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Social Welfare Appeals Office. Annual report 2021

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Social Welfare Appeals Office

Annual Report 2021



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**OIFIGACHOMHAIRC
LEASASHÓISIALAIGH**



**SOCIAL WELFARE
APPEALS OFFICE**

Ms. Heather Humphreys, T.D.
Minister for Social Protection,
Áras Mhic Dhiarmada,
Store Street,
Dublin 1.

June 2022

Dear Minister,

In accordance with the provisions of Section 308(1) of the Social Welfare Consolidation Act 2005, I hereby submit a report on the activities of the Social Welfare Appeals Office for the year ended 31 December 2021.

Yours sincerely,

A handwritten signature in black ink that reads "Joan Gordon". The signature is written in a cursive, flowing style.

Joan Gordon
Chief Appeals Officer

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Chapter 1

Introduction

Chapter 1 - Introduction

The Social Welfare Appeals Office aims to provide an independent, accessible and fair appeals service with regard to entitlement to social welfare payments and to deliver that service in a prompt and courteous manner.

I am pleased to submit my Annual Report on the activities of the Social Welfare Appeals Office for the period 1 January to 31 December 2021 pursuant to Section 308(1) of the Social Welfare Consolidation Act 2005.

As well as fulfilling its primary function as an Annual Report to the Minister for Social Protection, I hope that the Report will be helpful to people preparing an appeal and other interested parties.

The role of my Office is to determine appeals from people who are not satisfied with a decision of a Deciding Officer or a Designated Person of the Department with regard to their entitlement under social welfare legislation.

Our ability to deal with the volume of appeals we receive and the issues that arise is highly dependent on the staff of the Office and, as always, I would like to take this opportunity to pay tribute to their work in the course of 2021 and for the flexibility and dedication they have demonstrated. 2021 saw a number of staff leaving the Office on retirement or to avail of other opportunities and I would like to wish them well for the future. All new staff that joined the Office are most welcome and I look forward to working together in the coming year.

While public health restrictions due to the Covid-19 pandemic continued to impact on how the appeals service was delivered, the introduction in 2020 of technology to facilitate oral hearings remotely ensured the continuity of the appeals service and has proved to be an effective and convenient way to conduct hearings that would otherwise be held in-person.

Notwithstanding the continued impact of the Covid-19 pandemic and the challenges arising from loss of experienced staff, we maintained the appeal service while operating within the prevailing restrictions and public health guidance as they evolved in the course of the year. Our priority at all times was to safeguard the health and safety of our staff and people availing of the service.

The Office made good progress in the processing and finalisation of appeals. In the course of the year, 24,820 appeals were received compared to 23,664 in 2020, representing an increase of 4.9% in the number of appeals received. The number of appeals finalised in 2021 was 23,929 representing a decrease of 10.7% in output when compared to the 26,790 appeals finalised in 2020.

The average processing time for all appeals finalised during 2021 was 12.9 weeks. This compares to 16.5 weeks in 2020. The average time taken to process appeals which required an oral hearing was 25.5 weeks, (27.1 weeks in 2020) and the

corresponding time to process appeals determined on a summary basis was 13.9 weeks (15.5 weeks in 2020).

I am acutely aware that the time taken to process an appeal is hugely important to the people who submit an appeal and directly impacts on people's personal lives, and I continue to monitor processing times and ensure that every effort is made to reduce the time taken to process an appeal.

While I endeavour to reduce processing times, people availing of the service and their advocates can also help. I have outlined in previous Annual Reports the importance of all evidence relevant to a claim being made available to the decision maker at the earliest opportunity. As can be seen from the statistical information in Chapter 3, of the 23,929 appeals finalised in the course of the year, 6,462 were revised in favour of the appellant by a revised decision of a Deciding Office/Designated Person of the Department but this does not mean that the original decision was incorrect. In some cases the Deciding Officer/Designated Person was able to revise the decision because the person making an appeal had provided additional information which was not made available when the decision was first made.

As can be seen from some of the case studies featured in the Report it is also the case that additional evidence was provided in the course of the appeal process and some appeals were unsuccessful because all information relevant to a claim was not made available to the Appeals Officer. I have selected some case-studies to illustrate that information required to make a decision in accordance with the legislative provisions is not always provided and in these situations the decision maker simply cannot make an informed decision on the person's entitlement. Now more than ever it is vitally important that all relevant information is made available at the earliest opportunity in the decision making process.

A more detailed account of the statistical trends relating to 2021 is set out in Chapter 3. The data shows a reduction in the number of appeals relating primarily to medical based schemes – Carer's Allowance, Disability Allowance, Domiciliary Care Allowance, and Invalidity Pension. The number of appeals in respect of Jobseeker's Allowance increased by over 5%.

A more detailed account of the business of the Office in the course of 2021, from staffing resources to operational issues, is contained in Chapter 2. We made further progress over the course of the year in the Appeals Modernisation Project which will develop and implement a new Social Welfare Appeals Business Process which will facilitate a more efficient and streamlined service for people availing of services from my Office. It is envisaged that the new appeals system will be in operation in 2023.

Given the high turn-over of Appeals Officers, with 12 leaving and 11 assigned to the Office over the course of the year, the training and development programme was a priority. In addition to in-house training, 25 Appeals Officers obtained a Level 8

Special Purpose Award from the National College of Ireland following their participation in a programme of learning specifically designed for Appeals Officers.

The opportunity to provide feedback to the Department on issues arising on appeal is an important aspect of the appeals process. Meeting with the head of the Decisions Advisory Office of the Department and his staff is one of the main channels for providing such feedback. Some of the issues discussed with that Office at our meetings in 2021 and changes in the reporting line of the Decisions Advisory Office are also set out in Chapter 2.

In selecting case studies to be included in the Annual Report I endeavour to select those cases which reflect the diverse range of issues that arise on appeal across the range of programmes and schemes covering children and families, people of working age, retired and older people and employers and which I consider will be of relevance to others considering making an appeal.

80 case-studies are featured in this Report, including a number of reviews that I carried out under Section 318 of the Social Welfare Consolidation Act 2005. The case studies are contained in Chapter 4 and 5.

This Report can be accessed on the gov.ie website www.gov.ie/swao in both English and Irish.

Joan Gordon

Chief Appeals Officer

June 2022



Chapter 2

The Business of the Office

Chapter 2 - The Business of the Office

2.1 Organisation Staffing Resources

The number of staff serving in my Office at the end of 2021 was 85, which equates to 82.1 full-time equivalents (FTE).

The staffing breakdown is as follows:

Posts	Full-time Equivalent
Chief Appeals Officer	1.0
Deputy Chief Appeals Officer	1.0
Office Manager	1.0
40 Appeals Officers (4 work-sharing)	38.8
3 Higher Executive Officers	3.0
11 Executive Officers (2 work-sharing)	10.4
28 Clerical Officers (3 work-sharing)	26.9
Total	82.1

2.2 Training and Development within the Appeals Office

The role of an Appeals Officer is a complex and challenging one which requires the development and application of a broad range of knowledge, skills and competencies. The importance of continuous professional development cannot be overestimated and this has continued to be a priority for my Office during 2021.

A formal programme of training for Appeals Officers was developed in recent years by professional trainers working with experienced Appeals Officers and is reviewed and updated on a regular basis. The programme consists of a mix of e-learning, trainer delivered learning modules, mentoring and peer support. Newly appointed and more experienced Appeals Officers engage with the programme in different

ways and the opportunity to learn from the experience of others and the provision of formal and informal peer support within the Appeals Officer group is a highly valued aspect of the role.

The formal training modules deal with all aspects of the role of the Appeals Officer including:

- The role and functions of an Appeals Officer.
- The management of all aspects of the appeals process including conducting an oral hearing.
- The legal aspects of an Appeals Officer's role.

All Appeals Officers have access to the full range of training support materials.

During 2021, 11 Appeals Officers were appointed to my Office and availed of the structured programme of training and support, with each module building on the learning in the previous module. These newly appointed Appeals Officers were also provided with formal mentoring support from a more experienced colleague. In addition to the formal training provided, as outlined in Section 2.7, online meetings of the Appeals Officers group in the course of the year provided further opportunities for sharing knowledge.

A Certificate in Social Welfare Appeals which had been developed by the Department's Staff Development Unit, the Social Welfare Appeals Office and the National College of Ireland (NCI) was delivered between April and June 2021. 25 Appeals Officers participated in and successfully completed the programme and graduation was held on 29 November 2021.

The programme, which is a level 8 Special Purpose Award, was specifically designed for Social Welfare Appeals Officers currently working in the role, to build on their professional knowledge through an accredited programme that would enhance their learning and development.

The content of the programme was designed to provide a structured approach to further develop the competencies of a Social Welfare Appeals Officer. The programme was delivered by two Appeals Officers and lecturers from the NCI. Due to Covid-19 restrictions, delivery was entirely online.

2.3 Process Improvements

An Appeals Modernisation Project is in progress to develop and implement a new appeals business process, including the manner in which the appeals process interacts with the Department. The project aims to significantly reduce the use of paper in the appeals process by developing a new case management system. In addition, the project

will provide online capabilities to provide a more efficient and streamlined service for people availing of services from my Office. Further progress was made during 2021 across the various elements of the project and it is envisaged that the new appeals system will be in operation in 2023.

2.4 Operational Matters

Parliamentary Questions

During 2021, 127 Parliamentary Questions were submitted (156 in 2020) in relation to the work of my Office.

Replies were given in Dáil Éireann to 107 of those questions. 18 questions were transferred to the relevant scheme area of the Department and the remaining 2 were withdrawn when the current status of the appeal which was the subject of the question was explained to the Deputy.

Correspondence

A total of 3,021 hardcopy enquiries and representations were received from appellants, their representatives or from public representatives on their behalf during 2021 (2,978 in 2020).

In addition, a total of 40,612 enquires were received by email from appellants, their representatives or from public representatives on their behalf during 2021 (41,696 enquiries were received in 2020).

Freedom of Information

A total of 91 formal requests were received in 2021 (89 in 2020) under the provisions of the Freedom of Information Acts. 39 of these requests were transferred to the Department and 1 was withdrawn. Of the 51 requests answered, 49 were in respect of personal information and 2 requests were in respect of non-personal information.

2.5 Audit and Report of the Office of the Comptroller and Auditor General

In the course of 2021, my Office provided the required support to the Office of the Comptroller and Auditor General in conducting a review on the management of social welfare appeals. Six recommendations were made:

- The Department should review its current procedures so as to ensure that all claimants are informed clearly of the reason(s) for refusal of claims.
- Written guidelines for Appeals Officers should be prepared that clearly establish the circumstances that usually result in an oral hearing being held. The guidelines should be published on the Social Welfare Appeals Office's website.
- The Department and the Appeals Office should progress the Appeals Modernisation Project as a matter of priority.
- The Department should carry out periodic reviews of successfully appealed cases where no new or additional material information was provided.
- The Department should examine the application process and related guidance for those schemes which are medical or social and care needs assessed in order to ensure claimants are able to supply all necessary information to assess eligibility when making a claim.
- The Appeals Office should consider establishing a quality assurance system in order to aid consistency in decision making and to identify training needs of Appeals Officers.

The procedures and processes to implement the recommendations have been put in place and a number of the recommendations require on-going action.

2.6 Feedback to the Department

Feedback to the Department on issues arising on appeal and during the processing of same is an important feature of the appeals process. There are always a number of opportunities that arise in the course of any year to provide feedback to the Department and while many such opportunities are informal, they are nonetheless hugely important.

In the main, feedback to the Department is provided through regular meetings with the Department's Decisions Advisory Office (DAO). Given the restrictions on in-person meetings that prevailed during 2021 many of our formal meetings were virtual and more regular contact was maintained through informal discussions on issues as they arose in the course of the year.

Meetings with the Decisions Advisory Office (DAO)

In order to strengthen the feedback from the Appeals Office into the Department's decision making process and to improve the quality of decisions made, the reporting line of the Decisions Advisory Office was moved to the Chief Appeals Officer. This allows the

Decisions Advisory Office have access to and monitor appeal decisions and to take learnings from these decisions.

This new reporting structure facilitated discussions in the course of the year on a number of key issues where the interpretation of legislative provisions was relevant to both the Department and my Office.

During 2021, the Chief Appeals Officer and the head of the Decisions Advisory Office met on a number of occasions to discuss the interpretation and application of certain provisions of the EU Residence Directive 2004/38/EC and the Free Movement of Persons Regulations (S.I. No. 548 of 2015) on the right of EU citizens and their family members to reside in the State. The outcome of these discussions, which were informed by legal advice, facilitated the provision of guidance to Deciding Officers and Appeals Officers on the application of these rules.

Other issues discussed with the DAO during 2021 included:

- Consideration of the types of permissions, conditions, and stamps granted/applied by INIS in the context of access to social welfare payments.
- The habitual residence condition and the application of the five factors.
- Processes for the implementation of the recommendations arising from the Comptroller and Auditor General's report:¹ "Chapter 10, Management of social welfare appeals".
- Consideration of legal advice and the implications of a number of Court judgments of relevance to both the Department and my Office.
- The application of the genuinely seeking work condition during the Covid-19 pandemic.
- The application of the means assessment rules in specific schemes.
- As both my Office and the Decisions Advisory Office have a shared interest in the quality and consistency of our respective decisions a number of discussions took place on this issue during 2021.
- Update of operational guidelines to reflect any changes from legislative amendments and from case-law of the Courts.

¹ <https://www.audit.gov.ie/en/find-report/publications/2021/chapter-10-management-of-social-welfare-appeals.pdf>

2.7 Meetings of Appeals Officers

The Regulations governing the appeals process (S.I. No. 108 of 1998) provide that the Chief Appeals Officer may convene meetings of Appeals Officers for the purpose of discussing matters relating to the discharge of the functions of Appeals Officers including achieving consistency in the application of the statutory provisions.

Due to the continued restrictions arising from the Covid-19 pandemic it was not possible to convene in-person meetings of the Appeals Officer group. However, a number of online meetings were convened. The continued impact of the pandemic on the business of the Office featured in our discussions. The Office continued to use video conferencing technology as a means of conducting oral hearings and the use of such technology featured in our discussions.

Recommendations relevant to the work of Appeals Officers arising from the report of the Office of the Comptroller and Auditor General were discussed. One of the recommendations related to the provision of guidelines that establish the circumstances that usually result in an oral hearing being held. While the decision to determine an appeal summarily or by way of oral hearing is at the discretion of the Appeals Officer to whom an appeal has been assigned, the meetings provided an opportunity to discuss the matters or circumstances that usually give rise to an oral hearing.

Consistency in decision making continues to be a major focus of my Office, in particular in relation to those questions which require a high degree of judgement and legislative interpretation. As in previous years a portion of our time was dedicated at our meetings in 2021 to this topic.

Given that a number of Appeals Officers were new assignees to the Office and that it was not possible to meet in-person, the need to build support from more experienced colleagues through other methods was emphasised. The meetings provided an invaluable opportunity for Appeals Officers to share knowledge and experience with their colleagues.

Guidance on the interpretation and application of certain provisions of the EU Residence Directive 2004/38/EC and the Free Movement of Persons Regulations (S.I. No. 548 of 2015) on the right of EU citizens and their family members to reside in the State was also discussed. This issue was of particular relevance given that the Court of Appeal had referred a number of questions to the Court of Justice of the EU.²

² See Case Study 74

Issues arising from challenges to decisions taken in the Courts were also discussed and the meetings also provided an opportunity to discuss a number of judgments delivered by the Courts in the course of the year.

2.8 Caselaw from the Courts

There were a number of judgments delivered by the Courts in 2021 which covered a broad range of issues that arose on appeal. While it is not possible to provide full details of the judgments, the following is an overview of the main findings and principles.

In a judgment delivered in March 2021, the High Court refused to grant an order quashing a decision refusing to extend the time for making an appeal. The statutory time limit for submitting an appeal is 21 days from the date on which the decision of the Deciding Officer is notified. A significant period of time had elapsed before an appeal had been submitted and the Court rejected the argument that delay in seeking an appeal was not a relevant factor in considering if a late appeal should be accepted. The Court also concluded that in considering a late appeal it is appropriate to have regard to the facts of the case, to the fact of delay, to what cause was advanced for the delay and whether any explanation offered constituted a good reason for the delay.

In two further judgments delivered in March 2021 the High Court held that where a person applies for benefit or assistance under the Act the person must establish that the statutory conditions of entitlement exist at the time when the claim was made and not at some point in time later than the date the claim for that benefit was submitted.

In a judgment delivered in May 2021, the High Court held that a person was not entitled to a Widower's (Contributory) Pension under social welfare legislation due to not being the legal spouse of a woman whom he married after he and his first wife got a divorce. The Court noted that Widower's (Contributory) Pension and the Widowed or Surviving Civil Partner's Grant can only be paid to a divorced person whose divorce is recognised under Irish law.

The Court held that the application for Widower's (Contributory) Pension was correctly disallowed on the basis that the person's divorce from his first wife was not recognised as valid in Ireland.

The Court rejected arguments that the person ought to be entitled to a presumption his marriage was valid and dismissed arguments that the relevant provisions of social welfare legislation were unlawful or discriminatory or that any family rights were breached.

A judgment of the Court of Appeal delivered in January 2020 held that a refusal by a Deciding Officer to revise an earlier decision of another Deciding Officer was itself neither a decision within the meaning of Section 311(1) of the Act nor a revised decision within the meaning of Section 301 of the Act and that, therefore, no appeal could be taken against such refusal to revise. An appeal was lodged to the Supreme Court against the judgment of the Court of Appeal.

In its judgment delivered in May 2021, the Supreme Court reversed earlier decisions of the High Court and Court of Appeal, in relation to the nature of the decisions which may be appealed to the Social Welfare Appeals Office and held that the refusal of a Deciding Officer to revise an earlier decision is, in itself, a decision that may be subject to an appeal.

In a judgment delivered in December 2021 the Supreme Court held that social welfare benefits under the Social Welfare Consolidation Act 2005 cannot accrue to a person who does not have a work permit or immigration permission to be in the State, despite the person making the relevant statutory contributions.

2.9 Litigation

There were thirteen applications for judicial review of decisions in 2021. Of these applications, nine cases were settled, and the remaining four cases are on-going.

In addition to the judicial review applications, there were four appeals to the High Court pursuant to Section 327 of the Act. This Section provides that any person who is dissatisfied with the decision of an Appeals Officer or the revised decision of the Chief Appeals Officer may appeal that decision or revised decision to the High Court on any question of law. All four cases are on-going.



Chapter 3

Statistical

Trends



Chapter 3 - Statistical Trends

Overview of Key Statistics

Our main statistical data for 2021 is set out in commentary form below and in the "workflow chart" and tables which follow.

Appeals received in 2021

In 2021, the Office received 24,820 appeals, which represents an increase of 4.9% on the 23,664 received in 2020.

Clarifications in 2021

In addition to the 24,820 appeals registered in 2021, a further 874 appeals were received where it appeared to us that the reason for the adverse decision may not have been fully understood by the appellant. In those circumstances, the letter of appeal was referred to the relevant scheme area of the Department requesting that the decision be clarified for the appellant. We informed the appellants accordingly and advised that if he/she were still dissatisfied with the decision following the Department's clarification, they could then appeal the decision to my Office.

During 2021, a total of 449 appeals (equivalent to 51% of the 874 cases identified for the clarifications process in the year) were formally registered as appeals in respect of the five schemes (State Pension (Contributory), Maternity Benefit, Paternity Benefit, Treatment Benefit and Liable Relatives) for which the clarification process is used.

Workload for 2021

The workload of 30,482 for 2021 was arrived at by adding the 24,820 appeals received to the 5,662 appeals on hand at the beginning of the year.

Appeals finalised in 2021

We finalised 23,929 appeals in 2021. The appeals finalised were broken down between:

- Appeals Officers (69.2%): 16,567 were finalised by Appeals Officers either summarily or by way of oral hearing (equivalent figure in 2020 was 20,520 or 76.6%);
- Revised Decisions (27.0%): 6,462 were finalised as a result of revised decisions in favour of the appellant being made by Deciding Officers or Designated Persons before the appeals were referred to an Appeals Officer (5,204 or 19.4%

in 2020). This refers to cases where a Deciding Officer or Designated Person in the Department revised the original decision in favour of the customer, making it unnecessary for the Appeals Office to conduct an appeal. Typically, this arises where the customer produces evidence at appeal stage that was not available to the original decision maker.

- Withdrawn (3.8%): 900 were withdrawn or otherwise not pursued by the appellant (1,066 or 4% in 2020).

Appeals outcomes in 2021

The outcome of the 23,929 appeals finalised in 2021 can be broken down as follows:

- Favourable (54.8%): 13,104 of the appeals finalised had a favourable outcome for the appellant in that they were either allowed in full or in part by an Appeals Officer or resolved by way of a revised decision by a Deciding Officer or Designated Person in favour of the appellant (53.2% in 2020);
- Unfavourable (41.4%): 9,925 of the appeals finalised were disallowed by an Appeals Officer (42.8% in 2020); and
- Withdrawn (3.8%): As previously indicated, 900 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (4.0% in 2020).

Determinations by Appeals Officers in 2021

16,567 appeals were finalised by Appeals Officers in 2021.

- Overall, 6,642 (40.1%) had a favourable outcome for the appellant. 9,925 (59.9%) were disallowed.
- Oral Hearings: (6.3%): 1,050 of the 16,567 appeals finalised by Appeals Officers were dealt with by way of oral hearing. 733 (69.8%) of these had a favourable outcome. In 2020, 63.7% of the 1,712 cases dealt with by way of oral hearing had a favourable outcome.
- Summary Decisions: (93.7%): 15,517 of the appeals finalised were dealt with by way of summary decision. 5,909 (38.1%) of these had a favourable outcome. In 2020, 42.2% of the 18,808 cases dealt with by way of summary decision had a favourable outcome.

Processing times in 2021

During 2021, the average time taken to process all appeals was 12.9 weeks

(16.5 weeks in 2020). Of the 12.9 weeks overall average:

- 6.8 weeks was attributable to work in progress in the Department (8.8 weeks in 2020)
- 6.1 weeks was attributable to ongoing processes within the Social Welfare Appeals Office (7.7 weeks in 2020)
- The additional processing time due to responses awaited from appellants was not significant in 2021 or 2020.

The average number of weeks attributable to work in progress in the Department includes cases that have been referred by the Department back to appellants for more information/clarification, rather than awaiting action in the Department. A breakdown is not available for the purpose of this Report.

When these figures are broken down by type of process, the overall average waiting time for an appeal dealt with by way of a summary decision in 2021 was 13.9 weeks (15.5 weeks in 2020), while the average time to deal with an oral hearing was 25.5 weeks (27.1 weeks in 2020). The average time by scheme and stage in the process are set out in Table 6.

The time taken to finalise appeals includes all elements of the process. This may involve:

- Seeking the Department's submissions on the grounds for the appeals.
- Preparation of submissions by the Department, which may involve further medical assessments in certain illness related cases or further investigation by Social Welfare Inspectors, where required.
- The logistics involved in assigning files to Appeals Officers and arranging oral appeal hearings.

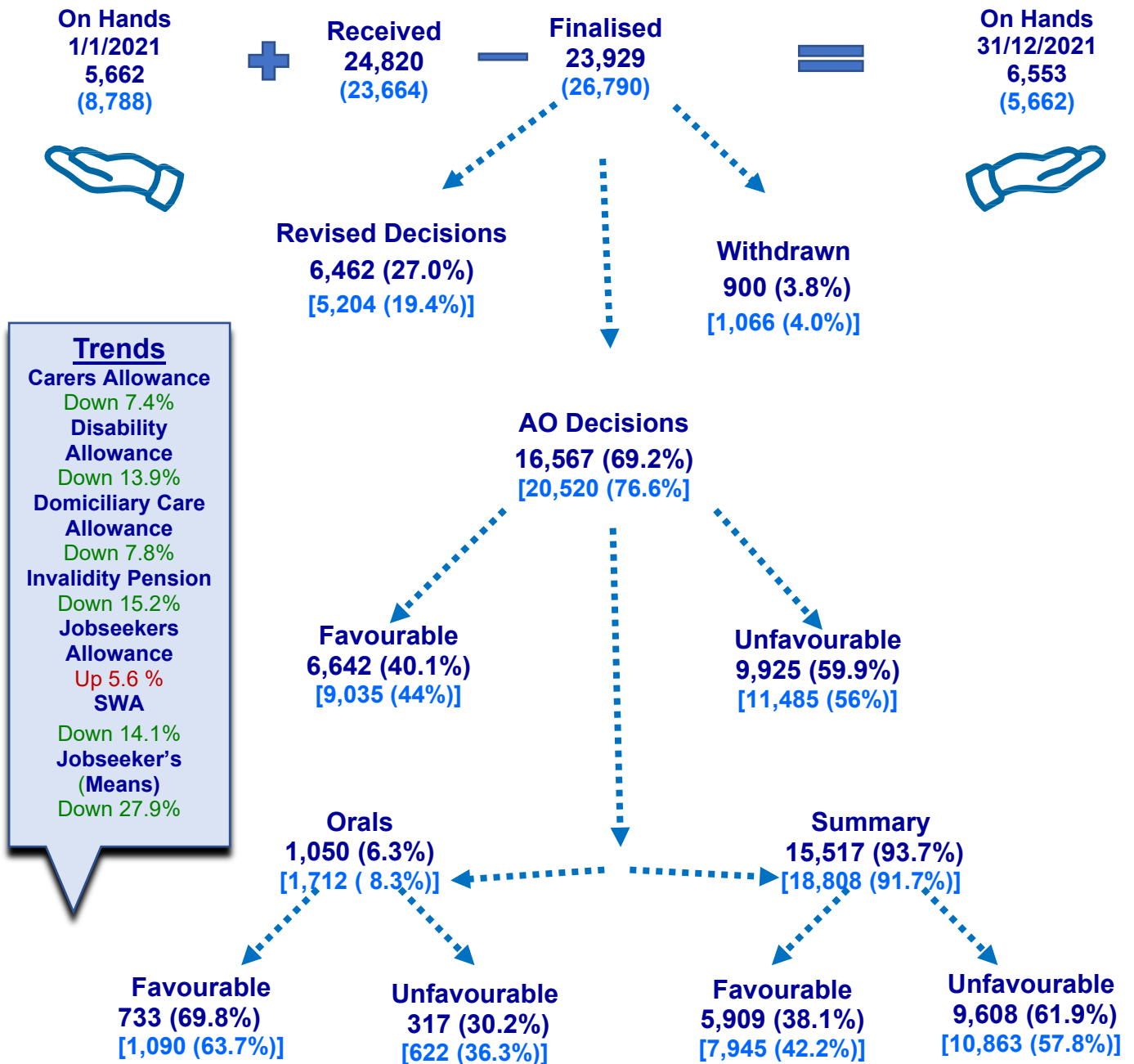
Appeals by gender in 2021

A breakdown of appeals received in 2021 by gender show that 40.1% were from men and 59.9% from women. The corresponding breakdown for 2020 was 39.5% and 60.5% respectively.

