pressure and delays in the system.
- The individual circumstances of the claimant may not necessarily be taken fully into account.

To assist decision makers the Department of Social Protection will likely issue detailed guidelines and the content of such guidelines will no doubt include examples of when it would be appropriate to impose financial sanctions on the claimant. Such guidance is essential but cannot guarantee that the nuances of each person's circumstances will be taken into account.

No guidelines can provide such certainty nor can they address every eventuality presented to a decision maker. We suggest that when faced with the reality of time pressure the decision maker may choose to apply a convenient example provided in guidelines rather than examine the specific circumstances of the claimant.

2.2.2 The absence of an income safety net

Section 18 of the Bill proposes to apply the same requirement to engage in training as a condition when determining eligibility to Supplementary Welfare Allowance (SWA).

Normally, in the event that a person receives an unfavourable decision from the Department of Social Protection they may seek assistance from a Community Welfare Officer/Superintendent Community Welfare Officer pending the outcome of an appeal.

The consequences of the proposed amendments contained in Section 18 of the Bill are the same as those applicable to person's appealing decision concerning habitual residence. In effect a person may end up appealing two decisions made on exactly the same grounds:

1. The decision to reduce their Jobseekers Allowance as they have not shown good cause for refusing an appropriate training offer, and
2. The decision not to pay Supplementary Welfare Allowance as they have not shown good cause for refusing an appropriate training offer

This exerts further pressure on a system which is already strained and creates a situation of unreasonable hardship for those who wish to access the appeals process.

While legally a Community Welfare Officer may use their discretion to pay a person as the matter at issue has not yet been adjudicated, in practice they are unlikely to do so. This is the case given the explicit instructions contained in a circular issued to staff in June 2009. The circular was issued for the purpose of clarifying the interpretation of the habitual residence condition in the context of the SWA scheme and is explained below.

2.2.3 SWA and the Habitual Residence Condition

This circular issued in June 2009 effectively removed the safety net of SWA in cases where the habitual residence of that individual was in dispute. It stated:

Important

Subject to the provisions of paragraph 5 below, Supplementary Welfare Allowance cannot at any time be viewed as a temporary or interim means of income support available independently of HRC, while an applicant awaits the outcome of either a decision - or an appeal against a decision - on a claim for a social welfare payment from DSFA.³

A later note of clarification was issued to staff on 18 June 2009 stating:

It was not intended to imply in the original circular that an applicant awaiting the outcome of either a decision - or an appeal against a decision - on a claim for a primary social welfare payment from the Department of Social and Family Affairs, could not make a claim to SWA and have it adjudicated upon in the normal manner.⁴

³ SWA Circular No: 08/09 15 June 2009
To: Superintendent CWOs, Community Welfare Officers, Regional Co-ordinators, Social Welfare Appeals Officers. Copy for information to: Chief Executive Officer HSE, National Director PCCC, Assistant National Directors PCCC, HSE Appeals Officers

⁴ Note for Information. 18 June 2009.

SWA had previously been available as an interim payment to guarantee a minimum level of income support pending the outcome of an appeal against a refusal of a payment to which a person may be entitled. However, the effect of the above circular is that when a person appeals a decision by the Department of Social Protection – asserting that they are not habitually resident - they are unable to rely on an income support under the Supplementary Welfare Allowance scheme unless they are found to meet the all the conditions applicable to SWA, a payment which is also subject to the habitual residence test.

As the circular stipulates that a person cannot receive SWA as an interim payment pending the outcome of an appeal, the claimant will therefore have no income or insufficient income to pay for their basic needs. In the case of those appealing habitual residence a further consequence has been the denial of access to homeless services as they are not in receipt of a payment.

3.0 Section 24 Proposed amendments to the One Parent Family Payment

The Minister's stated objectives in proposing amendments to the One Parent Family Payment are to:

...bring Ireland's support for lone parents more into line with international provisions, where there is a general movement away from long-term and passive income support. The EU countries achieving the best outcomes in terms of tackling child poverty are those that are combining strategies aimed at facilitating access to employment and enabling services (e.g. child care) with income support.
Written statement issued 29/05/2010

The poverty experienced by lone parent households was clearly identified in research published by the Economic and Social Research Institute (ESRI) in September 2009.

