

2006

Doc 83
(work with 5 May '06
Doc 86)

Mr Seán Aylward
Secretary General
Department of Justice, Equality and Law Reform
94 St. Stephens Green
Dublin 2

Re. Payments to Asylum Seekers and unaccompanied minors who fail to satisfy Habitual Residence Condition

Dear Seán,

I am writing to you in connection with payments to asylum seekers in direct provision.

The original Government decision leading to the setting up of the direct provision arrangements envisaged that asylum seekers would not have access to the social welfare system. On the introduction of direct provision, it was recognised that a small weekly payment was appropriate to provide for personal comforts. In the absence of any other arrangements being put in place to deliver such residual payments, this Department paid a basic supplementary welfare allowance (SWA) at the rate of EUR19.10 per adult per week and EUR9.60 per child per week, even though this necessarily meant that asylum seekers therefore had continued access to the social welfare system.

You will recall that your Minister agreed at the Cabinet Committee on Asylum Seekers of 11 December 2002 to take over responsibility for these payments to asylum seekers in direct provision. This would give effect to the original Government decision and would mean, for example, that it would no longer be necessary for asylum seekers to be issued with PPSNs, which they need in order to receive SWA.

We have continued to make these payments as an interim measure until such time as your Department put the necessary arrangements in place to make the payments.

In the meantime, Section 17 of the Social Welfare (Miscellaneous Provisions) Act, 2004 introduced a new provision to the social welfare code whereby new applicants for social assistance payments, including supplementary welfare allowance, are required to satisfy a habitual residence condition (HRC) as an additional eligibility condition in determining entitlement to a payment. This provision was given effect by commencement order from 1st May 2004.

The primary objective of the provision was to ensure that the State's social welfare system did not become overburdened by persons who have little or no connection with this country. This provision impacted on a number of categories of people, including:

1. Asylum seekers in direct provision centres operated by the Reception and Integration Agency;
2. Asylum seekers who have special needs and who are catered for in "step down" facilities, also operated under the Direct Provision system, but who were paid a full rate basic supplementary welfare allowance payment, currently €165.80 per week less a sum equivalent to the minimum contribution towards rent paid by rent supplement recipients currently €13 per week;
3. Unaccompanied minors who are in the care of the health boards and who received various rates of supplementary welfare allowance depending upon the type of accommodation provided.

Since 1st May 2004 payments have been made without proper legal authority in these cases, as SWA is not payable to the people in question because they do not satisfy the habitual residence condition. I find it regrettable that some two years later, these interim measures are still applying with no sign of any steps been taken by your Department to assume responsibility in this matter, as agreed at the Cabinet sub-committee. I do not understand why it is has not been possible to include these payments in the contractual arrangements that the RIA has with accommodation providers. In any event, the amount of work involved for your Department is now much less than it would have been previously, given that the volume of new asylum cases has fallen and the average length of stay has shortened.

In the circumstances I am now requesting as a matter of urgency that the necessary arrangements be put in place for your Department to take responsibility for the making of these payments so that the Department of Social and Family Affairs can withdraw from making payments that are in effect *ultra vires*.

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Yours sincerely

John Hynes
Secretary General
Department of Social and Family Affairs