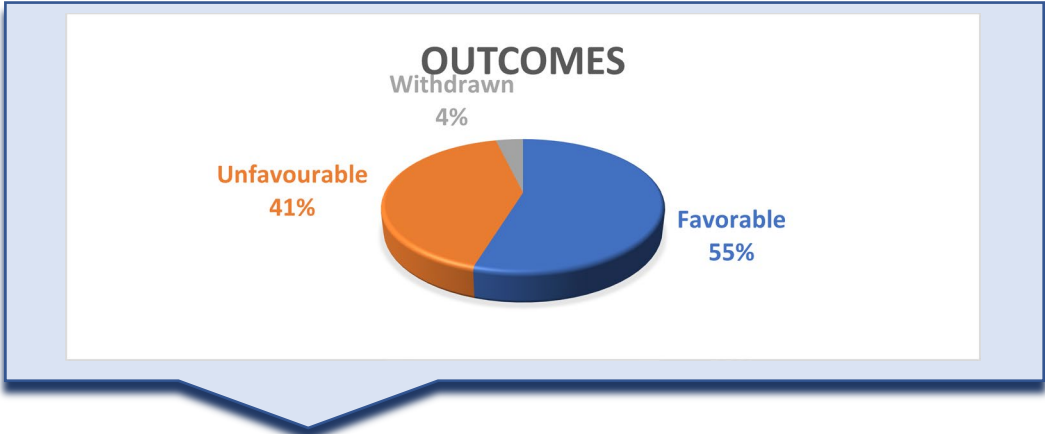
For all outcomes for men 56.9% were favourable and for women 58.3% were favourable.

Social Welfare Appeals Workflow 2021

(Corresponding figures for 2020 are in brackets)



- Trends**
- Carers Allowance
Down 7.4%
 - Disability Allowance
Down 13.9%
 - Domiciliary Care Allowance
Down 7.8%
 - Invalidity Pension
Down 15.2%
 - Jobseekers Allowance
Up 5.6%
 - SWA
Down 14.1%
 - Jobseeker's (Means)
Down 27.9%



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Table 1: Appeals received and finalised 2021

Pensions	In progress 01-Jan-21	Receipts	Decided	Revised Decision	With drawn	In progress 31-Dec-21
State Pension (Non-Contributory)	128	315	250	56	12	125
State Pension (Contributory)	95	354	277	58	9	105
State Pension (Transition)	-	-	-	-	-	-
Widows', Widowers' Pension (Contributory)	18	59	45	11	5	16
Death Benefit	1	2	2	-	-	1
Bereavement Grant	-	-	-	-	-	-
Total	242	730	574	125	26	247

Working Age Income & Employment Supports	In progress 01-Jan-21	Receipts	Decided	Revised Decision	With drawn	In progress 31-Dec-21
Jobseeker's Allowance - Payments	321	1,320	798	233	144	466
Jobseeker's Allowance (Means)	339	905	604	141	146	353
Jobseeker's Transitional	24	98	55	20	18	29
Farm Assist	31	79	51	12	9	38
Jobseeker's Benefit	195	1,196	751	242	109	289
Jobseeker's Benefit Self Employed	5	33	17	4	4	13
Jobseeker's Benefit Over 65	-	196	132	7	7	50
Pandemic Unemployment Payment	268	2,902	646	1,984	35	505
One Parent Family Payment	80	254	164	56	29	85
Widow's Widower's Pension (Non-Contributory)	6	12	9	3	-	6
Deserted Wife's Allowance	1	-	-	-	-	1
Supplementary Welfare Allowance	325	904	695	121	70	343
Deserted Wife's Benefit	5	6	5	1	-	5
Maternity Benefit	14	57	37	21	1	12
Paternity Benefit	9	33	19	17	-	6
Parent's Benefit	-	10	2	4	-	4
Adoptive Benefit	-	-	-	-	-	-
Treatment Benefits	2	2	3	-	-	1
Partial Capacity Benefit	51	132	123	14	12	34
Total	1,676	8,139	4,111	2,880	584	2,240

Social Welfare Appeals Office Annual Report 2021

Illness, Disability and Carers	In progress 01-Jan-21	Receipts	Decided	Revised Decision	With drawn	In progress 31-Dec-21
Disability Allowance	1,199	5,733	4,890	643	42	1,357
Blind Pension	3	16	16	1	-	2
Carer's Allowance	639	3,361	2,724	519	24	733
Domiciliary Care Allowance	394	1,558	896	484	5	567
Carer's Support Grant	27	300	222	33	6	66
Illness Benefit	230	683	245	433	49	186
Injury Benefit	44	72	48	13	18	37
Invalidity Pension	482	1,870	1,549	439	19	345
Disablement Benefit	75	322	266	41	4	86
Incapacity Supplement	2	-	1	1	-	-
Medical Care	2	1	2	1	-	-
Carer's Benefit	58	281	180	97	4	58
Total	3,155	14,197	11,039	2,705	171	3,437

Children	In progress 01-Jan-21	Receipts	Decided	Revised Decision	With drawn	In progress 31-Dec-21
Child Benefit	211	341	279	126	18	129
Working Family Payment	238	1,221	416	610	95	338
Back To Work Family Dividend	6	31	14	5	-	18
Guardian's Payment (Non-Contributory)	2	19	15	1	-	5
Guardian's Payment (Contributory)	10	33	31	2	-	10
Widowed Parent Grant	1	15	11	2	-	3
Total	468	1,660	766	746	113	503

Other	In progress 01-Jan-21	Receipts	Decided	Revised Decision	With drawn	In progress 31-Dec-21
Insurability of Employment	120	91	77	4	6	124
Liable Relatives	-	3	-	1	-	2
Recoverable Benefits & Assistance	1	-	-	1	-	-
Total – ALL APPEALS	5,662	24,820	16,567	6,462	900	6,553

Figure 1 : Appeals by Scheme Group

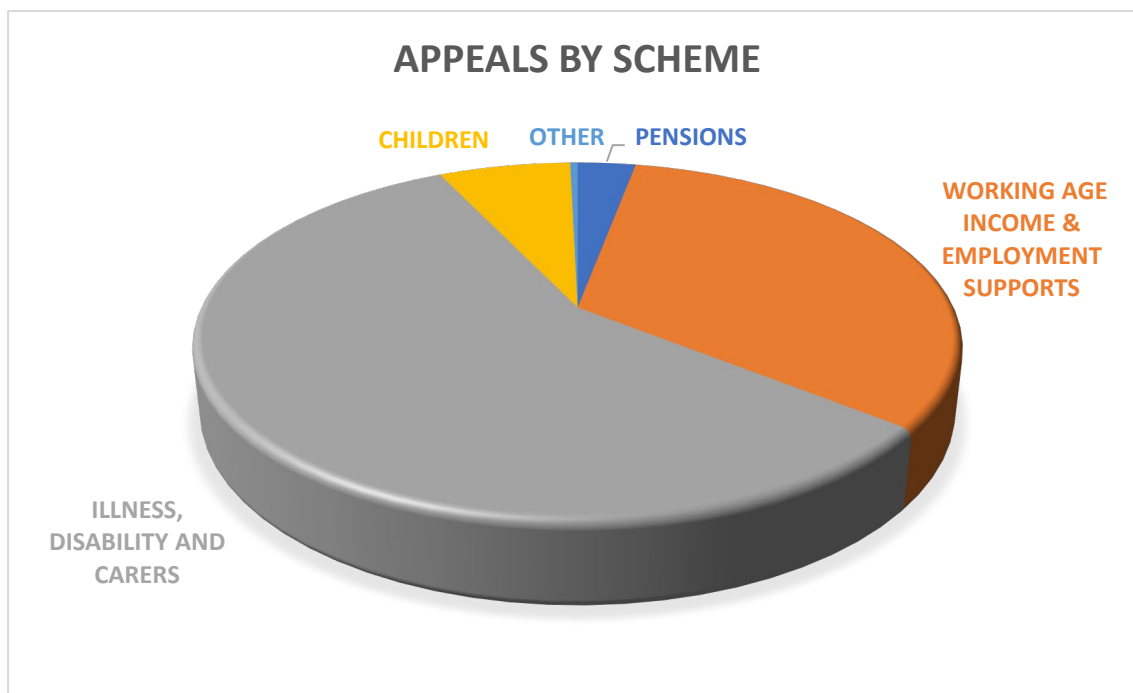


Table 2: Appeals received 2015-2021

Pensions	2015	2016	2017	2018	2019	2020	2021
State Pension (Non-Contributory)	348	397	370	347	386	350	315
State Pension (Contributory)	264	366	408	309	457	345	354
State Pension (Transition)	3	2	3	0	-	-	-
Widow's, Widower's Pension (Contributory)	40	49	45	38	38	46	59
Death Benefit	1	1	-	1	1	2	2
Bereavement Grant	6	3	1	1	1	-	-
TOTAL Pensions	662	818	827	696	883	743	730

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Working Age Income & Employment Supports	2015	2016	2017	2018	2019	2020	2021
Jobseeker's Allowance - Payments	2,058	2,031	1,676	1,570	1,445	1,250	1,320
Jobseeker's Allowance - Means	2,174	2,050	1,504	1,380	1,188	1,256	905
Jobseeker's Transitional	34	43	41	70	75	83	98
Farm Assist	201	196	130	84	111	76	79
Jobseeker's Benefit	735	637	545	610	671	759	1,196
Jobseeker's Benefit Self Employed	-	-	-	-	3	75	33
Jobseeker's Benefit Over 65	-	-	-	-	-	-	196
Pandemic Unemployment Payment	-	-	-	-	-	275	2,902
One Parent Family Payment	368	313	244	273	302	272	254
Widow's, Widower's Pension (Non-Contributory)	25	26	23	18	17	9	12
Deserted Wife's Allowance	1	0	1	1	-	1	-
Supplementary Welfare Allowance	2,125	1,970	1,302	859	888	1,052	904
Pre-Retirement Allowance	0	0	2	0	-	-	-
Deserted Wife's Benefit	19	7	7	8	6	7	6
Maternity Benefit	71	87	84	40	38	74	57
Paternity Benefit		1	16	14	8	32	33
Parent's Benefit	-	-	-	-	-	3	10
Adoptive Benefit	0	0	2	1	-	-	-
Homemaker's	-	-	-	-	-	-	-
Treatment Benefits	3	5	1	2	2	5	2
Partial Capacity Benefit	42	42	38	75	131	72	132
Total Working Age Income & Employment Supports	7,856	7,408	5,616	5,005	4,885	5,301	8,139

Illness, Disability and Carers	2015	2016	2017	2018	2019	2020	2021
Disability Allowance	6,435	4,912	5,077	5,200	6,242	6,661	5,733
Blind Pension	22	13	19	12	15	9	16
Carer's Allowance	3,188	3,887	3,200	2,902	3,006	3,630	3,361
Domiciliary Care Allowance	1,258	1,198	1,199	1,432	1,656	1,690	1,558
Carer's Support Grant	124	164	164	126	165	201	300
Illness Benefit	1,204	819	443	581	916	984	683
Injury Benefit	65	56	51	44	53	83	72
Invalidity Pension	1,857	1,362	1,381	1,387	1,874	2,206	1,870
Disablement Benefit	347	298	347	330	278	169	322
Incapacity Supplement	12	9	7	7	1	5	-
Medical Care	4	4	2	2	7	6	1
Carer's Benefit	93	95	110	162	244	331	281
TOTAL - Illness, Disability and Carers	14,609	12,817	12,000	12,185	14,457	15,975	14,197

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Children	2015	2016	2017	2018	2019	2020	2021
Child Benefit	552	595	473	485	552	460	341
Working Family Payment	447	510	477	290	1,441	1,037	1,221
Back To Work Family Dividend	64	52	43	43	29	25	31
Guardian's Payment (Non-Contributory)	18	17	16	8	12	8	19
Guardian's Payment (Contributory)	49	38	34	22	27	27	33
Widowed Parent Grant	10	8	6	1	5	10	15
TOTAL – Children	1,140	1,220	1,049	849	2,066	1,567	1,660

OTHER	2015	2016	2017	2018	2019	2020	2021
Insurability of Employment	156	151	132	86	92	73	91
Liabile Relatives	26	23	9	4	5	1	3
Recoverable Benefits & Assistance	26	24	25	29	9	4	-
TOTAL – ALL APPEALS	24,475	22,461	19,658	18,854	22,397	23,664	24,820

Table 3: Outcome of Appeals by category 2021

Pensions	Allowed	Partially Allowed	Revised DO Decision	Disallowed	With drawn	Total
State Pension (Non-Contributory)	51 16.0%	31 9.7%	56 17.6%	168 52.8%	12 3.8%	318
State Pension (Contributory)	29 8.4%	7 2.0%	58 16.9%	241 70.1%	9 2.6%	344
Widow's/Widower's Pension (Contributory)	5 8.2%	2 3.3%	11 18.0%	38 62.3%	5 8.2%	61
Death Benefit	- 0.0%	- 0.0%	- 0.0%	2 100.0%	- 0.0%	2
Bereavement Grant	- 0.0%	- 0.0%	- 0.0%	- 0.0%	- 0.0%	-
TOTAL Pensions	85	40	125	449	26	725

Working Age Income & Employment Supports	Allowed	Partially Allowed	Revised DO Decision	Disallowed	With drawn	Total
Jobseeker's Allowance - Payments	181 15.4%	40 3.4%	233 19.8%	577 49.1%	144 12.3%	1,175
Jobseeker's Allowance - Means	65 7.3%	33 3.7%	141 15.8%	506 56.8%	146 16.4%	891
Jobseeker's Transitional	11 11.8%	6 6.5%	20 21.5%	38 40.9%	18 19.4%	93
Farm Assist	6 8.3%	4 5.6%	12 16.7%	41 56.9%	9 12.5%	72
Jobseeker's Benefit	96 8.7%	93 8.4%	242 22.0%	562 51.0%	109 9.9%	1,102
Jobseeker's Benefit Over 65	11 7.5%	- 0.0%	7 4.8%	121 82.9%	7 4.8%	146
Jobseeker's Benefit Self Employed	3 12.0%	0 0.0%	4 16.0%	14 56.0%	4 16.0%	25
Pandemic Unemployment Payment	14 0.5%	2 0.1%	1,984 74.4%	630 23.6%	35 1.3%	2,665
One Parent Family Payment	56 22.5%	10 4.0%	56 22.5%	98 39.4%	29 11.6%	249
Widow's/Widower's Pension (Non-Contributory)	1 8.3%	0 0.0%	3 25.0%	8 66.7%	0 0.0%	12
Supplementary Welfare Allowance	182 20.5%	27 3.0%	121 13.7%	486 54.9%	70 7.9%	886
Deserted Wife's Benefit	3 50.0%	- 0.0%	1 16.7%	2 33.3%	- 0.0%	6
Maternity Benefit	4 6.8%	3 5.1%	21 35.6%	30 50.8%	1 1.7%	59
Paternity Benefit	3 8.3%	2 5.6%	17 47.2%	14 38.9%	0 0.0%	36
Parent's Benefit	0 0.0%	0 0.0%	4 66.7%	2 33.3%	0 0.0%	6
Treatment Benefits	- 0.0%	- 0.0%	- 0.0%	3 100.0%	0 0.0%	3

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Partial Capacity Benefit	42 28.2%	- 0.0%	14 9.4%	81 54.4%	12 8.1%	149
TOTAL Working Age Income & Employment Supports	678	220	2,880	3,213	584	7,575

Illness, Disability and Carers	Allowed	Partially Allowed	Revised DO Decision	Disallowed	With drawn	Total
Disability Allowance	2,611 46.8%	101 1.8%	643 11.5%	2,178 39.1%	42 0.8%	5,575
Blind Pension	0 0.0%	2 11.8%	1 5.9%	14 82.4%	0 0.0%	17
Carer's Allowance	886 27.1%	95 2.9%	519 15.9%	1,743 53.4%	24 0.7%	3,267
Domiciliary Care Allowance	533 38.5%	25 1.8%	484 34.9%	338 24.4%	5 0.4%	1,385
Carer's Support Grant	69 26.4%	4 1.5%	33 12.6%	149 57.1%	6 2.3%	261
Illness Benefit	33 4.5%	10 1.4%	433 59.6%	202 27.8%	49 6.7%	727
Injury Benefit	15 19.0%	1 1.3%	13 16.5%	32 40.5%	18 22.8%	79
Invalidity Pension	869 43.3%	5 0.2%	439 21.9%	675 33.6%	19 0.9%	2,007
Disablement Benefit	79 25.4%	18 5.8%	41 13.2%	169 54.3%	4 1.3%	311
Incapacity Supplement	- 0.0%	- 0.0%	1 50.0%	1 50.0%	- 0.0%	2
Medical Care	- 0.0%	- 0.0%	1 33.3%	2 66.7%	- 0.0%	3
Carer's Benefit	58 20.6%	3 1.1%	97 34.5%	119 42.3%	4 1.4%	281
TOTAL – Illness, Disability and Carers	5,153	264	2,705	5,622	171	13,915

Children	Allowed	Partially Allowed	Revised DO Decision	Disallowed	With drawn	Total
Child Benefit	41 9.7%	14 3.3%	126 29.8%	224 53.0%	18 4.3%	423
Working Family Payment	106 9.5%	10 0.9%	610 54.4%	300 26.8%	95 8.5%	1,121
Back To Work Family Dividend	1 5.3%	0 0.0%	5 26.3%	13 68.4%	- 0.0%	19
Guardian's Payment (Non-Contributory)	3 18.8%	2 12.5%	1 6.3%	10 62.5%	- 0.0%	16
Guardian's Payment (Contributory)	8 24.2%	- 0.0%	2 6.1%	23 69.7%	- 0.0%	33
Widowed Parent Grant	- 0.0%	- 0.0%	2 15.4%	11 84.6%	- 0.0%	13

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TOTAL – Children	159	26	746	581	113	1,625
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OTHER	Allowed	Partially Allowed	Revised DO Decision	Disallowed	With drawn	Total
Insurability of Employment	16 <i>18.4%</i>	1 <i>1.1%</i>	4 <i>4.6%</i>	60 <i>69.0%</i>	6 <i>6.9%</i>	87
Liable Relatives	- <i>0.0%</i>	- <i>0.0%</i>	1 <i>100.0%</i>	- <i>0.0%</i>	- <i>0.0%</i>	1
Recoverable Benefits & Assistance	- <i>0.0%</i>	- <i>0.0%</i>	1 <i>100.0%</i>	- <i>0.0%</i>	- <i>0.0%</i>	1
TOTAL APPEALS	6,091	551	6,462	9,925	900	23,929

Table 4: Appeals in progress at year end 2015 – 2021

Pensions	2015	2016	2017	2018	2019	2020	2021
State Pension (Non-Contributory)	165	179	206	190	186	128	125
State Pension (Contributory)	149	203	257	199	262	95	105
State Pension (Transition)	4	1	1	1	-	-	-
Widow's, Widower's Pension (Contributory)	24	13	27	25	36	18	16
Death Benefit	1	1	-	0	1	1	1
Bereavement Grant	0	1	1	1	1	-	-
TOTAL Pensions	343	398	492	416	486	242	247

Working Age Income & Employment Supports	2015	2016	2017	2018	2019	2020	2021
Jobseeker's Allowance - Payments	811	809	912	926	608	321	466
Jobseeker's Allowance - Means	947	838	889	830	570	339	353
Jobseeker's Transitional	13	17	21	44	43	24	29
Farm Assist	118	99	87	51	56	31	38
Jobseeker's Benefit	290	223	289	303	264	195	289
Jobseeker's Benefit Self Employed	-	-	-	-	3	5	13
Jobseeker's Benefit Over 65	-	-	-	-	-	-	50
Pandemic Unemployment Payment	-	-	-	-	-	268	505
One Parent Family Payment	190	156	143	186	167	80	85
Widow's' /Widower's Pension (Non-Contributory)	9	13	13	14	14	6	6
Deserted Wife's Allowance	-	-	1	1	-	1	1
Supplementary Welfare Allowance	672	610	563	375	290	325	343
Pre-Retirement Allowance	1	1	2	-	-	-	-
Deserted Wife's Benefit	6	2	4	6	6	5	5
Maternity Benefit	26	22	35	21	23	14	12
Paternity Benefit	-	1	9	7	5	9	6
Parent's Benefit	-	-	-	-	-	-	4
Adoptive Benefit	-	-	-	1	0	-	-
Homemaker's	-	-	-	-	-	-	-
Treatment Benefits	2	1	1	1	2	2	1
Partial Capacity Benefit	25	32	25	68	100	51	34
TOTAL Working Age Income & Employment Supports	3,110	2,824	2,994	2,834	2,151	1,676	2,240

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Illness, Disability and Carers	2015	2016	2017	2018	2019	2020	2021
Disability Allowance	1,639	1,376	1,519	1,713	1,948	1,199	1,357
Blind Pension	10	4	8	6	9	3	2
Carer's Allowance	1,131	1,394	1,178	1,370	837	639	733
Domiciliary Care Allowance	562	416	814	674	640	394	567
Carer's Support Grant	57	70	79	65	78	27	66
Illness Benefit	335	274	203	289	445	230	186
Injury Benefit	25	22	35	32	37	44	37
Invalidity Pension	674	382	415	708	980	482	345
Disablement Benefit	160	87	184	185	136	75	86
Incapacity Supplement	11	6	3	5	-	2	-
Medical Care	1	2	2	3	3	2	-
Carer's Benefit	15	39	45	70	88	58	58
TOTAL - Illness, Disability and Carers	4,620	4,072	4,485	5,120	5,201	3,155	3,437

Children	2015	2016	2017	2018	2019	2020	2021
Child Benefit	193	187	222	281	288	211	129
Working Family Payment	192	232	206	110	483	238	338
Back To Work Family Dividend	37	24	26	22	14	6	18
Guardian's Payment (Non-Contributory)	7	4	5	4	7	2	5
Guardian's Payment (Contributory)	18	14	15	13	15	10	10
Widowed Parent Grant	4	1	5	1	2	1	3
TOTAL - Children	451	462	479	431	809	468	503

OTHER	2015	2016	2017	2018	2019	2020	2021
Insurability of Employment	148	160	153	144	131	120	124
Liable Relatives	10	12	4	3	3	-	2
Recoverable Benefits & Assistance	15	10	9	15	7	1	-
TOTAL – ALL APPEALS	8,697	7,938	8,616	8,963	8,788	5,662	6,553

Table 5: Appeals Workload 2000 – 2021

Year	On hands at start of year	Received	Workload	Finalised	On hands at end of year
2000	6,947	17,650	24,597	17,060	7,537
2001	7,537	15,961	23,498	16,525	6,973
2002	6,973	15,017	21,990	15,834	6,156
2003	6,156	15,224	21,380	16,049	5,331
2004	5,331	14,083	19,414	14,089	5,325
2005	5,325	13,797	19,122	13,418	5,704
2006	5,704	13,800	19,504	14,006	5,498
2007	5,498	14,070	19,568	13,845	5,723
2008	5,723	17,833	23,556	15,724	7,832
2009	7,832	25,963	33,795	17,787	16,008
2010	16,008	32,432	48,440	28,166	20,274
2011	20,274	31,241	51,515	34,027	17,488
2012	17,488	35,484	52,972	32,558	20,414
2013	20,414	32,777	53,191	38,421	14,770
2014	14,770	26,069	40,839	31,211	9,628
2015	9,628	24,475	34,103	25,406	8,697
2016	8,697	22,461	31,158	23,220	7,938
2017	7,938	19,658	27,596	18,980	8,616
2018	8,616	18,854	27,470	18,507	8,963
2019	8,963	22,397	31,360	22,572	8,788
2020	8,788	23,664	32,452	26,790	5,662
2021	5,662	24,820	30,482	23,929	6,553