In the Executive Summary it states:

*Ireland displays the highest level of consistent poverty for lone parents followed by Estonia and the Czech Republic.... in relation to consistent poverty, Ireland represents the worst case scenario with regard to absolute and relative outcomes for individuals in lone parent households*⁵

While it is clear that the issue of poverty for single parent families needs to be addressed, it is not clear how the amendments contained in the current Bill represent an appropriate or effective anti-poverty mechanism.

Re: Clarification on Paragraphs 2 and 3.7 of HRC Circular 08/09 on the Habitual Residence Condition/EEA Migrant Workers

⁵ *Poverty and Deprivation in Ireland in Comparative Perspective*. ESRI, 2009. Executive Summary. Page xv.

The proposed amendment also confuses two distinct policy objectives, that is, the provision of support to address the contingency of bereavement and the delivery of appropriate supports for those who are one parent households. We submit that in trying to address these two distinct objectives in the same scheme the principle of equal treatment in relation to single parent households is undermined.

Rather than aiding the Government's stated policy objectives, the consequence of the proposed amendments may lead to some single parent households living in greater poverty.

3.1 Different treatment of one parent families

When the One Parent Family Payment was first introduced in January 1997 it sought to eliminate discrimination on the basis of gender or the reasons for a person being a single parent.

The proposed amendments to legislation reverse that intent by creating different categories of one parent families:

1. A lone parent who is bereaved, was married and has sufficient PRSI contributions can claim the Widows/Widowers Contributory Pension indefinitely unless the claimant cohabits or remarries. The child dependant portion of the payment is payable until the child reaches 22 years of age if he/she remains in full time education. Additionally the person will receive the Widowed Parent Grant and can earn as much as they want should they choose to work.
2. A person (parent or guardian) who was part of a couple (married or cohabiting), was bereaved and does not have the necessary PRSI contributions will be allowed to receive the One Parent Family Payment for two years if their children are over 13 at the time of the death of their partner. They do not get the Widowed Parent Grant (unless they were married) and once the two years are over they will have to apply for an alternative income support. If he or she is capable of work they will have to apply for Jobseekers Allowance.
3. The situation of one parent families who are separated or divorced from their partners or who do not have partners is different to both of the above categories. For these families once their children reach 13 they will, if capable of work, have to apply for Jobseekers Allowance and will no longer be entitled to One Parent Family Payment. There is no special recognition for changed circumstances in the case of desertion.

3.1.1 Supporting those who are bereaved

The Minister proposes to insert a special provision for those who suffer bereavement and who have children aged over 13 years at the time of the death of their partner. In this event they will be allowed to receive a payment for a period of two years. For other one parent families, other than those for whom Domiciliary Care Allowance is in payment, the One Parent Family Payment will not be paid when a child reaches 13.

Again referring to the Minister's statement on 29 May 2010, he describes the special provision for the bereaved as being necessary to enable them to come to terms with their changed circumstances.

Bereavement should indeed be recognised as a distinct contingency that needs support. However, we suggest that a more appropriate policy approach would be the reform of the existing income supports for those who are bereaved. Most notably, the conditions that govern the Widow/Widowers Parent Grant (currently €6,000) only allow those who were married to claim the payment.

The Minister in the current proposals to amend the One Parent Family Payment has acknowledged bereavement in the case of cohabitation and marriage. Might it not be more appropriate to remove the discriminatory conditions applicable to the Widowed Parent Grant, thus making it accessible to all those who are bereaved and raising children without a partner regardless of their marital or family status?

3.1.2 Equality

There should be no discrimination between lone parents in relation to receiving the One Parent Family Payment, whether their situation is caused by bereavement, separation, divorce or as a result of being forced to leave the family home due to domestic violence. The introduction of the One Parent Family Payment sought to eliminate those distinctions as they were seen to unreasonably 'judge' a person's status.

We submit that Section 24 of the Bill is potentially open to challenge as it creates discrimination on the basis of marital status under the Equal Status Acts 2000 – 2004.

Furthermore, the proposed changes to the One Parent Family Payment may be open to challenge under the European Convention on Human Rights Act 2003. Specifically, Article 8 and/or Protocol 1 of the Convention read in conjunction with Article 14 of the Act.⁶

The Convention provides that a person should be able to secure their rights under the convention without discrimination on any ground.

3.1.3 Increase for a qualified child

The Minister has stated that a person can continue to receive the One Parent Family Payment until their youngest child reaches the age of 13. The proposed legislation does set out this condition.

⁶ Article 8: right to respect for private and family life

- 1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

However, we are concerned that it is less than clear that a person will receive the appropriate increase in payment for each of their children in the event that one child is over 13.

Specifically, Section 174(1) of the Principal Act of 2005 (as amended) provides:

174.—(1) The rate (in this section referred to as “the scheduled rate”) of one-parent family payment shall be the weekly rate set out in column (2) of Part 1 of Schedule 4 increased by the appropriate amount set out in column (4) of that Part in respect of each qualified child who normally resides with the beneficiary.

As the proposed amendment to the legislation stipulates that a qualified child is a child under 13 it is therefore not clear as to how a lone parent with two children aged, for example, 10 and 14 will be able to receive an increase of €29.80 in respect of the 14 year old child.

Clarification needs to be provided as to the precise legal mechanism to allow payment of a qualified child increase in these circumstances.

3.2 Poverty by a different name

Returning once more to the Minister’s statement on 29 May:

The Government believes that this long-term welfare dependency is not in the best interests of the recipient, the child and society in general.

There is no evidence that the proposed changes to the One Parent Family Payment will alleviate welfare dependency.

3.2.1 Childcare

When the one parent family payment was introduced, provision was made for a more ‘generous’ means assessment in order to offset the cost of childcare. As a result of this many single parents can and do work outside the home.⁷ However, under the proposed legislation there is no provision to address the needs of teenage children after school and during summer holidays while a parent returns to work or takes up a ‘reasonable’ training offer under the proposed conditions for Jobseekers Allowance.

We submit that if the intent is to provide meaningful supports to prevent long term welfare dependency then the Minister should explore the ways in which these supports can be provided before legislating to remove those that currently exist.

3.2.2 Qualifying for a jobseekers payment

A single parent who is no longer eligible for the One Parent Family Payment will have to apply for Jobseekers Allowance if capable of work. A jobseeker is not allowed to place ‘unreasonable

⁷ This Government discussion paper "Proposals for Supporting Lone Parents" refers to 59% of one parent family payment recipients being engaged in employment Page 68.

restrictions' on their availability for employment. In the case of a single parent with teenage children he/she may, reasonably, not wish to take up full time employment due to their childcare responsibilities. In such circumstances a Deciding Officer might be left with little choice but to refuse Jobseekers Allowance as the claimant may be considered to have placed an 'unreasonable restriction' on their availability.

In this context we refer to the existing guidelines available on the Department's website which state:

*If a person states that s/he is unwilling to take up full-time work but is **looking for part-time work only**, e.g., 3 days per week or morning/evening work only, this could be regarded as an unreasonable restriction on his/her availability in terms of the hours of work s/he is prepared to accept.⁸*

4.0 Conclusions

In relation to the proposed amendments to Jobseekers Allowance and Supplementary Welfare Allowance, a sufficient framework already exists to ensure that a person will take up an offer of employment or training where it is appropriate. The changes add a further administrative burden and will lead to arbitrary decision-making and thus extra appeals.

The Social Welfare Appeals Office's Annual Report 2009⁹ reflects the need for better decision making at first instance. The Office's workload in 2009 was 43 per cent higher than in 2008. A total of 25,963 appeals were received in 2009 and 7832 further cases were carried over from 2008. Of the 17,787 appeals concluded in 2009, 48.2 per cent, or in other words 8568 appeals, were decided in favour of the appellant. This is a very high figure and suggests inadequate and overly restrictive decision-making at first instance. These statistics demonstrate the pressure currently placed on the entire system both at Department level and at appeal stage. Unclear or unnecessary changes to the legislation will only add to the administrative burden.

It is notable that the number of appeals against an initial refusal of Jobseekers Allowance (other than a decision based on the means test) was 1849 of which 642 were allowed in full or in part (either by the Appeals Officer or a revision by the Deciding Officer).

The changes in relation to One Parent Family Payment create inequality between lone parent families and drive a wedge between the different types of lone parent as categorised by the proposed legislation. The Government should not make a distinction between those who are parenting alone be it due to the death of a partner or the breakdown of a relationship. If they wish to offer additional support to the bereaved, then it should be done by way of amendment of the existing supports for the bereaved not by reducing the payment available to other lone parents.

The priority of the legislators should be to provide tangible supports to those who are most vulnerable rather than restrict access to basic income supports.

⁸ Available at: www.welfare.ie/EN/OperationalGuidelines/Pages/ja_jobseekall.aspx

⁹ Available at: www.welfare.ie/EN/Policy/CorporatePublications/Documents/swappealsar2009.pdf