Figure 2 - Appeals Trends by Year

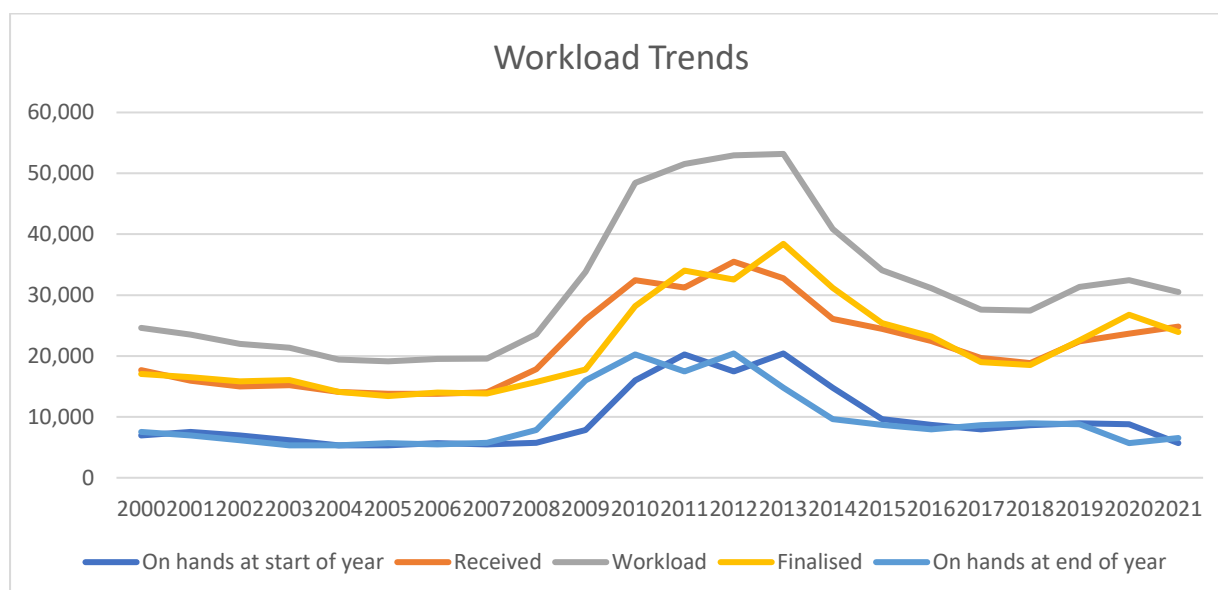


Table 6: Appeals Processing Times in Weeks by Scheme January-December 2021

Scheme	Social Welfare Appeals Office	Department	Appellant	Total Weeks
Blind Pension	5.7	8.3	-	13.9
Back to Work Family Dividend	5.0	3.2	-	8.3
Carer's Allowance	8.5	4.0	-	12.5
Carer's Benefit	7.3	4.3	0.1	11.7
Carer's Support Grant	7.9	7.2	-	15.0
Child Benefit	12.4	19.9	-	32.4
Death Benefit	14.7	2.7	-	17.4
Deserted Wife's Benefit	3.7	43.2	-	46.9
Disability Allowance	8.5	3.9	-	12.4
Disablement Pension	13.8	9.5	-	23.3
Domiciliary Care Allowance	7.6	10.8	-	18.4
Farm Assist	31.0	20.2	-	51.2
Guardian's Payment (Contributory)	12.4	8.7	-	21.1
Guardian's Payment (Non-Contributory)	7.5	8.1	-	15.6
Illness Benefit	4.6	11.7	0.1	16.3
Incapacity Supplement	8.9	12.4	-	21.4
Insurability of Employment	58.7	41.3	-	100.0
Invalidity Pension	7.4	8.7	-	16.1
Jobseeker's Allowance (Means)	13.7	13.5	-	27.2
Jobseeker's Allowance (Payments)	13.3	10.2	-	23.5
Jobseeker's Benefit	8.7	6.8	-	15.4
Jobseeker's Benefit Self Employed	4.8	5.5	-	10.3
Jobseeker's Benefit Over 65	7.5	4.9	-	12.4
Jobseeker's Transitional	9.2	6.6	-	15.8
Liable Relatives	0.1	3.4	-	3.3
Maternity Benefit	8.0	7.0	-	15.0
Medical Care	4.4	142.9	-	147.4
Occupational Injury Benefit	10.0	24.4	-	34.4
One Parent Family Payment	12.3	10.2	-	22.4
Pandemic Unemployment Payment	5.4	9.3	-	14.7
Partial Capacity Benefit	6.8	11.9	-	18.7
Parents Benefit	4.9	2.4	-	7.3
Paternity Benefit	4.3	6.8	-	11.2
Recoverable Benefits & Assistance	0.1	94.6	-	94.6
State Pension (Contributory)	11.0	9.1	-	20.2
State Pension (Non-Contributory)	19.1	9.7	-	28.8
Supplementary Welfare Allowance	6.6	11.7	-	18.3
Treatment Benefit	5.7	20.1	-	25.8
Widow/Widower's Pension (Contributory)	22.9	47.8	-	70.7

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Widow/Widower's Pension (Non-Contributory)	11.0	34.0	-	45.0
Widowed Parent Grant	4.7	3.7	-	8.4
Working Family Payment	6.0	7.9	-	14.0
All Appeals	6.1	6.8	-	12.9

Table 7: Appeals outstanding on 31st December 2021

Scheme	In progress in Social Welfare Appeals Office	Awaiting Department response	Awaiting Appellant response	Total
Jobseeker's Allowance/Benefit/JST	245	537	1	783
Jobseeker's Allowance Means/Farm Assist	133	258	0	391
Supplementary Welfare Allowance	113	230	0	343
Disability Allowance	855	502	0	1,357
Carer's Allowance	531	201	1	733
Domiciliary Care Allowance	178	389	0	567
Invalidity Pension	207	138	0	345
Illness Benefit	35	151	0	186
Child Benefit	41	88	0	129
Other schemes	682	1,037	0	1,719
Total	3,020	3,531	2	6,553



Chapter 4

Case Studies



Chapter 4 - Case Studies

Introduction

The case studies included in this Chapter represent a sample of appeals determined during 2021. My Office deals with appeals covering a wide and diverse group of people including families, people in employment, jobseekers, people with illnesses and disabilities, carers and older people. Many appeals that come before Appeals Officers must be considered in the broader context of EU legislation, most notably the EU Social Security Coordination rules contained in EU Regulation 883/2004 and the provisions of the EU Residence Directive 2004/38/EC on the right to reside in the State.

All social welfare appeals arise from unfavourable decisions having been made on issues of entitlement. Given the complexity of the issues that arise, it would not be possible in this Report to cover all issues in the case studies. However, I have attempted to provide a representative sample covering payment types and issues arising across the range of schemes from Child Benefit to State Pension.

In the cases featured, questions at issue refer to a broad range of criteria on which entitlement was assessed, including habitual residence in the State, assessment of means, medical evidence, care required and/or care provided, PRSI contribution conditions and insurability of employment. A number of appeals relating to payments for people affected by the Covid-19 pandemic are also featured.

Appeals may be determined on a summary basis, with reference to the documentary evidence available, or by way of oral hearing. The case studies included in this Chapter refer to both types of determination. A sample of cases which were the subject of review by me under Section 318 of the Social Welfare Consolidation Act 2005 has also been included. In all cases featured, a brief report is outlined for each appeal included. All personal details have been withheld to safeguard the anonymity of appellants. References in the case studies to the Department should be read as references to the Department of Social Protection (DSP). References to decisions made by the Department should be read as decisions made by Deciding Officers of the Department or by Designated Persons in the case of Supplementary Welfare Allowance.

The Social Welfare Consolidation Act 2005 provides the primary legislative basis for social welfare schemes. In the case studies included in this Chapter any reference to the Act refers to the Social Welfare Consolidation Act 2005. Any reference to the 2007 Regulations refers to the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, (S.I. No 142 of 2007).

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Child Benefit

Case Study 1: Child Benefit Qualified Child

Summary Decision

Question at Issue: Qualified child – normal residence

Background:

The Department disallowed payment of Child Benefit to the appellant from June 2019 on the basis that the child was not ordinarily resident with him. The disallowance resulted in an overpayment for a period of two months.

The appellant and his partner separated in 2017 and each parent had joint custody of the children and the children's mother received Child Benefit. The appellant started receiving Child Benefit for his son from November 2018 when he moved to live with him full-time while his ex-partner received payment for their other two children. From May 2019, under a new arrangement, the appellant's son had only been living with him 50% of the time. Payment of Child Benefit was awarded to the child's mother in accordance with the governing social welfare legislation.

Oral Hearing:

At oral hearing the appellant stated that the child lived with him for more than 50% of the time. The appellant agreed that the court order was for custody on a 50/50 basis and stated he had not kept close watch on the exact hours that each parent had custody of the children.

Consideration:

A qualifying condition of Child Benefit is that the child must be ordinarily resident with the recipient of such benefit. In this case, the children resided with their mother 50% of the week and with their father 50%. Legislation provides that in situations where custody is shared equally between both parents, Child Benefit is paid to the mother. Section 220(1) and (2) (a) and (b) of the Act and Article 159 (6) and (7) of the 2007 Regulations refer. The Appeals Officer was satisfied that payment of Child Benefit should remain with the mother, noting that custody of all three children was split evenly.

The Appeals Officer concluded that it was more appropriate that the decision in relation to the two-month overpayment be made by reference to Section 302(c) of the Act which meant that the decision was revised from a current date and no overpayment accrued to the appellant.

Outcome: Appeal partially allowed.

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Case Study 2: Child Benefit Habitual Residence

Summary Decision

Question at issue: Habitual residence and backdating

Background:

The appellant applied for Child Benefit in September 2018 for her daughter who was born in August 2017. The appellant's application was awarded from September 2018 and disallowed for the period before September 2018 when the appellant was unable to establish habitual residency. Section 220(3) of the Act provides that a person must be habitually resident in the State for the purposes of establishing entitlement to Child Benefit and Section 246 of the Act specifies that, if a person does not have a right to reside, he/she cannot be habitually resident for the purposes of the Act and further provides that when permission to reside is granted to an applicant, he/she cannot be regarded as being habitually resident for any period prior to the permission having been granted. It was submitted in support of the appellant's claim by a HSE case worker that the appellant had a right to reside prior to September 2018. It was also submitted that the Court of Appeal had commented on the unconstitutionality of Section 246(7) and 246(8) of the Act insofar as it prevented the payment of Child Benefit to an Irish citizen child resident in the State solely on the basis of the immigration status of the parent claiming the benefit.

Consideration:

The Appeals Officer noted that the Supreme Court ruled that the Court of Appeal should have considered the position of the mother, who was the qualified person to whom Child Benefit would be payable provided that the mother met the eligibility requirements of the Act. The Supreme Court, in this ruling, found that the Court of Appeal had been incorrect in law, rather than Section 246 of the Act being unconstitutional. The Appeals Officer noted it was his /her role to make determinations in accordance with social welfare legislation as enacted and it was for the Supreme Court, and not a quasi-judicial decision-making body such as the Social Welfare Appeals Office, to make rulings on the constitutionality of legislation enacted by the Oireachtas.

The Appeals Officer concluded that as no evidence was presented to establish that the appellant had a right to reside prior to September 2018, she could not be regarded as being habitually resident prior to that date in accordance with the governing legislation.

Outcome: Appeal disallowed.

Domiciliary Care Allowance

Case Study 3: Domiciliary Care Allowance Qualified Child

Oral Hearing

Question at issue: Qualified child - level of care required

Background:

The appellant applied for Domiciliary Care Allowance in respect of her child who was aged nine and had a diagnosis of permanent bilateral hearing loss. The child was independent in personal care and activities of daily living. It was outlined that the child was impacted academically, communicatively, and socially by her condition. The child became frustrated and anxious, and this impacted her behaviour which included aggressive outbursts. The appellant advised of safety concerns for the child whilst out in traffic or noisy environments.

Consideration:

Section 186C of the Act requires that for the purposes of Domiciliary Care Allowance a child must have a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age and the child is likely to require full-time care and attention for at least 12 consecutive months. It was accepted that the child had a disability and had additional care needs. The Appeals Officer sought on two occasions to hold a hearing to afford the appellant an opportunity to present additional evidence on the child's care requirements. The appellant failed to engage and the appeal was determined summarily based on the available evidence.

The Appeals Officer concluded that it had not been established that the child required continual and continuous care and attention which was substantially in excess of the care and attention normally required by a child of the same age.

Outcome: Appeal disallowed.

Case Study 4: Domiciliary Care Allowance Qualified Child

Summary Decision

Question at issue: Qualified child – level of care required.

Background:

The appellant applied for Domiciliary Care Allowance in May 2021 in respect of her child who was four years old. The application stated that the child suffered from two serious skin conditions from birth, one of them was a congenital hereditary condition. The conditions caused the skin to crack and bleed, requiring creams to be applied several times a day, and for the hands, feet, and limbs to be wrapped in bandages each day. One of the conditions caused a build-up of fluid and swelling in the body and can be life threatening if not treated with an injection quickly. The child was in pain frequently, did not sleep well, had poor mobility, and there were some sensory and behavioural issues. In the appeal submission, the appellant stated that she had to be on standby 24/7, as her child could have a severe attack of the congenital condition at any time, and he would need to be brought to hospital immediately. Her child required treatment every single day and needed to be brought to the hospital regularly for treatment of skin infections and monitoring. The appellant provided additional medical evidence in the context of the appeal.

Consideration:

Section 186C of the Act provides that Domiciliary Care Allowance is payable where a child had a severe disability requiring continual or continuous care and attention substantially in excess normally required by a child of the same age, and the child is likely to require full-time care and attention for at least 12 consecutive months.

The evidence presented showed that the child had two severe and longstanding skin conditions, which required creams to be applied each day, and for their limbs to be wrapped in special bandages. The child could not walk far, as the skin cracked and was prone to bleeding. The child missed school regularly because of the condition and needed to be looked after at home. The child did not sleep well due to the irritation arising from the condition. The Appeals Officer noted that the issue was a serious congenital condition that would require regular hospital visits for life and required medication to be on standby in case of a severe life threatening attack at any time.

In light of the evidence presented with the appeal, the Appeals Officer concluded that the child had a severe disability and required continual or continuous care and attention substantially in excess of that required by a child of the same age. The Appeals Officer was also satisfied that the child was likely to require full-time care and attention for at least 12 consecutive months.

Outcome: Appeal allowed.



Case Study 5: Domiciliary Care Allowance Qualified Child

Summary Decision

Question at issue: Qualified child - level of care required.

Background:

The appellant's application for Domiciliary Care Allowance in respect of her four-year-old child was disallowed by the Department on the grounds that the child was not regarded as a qualified child under the governing legislation.

Consideration:

Section 186C of the Act provides that in order to qualify for Domiciliary Care Allowance a child must have a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, and the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months.

The Department contended that having considered the application in full, including all the evidence and information provided in support, together with the opinion of the Medical Assessor, it was decided that the application did not meet the qualifying conditions for the payment, at that time. The Department's Medical Assessor had expressed an opinion that it had not been established at that time that the child's care needs were substantially in excess of that required for a four year old child.

Medical evidence from the child's GP confirmed a diagnosis of ADHD and indicated that he was severely affected in relation to behaviour, feeding/diet, sleeping, washing, dressing, continence, sitting/standing, climbing stairs and bending/kneeling/squatting, and moderately affected in relation to intelligence, learning, sensory issues and reaching/lifting/carrying. The assessment of needs report outlined that the child presented with significant behavioural and attention difficulties. The appellant outlined in detail the challenges she and her family experienced as well as details of the child's condition and the care required.

The Appeals Officer noted the opinion of the Department's Medical Assessor but stated he could not disregard the family doctor's report identifying that the child was affected to a severe degree in nine of the activities of daily living while moderately affected in four others. The appellant's submissions were consistent with this report.

The Appeals Officer found that while the child was high functioning in some areas, the significant level of support and intervention of his parents in many areas of the child's daily activities clearly demonstrated the severity of the impact of the child's conditions that resulted in him requiring substantially more care than a child of the same age without his disabilities.

Outcome: Appeal allowed.

Case Study 6: Domiciliary Care Allowance Qualified Child

Oral Hearing

Question at issue: Qualified Child - level of care.

Background:

The appellant applied for Domiciliary Care Allowance in respect of her eight year old daughter, who had diagnoses of ADHD and dyslexia. Her claim was disallowed by the Department on the grounds that the child was not regarded as a qualified child under the governing legislation.

The documentary evidence submitted in support of the claim included a medical report completed by the child's GP, letters from CAMHS and a Psychological Assessment Report. The medical report completed by the GP informed that the child's condition had affected her abilities severely in relation to behaviour and moderately in relation to sleeping. It was reported that the child was mildly affected in the areas of intelligence, learning, communication, social skills, sensory issues, and dressing.

In her application form the appellant outlined the care she provided to her daughter. Her daughter suffered from anxiety, did not like showers/baths and had difficulties with buttons, brushing her teeth and toileting. It was outlined that the child had to be reminded to eat, she took movement breaks during the school day, had difficulty settling at night and did not sleep through the night. She found problem solving difficult and her mind wandered. She needed assistance with her belongings and had difficulty maintaining attention during sporting activities. The child also displayed high risk behaviours and had climbed out windows resulting in the appellant putting extra locks on the windows. The child's grandparents used to help with her care, but as she had got older, they found it more difficult and were unable to manage her.

In her appeal the appellant informed that she had to give up employment which was 15 hours a week as it was extremely difficult to get someone to look after her daughter due to her behavioural issues.

Oral Hearing:

At the oral hearing the appellant reported that her daughter was not getting on well in school and that completing homework was very difficult. The child had access to a SNA, resource hours and movement breaks in school. She was very anxious about school and feigned sickness. The appellant advised that her daughter was prescribed melatonin, but her sleep pattern remained poor and of short duration. The child had sensory issues which caused issues with her personal care and

toileting. The appellant outlined that her daughter could not be left unsupervised for any length of time either inside or outside the home as she was a flight risk and had no sense of danger. At the time of the oral hearing the child was on a waiting list for Occupational Therapy and was awaiting an appointment with CAMHS.

Consideration:

Section 186C of the Act provides that Domiciliary Care Allowance may be paid in respect of a child who had a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age and the level of disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months.

The Appeals Officer noted that the medical report completed by the GP indicated the child's condition had affected her behaviour severely and sleeping moderately. The Psychological Assessment Report highlighted that the child had significant difficulties in hyperactivity, impulsivity, and specific learning difficulties. She also had difficulties in the areas of attention, concentration, and emotional regulation. She required further investigation in the areas of behavioural optometry and sensory seeking/movement.

The appellant outlined in her application form and at the oral hearing, the level of care and supervision which her daughter required daily. In addition to the difficulties the child had with activities of daily living, she was a flight risk, there were safety concerns in relation to her behaviour and she required constant supervision.

The Appeals Officer concluded that the appellant's daughter had a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age and, was likely to require this full-time care and attention for at least 12 consecutive months.

Outcome: Appeal allowed.

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One Parent Family Payment

Case Study 7: One Parent Family Payment Date of Award

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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Case Study 8: Working Family Payment Eligibility

Summary Decision

Question at Issue: Eligibility - qualifying employment.

Background:

The appellant's claim for Working Family Payment was the subject of a review by the Department and it came to light that she was participating on a TÚS scheme. Her payment was terminated, as regulations governing entitlement to Working Family Payment exclude participation on TÚS schemes as being considered to be full-time

remunerative employment. In her notification of appeal, the appellant submitted that she was still participating on the scheme for 19.5 hours per week.

Consideration:

The Appeals Officer outlined that one of the conditions for receipt of Working Family Payment is that a person must be “engaged in remunerative full-time employment as an employee”. Article 175 of the 2007 Regulations defines this as remunerative employment which is expected to continue for at least 3 months and where the number of hours worked is not less than 38 per fortnight. Article 175(2)(c)(iii) of the 2007 Regulations provides that remunerative full-time employment shall not include participation on a TÚS scheme.

The appellant did not dispute that the work she was doing was a TÚS scheme. Her appeal was based on the contention that she was working 19.5 hours per week.

The Appeals Officer concluded that the appellant did not satisfy the qualifying conditions for eligibility for Working Family Payment.

Outcome: Appeal disallowed.

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Back to Work Family Dividend

Case Study 9: Back to Work Family Dividend Eligibility

Summary Decision

Question at issue:

Eligibility – No Increase for a Qualified Child on previous claim.

Background:

The appellant was in receipt of Jobseeker’s Benefit but did not qualify for an increase for a qualified child. Her claim for Back to Work Family Dividend was disallowed on the grounds that she was not in receipt of an increase for a qualified child when her Jobseeker’s Benefit claim ceased.

In her appeal the appellant submitted that she had two dependent children, and that according to the information on the Citizens Information website she met all the conditions for receiving payment of the Back to Work Family Dividend.

Consideration:

Section 238B (1)(b) of the Act provides that entitlement to Back to Work Family Dividend is subject to a person being in receipt of an increase for a qualified child on either a Jobseeker’s Benefit, Jobseeker’s Benefit (Self-employed), Jobseeker’s Allowance or One-Parent Family Payment claim, immediately before the date on which the person ceased to claim or ceased to be entitled to the benefit.

The Appeals Officer concluded that as the appellant was not in receipt of an increase in respect of a qualified child when her Jobseeker’s Benefit payment ceased, she did not satisfy the conditions for receipt of the Back to Work Family Dividend.

Outcome: Appeal disallowed.



Maternity Benefit

Case Study 10: Maternity Benefit Backdating

Summary Decision

Question at issue: Backdating of claim.

Background:

The appellant applied for Maternity Benefit in February 2021 following the birth of her child in April 2020. Her claim was disallowed by the Department on the grounds that she did not submit the claim within the prescribed time, and that backdating was not awarded as the Department did not consider there was good cause for the late application. The appellant’s grounds for appeal were that having contributed substantial tax over 20 years, and only having claimed maternity leave, that the decision was unfair. She stated that for a previous claim she was paid through work and that due to Covid-19 and not being in contact with her office she understood this to be the case again. She also outlined very difficult family circumstances at the time including a close family bereavement that contributed to the delay.

Consideration:

Article 182 of the 2007 Regulations provides that the prescribed time for making a Maternity Benefit claim is the date on which the person becomes entitled to that benefit. Section 241 of the Act allows for backdating of a Maternity Benefit claim for up to six months where the person was entitled to benefit, and there was good cause for the delay in making a claim. Article 186 of the 2007 Regulations allows for backdating beyond six months where the delay was due to incorrect information

given by the Department or due to the person being so incapacitated that he or she was unable to make a claim or appoint a person to act on his or her behalf.

Having considered the appellant's previous experience with Maternity Benefit being paid through her employment, her circumstances due to Covid-19, lack of contact with her office and her personal family circumstances, the Appeals Officer concluded that she had shown good cause for the delay in making her claim and backdating of six months was allowed.

The Appeals Officer also concluded that there were no grounds to backdate beyond six months.

Outcome:

Appeal partially allowed.

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Paternity Benefit

Case Study 11: Paternity Benefit Backdating

Summary Decision

Question at issue: Prescribed manner for making a claim and backdating.

Background:

The prescribed time for making a claim for Paternity Benefit is within 26 weeks of the birth of the child. The appellant applied for Paternity Benefit in March 2021 for a child born in January 2020, and with the stated intention of availing of the Benefit from June 2020. The appellant advised of uncertainty between his employer and himself as to availing of the statutory entitlement available under Paternity Benefit as the reason for his late application.

Consideration:

The Appeals Officer examined the question as to whether the appellant's application for Paternity Benefit had been made in the prescribed manner, and if not, whether legislative consideration could be invoked to backdate any award more than 6 months from date of application. It is a condition of entitlement to social welfare payments that claims must be made in the prescribed manner and within the prescribed time. Legislation allows discretion to backdate for up to 6 months, where it is established that there is good cause for the failure to apply within the prescribed

time. Regulations provide for backdating beyond 6 months where the delay is due to incorrect information given by the Department or due to the person being so incapacitated that he or she is unable to make a claim or appoint a person to act on his or her behalf.

The application for Paternity Benefit was made more than 6 months after the appellant became entitled to it and therefore was not made in the prescribed manner. The Appeals Officer did not find that the circumstances relating to the late application were sufficient to satisfy either of the two criteria for consideration of backdating beyond 6 months. The Appeals Officer concluded that there was no legislative basis to backdate the appellant's claim for Paternity Benefit.

Outcome: Appeal disallowed.

Blind Pension

Case Study 12: Blind Pension Living Alone Allowance

Summary Decision

Question under appeal: Entitlement to Living Alone Allowance.

Background:

The appellant was in receipt of Blind Pension. The appellant completed a Blind Pension questionnaire in July 2020 at the request of the Department and from this it was noted that there was no indication that anyone else was resident at her address. The appellant was awarded the Living Alone Allowance from April 2021. Following completion of a subsequent means assessment review, it was noted that there was another person residing at the appellant's address. The appellant was informed that with effect from September 2021 she was no longer entitled to the Living Alone Allowance as she was not living alone.

The appellant queried the cessation of the Living Alone Allowance stating that nothing had changed in the previous 20 years.

Consideration:

The Living Alone Allowance is a payment for people aged 66 years or over who are in receipt of certain social welfare payments, including State pensions, and who are living alone. It is also paid to people aged under age 66 who are living alone and are in receipt of certain payments, including Blind Pension.

From the evidence provided the Appeals Officer noted that the appellant's full-time carer confirmed that he was a full-time resident at the appellant's address.

The Appeals Officer concluded the Living Alone Allowance is only payable to persons who are living alone and meet the criteria as outlined in social welfare legislation.

Outcome: Appeal disallowed.

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Invalidity Pension

Case Study 13: Invalidity Pension Eligibility

Summary Decision

Question at issue: Eligibility – contribution conditions.

Background:

The appellant applied for an Invalidity Pension through the Norwegian Social Security Authorities. Her application was disallowed on the grounds that she did not satisfy the contribution conditions. The appellant advised that she moved to Norway following the completion of her university degree in May 2013 and at the time she could not get work in Ireland. She outlined that having completed her Leaving Certificate in 2010 she was a full-time student until the completion of her degree. She questioned how she would have been expected to acquire the contributions required when she was a full-time student. She submitted that the system was inflexible and did not take account of her circumstances and she felt discriminated against.

Consideration:

A person may be entitled to a pro-rata pension when they have social insurance contributions in at least one other EU Member State or in a country with which Ireland has a bilateral social security agreement. In order for a bilateral agreement to apply, the person must have been in insurable employment for at least one week in Ireland and have a minimum of 52 qualifying contributions, whether paid or credited under Irish legislation. The appellant's social insurance record showed that she had 4 paid contributions and no credited contributions.

The Appeals Officer concluded that the appellant did not satisfy the conditions for receipt of a pro-rata Invalidity Pension.

Outcome: Appeal disallowed.

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Case Study 14: Invalidity Pension Eligibility

Summary Decision

Question at issue: Eligibility - permanently incapable of work.

Background:

The appellant's application for Invalidity Pension was disallowed by the Department on the grounds that she was not permanently incapable of all types of work for life. The appellant, aged 43, was diagnosed with chronic back pain and severe anxiety. The appellant submitted that she was suffering from depression and anxiety and had four prolapsed discs and was awaiting surgery.

Consideration:

Section 118 of the Act and Article 76 of the 2007 Regulations provide that entitlement to Invalidity Pension is subject to a person being permanently incapable of work. This condition is satisfied where, at the time of making a claim, a person has been continuously incapable of work for twelve months and is likely to remain incapable for a further twelve months, or it is established that the incapacity is of such a nature that the person is likely to be incapable of work for life.

The GP reported that the appellant was moderately to severely affected in relation to mental health/behaviour, lifting/carrying, sitting/rising and standing. It was certified that she was moderately affected in relation to balance/coordination, reaching, bending/kneeling/squatting, and climbing stairs and ladders. Her ability in all other categories was described as normal.

The appellant was attending a specialist and a surgeon in relation to her back conditions and was attending counselling for anxiety. She was taking prescribed medications and it was certified that her conditions would persist indefinitely.

The appellant outlined that she suffered from anxiety all her life and from chronic back pain for 5 years. Her conditions affected her in all aspects of her life, she couldn't do normal housework or shopping and could only walk for short periods due to pain in her legs.

From the medical evidence submitted and the appellant's own account of the impacts of her conditions, the Appeals Officer was satisfied that the appellant was likely to remain incapable of work for life and therefore met the medical criteria for Invalidity Pension.

Outcome: Appeal allowed.

Illness Benefit

Case Study 15: Illness Benefit Eligibility

Summary Decision

Question at issue: Eligibility - not incapable of work.

Background:

The appellant's application for Illness Benefit was disallowed by the Department on the grounds that she was not incapable of work. The appellant, in her 40s, was employed in childcare.

A GP report on file gave a diagnosis of lower back pain and outlined that the condition was expected to preclude the appellant from returning to work for three months or less. The GP reported that the appellant had been mildly affected in relation to lifting/carrying, bending/kneeling/squatting, and sitting/rising. The appellant was not attending a specialist and had not been prescribed medication. A radiology report showed that the appellant had mild lumbar spondylosis. A letter from another GP stated that the appellant was not fit to return to her current occupation.

Following an assessment, the Department's Medical Assessor (MA) found that the appellant's incapacity was lower back pain and she was suffering from mechanical pain. The MA acknowledged some restriction in terms of heavy work and range of movement and noted that the appellant attended physiotherapy and took analgesia as needed. The MA was of the opinion that the appellant was capable of light to moderate lesser skilled to skilled work and had not established that she was substantially restricted, indicating ability for suitable work, light and sedentary included.

The appellant stated that she was still in pain and was suffering from arthritis, a permanent condition. She had concerns regarding anti-inflammatory medication and used natural substitutes. She worked in childcare which was physically demanding. The appellant stated that she was in constant pain.

Consideration:

The Appeals Officer outlined that when making a claim for any social welfare payment, the onus is on the claimant to establish that they meet all the conditions of the scheme. On consideration of the medical evidence in this case and the appellant's submissions, the Appeals Officer concluded that the appellant was not incapable of work.

Outcome: Appeal disallowed.

Case Study 16: Illness Benefit Eligibility

Summary Decision

Question at issue: Eligibility - contribution conditions.

Background:

The appellant's claim for Illness Benefit was disallowed by the Department on the grounds that the appellant did not meet the contribution conditions. The appellant stated that he was self-employed since 1985 and was paying PRSI and believed that he was entitled to Illness Benefit.

Consideration:

Illness Benefit is a social insurance based scheme for people who are incapable of work due to illness. The qualifying conditions in relation to PRSI contributions are contained in Section 41 of the Act. A person must have sufficient PRSI contributions at class A, H, E and P in the relevant years in order to qualify. The appellant in this case was required to have at least 39 paid or credited contributions in the governing tax year (2019) or 26 paid contributions in the governing contribution year (2018 and 2019) at any of the relevant PRSI classes.

The Appeals Officer concluded that the appellant had not satisfied either of the conditions as he had only class S rate contributions paid that do not satisfy the contribution conditions for Illness Benefit.

Outcome: Appeal disallowed.

Case Study 17: Illness Benefit Rate of Payment

Summary Decision

Question at issue: Rate of payment.

Background:

The appellant was awarded Illness Benefit from 21 December 2020 at a reduced rate.

Consideration:

Article 27 of the 2007 Regulations provides that where a person's earnings are less than €300.00 per week in the governing contribution year (in this case 2018) a reduced rate of Illness Benefit is payable. The appellant submitted that her income tax return for the year 2018 showed an income of €12,880. She stated that this confirmed that her average weekly income for the year was approximately €240 and, on that basis, she was entitled to the full rate of Illness Benefit. Based on the records of the Department, the appellant had reckonable earnings of €11,375 in 2018 giving gross weekly earnings of €218.75. This entitled the appellant to a reduced rate of €131.00 per week.

The Appeals Officer concluded that the rate of entitlement to Illness Benefit as determined with reference to the level of the appellant's reckonable earnings in the governing contribution year was awarded in accordance with the governing legislation.

Outcome: Appeal disallowed.

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Case Study 18: Illness Benefit Eligibility

Summary Decision

Question at Issue: Eligibility – medical.

Background:

Section 40 (3) (a) of the Act provides that, for the purposes of any provision of the Act relating to Illness Benefit, a day shall not be treated as a day of incapacity for work unless on that day the person is incapable of work.

The appellant was in receipt of Illness Benefit from September 2019, diagnosed with a moderate depressive episode. Following a review by the Department it was decided that she was not incapable of work. The Medical Assessor (MA) of the Department opined that the appellant was capable of light work. The available medical evidence was a medical report completed by the appellant's GP in March 2021 certifying that her conditions affected her to a moderate degree in relation to balance/co-ordination and vision with mild affect in relation to mental health/behaviour. The report of the MA in June 2021 indicated that the appellant's ability was mildly affected in relation to mental health and vision while balance/co-ordination was normal/mild. The MA noted that the appellant reported that she was coping with activities of daily living, care of the home and external activities, and based on available medical evidence return to work was feasible and that the appellant was capable of light work.

Consideration:

The legislative provisions relating to Illness Benefit are set out in Sections 40 to 46 of the Act and Articles 20 to 28 of the 2007 Regulations. Section 40 (3) (a) of the Act provides that, for the purposes of any provision of this Act relating to Illness Benefit, a day shall not be treated as a day of incapacity for work unless on that day the person is incapable of work.

The Appeals Officer noted the divergence of opinion between the appellant's GP and the Department's MA as to how her conditions were affecting her abilities. Based on the totality of the evidence, including the appellant's own description of her restrictions, the Appeals Officer concluded that it had not been established that the appellant had continued to be incapable of work.

Outcome: Appeal disallowed.

Case Study 19: Illness Benefit Eligibility

Summary Decision

Question at issue: Eligibility - contribution conditions.

Background:

The appellant made a claim for Illness Benefit in respect of a number of weeks in 2020. The claim was disallowed by the Department on the grounds that the appellant did not have a minimum of 39 PRSI contributions paid or credited in the relevant tax year (2018) or at least 26 contributions paid in both 2017 and 2018.

The appellant submitted that 48 contributions had been paid in 2020.

Consideration:

Illness Benefit is a social insurance based scheme for people who are incapable of work due to illness. The qualifying conditions in relation to PRSI contributions are contained in Section 41 of the Act.

The Appeals Officer concluded that the appellant had 31 PRSI contributions paid in 2018 and no contributions paid in 2017. The legislation requires that a person must have at least 39 paid or credited contributions in the second last complete contribution year before the beginning of the year in which the claim is made (the relevant year was 2018 in this case) or at least 26 paid contributions in each of the

second last (2018) and third last (2017) complete contribution years before the beginning of the year in which the claim is made.

The Appeals Officer concluded that the appellant did not meet the contribution conditions for receipt of Illness Benefit as laid down in legislation.

Outcome: Appeal disallowed.

Case Study 20: Illness Benefit Enhanced Rate

Summary Decision

Question at issue: Entitlement to enhanced rate for Covid-19.

Background:

The appellant was in receipt of Illness Benefit for a period of eight days during 2020. Her claim for an enhanced rate of Illness Benefit was disallowed on the grounds that the medical evidence provided did not demonstrate an entitlement. In her appeal, the appellant contended that, due to the nature of her occupation and as she was awaiting a Covid-19 test and results at that time, she should not be penalised for conforming to public health policy.

Consideration:

Section 40(7) of the Act provides for the payment of an enhanced rate of Illness Benefit where the person is certified as being diagnosed with Covid-19, notified that they are a probable source of infection of Covid-19, or have been directed to self-isolate. Article 28Q of the 2007 Regulations specifies the way diagnoses, notifications, and directions, under Section 40(7) of the Act are to be provided. The Department advised that the information was not provided by the appellant with her request for an enhanced payment or subsequently, despite being offered two opportunities to do so.

The Appeals Officer concluded that the appellant had not demonstrated an entitlement to an enhanced rate of Illness Benefit for the period in question, as the required information had not been provided.

Outcome: Appeal disallowed.

Disability Allowance

Case Study 21: Disability Allowance Eligibility

Oral Hearing

Question at issue: Eligibility – medical.

Background:

The appellant's application for Disability Allowance was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability which was expected to last for a period of at least one year. The appellant, in his 20s, was educated to third level.

The appellant had completed an apprenticeship in the hospitality sector and had also worked in that sector in the past. The appellant submitted that he was not employed and had not been for 2 to 3 years because of issues around anxiety and depression.

He had a diagnosis of anxiety disorder and the condition was expected to continue for 1 to 2 years. The GP indicated that he was suitable for work/training for rehabilitative purposes. The ability/disability profile in which a medical assessment is made of the impact of the appellant's condition in relation to 16 daily activities advised that the appellant was severely affected in relation to mental health and normal in relation to the remaining 15 categories.

Oral Hearing:

The appellant advised that he was not in receipt of any social welfare payment and his parents were supporting him. The appellant stated that he had not completed a third level course.

The appellant was not currently receiving any treatment or taking any medication.

The appellant stated that he had struggled with anxiety for years. When he worked in the hotel industry he was surrounded by a lot of people and ended up having constant panic attacks. The appellant informed he can interact with other people including friends and can go out to the pub and cafes.

The appellant informed that he intended to seek an appointment with/attend a psychiatrist or psychologist and undertook to submit evidence of this within 21 days of the oral hearing.

Consideration:

The question before the Appeals Officer was whether the appellant was substantially restricted in undertaking work which would otherwise be suitable with reference to his age, experience and qualifications and, if so, whether this had continued or

might reasonably be expected to continue for a period of at least one year in accordance with the governing legislation.

The Appeals Officer noted the appellant's medical condition, that he was not currently receiving treatment or on medication and the degree to which it affected his activities of daily living as certified by his GP. The Appeals Officer noted the medical evidence provided by the appellant and his description of how his condition impacted on his daily activities. The Appeals Officer noted his age, work history and educational background and the additional information provided at oral hearing including the appellant's stated intention to seek an appointment with a psychiatrist/psychologist, but no further evidence of this was provided.

While the Appeals Officer accepted that the appellant experienced some restriction due to his condition, she was not satisfied that the evidence supported a conclusion that the appellant was substantially restricted in undertaking employment that would otherwise be suitable having regard to his age, experience and qualifications.

Decision: Appeal disallowed.

Case Study 22: Disability Allowance Eligibility

Oral Hearing

Question at issue: Eligibility – medical.

Background:

The appellant's application for Disability Allowance was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability which was expected to last for a period of at least one year. The appellant, in his 50s, was educated to second level and had worked in the health care sector in the UK and Ireland.

The appellant had a diagnosis of hip osteoarthritis since 2016 which was expected to continue indefinitely, was attending an orthopaedic specialist and was awaiting hip replacement surgery.

The appellant's evidence was that he experienced great anxiety, limped a lot, was in great pain and while he urgently needed an operation on one leg the other leg was deteriorating fast. He was greatly impacted in undertaking daily activities. He felt he would not be allowed to do any manual handling in the condition he was in. The appellant's GP stated the appellant was very limited by pain and stiffness in his hip, was unfit for any physical work and had been prescribed additional medications.

Oral Hearing:

At oral hearing the appellant confirmed that he had left hip surgery. The operation left him with a hole in his back and his left leg was shorter than his right leg. The appellant had an appointment with his consultant the following day to assess his recovery to date.

Due to Covid-19 restrictions, the appellant had been unable to attend hospital in the UK for treatment for breathing difficulties. There was no date or plan in place for the appellant to have an operation on his right hip. The appellant confirmed that he was in receipt of Illness Benefit and was certified as unfit for work for a further 6 months.

Consideration:

The Appeals Officer noted the appellant’s medical condition, the treatment he was receiving and had sought and the degree to which it affected his activities of daily living as certified by his GP, the additional medical evidence provided and the appellant’s description of how his condition impacted on his daily activities.

The Appeals Officer concluded that the appellant was substantially restricted from undertaking suitable employment having regard to his age, qualifications and experience as specified in the governing legislation.

Decision: Appeal allowed.

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Case Study 23: Disability Allowance Eligibility

Summary Decision

Question at issue: Eligibility – medical

Background:

The appellant, aged 15, had a diagnosis of Autistic Spectrum Disorder which was expected to last indefinitely. His application for Disability Allowance was disallowed by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability which was expected to last for a period of at least one year. The appellant was attending mainstream secondary school and given his age had no history of employment.

Consideration:

The ability/disability profile completed by the appellant’s GP indicated that the

appellant was mildly affected in relation to balance/co-ordination and climbing stairs/ladders and moderately affected in relation to learning/intelligence. All other categories were certified as being normal. His GP did not indicate whether he considered the appellant suitable for work/training for rehabilitative purposes. The medical evidence indicated that the appellant was not under specialist care. He was taking prescribed medications for asthma.

The appellant's mother submitted that her son had major issues with communicating with people of all ages and required support from his parents with the normal activities of everyday life. She submitted that her son lacked organisational and problem-solving skills and that while he attended mainstream school he was supported when required with regular breaks.

In the application form the appellant stated that he suffered from poor concentration. He outlined that he struggled with interacting with people and had problems with standing, climbing stairs and using public transport. He stated he had poor stamina and was unable to sit for long periods due to poor concentration and difficulties with balance. He stated that he had good technology skills but had difficulties writing and picking up small items.

The Appeals Officer noted that as the appellant was of school going age and had no history of employment she must determine the appeal by reference to the likely impact of the appellant's condition on future employment prospects.

The Appeals Officer concluded that while the appellant had some restrictions due to his condition, she was not satisfied based on the evidence that the appellant was substantially restricted in undertaking employment that would otherwise be suitable having regard to his age, experience and qualifications.

Outcome: Appeal disallowed.

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Case Study 24: Disability Allowance Establishing Entitlement

Summary Decision

Question at issue: Information not provided to establish entitlement.

Background:

The appellant's application for Disability Allowance was disallowed by the Department on the grounds that the appellant failed to submit information requested in order to establish the appellant's entitlement. The appellant's application when submitted to the Department was incomplete and the Department requested information in relation to bank accounts, medical information, details of employment,

completion of three unanswered questions on the application form and details as to the appellant's preferred payment method.

Consideration:

The appellant did not make any contentions in his appeal notification but submitted statements for one bank account and details as to his medical condition.

Having reviewed the material submitted by the appellant the Appeals Officer concluded that the appellant had not submitted all the information requested by the Department in order to assess his means and medical condition.

Outcome: Appeal disallowed.

Section 317 review:

The appellant subsequently requested a review of the Appeals Officer's decision and provided additional information in relation to his bank accounts, employment history and the appellant also provided replies to the outstanding questions in the application form.

The Appeals Officer reviewed his decision in light of the new information provided and concluded that the appellant met all of the conditions of entitlement.

Outcome: Appeal allowed.

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Case Study 25: Disability Allowance Eligibility

Summary Decision

Question at issue: Eligibility – medical.

Background:

The appellant's application for Disability Allowance was disallowed by the Department on the grounds that he was not substantially restricted in undertaking suitable employment. The appellant had a diagnosis of intellectual disability and had never held employment. The appellant stated that he had no formal education.

Consideration:

The question before the Appeals Officer was whether the appellant was substantially restricted in undertaking employment which would otherwise be suitable having regard to the appellant's age, experience and qualifications.

The appellant stated that his mental health was affected by his condition in that his concentration was very poor, he had poor memory and he needed help with daily activities. He indicated that his physical health was not affected.

From the evidence provided the Appeals Officer noted a GP's diagnosis of intellectual disability. No medical history or surgical history was provided. The medical evidence informed that the appellant was not attending a specialist. The GP stated that he did not have an IQ result for the appellant but in his opinion the appellant met the criteria for disability regarding his intellectual levels.

The Appeals Officer concluded that based on the totality of the evidence and in particular the limited nature of the medical evidence submitted it had not been established that the appellant was substantially restricted by reason of a specified disability which was expected to last for a period of at least a year in undertaking suitable employment.

Outcome: Appeal disallowed.

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Case Study 26: Disability Allowance Eligibility

Summary Decision

Question at issue: Eligibility – medical.

Background:

The appellant, in her 50s, had a diagnosis of a rotator cuff problem, neck and knee pain, with which she had suffered for five years. The diagnosis had its origins in a road traffic accident 10 years previously. The appellant worked as a legal assistant until 2019.

Her application for Disability Allowance was refused by the Department on the grounds that she was not substantially restricted in undertaking suitable employment.

Consideration:

From the evidence provided the Appeals Officer noted that the appellant had last worked three years ago as a legal assistant. The appellant indicated that she was unable to carry anything heavy due to neck and rotator cuff and reaching prompted a sharp pain in her shoulder. She also suffered from severe wrist pain. She was not

able to spend long periods of time reading, writing or using a computer as it caused neck, shoulder and wrist pain. These symptoms were confirmed by the medical evidence.

The Appeals Officer also noted a specialist physiotherapist report which showed chronic degenerative changes. A letter from a consultant orthopaedic surgeon stated that, clinically, the appellant had severe restriction of mobility and was unable to work because of the symptoms. Furthermore, the doctor stated that, in view of the chronic nature of her symptoms, it was felt that the appellant would remain unfit for work as a legal assistant for the foreseeable future.

Taking the evidence as a whole the Appeals Officer concluded that the appellant was substantially restricted in undertaking suitable employment having regard to her age, experience and qualifications.

Outcome: Appeal allowed.

Case Study 27: Disability Allowance Eligibility

Summary Decision

Question at issue: Eligibility – medical.

Background:

The appellant, in his late 20s, had diagnoses of depression, anxiety and post-concussion syndrome, which started in 2021 and was expected to continue for less than three months. His application was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability that may reasonably be expected to continue for a period of at least one year.

The appellant had worked in several jobs since 2014 with his last employment as a storeman in November 2019. In a questionnaire completed by the appellant, he indicated difficulties with all his activities of daily living due to mental health issues. The appellant informed that he was not on any medication.

In his appeal submission the appellant stated that he left his job due to his medical conditions, was unable to work and needed financial assistance to cover his day to day living expenses.

Consideration:

The question before the Appeals Officer was whether the appellant was substantially restricted in undertaking suitable employment of a kind which would be suited to

that person's age, experience, and qualifications. Furthermore, the disability and the associated restriction, must have continued, or be likely to continue for a period of at least one year.

From the evidence provided in the appellant's application and appeal submission, the Appeals Officer noted the appellant's medical conditions and the degree to which they affected his activities of daily living as certified by his GP. The Appeals Officer also noted that the ability/disability profile, which indicates the degree to which the appellant's conditions affected him across a number of activities of daily living, was normal in 15 of the 16 activities profiled.

The Appeals Officer accepted that the appellant experienced some difficulties as a result of his medical conditions but was not satisfied that the evidence supported a conclusion that the appellant was substantially restricted in undertaking suitable employment, by reason of a specified disability, which was expected to continue for a period of at least one year.

Outcome: Appeal disallowed

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Case Study 28: Disability Allowance Eligibility

Oral Hearing

Question at issue: Eligibility – medical.

Background:

The appellant, in his late 50s, had diagnoses of depression, fibromyalgia and cervical radiculopathy, which started in 2010 and was expected to continue indefinitely.

His application was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability that may reasonably be expected to continue for a period of at least one year.

The appellant's GP informed of a medical history of chronic daily symptoms of tinnitus, chronic pain and stiffness of the neck, lower back, and lower femur. The appellant's GP stated that the medical conditions were expected to last indefinitely.

The appellant did not complete substantial portions of the application form, including work history and how his illness was affecting him. In his appeal submission the appellant stated that he left his job due to his medical conditions, outlined how his medical conditions affected him during a typical day. The appellant informed of attendances with a pain management clinic, an orthopaedic surgeon, and a physiotherapist.

Oral Hearing:

The evidence given at an oral hearing was that the appellant had not worked since 2010 due to his medical conditions. The appellant outlined his medical conditions, the medication he had been prescribed and how his conditions affect his activities of daily living. The appellant stated that he was unable to work and will not be able to do so in the future.

Consideration:

The question before the Appeals Officer was whether the appellant was substantially restricted in undertaking suitable employment of a kind which, if the person was not suffering from that disability, would be suited to that person's age experience and qualifications. Furthermore, the disability and the associated restriction, must have continued, or to be likely to continue for a period of at least one year.

From the evidence provided in the appellant's application form, appeal submission and the oral hearing, the Appeals Officer noted the appellant's medical conditions and the degree to which they affected his activities of daily living as certified by his GP. The Appeals Officer also noted that the ability/disability profile, which indicates the degree to which the appellant's conditions affected him across several activities of daily living, established a substantial restriction in undertaking employment.

The Appeals Officer concluded that the appellant had met the qualifying conditions for Disability Allowance in that he was substantially restricted in undertaking suitable employment by reason of a specified disability which was expected to continue for a period of at least one year.

Outcome: Appeal allowed.

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Case Study 29: Disability Allowance Eligibility

Oral Hearing

Question at issue: Eligibility – medical.

Background:

The appellant, in his late 30s, had a diagnosis of leg and ankle fracture with open reduction internal fixation resulting from a serious occupational injury. His claim for Disability Allowance was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability.

The appellant submitted on appeal that he was unable to work due to not having full use of his leg. He remained under the care of an orthopaedic surgeon and was awaiting further surgery to try to help with movement. The appellant also outlined the financial and emotional strain on his family.

Oral Hearing:

The evidence presented at oral hearing was that the appellant sustained multiple fractures, had severely restricted movement and experienced constant pain on standing/walking from resulting osteoarthritis. His surgeon advised that surgery would not guarantee increased movement and would make no improvement to arthritis. The appellant further described the impact on his mental health and provided additional medical evidence regarding prescribed medication and CT scan results.

Consideration:

The Appeals Officer noted that the appellant's occupational history was in construction, which was then not feasible given the appellant's restricted range of movement, inability to keep weight on his foot or stand for long periods. The Appeals Officer outlined that the appellant's GP assessed his condition (in the ability/disability profile) as affecting him to a profound degree in relation to balance/co-ordination, lifting/carrying, bending/kneeling/squatting, sitting/rising, climbing stairs/ladders and walking and to a severe degree in relation to his mental health. The appellant was on medication for osteoarthritis and depression. The Appeals Officer noted the appellant's education level and work history, in particular, the nature of the construction work environment and the required physical ability.

The evidence presented at oral hearing also included a consultant report confirming the appellant's ongoing clinic attendances, struggle with range of motion and confirmed onset of post-traumatic arthritis.

The Appeals Officer concluded that the appellant was substantially restricted in undertaking suitable employment by reason of a specified disability and having regard to his age, experience, and qualifications.

Outcome: Appeal allowed.

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Case Study 30: Disability Allowance Eligibility

Summary Decision

Question at issue: Eligibility – medical.

Background:

The appellant, in his late 50s, had a diagnosis of renal cancer in 2015 which was treated. A medical report outlined that the appellant attended an urologist. His claim for Disability Allowance was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability. The appellant had a third level education and had a work history as a painter/decorator and as a technical support agent. He had also provided care to one of his parents.

The Department refused the appellant’s application on the ground that he was not substantially restricted in undertaking suitable employment. The ability/disability profile in which a medical assessment is made of the impact of the appellant’s condition in relation to 16 daily activities advised that the appellant was moderately affected in relation to 4 activities and mildly affected in relation to 2 activities. It was reported that the remaining 10 abilities were normal. The appellant reported that because of his kidney condition, he was unable to stand, sit or walk for long periods without pain. He was susceptible to infections and had to dress in warm clothing. DIY jobs which involved standing or bending made him tired and caused pain.

In his notice of appeal, the appellant stated that he did not feel that he would be physically able to work for a full week. He submitted that he felt his level of incapacity would enable him to work on a part-time basis with a return to full-time work being feasible at a later stage.

Consideration:

The Appeals Officer noted the medical evidence submitted and the appellant’s account of the impact of his condition on his daily life. At the date of claim, the appellant was participating in an office administration course in which he sat at a computer and took regular breaks and moved to ease any pain.

The Appeals Officer accepted that the appellant experienced some difficulties as a result of his medical condition but was not satisfied that the evidence supported a conclusion that the appellant was substantially restricted in undertaking suitable employment, by reason of a specified disability, which was expected to continue for a period of at least one year.

Outcome: Appeal disallowed.



Pandemic Unemployment Payment

Case Study 31: Pandemic Unemployment Payment Eligibility Student

Summary Decision

Question at issue: Eligibility - registered as full-time student.

Background:

The appellant's Pandemic Unemployment Payment (PUP) eligibility ceased with effect from 3rd September 2021 as he was registered as a full-time student.

Consideration:

Section 68N 2(b) of the Act provides that the Minister may make regulations to specify a date on which the PUP shall cease to be made. The Minister stated that eligibility for PUP would cease from 3rd September 2021 for those claimants registered as full-time students for the 2021/22 academic year.

In his appeal submission the appellant stated that he was commencing his third year of study on his full-time college course, which would include interviews for work placement in industry. This placement would commence in March 2022. The appellant contended that it would be difficult to manage study, interviews and part-time employment and requested that his payment continue until his work placement would begin.

The question before the Appeals Officer was whether the appellant had entitlement to payment of PUP after the 3rd September 2021. As the claimant was registered as a full-time student in the relevant academic year, the Appeals Officer concluded that the appellant had no entitlement to the Pandemic Unemployment Payment past the relevant date.

Outcome: Appeal disallowed.

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Case Study 32: Pandemic Unemployment Payment Eligibility Student

Summary Decision

Question at issue: Eligibility - registered as full-time student.

Background:

The appellant’s Pandemic Unemployment Payment (PUP) eligibility ceased with effect from 3rd September 2021 as she was registered as a full-time student. In her appeal submission the appellant contended that she was a full-time student returning to college mid-September 2021. She outlined that her previous part-time earnings had come from self-employment as a DJ, but at the time of submitting her appeal, she had been unable to return to this work due to the Government restrictions in the entertainment sector and felt that she should have a continued entitlement to PUP on that basis.

Consideration:

Section 68N 2(b) of the Act provides that the Minister may make regulations to specify a date on which the PUP shall cease to be made. The Minister stated that eligibility for PUP would cease from 3rd September 2021 for those claimants registered as full-time students for the 2021/22 academic year.

The question at issue was whether the appellant had entitlement to claim PUP past the 3rd September 2021. As the claimant was registered as a full-time student, with her course commencing in mid-September 2021, the Appeals Officer concluded that the appellant had no entitlement to the Pandemic Unemployment Payment past the relevant date.

Outcome:

Appeal disallowed.

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Case Study 33: Pandemic Unemployment Payment Eligibility Lost Employment

Summary Decision

Question at issue: Eligibility: whether employment was lost as a direct consequence of Covid-19.

Background:

The appellant was in receipt of the Pandemic Unemployment Payment (PUP) from May to July 2021. The decision of the Department was that he did not qualify for the payment for that period as he did not lose his employment as a direct consequence of Covid-19 in accordance with Section 68L(1)(b)(i).

Evidence presented included a resignation letter from appellant to his employer stating that he was resigning from his position as a customer assistant due to unforeseen personal family circumstances relating to Covid-19 and correspondence from the appellant stating he was advised by his family to quit his job as his grandmother had moved into their house and he was working in a busy environment putting him at high risk of contracting the virus. The appellant stated he would be seeking employment once he was fully vaccinated and when his family was happy for him to return to work.

A report from a Social Welfare Inspector of the Department outlined that the appellant had resigned from his job and was not laid off due to Covid-19.

In appealing the decision of the Department, the appellant contended that he was forced to quit his job in order to protect his sick and vulnerable grandmother who had moved in with the family. The appellant contended that in those circumstances he had lost his employment due to the pandemic.

Consideration:

Section 68L(1)(b)(i) of the Act provides that one of the conditions for a person to be eligible for the PUP is that on or after 13th March 2020 the person lost employment as a direct consequence of Covid-19 including the adverse effects of Covid-19 on the business of his or her employer and the adverse effects of measures required to be taken by his or her employer in order to comply with, or as a consequence of, Government policy to prevent, limit, minimise or slow the spread of infection of Covid-19.

The Appeals Officer concluded that based on the evidence presented, the appellant did not meet the criteria for entitlement to the Pandemic Unemployment Payment based on the circumstances presented and had no entitlement to the Pandemic Unemployment Payment.

Outcome: Appeal disallowed.

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Case Study 34: Pandemic Unemployment Payment Eligibility Employment History

Summary Decision

Question at issue: Entitlement – employment history.

Background:

The appellant’s claim for the Pandemic Unemployment Payment (PUP) was disallowed by the Department on the grounds that the appellant did not qualify as he was not an employed contributor or in insurable self-employment in the week immediately before he ceased to earn an income from the employment concerned.

When applying for the Pandemic Unemployment Payment the appellant declared his last day worked as 18th March 2020 and stated that his self-employment had ended.

The appellant had been requested by the Department to supply evidence of trading immediately prior to claiming PUP in March 2020. He provided notice of his self-employment in 2019, which he was advised was not sufficient. He stated he was out of the country from the beginning of 2020 until March 2020. Revenue records indicated he had a nil return for 2020.

In appealing the decision, the appellant stated that he was out of the country on holiday immediately before the lockdown and while his tax affairs were not up to date immediately before lockdown they were now fully up to date.

Consideration:

Section 68L(1)(b)(ii) of the Act provides that a person shall be entitled to the Pandemic Unemployment Payment in respect of any week where on or after 13th March 2020, the person was in insurable self-employment in the week immediately before the date.

The appellant’s own evidence was that he was out of the country from the beginning of 2020 until 17th March 2020.

The Appeals Officer concluded that the appellant had no entitlement to the Pandemic Unemployment Payment as he had not submitted any evidence that he was in insurable self-employment in the week immediately before the date on which he could demonstrate to the Minister that the reckonable income or reckonable emoluments ceased, or reduced, as a direct consequence of Covid-19 to the extent that he would be available to take up full-time employment, in accordance with Section 68L(1)(b)(ii) of the Act.

Outcome: Appeal disallowed.



Case Study 35: Pandemic Unemployment Payment Rate of Payment

Summary Decision

Question at issue: Rate of payment due from 22 September 2020.

Background:

The appellant was in receipt of the Pandemic Unemployment Payment (PUP). While it was initially paid at a flat rate, the rate was changed and linked to prior earnings. The appellant was advised by the Department that his rate of payment would be reduced to €250 per week with effect from 22nd September 2020.

The Department's decision explained that the weekly rate was decided by assessing earnings and contribution data for a specific year and that the average weekly earnings then determined the PUP payment rate. As the records showed that appellant had reckonable income in 2018, which equated to average reckonable weekly income of €290, the appellant's earnings were in the €200 - €299.99 band and he was therefore entitled to PUP of €250 per week. The Department outlined that as the appellant's average reckonable weekly income from self-employment in 2019 was €30, his weekly reckonable income in 2018 was more favourable to him.

Revenue records indicated nil reckonable income from self-employment in both 2018 and 2019. PUP was calculated based on director's emoluments for both years.

On appeal the appellant contended that, based on his 2019 Revenue Assessment, his PUP payment should not have been reduced. The Appeals Officer gave the appellant the opportunity to submit additional evidence from Revenue for 2018 and for 2019 which showed reckonable income of over €30,000 in 2019.

Consideration:

Section 680 of the Act provides that the weekly rates of payment of PUP and the manner for calculating average reckonable weekly income be set out in regulations. Article 52J of the 2007 Regulations provided that a rate of €250 was payable to a person with an average reckonable weekly income between €200 and €300 and a rate of €300 was payable to a person with an average reckonable weekly income greater than €300.

The Appeals Officer identified Article 52I(2)(b) of the 2007 Regulations as applicable in calculating the appellant's average weekly income. This provides that in calculating average weekly income in the case of a self-employed contributor account can be taken of that person's reckonable income or reckonable emoluments for the 2018 income tax year, divided by the number of contribution weeks in that period, or that person's reckonable income or reckonable emoluments for the 2019 income tax year, divided by the number of contribution weeks in that period, whichever is the greater.

The additional tax records, submitted by the appellant in support of his appeal, showed directors emoluments averaging over 52 weeks at €260 in 2018 and at €576 in 2019 making 2019 more favourable to him.

The Appeals Officer concluded that the correct weekly rate of PUP from 22nd September 2020 in the appellant's case was €300 in accordance with Article 52J of the 2007 Regulations.

Outcome: Appeal allowed.

Carer's Allowance

Case Study 36: Carer's Allowance Care Required

Summary Decision

Question at issue: Eligibility - care required.

Background:

The appellant's application for Carer's Allowance was disallowed by the Department on the grounds that the care recipient did not require full-time care and attention as required by the governing legislation.

The care recipient had diagnoses of depression/anxiety, borderline personality disorder with a history of addiction, self-harm, OCD and fractures.

The Department's Medical Assessor who provided an opinion reported that there were no safety concerns and constant supervision was not required by the care recipient.

The medical report confirmed that the care recipient had impaired mental health with polysubstance addiction and history of overdoses. The medical reports also confirmed that the care recipient had up to 20 admissions to a mental health unit. The care recipient's doctor confirmed that the care recipient had attended him on 17 occasions in the previous 5 months. The medical evidence also recorded a suicide attempt some years prior to the claim for Carer's Allowance.

In the appeal submission, the appellant provided additional significant updates from the GP and she elaborated on the supports and care which included looking after his finances, doing shopping, preparation of food, administering medication, ensuring self-care and responding to self-harm ideation.

Consideration:

The Appeals Officer noted that the Department's Medical Assessor did not have the benefit of the additional report from care recipient's GP.

The Appeals Officer outlined that in accordance with Section 179(4) of the Act, a person shall not be regarded as requiring full-time care and attention unless the person has such a disability that requires continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or continual supervision in order to avoid danger to himself or herself.

The Appeals Officer took account of the hospital admissions, frequent medical support and medication management/supervision. He found that the appellant had made a convincing submission which was corroborated by additional medical evidence and concluded that the evidence confirmed that the care recipient required constant supervision in order to avoid being a danger to himself.

Outcome: Appeal allowed.

Case Study 37: Carer's Allowance Care Required

Summary Decision

Question at issue: Eligibility - care required.

Background:

The appellant's application for Carer's Allowance was disallowed by the Department on the grounds that the care recipient did not require full-time care and attention as required by the governing legislation.

The care recipient had diagnoses of ischaemic heart disease, moderate COPD and hypercholesterolemia. In the ability/disability profile the care recipient was assessed as normal in relation to cognition, mental health, speech/hearing and consciousness/seizures, and independent/age appropriate in relation to bathing/showering, feeding, dressing, continence/toileting, and mobility. It was outlined that the care recipient wore glasses and had recent cataract surgery. In support of her claim the appellant submitted an additional GP report indicating that the care recipient had weakness and fatigue with breathlessness on minimal effort. She couldn't do household duties and required assistance with personal tasks. The appellant submitted that the care recipient's conditions were permanent and progressive and complicated by deafness which was leading to increasing isolation and she needed assistance at home.

In her appeal submission the appellant stated that she looked after her mother from early in the morning until late in the evening. She stated that her mother was in very bad health, had poor hearing, could not walk for more than a few feet and could not

talk for more than a few minutes without getting breathless and coughing. The appellant stated that she did everything for her mother including shopping, cleaning, household duties, cooking, lighting fires and bringing her to appointments and that her mother totally depended on her care for any quality of life.

Consideration:

The Appeals Officer outlined that Section 179 of the Act provides that a person shall not be regarded as requiring full-time care and attention unless the person has such a disability that requires from another person continual supervision and frequent assistance throughout the day in connection with normal bodily functions or continual supervision in order to avoid danger to himself or herself.

The Appeals Officer concluded that while the medical evidence outlined the care recipient's conditions, the degree to which it affected her ability in certain areas, it did not indicate the need for assistance with normal bodily functions throughout the day or that the care recipient required continual supervision in order to avoid danger to herself. The Appeals Officer concluded, that while the care recipient required a level of care and support which the appellant provided, it had not been established that she required full-time care and attention within the meaning of the governing legislation.

Outcome: Appeal disallowed

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Case Study 38: Carer's Allowance Care Provided

Oral Hearing

Question at issue: Eligibility - care provided.

Background:

The appellant's application for Carer's Allowance was disallowed by the Department on the grounds that she was not providing full-time care and attention to the care recipient as required by the governing legislation.

In her application form the appellant stated that she provided a total of 21 hours care per week over 7 days. The appellant described the daily duties that she carried out which included giving the care recipient his medication, preparing breakfast and spending at least 1.5 hours with the care recipient in the mornings. The appellant spent a further 3-4 hours preparing meals, doing housework and helping the care recipient to shower. In her appeal submission, the appellant stated that she forgot to mention in her application that she also went to his home every night for 2 hours to sort his medications and to help him get ready for bed. In addition, she

accompanied the care recipient to all his medical appointments. She stated that she may need to reduce her working hours in order to continue to provide the care required.

Oral Hearing:

During the oral hearing the appellant provided a more detailed account of the care she provided to the care recipient. She stated that she worked 15 hours per week over three evenings. She confirmed that she went to the care recipient’s home each morning. In the afternoon she went back to his house for a number of hours to do housework if she was not in work. On the three evenings that she worked the appellant called to the care recipient for an hour before going to work. She accompanied him on the train to all his medical appointments.

Consideration:

The Appeals Officer outlined that Section 179 of the Act provides that in order to be considered a carer for the purposes of Carer’s Allowance the person must be providing full-time care and attention to a person who requires continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or continual supervision in order to avoid danger to himself or herself. Article 136(1)(e) of the 2007 Regulations provides that a carer may be regarded as providing full-time care and attention, where the number of hours of care provided is not less than 35 hours in a period of 7 consecutive days, and care is provided on any 5 days, whether consecutive or not, within a period of 7 consecutive days. The Appeals Officer determined that both the hours of care provided and the nature of the care provided fell to be considered.

The Appeals Officer concluded that while the evidence demonstrated that the appellant provided support to the care recipient, the care related mainly to household duties and general assistance rather than personal care aligned with continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or continual supervision in order to avoid danger to the care recipient.

The Appeals Officer concluded that the evidence provided by the appellant did not support a conclusion that she provided care to a level or for a sufficient time period that could be considered to be full-time within the meaning of the governing legislation.

Outcome: Appeal disallowed.



Case Study 39: Carer's Allowance Care Required / Provided

Summary Decision

Question at issue: Eligibility - care required and care provided.

Background:

The appellant's application for Carer's Allowance was disallowed by the Department on the grounds that he was not providing full-time care and attention to the care recipient and that the care recipient did not require full-time care and attention within the meaning of the governing legislation.

The care recipient, in her 60s, was the appellant's father's partner and had diagnoses of arthritis, back pain and depression. In the medical report submitted with the application form the care recipient was assessed as having chronic anxiety and low mood and experienced significant pain while walking, shopping or doing household chores.

The appellant reported that the care recipient had chronic pain and arthritis and required support with cooking, cleaning, household duties, shopping, attending appointments and general assistance due to reduced mobility.

Consideration:

The Appeals Officer noted that the medical report was consistent with the appellant's account that the care recipient had back pain/arthritis and mobility needs. The Appeals Officer acknowledged that the appellant provided practical supports to the care recipient, such as housework and shopping. However, the Appeals Officer concluded that the need for continual supervision and frequent assistance throughout the day in connection with normal bodily functions had not been demonstrated or supported by the evidence. The Appeals Officer also concluded that it had not been demonstrated that the care recipient required continual supervision in order to avoid danger to herself.

The Appeals Officer also noted that the appellant's evidence was that he provided 28 hours of care and attention per week. In those circumstances the Appeals Officer concluded that as the appellant did not provide a minimum of 35 hours of care per week he could not be considered to be providing full-time care and attention.

Outcome: Appeal disallowed.



Case Study 40: Carer's Allowance Care Provided

Summary Decision

Question at issue: Eligibility - care provided.

Background:

The appellant's application for Carer's Allowance was refused by the Department on the grounds that he was not providing full-time care and attention as required by the governing legislation. In his application form, the appellant stated that he resided next door to the care recipient and provided care for 17 hours per week over 7 days. He described the daily duties that he performed for the care recipient as shopping, doing laundry and other household duties, preparing meals, collecting medication and bringing the care recipient to medical appointments. The appellant also brought the care recipient to and from day care service two mornings per fortnight. The appellant also stated that he provided emotional support and companionship to the care recipient.

In his appeal, the appellant stated the care recipient had complex medical and physical needs, had extremely limited mobility and was in the early stages of memory loss. The care recipient was reported to be independent in terms of personal care.

Consideration:

The Appeals Officer outlined that Section 179 of the Act provides that in order to be considered a carer for the purposes of Carer's Allowance the person must be providing full-time care and attention to a person who requires continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or continual supervision in order to avoid danger to himself or herself.

Article 136(1)(e) of the 2007 Regulations provides that a carer may be regarded as providing full-time care and attention, where the number of hours of care provided is not less than 35 hours in a period of 7 consecutive days, and care is provided on any 5 days, whether consecutive or not, within a period of 7 consecutive days.

The Appeals Officer concluded that while the appellant provided support to the care recipient it had not been established that the appellant provided care to a level or for a sufficient time period that could be considered to be full-time within the meaning of the governing legislation.

Outcome: Appeal disallowed.



Carer's Support Grant

Case Study 41: Carer's Support Grant Eligibility

Summary Decision

Question at issue: Eligibility – care required.

Background:

The appellant's application for Carer's Support Grant in respect of the care provided to her son was refused by the Department on the grounds that the care recipient did not require full-time care and attention as defined in Section 224(2) of the Act.

The medical evidence confirmed diagnoses of multi-drug use, intellectual disability, schizophrenia, and insulin dependent diabetes and that the conditions started some years previously and were expected to last indefinitely. The medical evidence outlined a history of heroin, alcohol, and cocaine dependence, confirmed surgical history, recent admission to hospital due to drug abuse, provision of specialist's care and medications prescribed.

The Appeals Officer noted that in completing the ability/disability profile the GP had assessed the care recipient's conditions as affecting him to a severe degree in relation to mental health/behaviour, to a moderate degree in relation to manual dexterity and to a mild degree in relation to learning/intelligence. The care recipient was considered by his GP to be normal in relation to the remaining 13 abilities.

The appellant stated that she could not understand why she was not awarded the grant in this particular year as she had received the grant in the previous four years and submitted that her son's medical conditions had not improved on previous years when she was awarded the grant. She outlined her caring duties and role in the care of her son.

The Department, having reviewed its decision in light of the appeal submission, advised that the decision remained unchanged but did not provide any previous medical evidence to compare to that submitted in support of the current grant application.

Consideration:

The Appeals Officer outlined that Carer's Support Grant may be awarded in respect of a care recipient who requires continual supervision and frequent assistance throughout the day in connection with normal bodily functions or requires continual supervision in order to avoid danger to himself or herself.

The Appeals Officer, having regard to the totality of the evidence, including the care recipient's diagnoses and ongoing issues as certified by his GP, was satisfied that the

medical evidence confirmed that the care recipient required continual supervision and frequent assistance throughout the day in connection with normal bodily functions and that in those circumstances the legislative requirements for Carer's Support Grant were met.

Outcome: Appeal allowed.

Case Study 42: Carer's Support Grant Eligibility

Summary Decision

Question at issue: Eligibility – hours of employment.

Background:

The appellant's application for Carer's Support Grant in respect of the years 2020 and 2021 was refused by the Department on the grounds that the appellant was working in excess of 18.5 hours per week.

In her application form the appellant advised that she worked 24 hours a week from 2001 to 19th July 2021. The appellant also advised that she commenced providing care in mid-March 2020, had reduced her hours of work and was awarded Carer's Benefit from 19th July 2021.

Consideration:

The Appeals Officer outlined that the governing legislation provides that Carer's Support Grant shall be payable on the first Thursday in June of each year and that the hours of employment/self-employment that a carer can engage in where full-time care and attention is provided cannot exceed 18.5 hours per week (15 hours per week prior to January 2020).

The Appeals Officer noted that the evidence was that the appellant was employed from 2001 to 18th July 2021 and that she worked 24 hours a week during that period and as such the hours of employment were greater than the permitted threshold in order to qualify for the grant. In those circumstances the Appeals Officer concluded that the legislation governing the payment of Carer's Support Grant precluded the appellant from qualifying for the grant for the years 2020 and 2021.

Outcome: Appeal disallowed.

Case Study 43: Carer's Support Grant Eligibility

Oral Hearing

Question at issue: Eligibility - care required.

Background:

The appellant's application for Carer's Support Grant was disallowed by the Department on the grounds that the care recipient was not so invalided or disabled as to require full-time care and attention as defined in Section 224(2) of the Act. The care recipient, in her late 30s, had diagnoses of rheumatoid arthritis and hypertension. In completing the ability/disability profile the care recipient's GP assessed the conditions as affecting her to a moderate degree in relation to balance/co-ordination, manual dexterity, her ability to lift/carry and to walk, severely affected in terms of her ability to bend/kneel/squat and to climb stairs. It was also certified that the care recipient suffered from headaches, obesity, depression/anxiety and had emotionally unstable personality traits.

In her letter of appeal, the appellant stated that the care recipient was incapable of doing everyday tasks, she was in constant pain and her mental health had deteriorated. The appellant outlined the care recipient's restrictions in terms of mobility, showering, dressing, and using the stairs.

Oral Hearing:

At the oral hearing the appellant provided a more detailed account of the care required by the care recipient. It was outlined that that the care recipient had a history of mental health illness and experienced chronic pain due to rheumatoid arthritis. The care recipient required assistance getting out of the bed, using the toilet, showering and with aspects of dressing. The appellant managed the care recipient's medication as well as housework and meal preparation. The appellant outlined that the care recipient suffered from chronic headaches, dizzy spells and her balance could be affected. The appellant explained that the care recipient was unable to use the stairs without assistance, had serious mental health problems and she was diagnosed with an emotionally unstable personality and displayed bi-polar symptoms including extreme mood swings.

Consideration:

The Appeals Officer noted the more detailed account of the care recipient's care requirements provided by the appellant at oral hearing. The Appeals Officer, having considered the nature and combination of the care recipient's chronic illnesses as well as noting the appellant's evidence in relation to the care required by the care

recipient, was satisfied that the evidence supported a conclusion that the care recipient required full-time care and attention within the meaning of the governing legislation.

Outcome: Appeal allowed.

Occupational Injury Benefit/Disablement Benefit

Case Study 44: Occupational Injury Benefit/Disablement Source of Injury

Summary Decision

Question at issue: Whether injury arose out of and in the course of employment.

Background:

The appellant applied for Disablement Benefit stating her incapacity for work was caused by an accident/incident at work that occurred in June 2021.

In response to a questionnaire issued by the Department the appellant stated that in the course of her employment her back started to hurt her. She stated nothing unexpected happened on the day in question. Her application was refused by the Department on the grounds that no specific accident or incident happened on the specific day to cause her injury. The appellant stated that while she did not break an arm or leg in June 2021, she had been unable to work for four months due to back pain.

Consideration:

Disablement Benefit is a payment under the Occupational Injuries Scheme which is payable to an insured person who suffers a loss of physical or mental faculty as a result of an occupational accident or a prescribed occupational disease. The question at issue in this case was whether the appellant could be deemed to have suffered a personal injury caused by an accident arising out of and in the course of the appellant's insurable employment. The medical evidence was that the appellant suffered back pain. Her GP stated she had rheumatism. The Appeals Officer outlined that in order to qualify for the benefit the back injury must be caused by a specific accident or incident and not as the result of normal wear and tear.

The Appeals Officer concluded that the evidence did not support a conclusion that the appellant suffered personal injury caused by an accident/incident on a specific date in June 2021 arising out of and in the course of her employment.

Outcome: Appeal disallowed.

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Case Study 45: Occupational Injury Benefit / Disablement Medical Examination

Summary Decision

Question at issue: Not examined or assessed in person by medical assessor.

Background:

The appellant applied for Disablement Benefit in respect of an occupational injury. In a letter from the Department the appellant was informed that following a medical assessment by a Medical Assessor in the Department, his loss of faculty was assessed at 10% disablement as a result of an occupational injury. The appellant appealed the decision on the grounds that he was not assessed in-person by a medical professional.

Consideration:

The Appeals Officer noted the appellant was not assessed by the Medical Assessor in-person as the prevailing Covid-19 situation prevented such assessments at the relevant time. However, the Appeals Officer noted that the Medical Assessor carried out an analogous desk-based assessment and that a copy of the Medical Assessor's report was attached with the file.

Having regard to Section 300A of the Act, the Appeals Officer concluded that a medical examination/medical assessment was not defined for the purpose of the scheme. The relevant legislation refers to the 'opinion of a medical assessor' and the Appeals Officer was satisfied that there is no legislative requirement to carry out an in-person assessment. The Appeals Officer noted that the medical assessor considered all of the information submitted by the appellant and a report from a Social Welfare Inspector of the Department.

Outcome: Appeal disallowed.

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Treatment Benefit

Case Study 46: Treatment Benefit Spouse Eligibility

Summary Decision

Question at issue: Eligibility as a widowed dependent spouse.

Background:

The appellant, in her 80s, applied for Treatment Benefit in respect of the purchase of hearing aids based on being a dependent spouse of a person entitled to Treatment Benefit.

The appellant's application was refused by the Department on the grounds that she did not satisfy the eligibility conditions as the records of the Department indicated that her gross weekly income exceeded the limit for a dependent spouse at the time of her spouse's death.

Consideration:

The Treatment Benefit Scheme provides assistance under certain conditions towards the provision of treatment and appliances or repair of appliances in respect of dental treatment, optical treatment, hearing aids and contact lenses (if necessary, on medical grounds). Spouses or partners of qualified insured persons, subject to dependency conditions, are entitled to Treatment Benefit.

The 2007 Regulations set out the conditions under which a dependent spouse or civil partner of an insured person can continue to be entitled to Treatment Benefit following the death of the insured person. The Regulations provide that a person whose weekly income is over €100.00 is not a dependent spouse.

The appellant received a State Pension Contributory from March 2003 to May 2008 which was paid at a rate greater than €100.00 per week and then qualified for the Widow's Contributory Pension following the death of her spouse in May 2008.

The Appeals Officer concluded that as the appellant was not considered dependent on her spouse at the time of his death, she did not qualify for Treatment Benefit based on being a dependent spouse.

Outcome: Appeal disallowed.

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Partial Capacity Benefit

Case Study 47: Partial Capacity Qualifying Payments

Summary Decision

Question at issue: Eligibility – qualifying payments.

Background:

The appellant's application for Partial Capacity Benefit, submitted in February 2020, was disallowed by the Department on the grounds that on the day immediately before the day for which benefit was claimed the appellant was not in receipt of Illness Benefit for at least 26 weeks or Invalidity Pension, as required by the governing legislation.

The appellant was in receipt of Illness Benefit until early 2019 and received Invalidity Pension until late 2019 when he returned to full-time work. His grounds of appeal were that he was out sick from work until late 2019 and that when he returned to work he advised his local Intreo centre. The appellant submitted that the Intreo centre undertook to notify Invalidity Pension section of his return to work, he was advised of the availability of Partial Capacity Benefit and was provided with the application form.

Consideration:

Section 46A of the Act provides that a person shall be entitled to Partial Capacity Benefit where, among other conditions, on the day immediately before the day for which benefit is claimed the person was in receipt of Illness Benefit for at least 26 weeks or Invalidity Pension. The appellant's application for Partial Capacity Benefit claim was made in February 2020. Based on the evidence available he was in receipt of Illness Benefit until early 2019 and Invalidity Pension until late 2019. The appellant was not therefore in receipt of either Illness Benefit or Invalidity Pension on the day immediately before the day for which Partial Capacity Benefit was claimed.

Outcome: Appeal disallowed.

Section 317 review request:

The appellant requested a review of the Appeals Officer's decision and a submission was provided by Citizens Information on his behalf. The primary grounds submitted were that the Department did not provide a holistic service to the appellant as he was prompted to make a Partial Capacity Benefit claim by the Department and was

then advised that it was too late. The appellant also submitted that he advised the Department in late 2019 that a Partial Capacity Benefit application was completed by his doctor and given the extensive and confusing interactions with the Department he was disappointed that the Department did not exercise discretion to award the payment.

While acknowledging the appellant's evidence of his interaction with the Department, the Appeals Officer concluded that the only decision under consideration related to the appellant's entitlement to Partial Capacity Benefit at the date of claim. Regarding the appellant's contention that in late 2019 forms were completed by his GP for Partial Capacity Benefit the Appeals Officer noted that no evidence was provided of this. The Appeals Officer outlined that she had no discretion to award payment from an earlier date and the legislation governing entitlement to Partial Capacity Benefit made no provision for late claims or backdating of claims. In those circumstances the Appeals Officer outlined that the only claim she could consider was that received by the Department in February 2020. The Appeals Officer concluded that the information provided did not render the original decision erroneous and a revision of her decision was not warranted.

Outcome: Decision not revised.

Case Study 48: Partial Capacity Benefit Eligibility

Summary Decision

Question at issue: Eligibility – medical.

Background:

The appellant applied for Partial Capacity Benefit in June 2020. The Department deemed the appellant's restriction on his capacity for work to be mild and the claim was disallowed. The appellant suffered a fracture of the spine and had undergone surgery following an accident. He continued to attend physiotherapy and was prescribed pain medication. The appellant submitted that his capacity for work was greatly reduced physically and mentally, and he was attending a counsellor due to panic attacks, anxiety and disturbed sleep. Physically the appellant described stiffness of the back, hips, numbness and restricted movement. The GP reported that the appellant was severely affected in lifting/carrying, moderately affected in reaching, bending/kneeling/squatting, sitting/rising, standing, climbing stairs/ladders, walking and mildly affected in mental health/behaviour. The appellant submitted all hospital notes and CT reports.

Consideration:

Section 46A of the Act and Articles 28A and 28B of the 2007 Regulations specify the scheme entitlement conditions and the conditions for which a person would be assessed as having a profound, severe, moderate, or mild restriction on his or her capacity for work. A person is assessed as having a moderate restriction on work capacity if that person is assessed as having a capacity for work which was greater than one half and not more than four fifths of the norm for a person of the same age who had no restriction on work capacity.

The Appeals Officer noted the level of restriction as certified by the appellant's GP and the appellant's explanation as to why he was unable to work full-time or return to his previous role of over 20 years, which was physically demanding. He had agreed with his employer to work in an administrative capacity for 20 hours a week, but this alone would not enable him to return to work. Based on the evidence the Appeals Officer was satisfied that the appellant's medical condition was such that he had a moderate restriction on his capacity for work.

Outcome: Appeal allowed.

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Jobseeker's Allowance

Case Study 49: Jobseeker's Allowance Habitually Resident

Summary Decision

Question under Appeal: Right to reside and habitual residence.

Background:

The appellant, an EU national, applied for Jobseeker's Allowance in December 2020. The application was disallowed by the Department on the grounds that the appellant did not have a right to reside and could not therefore be considered to be habitually resident in the State. The appellant informed that she arrived in Ireland in October 2020 but did not provide evidence of travel to verify entry. Three months had not elapsed between the date of entry to the State and the date of application for Jobseeker's Allowance.

In her appeal notification, the appellant contended that she was an EU citizen who came to Ireland looking for a job, intending to stay as long as possible. She advised that she lived in Ireland from 2013 until 2014 and had some employment in that period after which she returned to her country of origin. She returned to Ireland in 2020 and was trying to find work.

Consideration:

Under the Act it is a requirement for entitlement to most social assistance payments that the person is habitually resident in the State. Section 246 of the Act contains the provisions with respect to habitual residence and deciding if a person is habitually resident is a two-stage process involving establishing, in the first instance, a right of residence and secondly determining whether a person is habitually resident. Section 246 (5) of the Act provides that a person who does not have a right to reside in the State cannot be regarded as being habitually resident in the State.

Right of residence for EU nationals and their family members is governed by Directive 2004/38/EC and the European Communities (Free Movement of Persons) Regulations, 2015 (S.I. No. 548 of 2015).

Article 6 (1) of the 2015 Regulations provides that EU citizens and certain family members have a right of residence for a period of three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport. Article 17(2) of the 2015 Regulations provides that a person to whom Article 6(1) applies is not entitled to receive social assistance under the Social Welfare Acts.

The evidence in this case was that the appellant had applied for an assistance payment within three months of her arrival in the State. In the circumstances the Appeals Officer concluded that the appellant had was not entitled to receive Jobseeker's Allowance.

Outcome: Appeal disallowed.

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Case Study 50: Jobseeker's Allowance Means

Summary Decision

Question at issue: Means - partner's income.

Background:

The appellant's claim for Jobseeker's Allowance was awarded by the Department at a reduced weekly rate, consisting of a personal rate and an increase in respect of one dependent child at half-rate less means assessed. The appellant queried the assessment of means in view of overall household costs including education expenses.

Consideration:

Section 141(1)(c) of the Act provides that entitlement to Jobseeker's Allowance is subject to a means assessment calculated in accordance with the rules contained in Part 2 of Schedule 3 of the Act.

Assessable means refers to all household income and, in the appellant's case, his partner's earnings from insurable employment fell to be assessed. The Appeals Officer outlined that the governing legislation provides for the assessment of means with reference to household income, and this is based on gross rather than net income, with a limited number of allowable deductions.

Having considered the available evidence, the Appeals Officer determined that the rate of entitlement to Jobseeker's Allowance as calculated by the Department was correct and that means including the appellant's partner's reckonable income from insurable employment had been assessed correctly in line with the provisions set out in governing legislation.

Outcome: Appeal disallowed.

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Case Study 51: Jobseeker's Allowance Means

Summary Decision

Question at issue: Means- assessment of capital.

Background:

The appellant, in her mid-50s, applied for Jobseeker's Allowance which was disallowed by the Department on the grounds that her means were in excess of the rate of Jobseeker's Allowance that would otherwise be payable. The appellant's means derived from an assessment of capital held by the appellant and income from a private pension.

The assessment of capital included money held in a number of financial institutions and money held in an Irish State Savings Solidarity Bond.

The appellant outlined her intention to work up to pension age and to having invested part of a redundancy payment from a previous employment with a view to retirement at that time. She queried the inclusion of the amount invested for this purpose in the assessment of means.

Consideration:

Section 141(1)(c) of the Act provides that entitlement to Jobseeker’s Allowance is subject to a means assessment calculated in accordance with the rules contained in Part 2 of Schedule 3 of the Act.

Assessable means refers to any form of income that is available to a person claiming a means-tested payment and in this instance, included the amount held in a savings bond.

The Appeals Officer determined that the appellant’s means had been assessed correctly in line with the provisions set out in governing legislation and that an entitlement to Jobseeker’s Allowance did not accrue.

Outcome: Appeal disallowed.

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Jobseeker’s Benefit

Case Study 52: Jobseeker's Benefit Loss of Employment

Summary Decision

Question at issue: Substantial loss of employment.

Background:

The appellant’s application for Jobseeker’s Benefit in June 2021 was disallowed by the Department on the grounds that she had not suffered a substantial loss of employment based on her normal level/pattern of employment. The appellant had been fully employed since 2014 with the same employer and then was laid off for the duration of the Covid-19 pandemic. She was re-engaged by her employer in June 2021 and was offered one day per week. The Department considered her normal level of employment from the date she returned to work, decided that this was her normal pattern of employment, and having not suffered a loss, refused the claim.

Consideration:

Section 62 (1)(d) of the Act provides that a person shall be entitled to Jobseeker’s Benefit where they have sustained a substantial loss of employment in any period of seven consecutive days. Article 49 of the 2007 Regulations provides that a person must have suffered a loss of reckonable earnings or income as a consequence of the loss of employment in any period of seven consecutive days where they have lost one day of insurable employment.

From the evidence provided, the Appeals Officer noted that the appellant's employment had been interrupted for an extensive period due to the emergency health measures in place since 2020 and that she could have reasonably expected to return to a similar level of employment following resumption of the business when restrictions were eased/lifted. The Appeals Officer considered that the fairest method of establishing substantial loss of employment was to compare the conditions at the time of her claim to her last period of normal employment.

The Appeals Officer concluded that it was appropriate and fair to consider the appellant's normal level/pattern of employment as that immediately prior to her enforced lay-off, also bearing in mind her return to work with the same employer in the same capacity and that her level of employment had reduced from full-time to one day per week and this constituted a substantial loss of employment.

Outcome: Appeal allowed.

Jobseeker's Benefit for Self-Employed

Case Study 53: Jobseeker's Benefit for Self-Employed

Summary Decision

Question at issue: Eligibility - engaged in self-employment.

Background:

The appellant applied for Jobseeker's Benefit as a self-employed person in July 2021. Her application was refused by the Department on the grounds that she was between contracts and was seeking employment in her specialist area and as such this was similar to a temporary closure and she was therefore considered to be engaged in self-employment.

The appellant outlined that she secured work through contracts and that her last typical length contract ended in late June 2021. She had worked 5 days per week on this and the previous contracts she had secured. She had secured a very short-term contract from 30 June 2021 to 14 July 2021. She was due to commence maternity leave from mid-August 2021. She submitted that she was available for, looking for and was willing to accept any work during the period from 15 July 2021 up to the date she was due to commence maternity leave. She was unsuccessful in securing work during this period.

Consideration:

The legislation provides that in order to qualify for Jobseeker’s Benefit as a self-employed person one cannot be engaged in self-employment.

The Appeals Officer found no evidence that the appellant’s past self-employment contracts were seasonal only or that there was an ongoing commitment to future contracts from the businesses with whom she had contracted up to 14 July 2021.

On the basis of the evidence the Appeals Officer concluded that the appellant lost her self-employment involuntarily and not as a consequence of a temporary or seasonal closure of the business and as such she could not be considered to be engaged in self-employment.

Outcome: Appeal allowed.

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Benefit Payment for 65 Year-Olds

Case Study 54: Benefit Payment for 65 Year-Olds

Summary Decision

Question under Appeal: Eligibility - Contribution conditions.

Background:

The appellant’s claim for Benefit Payment for 65-year-olds submitted in 2021 was disallowed by the Department on the grounds that he did not satisfy the PRSI contributions.

The appellant outlined that he had worked for 40 years and paid over 2,000 PRSI contributions and believed that it was discriminatory and inequitable that he was not eligible for the payment just because he had been made redundant and could not get work. The appellant was made redundant in 2014 and his last paid PRSI contributions were in 2015.

Consideration:

Benefit Payment for 65 year olds is a payment for people aged between 65 and 66 years who have ceased employment or self-employment and who satisfy PRSI contribution conditions.

The contribution conditions are set out in Section 64(1)(b) of the Act and Article 48A of the 2007 Regulations.

In addition to having a total number of PRSI contributions paid over one's working life a person must also have a minimum number of paid contributions or credited contributions in more recent contribution years. It was this latter condition that was at issue in this appeal.

In order to meet the condition a person must have a minimum of 39 paid or credited contributions of which at least 13 must be qualifying paid contributions in the second last complete contribution year before the year in which the claim is made. As the appellant's claim was made in 2021, the second last contribution year in his case was 2019.

As an alternative, a person may satisfy this condition by having a minimum of 26 qualifying paid contributions in each of the second last year (2019) and third last year (2018) before the year in which the claim is made.

If a person doesn't qualify under either of the first two conditions, the person may qualify if he/she has 13 qualifying paid contributions in any of the following years: the current tax year, the last complete tax year, the governing contribution year, or the two years before this. The contribution years in question in the appellant's case were 2017 to 2021.

Following an examination of the appellant's employment and PRSI contribution record, the Appeals Officer noted that the appellant had more than 2,000 PRSI contributions over a 40-year working career and his last paid PRSI contribution was in 2015.

While the appellant had credited contributions in 2019, he had no paid PRSI contributions in any of the contribution years from 2017 to 2021 and did not satisfy the PRSI contribution conditions for receipt of the payment.

Outcome: Appeal disallowed.

Supplementary Welfare Allowance

Case Study 55: Supplementary Welfare Allowance - Rent Supplement

Summary Decision

Question under appeal: Rent Supplement eligibility – inability to afford rent.

Background:

The appellant's application for Rent Supplement was refused by the Department on the grounds that the appellant voluntarily left employment which led to an inability

to afford rent. In her appeal notification the appellant stated that she had to cease employment due to illness and provided evidence that she was unfit to work.

Consideration:

The Appeals Officer outlined that in accordance with Section 198 (3F) (b) (i) of the Act a person may qualify for Rent Supplement if at the commencement of the tenancy there was a reasonable expectation that the person could pay the rent into the future.

The evidence was that the tenancy commenced in 2015 at which point the appellant was working and she continued to pay rent for the accommodation for a further 6 years.

The Appeals Officer concluded that the appellant was in a position to pay the rent at the commencement of the tenancy and had demonstrated that she could pay the rent into the future within the meaning of the governing legislation.

Outcome: Appeal allowed.

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Case Study 56: Supplementary Welfare Allowance - Heat Supplement

Summary Decision

Decision under appeal: Heat Supplement eligibility.

Background:

The appellant, in his 80s, had been in receipt of a supplement towards extra heating needs since May 2014. The claim was reviewed by the Department in 2021 and payment withdrawn on the grounds that the appellant had failed to provide a certificate from his GP confirming the medical need for extra heating.

The Department outlined that the appellant had informed Office staff that his GP would not complete the form due to Covid-19 demands on the practice but the appellant had provided receipts in respect of heating costs. The appellant's medical and financial circumstances were set out. The appellant outlined his medical condition and the requirement for additional heating need.

Consideration:

The Appeals Officer noted the appellant's age and that he had been in receipt of a Heating Supplement for seven years and concluded that it was unlikely that the appellant's condition had improved since the supplement was awarded.

While the Appeals Officer stated it was reasonable for the Department to seek medical confirmation of the need for heating, the appellant's GP would not provide it during the Covid-19 pandemic and the resulting demand on the practice's time and resources.

The Appeals Officer concluded that, taking all the circumstances into account, the appeal should be allowed. The Appeals Officer outlined that the circumstances she took into account included that the burden of proof to justify withdrawing a payment was on the Department, previous papers were not available, the appellant's age, the appellant's medical condition, that he had been in receipt of the payment for seven years, he had provided evidence of additional heating needs and was unable to obtain the medical evidence requested by the Department in the context of the review due to the pandemic.

Outcome: Appeal allowed.

Case Study 57: Supplementary Welfare Allowance - Diet Supplement

Summary Decision

Question at issue: Diet Supplement eligibility and increase in means.

Background:

The appellant had been in receipt of a diet supplement since 2002 at which time she was in receipt of Deserted Wives' Allowance. The claim was reviewed by the Department in 2021 and the payment was withdrawn on the grounds that the appellant's basic income had increased in 2006 when she transferred to a State Pension Non-Contributory, which was a higher payment rate than Deserted Wives' Allowance.

Consideration:

Section 198 of the Act provides that a person shall be entitled to a supplement to their basic income to meet a basic need. Article 15 of the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S.I. No. 412 of 2007) provides that a person may be paid a supplement towards the cost of a specific diet. The appellant had been deemed to have a specific medical condition which required a specified diet and was awarded a weekly amount from 2002. This continued unchanged until it was withdrawn in 2021.

The Appeals Officer noted that the Department had not conducted a review of the appellant's entitlement for more than 15 years and had not taken note that the

appellant had changed from Deserted Wife's Allowance to a State Pension Non-Contributory in 2006. The Appeals Officer also outlined that the legislation governing Diet Supplement changed in 2014 which prohibited any new applications for Diet Supplement, and which "preserved" payments already in payment subject to continuing qualification in accordance with the Regulations. The legislation further provided that these claims could be reviewed if there was an increase in income *after* the change in legislation in 2014.

In allowing the appeal, the Appeals Officer outlined that the appellant had not experienced an increase in income after the change in legislation in 2014, she had a need for and an expectation of the supplement continuing while her sole income remained the State Pension Non-Contributory.

Outcome: Appeal allowed.

Farm Assist

Case Study 58: Farm Assist Entitlement

Summary Decision

Question at issue: Entitlement and means assessment.

Background:

The appellant applied for Farm Assist in June 2019. He was invited by the Department to meet a Social Welfare Inspector (SWI) in August 2019 as he was not at his stated address when the SWI visited. The SWI made 6 more unsuccessful attempts to meet the appellant at his stated address in early mornings and late evenings. He noted that the property did not look lived in and that there was little electricity consumption. The claim was disallowed by the Department on the grounds that the appellant did not reside at the stated address.

On appealing the decision, the appellant stated that he farmed and worked part-time so he was often away from the house. His house was in a different part of the county to his mother and his farm. His mother lived there alone so he often visited her. If he had a cow due to calf he usually stayed in his mother's house.

Consideration:

The Appeals Officer decided to convene an oral hearing for the purposes of determining the appeal but despite repeated attempts by post, email and phone the Appeals Office was unable to contact the appellant to arrange an oral hearing. In

those circumstances the appeal was determined based on the documentary evidence.

The Appeals Officer outlined that Section 214 of the Act provides for entitlement to Farm Assist and in order to qualify a person must satisfy a means test. In order to conduct this test, the SWI needed to be able to interview the appellant and be satisfied as to his means. The SWI also needed proof that the appellant was living at his stated address. Based on the available evidence the Appeals Officer could not be satisfied that the appellant was living at his stated address at the date of claim. The Appeals Officer also concluded that as it was not possible to ascertain the appellant's weekly means the appeal was disallowed.

Outcome: Appeal disallowed.

Case Study 59: Farm Assist Eligibility

Summary Decision

Question under appeal: Eligibility - means.

Background:

The appellant's continued entitlement to Farm Assist was reviewed by the Department and payment was disallowed on the grounds that the appellant's revised weekly means exceeded the amount of Farm Assist that would be payable if the farmer had no means.

The appellant's means derived from his and his spouse's income from insurable employment and from his own income from farming. Weekly means from the appellant and his spouse's insurable employment were combined with weekly means from the appellant's farm income, to give a total weekly means assessment.

The appellant appealed the decision and provided up to date salary information for his spouse. He requested that holiday pay and PAYE tax be excluded from the calculation of means. The Department issued an additional revised decision confirming the decision based on the updated salary information.

Consideration:

Farm Assist is a means assessed payment calculated in accordance with Sections 213-215 and Part 2 of Schedule 3 of the Act and Articles 141-156 of the 2007 Regulations. The Appeals Officer outlined that this legislation provides that the appellant's means for entitlement to Farm Assist, shall consist of the gross income he may normally expect to receive from farming or any other form of self-

employment less any expenses necessarily incurred in carrying on any form of self-employment. Where the weekly means of the claimant or beneficiary are equal to or exceed the scheduled rate, no Farm Assist is payable.

The Appeals Officer also outlined that under the governing legislation, holiday pay must be assessed and PAYE tax is not an eligible deduction in relation to the calculation of means.

The Appeals Officer examined the calculations in both decisions from the Department and found that the appellant's means had been calculated in accordance with the requirements of the governing legislation.

Outcome: Appeal disallowed.

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Case Study 60: Farm Assist Means

Summary Decision

Question at issue: Review of eligibility – means.

Background:

The appellant's continued entitlement to Farm Assist was reviewed by the Department and following this review he was assessed with weekly means of €70.00 derived from farming. In his notice of appeal the appellant stated that information supplied from Revenue confirmed that he was exempt from tax due to low income and asked for the decision to be reviewed on this basis.

Consideration:

The Appeals Officer outlined that in accordance with Section 213(2) and Rule 1(9)(b) of Part 2 of Schedule 3 of the Act for the purposes of entitlement to Farm Assist, means are based on the gross yearly income which the farmer may reasonably be expected to receive from farming or any other form of self-employment, less any expenses necessarily incurred in carrying on any form of self-employment. The Appeals Officer noted that while the means assessment is based on the income for the previous year the assessment must give a fair and reasonable assessment of the net income which the holding will provide annually, that is an average annual income over the next number of years. It is based on the expected annual income having regard to normal output and costs appropriate to normal stock levels, capacity and market trends.

The Appeals Officer found that the assessment of farm means in the appellant's case

was fair and reasonable on the basis of the evidence. It was noted that the assessment allowed reasonable deductions in relation to operating costs associated with the farm. There is no provision in governing legislation which allows domestic or personal living expenses to be taken into account. The Appeals Officer concluded that the assessment of means by the Department was in line with the requirements of the governing legislation.

Outcome: Appeal disallowed.

State Pension (Contributory)

Case Study 61: State Pension (Contributory) Qualified Adult

Summary Decision

Question at Issue: Increase for a qualified adult.

Background:

The appellant's continued entitlement to an increase in respect of a qualified adult was reviewed and the Department decided that the appellant did not qualify for the increase from October 2020 on the grounds that weekly income attributable to his wife, assessed at €586, was greater than the €310 weekly income limit, above which an increase for qualified adult is not paid.

The appellant held joint accounts in financial institutions with his wife and he and his wife were also the joint owners of a second property. He contended that his wife should be assessed with nil income for the purposes of considering his entitlement to an increase for a qualified adult on his State Pension (Contributory), on the grounds that:

- His wife was not in receipt of any income and she had not made any monetary contribution to the household.
- He had extended his wife's access to his savings accounts over the years so that she would have access to these funds in the event that he became incapacitated by illness or accident or in the event of his death.
- He and his wife were completely unaware that this prudent household management decision would impact upon his wife's pension entitlement.

Consideration:

Social Welfare legislation provides for an increase in the weekly rate of State Pension (Contributory) where a claimant has a qualified adult. The legislation also sets out the circumstances in which a spouse is specified to be a qualified adult for the purposes of payment of an increase for a qualified adult. The relevant legislation is provided for in Section 112 (1) of the Act. Articles 6 to 10 of the 2007 Regulations set out the circumstances in which an increase for qualified adult is payable and the manner in which a spouse's income is calculated.

The Appeals Officer reasoned that, in the absence of objective evidence of a legal restriction on one or both account holders' ownership of and access to the monies held in accounts or property owned, he must conclude that all monies held in joint accounts belong on a 50/50 basis to the joint account holders. Therefore, monies held in joint accounts are assessable, in the determination of the appellant's wife's income, for purposes of determining the appellant's entitlement to an increase for a qualified adult. The Appeals Officer concluded that the appellant's wife's weekly income was calculated in accordance with the relevant legislation and based on the amount of capital/savings attributable to her (50% of monies held in accounts and ownership of property).

This amount was greater than the €310 per week income limit above which an increase for qualified adult is not paid. The Appeals Officer concluded that given the means of his wife, the appellant did not have an entitlement to an increase for a qualified adult on his State Pension (Contributory).

Outcome: Appeal disallowed.

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Case Study 62: State Pension (Contributory) Eligibility

Oral Hearing

Question at issue: Eligibility – contribution conditions.

Background:

The appellant appealed the decision of the Department to disallow an application for State Pension (Contributory) as the appellant did not satisfy the contribution conditions contained in Section 110(2) of the Act. Section 110(1) of the Act provides that the contribution conditions for State Pension (Contributory) shall not be regarded as being satisfied unless all self-employment contributions payable by a person have been paid.

The appellant made an application for State Pension (Contributory) in 2018 when she reached 66 years of age. The application was refused as she did not have

sufficient contributions to qualify. The appellant's self-employed contributions were not paid before she reached the age of 66 and in those circumstances the appellant did not satisfy Section 110(1)(a) of the Act. The Department outlined that the contributions must be paid before the appellant's 66th birthday.

The appellant stated that the initial tax/PRSI returns submitted to the Revenue Commissioners did not include self-employed contributions for the period from 2015 to 2017. The appellant stated that she subsequently amended her tax affairs and had paid the self-employed contributions for the period from 2015 to 2017.

The Department considered the information provided by the appellant regarding the self-employed contributions for the period from 2015 to 2017 and concluded that as the contributions were not paid before the appellant reached 66 years of age the contributions were not reckonable for State Pension (Contributory).

The appellant contended that the contributions were paid in accordance with Section 110(1)(a) of the Act.

Oral Hearing:

An oral hearing took place in which the appellant stated that she was self-employed during the tax years 2015 to 2017. The initial tax returns were completed in error and amended returns were submitted in 2019. The appellant submitted that if the self-employment contributions for the period 2015 to 2017 were considered she would qualify for State Pension (Contributory).

Consideration:

The Appeals Officer considered the interpretation of the relevant legislation and concluded that in line with the governing legislation contributions must be paid before reaching 66 years of age.

Outcome: Appeal disallowed.

State Pension (Non-Contributory)

Case Study 63: State Pension (Non-Contributory) Habitual Residence

Summary Decision

Question at issue: Right to reside and means.

Background:

The appellant, a widowed EU citizen, attained pension age in November 2016 and came to Ireland on an unspecified date in 2015. The appellant had been in receipt of a disability payment in her country of origin. The appellant advised that she came to live in Ireland with a family member so that he/she could care for her. The Department requested additional information regarding her means and residence status, including details regarding the family member upon whom she was claiming dependence. The appellant completed a HRC1 form but failed to provide the other information sought. The application was refused by the Department on the grounds that the appellant failed to meet the habitual residence and means conditions for State Pension (Non-Contributory). In relation to the habitual residence condition, it was determined that the appellant had failed to establish a right to reside in the State.

Consideration:

The matters for consideration were whether the appellant had established a right to reside either in her own right or as a dependent relative in the ascending line of an EU Citizen, and whether she met the means condition for State Pension (Non-Contributory). The Appeals Officer was of the view that documentary evidence was required to address the matters under appeal and these had not been provided either when sought by the Department or with the appeal.

The evidence advised of the appellant's advanced age, complex medical conditions, that she had come to Ireland to be cared for by her family members and her self-declaration she had not worked in Ireland and could not do so. Therefore, the Appeals Officer concluded that the appellant did not have a right to reside in her own right either as a worker or a jobseeker.

The appellant's right to reside as a dependent relative in the ascending line under the provisions of EU Directive 2004/38EC was also considered by the Appeals Officer. The Appeals Officer outlined that in order to establish a right to reside in the State as a dependent relative in the ascending line the person must establish a level of dependency on a family member, who was exercising EU Treaty free movement rights, both in Ireland and their country of origin. The appellant had been in receipt of a disability payment in her country of origin and other details sought by the Department had not been provided. The Appeals Officer concluded that the appellant had not established pre-dependency in her country of origin, notwithstanding her advised care commitments in Ireland. The Appeals Officer also concluded that the appellant failed to produce documentary evidence in relation to her means.

Outcome: Appeal disallowed.



Case Study 64: State Pension (Non-Contributory) Award Date

Oral Hearing

Question at Issue: Date of award and backdating.

Background:

The appellant was awarded State Pension (Non-Contributory) in January 2020. Subsequently, the appellant sought backdating of her claim to her 66th birthday in 2017.

The appellant had made a claim for State Pension (Non-Contributory) in August 2018 which had been disallowed by the Department on the grounds that the appellant had failed to attend an interview with a Social Welfare Inspector of the Department. The appellant did not appeal this decision.

Oral Hearing:

At oral hearing the appellant stated she delayed in making her claim as her husband's claim for State Pension (Contributory) had been refused on the grounds that he had not paid all prescribed PRSI contributions. The appellant submitted that she was waiting for her husband's accounts to be finalised before applying. She went ahead and applied in August 2018 as her husband had been hospitalised and they needed the income. The appellant said her husband had financially supported the family all their lives and she was not experienced in making claims or knowing her entitlements.

The appellant stated she had not received any correspondence from the Department about attending a meeting with the Social Welfare Inspector. She said when she received the decision disallowing her claim in November 2018 she called the Department to request that the claim be kept open and that she would send a letter to this effect. She said two to three weeks later she wrote a letter to the relevant section outlining her circumstances and that she wished for her claim to be kept open. The appellant stated that she did not receive an acknowledgment of this letter.

The appellant stated she was of the view that her claim was still being processed. In January 2020 the appellant's husband made a fresh claim for State Pension (Contributory) as his business accounts had been regularised. The appellant also made a new claim for State Pension (Non-Contributory) with the finalised business accounts. She said that when that application was allowed, she understood everything was in order and she would receive backdating of the payment to her 66th birthday.

Consideration:

The Appeals Officer noted that it was a condition of entitlement to State Pension (Non-Contributory) that claims be made in the prescribed manner within the prescribed time. Section 241 of the Act allows backdating of State Pension (Non-Contributory) payments for up to six months where it is established that the claimant was entitled to the payment at an earlier date and that there was sufficient good cause for the failure to apply within the prescribed time. Article 186 of the 2007 Regulations permits backdating payments beyond six months in two specific circumstances:(i) where the delay in making the claim is due to information given by an officer of the Minister to the person; (ii) where the delay in making a claim is due to the person being so incapacitated that he or she is unable to make a claim.

The Appeals Officer examined whether there was good cause for the delay in making the claim and whether the delay was due to information given by an officer of the Minister.

The appellant stated that on receipt of the first decision in November 2018 she phoned the Department advising she was not aware that the Social Welfare Inspector had scheduled a meeting. The appellant said she understood following her phone call to the Department that her claim could be reinstated, and she had done so by sending in a letter at the time.

The appellant outlined that her claim required input from her husband as all household income came from his earnings. She explained that her husband was diagnosed with a life limiting condition in 2011 which caused deterioration in how he managed their affairs. Her husband was self-employed and failed to correctly deal with his PRSI contributions liability. She said she did not understand this position until January 2020 when matters were regularised. She said she was led to believe that her claim was being processed but that she had to produce documents based on her husband's earnings.

A copy of a note of the telephone call was on the file. It stated that the appellant wished to pursue her claim and would send in a letter confirming this. The appellant could not provide a copy of this letter and stated that she did not receive an acknowledgement letter or follow up correspondence. The Department maintained it had no record of receiving a letter to this effect and stated it did not receive any correspondence or contact from the appellant until she reapplied for State Pension (Non-Contributory) in January 2020.

The appellant submitted that the information given by the officer of the Minister was deficient as it had not been clear as to allow her to fully understand the position or the consequences that she would not be entitled to any payments backdated for this period.

The Appeals Officer concluded that good cause had been established for the delay in making the claim and backdating for a period of six months should be allowed. In relation to backdating more than six months, the Appeals Officer acknowledged

there was merit to the appellant's understanding that she required her husband's accounts to support her claim for State Pension (Non-Contributory), given that it is a means tested payment. However, the Appeals Officer was not satisfied it had been established by the appellant that her delay in making the claim was due to incorrect information given by an officer of the Minister. The Appeals Officer therefore partially allowed the appeal.

Outcome: Appeal partially allowed.

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Guardian's Payment (Non-Contributory)

Case Study 65: Guardian's Payment (Non-Contributory) Eligibility

Summary Decision

Question at issue: Eligibility - definition of 'orphan'.

Background:

The appellant's claim for Guardian's Payment (Non-Contributory) in respect of her two grandchildren was refused by the Department on the grounds that the children were not considered to be orphans within the meaning of the governing legislation.

Consideration:

In accordance with Section 2(1) of the Act a child is regarded as an orphan if both of the child's parents are dead, or one parent is either dead or unknown or has abandoned and failed to provide for the child, and the other parent is unknown or has abandoned and failed to provide for the child.

The appellant came to live in Ireland and her two grandchildren came to live with her. The appellant stated that the children came into her care so they could receive an education in Ireland as their parents could not afford to educate them in their home country.

The appellant submitted that she received no financial support from the children's parents and she had responsibility for the medical, financial and care needs of the children. She also submitted that there was no income coming into the parents' house and they were unable to provide for the children. It was the appellant's contention that the parents had abandoned the children. In her application form the appellant indicated that the children's parents were in daily contact with them.

The Appeals Officer concluded that given all the facts of the case, including the regular contact with their parents, the children could not be considered to have been abandoned by their parents and could not therefore be considered to be orphaned within the meaning of the governing legislation.

Outcome: Appeal disallowed.

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Case Study 66: Guardian's Payment (Contributory) Eligibility

Summary Decision

Question at issue: Eligibility - definition of 'orphan'.

Background:

The appellant's application for Guardian's Payment (Contributory) in respect of her niece was disallowed by the Department on the grounds that the child was not considered to be an orphan within the meaning of the governing legislation.

Consideration:

In accordance with Section 2(1) of the Act a child is regarded as an orphan if both of the child's parents are dead, or one parent is either dead or unknown or has abandoned and failed to provide for the child, and the other parent is unknown or has abandoned and failed to provide for the child.

The Appeals Officer was satisfied based on documentation provided by Túsla (the Child and Family Agency) that the mother had abandoned the child. In her application form the appellant indicated that the child's father provided weekly financial support of €20. The Department contended that the arrangement whereby the father of the child paid €20 per week towards her care did not constitute parental abandonment.

The Appeals Officer outlined that the legislation does not contain a definition of what constitutes abandonment of a child. The Appeals Officer noted that the input from the father in relation to the upbringing and welfare of his child was minimal and it appeared from the evidence that he had no input in the past. Notwithstanding that the child's father paid €20 per week towards the child's financial support the Appeals Officer was satisfied that the child's father had effectively abandoned his daughter and she was an orphan within the meaning of the governing legislation.

Outcome: Appeal allowed.

Widower's Contributory (EU Pro Rata) Pension

Case Study 67: Widower's Contributory (EU Pro Rata) Pension

Summary Decision

Question at issue: Rate of pension awarded.

Background:

The appellant's application for Widow(er)'s Contributory Pension was initially disallowed by the Department on the grounds that he did not have a minimum of 260 paid contributions on either his, or his late spouse's, Irish social insurance record. The Department subsequently decided that the appellant was entitled to a small weekly pro-rata pension, based on his own social insurance record in Ireland and in another EU Member State. Copies of his social insurance records in both Member States showed that the appellant had 195 contributions based on his Irish record alone and a total 1,540 contributions based on his record in both Member States. The appellant appealed the decision disputing the method used in calculating his payment and submitted that as he had been resident in the State he should be entitled to full payment as he was an Irish citizen.

Consideration:

The appeal was considered under the provisions of Sections 124 and 125 of the Act and Articles 51 and 52 of Regulation (EC) No 883/2004. The methodology used to calculate the rate of pension and the appellant's social insurance records in both Member States was examined as part of the appeal. The Appeals Officer was satisfied that the appellant's entitlement had been calculated correctly and in accordance with the governing legislation.

Outcome: Appeal disallowed.

Insurability of Employment

Case Study 68: Insurability of Employment

Oral Hearing

Question at Issue: Whether a worker had been employed or self-employed.

Background:

The appeal by a company against a decision of the Department arose following a request in 2018 from the worker on the insurability of his employment with the appellant since 2008. The worker had been treated as a self-employed worker and paid PRSI at the self-employed PRSI Class S rate.

The Department decided that the worker had been in insurable employment since 2008 under a contract of service and PRSI Class A applied where earnings exceeded €30 per week.

The appellant contended that the worker had always worked under contract as a self-employed contractor and had always had the option to accept or reject any work offered. The worker provided his specialised services to various company clients in any given week and had not provided his services exclusively to one client. The appellant stated that the worker had been treated as self-employed and that the Revenue Commissioners had approved this. The appellant maintained that the work involved the provision of temporary, often very urgent, service to its clients for short periods with no obligation on either party to provide or accept the work. The appellant contended that this differed from a situation where a worker was required to provide full-time labour.

Consideration:

The matter to be determined by the Appeals Officer was whether the working arrangements between the appellant and the worker since 2008 were consistent with a contract for services or a contract of service.

The Appeals Officer in considering the appeal relied on *The Code of Practice for Determining Employment or Self-Employment Status of Individuals*. The Code of Practice sets out the key characteristics that are used to inform decisions on employment status, taking into account current labour market practices and developments in legislation and case law.

The Appeals Officer was also guided by case law from the Courts, including *Karshan (Midlands) Limited trading as Dominos Pizza and Revenue Commissioners [2019] IEHC 894; Neenan Travel Limited and Minister For Social and Family Affairs [2008 No.440SP]; Minister for Agriculture & Food –v- Barry & Ors [2008], and [2015] IESC 63*.

The Appeals Officer found that mutuality of obligation existed as the worker had undertaken to do work for the appellant company in return for agreed remuneration and in more recent years worked under a written contract which contained an expectation of payment in return for labour.

The Appeals Officer saw nothing wrong with a worker reappraising his working status as the working relationship had evolved over the years. He considered that what may have started out as self-employment could evolve into employment with increased continuity and stability of work patterns. The work was no longer seasonal

and irregular as described in the contract but had condensed into a very small number of the same weekly clients thereby eliminating the risk of having no work.

Having heard the submissions from the parties, the Appeals Officer concluded that the worker had been working consistently with the same small number of company clients for a number of years and that this reflected more elements of a contract of service than a contract for services. The Appeals Officer regarded it as significant that the worker's employment pattern was predictable, that he was paid a fixed hourly rate; that he was paid fortnightly; that he was not exposed to financial risk; that he carried no public liability insurance; that he provided labour only and was obliged to provide personal service. The worker was unsupervised, with the company only intervening if a client expressed dissatisfaction with the worker's performance.

The Appeals Officer did not find that the worker had been working under a contract of service for the entire duration of the working relationship. The Appeals Officer was of the view that in the earlier years of the working relationship the work had been done on a more ad hoc basis and mutuality of obligation was not entirely evident. After consideration of all the facts, the Appeals Officer took the view that the working relationship had evolved from a contract for services into a contract of services after a period of years, during which the work pattern had condensed into 5 days a week consistent work for a very small number of ongoing clients and which had stabilised the worker's fortnightly earnings paid on the basis of the repeated hours he worked.

Outcome: Appeal partly allowed.

Case Study: 69 Insurability of Employment

Summary Decision

Question at Issue: Whether a worker had been employed or self-employed.

Background:

A decision on insurability of employment was requested on behalf of a worker by a recruitment company, in respect of his employment in a food company from December 2018 to May 2019. The worker was a general operative performing work for a food company and he regarded himself as an employee of the recruitment company.

The statement provided by the recruitment company classed the worker as self-employed. He was a general operative/trimmer in the factory, supplied labour only, was not subject to direction, control or dismissal by the recruitment company, any

control was site specific, based on hours and business requirements where he worked. As he was contract based, he controlled the duration of his contract, he was free to take up similar work at the same time with another business or company, he was paid monthly, a fixed hourly rate applied. Pay was negotiated by the individual and the company's office in another Member State. All equipment was supplied. The worker did not provide public liability insurance. Work was done at the factory premises. The worker could not gain or lose from the performance of the work. He had to render personal service and could not hire an assistant.

Social Welfare Inspectors of the Department who investigated this matter onsite formed the view there was not any difference in the work performed between those directly employed by the factory and those engaged for the factory by the recruitment company, who were categorized as self-employed. The company provided copies of the forms supplied by ZUS (Polish social security) confirming that the worker was a posted worker under provisions contained in Regulation (EC) 883/2004 and as such, subject to Polish social insurance. Copies of income statements and monthly returns to the Polish authorities were also provided. Direct employees of the recruitment company and self-employed people both worked on the site, performing similar work. If an individual performed satisfactorily, they were offered a contract as a direct employee and became subject to Irish PRSI/PAYE.

The Department advised that the documentation supplied by the Polish authorities appeared valid. However, for a self-employed person to avail of posting provisions, they must have, prior to posting, pursued a similar activity in the country of origin. This was not the case with this worker, as in Poland he was self-employed in the construction industry. The Department was satisfied the worker was not self-employed and he was a general operative in a factory.

Article 12(2) of Regulation (EC) 883/2004 deals with self-employed persons. The Department queried the validity of the A1 certificates issued by the Polish authorities. The Polish authorities confirmed they reviewed this (and other A1 certificates) and withdrew the A1 certificates as the workers did not meet the conditions required in Poland prior to commencing the posting. The Department decided that as the A1 certifications were withdrawn by Poland, the worker was not covered for the period.

Consideration:

The Appeals Officer concluded that the worker was not entitled to self-employed status under the terms of a posted worker with an A1 certificate, as he was not performing the same type of work in Ireland as he had been performing in Poland. Given the evidence that the worker was a direct employee in the factory, the Appeals Officer decided that the worker was not self-employed and the employment was insurable under the Social Welfare Acts at PRSI Class A.

Outcome: Appeal disallowed.

Voluntary Contributions

Case Study: 70 Voluntary Contributions

Summary Decision

Question at issue: Prescribed time for making a claim.

Background:

The appellant's application in 2021 to pay voluntary contributions for an 11 year period and ongoing from 2021 was refused by the Department on the grounds that the appellant failed to apply within the prescribed time provided for in legislation.

The appellant cited lack of awareness of the scheme as the reason for not applying previously.

Consideration:

Chapter 4 of Part 2 of the Act contains the provisions relating to voluntary contributors and for the payment of voluntary contributions. Article 28 of the Social Welfare (Contributions and Insurability) Regulations, 1996 (S.I. No. 312 of 1996) provides that an application to become a voluntary contributor must be made within 60 months after the end of the contribution year in which the applicant ceased to be an employed contributor.

The Appeals Officer outlined that in the appellant's case the last paid/credited contribution in Ireland was in 2009, which was over 10 years prior to the application to become a voluntary contributor and well outside the 5 year limit provided for in the governing legislation.

In the appeal correspondence, the appellant cited lack of knowledge of the scheme as the reason for not applying previously. The appellant had also been out of the country for many years. The appellant submitted that it was only in 2021, when someone informed him of the scheme, that he undertook to apply to retrospectively pay voluntary contributions for the previous 11 years and ongoing from 2021.

The Department submitted that lack of awareness of the scheme was not a mitigating factor and that it makes extensive efforts to publicise the voluntary contribution scheme through its own network of public local offices and other information channels.

The Appeals Officer concluded that there was no provision within the governing legislation to allow an application submitted outside the time prescribed for making a claim to become a voluntary contributor.

Outcome: Appeal disallowed.



Chapter 5

Section 318

Reviews

Chapter 5 - Section 318 Reviews

Reviews of Appeals Officers' decisions in accordance with Section 318 of the Social Welfare Consolidation Act 2005

Introduction

This Chapter of my Report includes a summarised account of a selection of the reviews carried out by me in 2021. In each case, and in accordance with Section 318 of the Act, I emphasise that my role is a revising role and is not another avenue of appeal. In considering requests for a review under this provision I consider whether the Appeals Officer has erred in relation to the law or the facts.

In general, an Appeals Officer's decision is final and conclusive and can only be revised in circumstances which are defined in the Act. Section 318 gives power to the Chief Appeals Officer to revise any decision of an Appeals Officer where an error of fact or law has occurred. In practice where a review is being sought, the appellant or other interested party to an appeal is asked to give specific reasons why they believe a mistake has been made regarding the law or the facts.

In this year's Annual Report, I have selected case-studies on a thematic basis to reflect those issues that arise most frequently on appeal. I have also included a small number of other cases.

The themes are:

- Interpretation of provisions of Directive 2004/38/EC and the Free Movement of Persons Regulations S.I. No. 548 of 2015
- Provision of information
- Carer's Allowance/Benefit – Care Required/Care Provided

Like the case studies in the previous Chapters, the reviews included in this Chapter of my Report are a summarised account of the main features in each case and all personal details have been anonymised.

Theme: The interpretation of provisions of Directive 2004/38/EC and the European Communities (Free Movement of Persons) Regulations 2015, (S.I. No. 548 of 2015)

Right of residence for EU nationals and their families is governed by Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The interpretation of provisions of Directive 2004/38/EC and the European Communities (Free Movement of Persons) Regulations 2015, (S.I. No. 548 of 2015) featured prominently in a number of appeals in the course of 2021.

The case studies featured in this section relate specifically to:

- The spouse of a Union citizen
- The direct descendant of a Union citizen under the age of 21
- The dependent direct relative of a Union citizen in the ascending line
- The sibling of a Union citizen

Case Study: 71 Disability Allowance Right to Reside

Question at issue: Right to Reside – spouse of a Union citizen

Grounds for Review:

The appellant sought a review of the Appeals Officer's decision on the grounds that the Appeals Officer erred in law. The appellant submitted that her right of residency in the State was established in accordance with Article 7 of S.I. No. 548 of 2015 on the basis that she was a qualifying member of a European Union citizen residing in the State in exercise of their rights under Directive 2004/38/EC.

Background:

The appellant's claim for Disability Allowance was disallowed on the grounds that she had not established a right to reside in the State. The appellant, a third country national, came to Ireland with her husband who was a worker in the State. Correspondence on file from the Irish Naturalisation and Immigration Service (INIS) verified that the appellant had been granted a residence card under Regulation 7 of the European Communities (Free Movement of Persons) Regulations 2015 and Directive 2004/38/EC and this had been approved on the basis of her being a permitted family member of a Union citizen who was residing in the State in exercise of his rights under the Directive. It was clear from the correspondence that the

appellant was granted a Stamp 4 EU Fam³ being the spouse of an EU citizen who was a worker in the State. The notification advised the appellant that she was entitled to enter employment and engage in business in the State, subject to her continued conformity with the Regulations.

Consideration:

The evidence in this case was that the appellant was not a national of an EU Member State but was the spouse of a European Union citizen who was a worker in the State. In these circumstances the appellant had established a right to reside in the State in accordance with Article 6 (3) of Regulation 548 of 2015.

However, Article 11 of the Regulation provides that *a person residing in the State under Regulation 6, 9 or 10 shall be entitled to continue to reside in the State for as long as he or she satisfies the relevant provision of the regulation concerned and does not become an unreasonable burden on the social assistance system of the State.*

In my review I outlined that the right to reside of some categories of persons covered by Article 6 derives from dependency on a Union citizen worker being established. I considered that the concept of dependency finds expression in Article 11 by the requirement of not becoming an unreasonable burden on the State. There was however no such requirement in the case of the spouse of an EU citizen worker. As the right to reside of a spouse of an EU citizen worker does not derive from dependency on the Union citizen worker, I did not consider that an application for social assistance could result in the person becoming an unreasonable burden on the social assistance system of the State.

In the circumstances I concluded that the appellant, being the spouse of an EU citizen who was a worker in the State, has a right to reside in the State in accordance with Article 6(3) of S.I. No. 548 of 2015.

I concluded therefore that the Appeals Officer had erred in law in that he did not consider if the appellant was a family member of a Union citizen who satisfied one or more of the conditions referred to in clause (i),(ii) or (ii) of Article 6 (3)(a) and did not have regard to the provisions of Article 6(3)(b).

Outcome: Decision revised.



³ Immigration stamp issued by Irish Naturalisation and Immigration Service (INIS) which is given to the non-EU dependent family members of an EU national.

Case Study: 72 Disability Allowance Right to Reside

Question at issue: Right to Reside – direct descendant of a Union citizen under the age of 21

Grounds for Review:

The appellant sought a review of the Appeals Officer's decision on the grounds that the Appeals Officer erred in law. The appellant submitted that her right of residency in the State was established in accordance with Regulation 7 of S.I. No. 548 of 2015 on the basis that she was a "qualifying family member" of a Union citizen residing in the State in exercise of their rights under Directive 2004/38/EC.

Background:

The appellant, a third country national and under the age of 21 at the date of claim, came to Ireland with her mother to join her father whom she stated was supporting her. Her claim for Disability Allowance was refused by the Department on the grounds that she was not habitually resident in the State. The Department outlined that the appellant had a Stamp 4 EU FAM and therefore had the right to reside under S.I. No 548 of 2015, but that she must be self-supporting through employment, self-employment or through the financial support of family members.

In her letter of appeal, the appellant stated that due to a severe disability she was physically, mentally and emotionally dependent on her parents who were her main carers. Her father, an EU citizen, had lived and worked full-time in Ireland for a considerable number of years.

The Appeals Officer was satisfied that the medical criteria for receipt of Disability Allowance was met but, insofar as the appellant's right to reside in the State was concerned concluded that as the holder of a Stamp 4 EU FAM, while the appellant could live and work in the State, she had no entitlement to social assistance. Relying on Article 11 of S.I. No. 548 of 2015 the Appeals Officer concluded that the appellant had a right to reside in the State as a family member of an EU citizen as long as she did not become an unreasonable burden on the social assistance system of the State.

Consideration:

From my review of the material that was before the Appeals Officer, the appellant was granted a Stamp 4 EU Fam being the direct descendant of an EU citizen and was entitled to enter employment and engage in business in the State, subject to her continued conformity with the Regulations. Documentation on the file from the Department of Justice verified that the appellant's application for a residence card was approved on the basis that she was a *qualifying family member* of a Union citizen who was residing in the State in exercise of their rights under the Directive.

The evidence in this case was that the appellant was not herself a national of a Member State but was the direct descendant of a Union citizen who was a worker in the State and who at the date of claim was under the age of 21. In these circumstances I was satisfied that the appellant had established a right to reside in the State in accordance with Article 6 (3) of Regulation 548 of 2015. There is no provision in Article 6 of the 2015 Regulation which stipulates that the appellant couldn't claim social assistance.

I considered therefore that the Appeals Officer had erred in law insofar as she concluded that the appellant couldn't claim social assistance and that her continued right to reside was subject to her not becoming an unreasonable burden on the social assistance system of the State.

In my review I outlined that Article 11 of the Regulation provides that *a person residing in the State under Regulation 6, 9 or 10 shall be entitled to continue to reside in the State for as long as he or she satisfies the relevant provision of the regulation concerned and does not become an unreasonable burden on the social assistance system of the State.*

I noted that the right to reside of some categories of persons covered by Article 6 derives from dependency on a Union citizen worker being established. I considered that this concept of dependency finds expression in Article 11 by the requirement of not becoming an unreasonable burden on the State. I considered however that there is no such requirement in the case of *a direct descendant of the Union citizen, who is under the age of 21* of an EU citizen worker. As the right to reside of *a direct descendant of the Union citizen, who is under the age of 21* of an EU citizen worker does not derive from dependency on the Union citizen worker I did not consider that an application for social assistance could result in the person becoming an unreasonable burden on the social assistance system of the State.

In the circumstances I concluded that the appellant being *a direct descendant of the Union citizen who is a worker in the State and who at the date of claim was under the age of 21*, had a right to reside in the State in accordance with Article 6(3) of S.I. No. 548 of 2015.

Outcome: Decision revised.

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Case Study: 73 Disability Allowance Right to Reside

Question at issue: Right to Reside - dependent direct relative in the ascending line.

Grounds for Review:

The appellant sought a review of the Appeals Officer's decision on the grounds that the Appeals Officer erred in law. It was submitted that the appellant had a right to reside in the State as a direct dependent relative in the ascending line of a worker on whom she had been dependent prior to coming to Ireland.

It was contended that while the Appeals Officer acknowledged that the appellant was a direct dependant in the ascending line of a worker and accepted the evidence of her dependence prior to moving to Ireland, the disallowance of the appeal under Article 6 of S.I. No. 548 of 2015 on the basis that the appellant had not worked, couldn't work or support herself and did not have comprehensive sickness insurance was an error in law.

Background:

The appellant was a citizen of the EU and the mother of an EU citizen resident and working in the State. The appellant's claim for Disability Allowance was disallowed by a Deciding Officer of the Department on the grounds that she had not demonstrated a right to reside in the State. An Appeals Officer disallowed the subsequent appeal and a review of that decision was sought. An oral hearing was held for the purposes of the review. The Appeals Officer concluded that the appellant had a right to reside in the State in accordance with Article 6 of S.I. 548 of 2015 on the basis that she was a dependent direct relative in the ascending line of a Union citizen who was a worker but was not entitled to receive assistance under the Social Welfare Acts. The Appeals Officer was satisfied that the appellant had established that the dependency existed prior to the appellant joining her daughter in Ireland.

Consideration:

From my review of the Appeals Officer's decision it was clear that the Appeals Officer was satisfied that the appellant was a dependent direct relative in the ascending line of a Union citizen who was a worker in Ireland. The Appeals Officer was also satisfied that the appellant had established that the dependency existed prior to joining her daughter in Ireland.

The Appeals Officer considered that the appellant, a Union citizen, had a right to reside on the basis of being a dependent direct relative in the ascending line of a Union citizen who is a worker in Ireland. In those circumstances the provisions of Article 6(3)(a)(iv) of S.I. 548 of 2015 applied.

However, relying on Directive 2004/38/EC and the 2015 Regulations giving further effect to the Directive, I formed the view that the right to reside is not unconditional.

I outlined that Article 11 of the 2015 Regulations, dealing with the retention of rights of residence, provides:

"A person residing in the State under Regulation 6, 9 or 10 shall be entitled to continue to reside in the State for as long as he or she satisfies the relevant provision of the regulation concerned and does not become an unreasonable burden on the social assistance system of the State."

I concluded that while the appellant was residing in the State under Article 6 of the 2015 Regulations, the right to reside is not unconditional and that the appellant may continue to reside for as long as she satisfied the provisions of Article 6 and did not become an unreasonable burden on the social assistance system of the State.

I therefore did not consider that the Appeals Officer had erred in law on the grounds submitted and, in those circumstances, I declined to revise the decision of the Appeals Officer.

Outcome: Decision not revised.

Subsequent Court Proceedings:

The outcome of my review under Section 318 of the Act was subsequently challenged in the High Court by way of Judicial Review proceedings. The High Court in its judgment found that the requirement of self-sufficiency does not apply to dependent family members of a migrant worker who are lawfully resident in the State for a period of more than three months. The Court found that Article 11 of the 2015 Regulations goes too far and is invalid as it purports to extend such a requirement to a *dependent* family member of a migrant worker who is lawfully resident in the State.

The matter was appealed by the State to the Court of Appeal, which decided to make a preliminary reference to the Court of Justice of the European Union on the interpretation of the Directive.

The following questions have been referred:

- (i) Is the derived right of residence of a direct relative in the ascending line of a Union citizen worker pursuant to Article 7(1) of Directive 2004/38/EC conditional on the continued dependency of that relative on the worker?
- (ii) Does Directive 2004/38/EC preclude a Member State from limiting access to a social assistance payment of benefit by a family member of a Union citizen worker who enjoys a derived right of residence on the basis of her dependency on that worker, where access to such payment would mean she is no longer dependent on the worker?

- (iii) Does Directive 2004/38/EC preclude a Member State from limiting access to a social assistance payment of benefit by a family member of a Union citizen worker who enjoys a derived right of residence on the basis of her dependency on that worker, on the grounds that payment of benefit will result in the family member concerned becoming an unreasonable burden on the social assistance system of the State?

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Case Study: 74 Disability Allowance Right to Reside

Question at issue: Right to Reside – sibling of a European Union citizen

Grounds for Review:

The appellant sought a review of the Appeals Officer’s decision on the grounds that the Appeals Officer erred in law. The appellant submitted that his right of residence in the State was established as a dependant of a European Union citizen. It was also submitted that the appellant was entitled to equal treatment under the 2004 EU Citizens Directive (Directive 2004/38/EC) with nationals of the host State.

Background:

The appellant came to Ireland to join his sister who was a worker in the State. His application for Disability Allowance was refused by the Department on the grounds that he had failed to establish that he had a right to reside in the State. In disallowing the subsequent appeal, the Appeals Officer concluded that the appellant was not a *qualifying family member* of his sister as he was not the spouse/partner, direct descendent or direct ancestor of his sister. The Appeals Officer also found that there was no evidence in the appeal documentation to indicate that the Minister for Justice had decided that the appellant should be treated as a *permitted family member* of his sister for the purposes of Regulation 3(6) of S.I. 548 of 2015.

Consideration:

On reviewing the decision of the Appeals Officer I also concluded that the appellant did not meet any of the relationships identified to be regarded as a *qualifying family member*. I noted that the permission for *permitted family members* to enter the State is provided for in Article 5 of the 2015 Regulations. The provisions apply to a family member other than a *qualifying family member* and require Member States to facilitate the entry and residence of:

- Family members who are dependants or members of the household of the EU citizen or where serious health grounds strictly require the personal care of the family member by the EU citizen; and
- A partner with whom the EU citizen has a durable relationship.

I outlined that Article 5(2) of the 2015 Regulations provides that an application may be made to the Minister for a decision that a person be treated as a *permitted family member* for the purposes of the 2015 Regulations and various documents are required. The Minister in this case is the Minister for Justice.

Insofar as I was referred to Article 24 of the Directive I noted that the equal treatment provisions which apply to Union citizens and their family members is premised on residence in the State on the basis of the Directive.

Based on the evidence presented by the appellant I concluded that the Appeals Officer has not erred in fact and/or law.

Outcome: Decision not revised.



Theme: Provision of information

In any given year several appeals are submitted where appellants have failed to provide information that is required in order to allow a decision to be made on their entitlement. While the information required varies from one scheme to another, all claims for a social welfare payment require the completion of an application form and the provision of supporting documentation.

In some cases, typically where entitlement is dependent on a means test, information may be required by a Deciding Officer/Designated Person or Social Welfare Inspector when investigating entitlement. It is a statutory requirement that every claimant furnish such certificates, documents, information, and evidence as may be required by an officer of the Minister. The onus is on the claimant to demonstrate to the satisfaction of a Deciding Officer/Designated Person in the Department that she/he qualifies for the scheme applied for or continues to be entitled to a benefit already in payment.

The following two case studies illustrate that if claimants/appellants provide information requested by the Department their claims can be decided more quickly and without going through the lengthy appeals process.

Case Study: 75 Jobseeker's Allowance Means

Question at issue: Jobseeker's Allowance means assessment and provision of information

Grounds for Review:

The appellant sought a review of the Appeals Officer's decision stating that she had provided all the information requested by the Department in connection with a review of her entitlement to Jobseeker's Allowance.

Background:

The appellant had been in receipt of Jobseeker's Allowance and her claim was disallowed by the Department on the grounds that she had not shown that her means were less than the weekly rate of Jobseeker's Allowance appropriate to her family circumstances. The Department stated that the appellant had failed to provide evidence to a Social Welfare Inspector in relation to capital and property when requested to do so. The information requested related to a compensation award of a substantial amount of money awarded to the appellant's spouse, details of named bank accounts and the current market value of a site owned by her spouse or evidence of sale if the property had been sold. The Inspector reported that the appellant has failed to provide the information and it had not been possible to

determine her continued entitlement to Jobseeker's Allowance at the rate initially approved.

Consideration:

The legislation governing entitlement to Jobseeker's Allowance is contained in Chapter 2 of Part 3 of the Act and certain provisions of the 2007 Regulations also apply.

Section 141 of the Act provides that entitlement to Jobseeker's Allowance is subject to an assessment of means. In accordance with Article 181 of the 2007 Regulations it is a requirement that every claimant furnish such certificates, documents, information and evidence as may be required by an officer of the Minister for the purposes of deciding a claim.

While the appellant stated that she had provided all the information requested by the Social Welfare Inspector, the Appeals Officer and I, on reviewing that decision, were satisfied that the appellant had failed to provide any of the information requested and in those circumstances it was not possible to carry out a means assessment for the purposes of establishing entitlement to Jobseeker's Allowance.

Outcome: Decision not revised.

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Case Study: 76 Supplementary Welfare Allowance Entitlement /Information required

Question at issue: Entitlement and information required

Grounds for Review:

The appellant requested a review of the Appeals Officer's decision on the grounds that his appeal was not handled in a fair, impartial, and independent manner as nobody in the Social Welfare Appeals Office ever sought clarification from him on any of the issues or sought any documents from him on any of the issues. In those circumstances the appellant asserted that the Appeals Office had not considered his appeal in a competent manner.

Background:

The appellant submitted an application for a basic Supplementary Welfare Allowance payment and also requested backdating of the payment for a considerable number of years. The Department asked the appellant to provide evidence of income

including payslips if employed, copies of recent accounts if self-employed and last notification from the Revenue Commissioners, 6 months up to date statements of all financial accounts, and details of the primary payment for which the person was applying. The appellant was also asked to complete a habitual residence form.

The claim was disallowed by the Department on the grounds that the appellant failed to provide any of the information requested. The appellant also failed to complete the habitual residence form.

The decision of the Department was appealed and while the appellant submitted various grounds, some of which were outside of the appeal process, in support of the appeal and copies of evidence already provided with the original application, he failed to provide any of the information requested by the Department.

In evaluating the evidence, the Appeals Officer outlined that the conditions to be satisfied for payment of Supplementary Welfare Allowance are contained in social welfare legislation. In relation to this claim, the Department decided that the appellant did not have an entitlement to payment because he had not provided all the documents requested in order to make an informed decision. The Appeals Officer was satisfied that while the appellant furnished evidence of bank statements and a tax clearance certificate he failed to furnish any of the other outstanding information.

Relying on Article 19 of the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S.I. No. 412 of 2007) the Appeals Officer concluded that as the appellant failed to provide the requested evidence, a means test could not be completed or a decision on his habitual residence status established and therefore the Department had no option but to disallow the claim.

Consideration:

In light of the assertions made in support of the appeal it was necessary to outline that a review by the Chief Appeals Officer under Section 318 of the Act is confined to reviewing the material that was before the Appeals Officer to establish if an error of fact and/or law has occurred such that the decision should be revised. While the appellant asserted that his appeal was not handled in a fair, impartial and independent manner he did not identify an error of fact and/or law which rendered the decision of the Appeals Officer erroneous. The appellant's submission was instead premised on the assertion that the Appeals Office did not seek clarification from him on any of the issues or sought any documents from him in relation to his claim. I outlined that the role of the Appeals Office is to determine appeals against decisions of the Department and that when a person makes a claim for any payment under the Act the onus is on that claimant to demonstrate that he/she has an entitlement to the payment in accordance with the governing legislation. In this respect I outlined that a claimant is also required to provide such documents and information as may be required by a decision maker for the purpose of deciding a claim. It was clear that the Department in considering the appellant's entitlement

required certain information as specified in correspondence in order to make a decision. It was also clear that while the appellant submitted some information, he did not provide all of the information requested by the Department. That remained the position when the appellant submitted an appeal.

I was satisfied that the Appeals Officer had not erred in fact and/or law and in circumstances where the information required to make an informed decision had not been provided by the appellant it was not possible to determine entitlement.

Outcome: Decision not revised.



Theme: Carer's Allowance – Care provided/care required

Matters relating to the provision of care and the need for care arise quite frequently on appeal in relation to Carer's Allowance. It is often the case that a claim is disallowed on the grounds that care is not required by the care recipient, but the evidence submitted by the appellant and the grounds for the appeal relate to care provided by the carer on the assumption that the provision of care means that the care is required. Equally, in the case of some appeals disallowed on the grounds that care is not being provided the evidence submitted and the appeal contentions often relate to care required by the care recipient.

I selected the following case-study to illustrate these points. While other issues arose in the appeal, the summary provided is limited to the issues of care provided by the carer and care required by the care recipient.

A person is not regarded as requiring full-time care and attention unless he or she requires from another person continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or the person is so incapacitated as to need continual supervision to avoid danger to themselves and the person is likely to require full-time care and attention for at least 12 months.

Case Study: 77 Carer's Allowance Eligibility

Question at issue: Carer's Allowance eligibility – care required

Grounds for Review:

The medical evidence in this case was that the care recipient, in his mid-20s, had diagnoses of oppositional defiant disorder, obsessive compulsive disorder and attention deficit disorder. It was submitted that he was vulnerable to suggestion and recently served a term of youth detention in relation to a drugs offence. It was outlined that the evidence presented demonstrated that the care recipient remained vulnerable in his local area. The carer submitted that the care recipient's behaviour was erratic, and she was concerned that the care recipient was vulnerable to gangs in the area in which he lived and he had become a prisoner in his own home. The carer was concerned as to the level of naivety demonstrated by the care recipient and submitted that the care recipient presented a danger to himself and was easily taken advantage of by others. It was submitted that the carer's sole purpose was to protect the care recipient against these risks.

Background:

The appellant's claim for Carer's Allowance, in respect of care which she was providing was disallowed by the Department on the grounds that the care recipient

was not in need of full-time care and attention as required by the governing legislation.

The Appeals Officer noted historical medical evidence from the appellant's previous application but concluded that the evidence was of limited relevance to a current claim.

In considering the question of care required in the context of Section 179(4)(a)(i) of the Act, the Appeals Officer outlined that the medical evidence was to the effect that the care recipient was largely independent in terms of normal bodily functions and that the appellant had not demonstrated that the care recipient required continual supervision and frequent assistance throughout the day in connection with these functions.

In considering the question of care required in the context of Section 179(4)(a)(ii) of the Act, the Appeals Officer noted the content of the GP's report and referral for counselling but there was no medical evidence that the care recipient was a danger to himself. The Appeals Officer noted the appellant's evidence adduced at the oral appeal hearing in relation to the care recipient's activities and behaviour and the associated dangers that they posed to him. However, the Appeals Officer was not satisfied from the information provided that the appellant had demonstrated that the care recipient required continual supervision in order to avoid danger to himself.

In those circumstances the Appeals Officer concluded that the appellant was not a "*relevant person*" as defined by Section 179(1) of the Act.

Consideration:

In reviewing the Appeals Officer's decision, I set out the legislation that applied to the claim. It was clear from the Department's decision that the appellant's claim was disallowed on the basis that it was considered that the care required by the care recipient did not meet the statutory requirements. I outlined that the question of care being provided, while important, was not at issue and the focus of the appeal must therefore be on the care required by the care recipient and not on the care provided by the appellant.

The evidence that was before the Appeals Officer in relation to whether the care recipient required continual supervision in order to avoid danger to himself was to the effect that the care recipient presented a danger to himself and was easily taken advantage of by others, required protection against risks outside of the home and the appellant protected him against these risks. However, the Appeals Officer was not satisfied from the information provided that it had been demonstrated that this aspect of the legislative care test had been satisfied. In reviewing the Appeals Officer's decision I found no error of fact or law such that the decision should be revised.

I found that the evidence presented did not contain the degree of detail in relation to the specific risks that the care recipient encountered such that he required

continual supervision in order to avoid danger to himself as is envisaged by Section 179(4)(a)(ii) of the Act.

Outcome: Decision not revised.



Other Cases

Case Study: 78 Domiciliary Care Allowance Backdating

Question at issue: Domiciliary Care Allowance Back-dating

Grounds for Review:

The appellant contended that the Appeals Officer erred in law in his consideration of her request to have her claim backdated. It was also submitted that the Appeals Officer took account of irrelevant facts and failed to consider the grounds submitted by the appellant in support of her request.

Background:

The appellant's application for Domiciliary Care Allowance was awarded from a date in February 2020 following a successful appeal. The Appeals Officer allowed back-dating to a date in January 2020 on the basis that he considered that the reasons outlined by the appellant in the application form for not applying earlier constituted 'good cause'. The appellant sought back-dating of the award by a further four months. She submitted that she inserted the wrong date of commencement of the child's condition and that this was an error on her part. She also submitted that she was overwhelmed and stressed arising from the child's disability, the paperwork involved and the number of appointments and assessments associated with the child's diagnoses. She also outlined that she suffered from dyslexia.

The Appeals Officer on reviewing his decision was not satisfied that 'good cause' had been demonstrated and in the course of his reviews stated that he found no fault or liability on the part of the Department and also noted that the appellant was in receipt of the allowance in respect of another child and as such should have been aware of when she should have applied for the allowance.

Consideration:

The provisions governing claims and payments are contained in Part 9, Chapter 1 of the Act. Section 241 provides that it shall be a condition of any person's right to any benefit that he or she makes a claim for that benefit in the prescribed manner.

Section 241(4A) provides that a person who fails to make a claim for Domiciliary Care Allowance within the prescribed time shall be disqualified for payment in respect of any day before the first day of the month following the day on which the claim was made. However, the legislation also provides that in circumstances where a person fails to make a claim within the prescribed time a Deciding Officer or an

Appeals Officer may backdate a claim for a maximum period of 6 months where he/she was satisfied there was good cause for the delay in making the claim.

From my review of the Appeals Officer's decision and the outcome of his reviews of that decision I agreed with the appellant that the Appeals Officer misdirected himself in relation to the facts in stating he found no fault or liability on the part of the Department and it was the case that the appellant never asserted that there was any fault or liability on the part of the Department. In addition, I noted there is no provision in the legislation concerning backdating a claim for Domiciliary Care Allowance based on any fault on the Department's behalf. In this respect I considered that the Appeals Officer misdirected himself in relation to the law.

I also agreed with the appellant's submission that it was unfair to rely on the fact that she was in receipt of the allowance in respect of another child and therefore should have been aware of when she should have applied for the allowance.

From my review of the documentary evidence that was before the Appeals Officer I was satisfied that the appellant did not assert that she didn't know when she should have applied. It was the appellant's contention that she didn't apply earlier as she was waiting for referrals and appointments and was overwhelmed in trying to provide care and getting treatment for her child. She asserted that she was overwhelmed when completing the form when inserting the date from when the child needed care and that she suffers from dyslexia and was not good at getting her point across.

It was clear that Question 19 of the Domiciliary Care Allowance application and the related text invites a claimant to state from what date additional care was required and if a person didn't make an application from the date the additional care was first required he/she may apply for backdating of the allowance.

It was clear that the Appeals Officer was satisfied to backdate the allowance to the date inserted by the appellant in response to Question 19. However, I was of the view that the Appeals Officer didn't have regard to all of the grounds submitted by the appellant including a hand written letter submitted with her application in which she requested backdating for 6 months.

I was satisfied that the Appeals Officer had misdirected himself in relation to the law and did not take sufficient account of all the grounds submitted by the appellant. In those circumstances I allowed backdating of the appellant's claim to the maximum period of 6 months as permitted under the governing legislation.

Outcome:

Decision revised.



Case Study: 79 Illness Benefit Not Incapable of Work

Question at issue: Illness Benefit - not incapable of work.

Grounds for Review:

The Department in its request for a review submitted that the Appeals Officer erred in law in his application of Article 20(1)(a) of the 2007 Regulations to the appellant's circumstances.

Background:

The appellant had been in receipt of Illness Benefit which was disallowed following a review by the Department on the grounds that she was not incapable of work.

In considering her appeal, the Appeals Officer was also satisfied that, based on the evidence and in particular the medical evidence, the appellant was not incapable of work.

The Appeals Officer went on to consider the application of Article 20 of the 2007 Regulations and allowed the appeal on the basis that the appellant should be deemed to be incapable of work.

Consideration:

In order to be entitled to Illness Benefit in respect of any day a person must be incapable of work on that day. This is expressed in Section 40(3)(a) of the Act which provides:

"40. (3) For the purposes of any provision of this Act relating to illness benefit — (a) a day shall not be treated in relation to an insured person as a day of incapacity for work unless on that day the person is incapable of work,"

The Appeals Officer was satisfied that the appellant was not incapable of work.

The Appeals Officer went on to consider the applicability of Article 20(1)(a) of the 2007 Regulations to the appellant's appeal which provides:

"For the purposes of Chapter 8 of Part 2, and for no other purpose, a person who is not incapable of work shall, if it is so decided under the provisions of the Principal Act, be deemed to be incapable of work by reason of some specific disease or bodily or mental disablement for any day when —

(a) he or she is under medical care in respect of such a disease or disablement and it is certified by a registered medical practitioner that by reason of such disease or disablement he or she should abstain from work and he or she does not work."

I was of the view that the provisions of Article 20 of the 2007 Regulations are in place to cover very exceptional circumstances and provide essentially that even in

circumstances where a person is not incapable of work, the person shall be deemed to be incapable by reason of a specific disease or bodily or mental disablement when because of that disease or disablement it is certified by a medical practitioner that the person should abstain from work and does not work.

While the appellant had been found to be not incapable of work and it was accepted that she was under the care of a GP, she was not deemed by the Department to be incapable of work by reason of some specific disease or bodily or mental disablement for which she was under medical care and by reason of that disease or disablement it was certified by a medical practitioner that she should abstain from work.

I was satisfied that the provisions of Article 20(1)(a) of the 2007 Regulations did not apply and that the Appeals Officer erred in law in applying the provisions to the appellant's appeal.

Outcome: Decision revised.

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Case Study: 80 Invalidity Pension Eligibility – Medical Criteria

Question at issue: Invalidity Pension Eligibility – medical criteria

Grounds for Review:

The appellant asserted that the Appeals Officer had erred in relation to the facts and as a result had incorrectly applied the law.

Background:

The appellant had been in receipt of Disability Allowance for a number of years. An application for Invalidity Pension was refused on the grounds that the appellant was not considered to be permanently incapable of work.

The appellant asserted that as she met the medical eligibility criteria for Disability Allowance she automatically met the medical criteria for Invalidity Pension. The appellant submitted that she had been in receipt of Disability Allowance for a number of years and that her condition had not changed and had in fact deteriorated.

Consideration:

The legislation governing entitlement to Disability Allowance is contained in Chapter 10 of Part 3 of the Act and certain provisions of the 2007 Regulations also apply.

Section 210 (1) of the Act, among other things, provides that an allowance shall be payable to a person-

"(b) who is by reason of a specified disability substantially restricted in undertaking employment (in this Chapter referred to as "suitable employment") of a kind which, if the person was not suffering from that disability, would be suited to that person's age, experience and qualifications, whether or not the person is availing of a service for the training of disabled persons under section 68 of the Health Act 1970,"

Article 137 (1) of the 2007 Regulations 2007 provides that:

"Subject to sub-article (2), for the purposes of section 210, a person shall be regarded as being substantially restricted in undertaking suitable employment by reason of a specified disability where he or she suffers from an injury, disease, congenital deformity or physical or mental illness which has continued or, in the opinion of a deciding officer or an appeals officer, may reasonably expect to continue for a period of at least 1 year."

The legislation governing entitlement to Invalidity Pension is contained in Chapter 17 of Part 2 of the Act and certain provisions of the 2007 Regulations also apply.

Section 118 (1) of the Act provides that a person shall be entitled to Invalidity Pension where he or she-

"(a) is permanently incapable of working in insurable employment or insurable self-employment....., and

(b) satisfies the contribution conditions in section 119."

It was the first of these tests that was at issue in the appellant's case. The conditions under which a person shall be regarded for the purposes of Section 118 as being permanently incapable of work are set out in Article 76 of the 2007 Regulations as follows:

"Definition of permanently incapable of work

76. (1) Subject to sub-article (2), for the purposes of section 118, a person shall be regarded as being permanently incapable of work if immediately before the date of claim for the said pension -

(a) he or she has been continuously incapable of work for a period of one year and it is shown to the satisfaction of a deciding officer or an appeals officer that the person is likely to continue to be incapable of work for at least a further year, or

(b) he or she is incapable of work and evidence is adduced to establish to the satisfaction of a deciding officer or an appeals officer that the incapacity for work is of such a nature that the likelihood is that the person will be incapable of work for life."

It was clear therefore that the medical qualifying criterion for receipt of Invalidity Pension is that the person is permanently incapable of work. On the other hand the medical qualifying criterion for receipt of Disability Allowance is that the person has an injury, disease or physical or mental disability that has continued, or may be expected to continue, for at least one year and is substantially restricted from doing work that would otherwise be suitable having regard to the person's age, experience and qualifications. Therefore, while a person may be deemed to be substantially restricted from undertaking work for the purposes of Disability Allowance this does not equate to the person being permanently incapable of work for the purposes of Invalidity Pension.

I was satisfied that there was no basis in the governing legislation to conclude that a person who had been in receipt of Disability Allowance for a number of years automatically met the medical criteria for Invalidity Pension.

Outcome: Decision not revised.



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