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Social Welfare Appeals Office. Annual report 2017

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Social Welfare Appeals Office

Annual Report
2017



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Ms. Regina Doherty T.D.
Minister for Employment Affairs and Social Protection
Áras Mhic Dhiarmada
Store Street
Dublin 1

May 2018

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 2017.

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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Introduction by the Chief Appeals Officer



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 2017 pursuant to Section 308(1) of the Social Welfare Consolidation Act 2005.

Our ability to deal with the high volume of appeals we receive is highly dependent on the staff of the Office and I would like to take this opportunity to pay tribute to their work in the course of 2017. In keeping with the trend of recent years a number of Appeals Officers and administrative staff availed of retirement in 2017 and a number of new Appeals Officers and administrative staff joined the Office. To those who availed of retirement I wish them well in the future. To those who joined the team I am delighted to welcome them and look forward to working with them in the years ahead. There were also a number of other staffing changes in 2017 whereby staff left the Office to take up new opportunities and I wish them continued success in their new roles. I continue to work closely with the HR Division of the Department to ensure that vacancies arising are filled as quickly as possible and I very much appreciate the support of the Department in this regard.

Despite the loss of experience, the Office managed to make good progress in the course of 2017 in the processing and finalisation of appeals. In the course of the year, 19,658 appeals were received compared to 22,461 in 2016. The number of appeals finalised in 2017 was 18,980 compared to 23,220 in 2016. The number of appeals on hand at the end of 2017 was 8,616 representing an increase when compared to the end of 2016 position of 7,938 on hand.

A more detailed account of the statistical trends relating to 2017 is set out in Chapter 2. The data shows that the vast majority of appeals relate to the illness, disability and caring and working age income support programmes. On the other hand, the number of appeals relating to pensions and child income supports is low by comparison. The reduction in the number of appeals received in 2017 relates primarily to appeals in the working age schemes, with significant reductions in relation to Supplementary Welfare Allowance and Jobseeker's Allowance.

The average processing time for all appeals finalised during 2017 was 23.6 weeks. This compares to 20.5 weeks in 2016. The average time taken to process appeals which required an oral hearing was 26.4 weeks, (24.1 weeks in 2016) and the corresponding time to process appeals determined on a summary basis was 19.8 weeks (17.6 weeks in 2016).

Reducing processing times continues to be one of my priorities and every effort is made to reduce the time taken to process an appeal. However, this must be balanced with the competing demand to ensure that all decisions are of high quality and are made in line with the legislative provisions and the general principles of fair procedures.

A more detailed account of the business of the office in the course of 2017, from staffing resources to operational issues, is contained in Chapter 3. Given the high turn-over of Appeals Officers the training and development programme was well utilised during 2017. In addition to the formal programme of training all newly appointed Appeals Officers were provided with mentoring support from an experienced colleague. In addition, 17 Appeals Officers attended a two day training programme covering the legal aspects of the Appeals Officer role. The training programme is continuously reviewed and updated to ensure that the material reflects changes in legislation and developments derived from the case-law of the Courts.

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 her staff is one of the main channels for providing such feedback. Some of the issues discussed with that Office at our meetings in 2017 are also set out in Chapter 3.

During 2017, the Office embarked on and completed a business process review of the appeals service. The review was initiated to identify strategic, operational and procedural changes in order to improve customer service and the overall efficiency of the appeals service. One of the key objectives of the review was to identify ways in which digital access to information and data can support the work of the Office so as to reduce our reliance on paper based files.

The case-law from the Courts is an important feature of the work of my Office and in recent years a number of judgments dealt with the issue of what constitutes a good decision. In order to reflect the findings of the Courts and to ensure quality and consistency in our decision making I introduced a structured format for recording all decisions of Appeals Officers.

An overview of both the business process review and the new format for recording decisions is contained in Chapter 3.

In selecting cases to be included in the Annual Report as case studies 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.

In this Report 70 case-studies, including a number of reviews that I carried out under Section 318 of the Social Welfare Consolidation Act 2005, which I consider may be of benefit to would be appellants or their advocates are featured. The case studies are contained in Chapter 4.

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

This Report can be accessed on our website www.socialwelfareappeals.ie in both English and Irish.

Joan Gordon

Chief Appeals Officer

May 2018

Chapter 2

Statistical Trends



Our main statistical data for 2017 is set out in commentary form below and in the "Workflow Chart" and tables which follow.

APPEALS RECEIVED IN 2017

In 2017, the Office received 19,658 appeals, which represents a reduction of 2,803 on the 22,461 appeals received in 2016.

The majority of the reduction relates to appeals in Working Age – Income and Employment Support schemes. Appeals in relation to Supplementary Welfare Allowance reduced by 33.9%; Jobseeker's Allowance (Means) 26.6%; while Jobseeker's Allowance (Payments) reduced by 17.5%.

There were also reductions in the number of appeals received in respect of Illness Benefit (down 45.9%), Carer's Allowance (down 17.7%) and Family Income Supplement appeals (down 6.5%).

The number of appeals in respect of Disability Allowance increased by 3.4%, Invalidity Pension increased by 1.4%, while Domiciliary Care Allowance appeals increased by 0.1%.

CLARIFICATIONS IN 2017

In addition to the 19,658 appeals registered in 2017, a further 3,801 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 2017, 1,089 (28.7%) of the 3,801 cases identified as requiring clarification were subsequently registered as formal appeals. This is considered to be a very practical way of dealing with such appeals so as to avoid unnecessarily invoking the full appeals process.

WORKLOAD FOR 2017

The workload of 27,596 for 2017 was arrived at by adding the 19,658 appeals received to the 7,938 appeals on hand at the beginning of the year.

APPEALS FINALISED IN 2017

We finalised 18,980 appeals in 2017.

The appeals finalised were broken down between:

- Appeals Officers (71.4%): 13,556 were finalised by Appeals Officers either summarily or by way of oral hearings (equivalent figure in 2016 was 16,990 or 73.2%);
 - Revised Decisions (22.6%): 4,283 were finalised as a result of revised decisions in favour of the appellant being made by Deciding Officers before the appeals were referred to an Appeals Officer (5,100 or 22.0% in 2016). This refers to cases where a Deciding Officer 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 (6.0%): 1,141 were withdrawn or otherwise not pursued by the appellant (1,130 or 4.9% in 2016).
-

APPEALS OUTCOMES IN 2017

The outcome of the 18,980 appeals finalised in 2017 was broken down as follows:

- Favourable (60.1%): 11,405 of the appeals finalised had a favourable outcome for the appellant in that they were either allowed in full or in part or resolved by way of a revised decision by a Deciding Officer in favour of the appellant (59.2% in 2016);
- Unfavourable (33.9%): 6,434 of the appeals finalised were disallowed (35.9% in 2016); and

-
- **Withdrawn (6.0%):** As previously indicated, 1,141 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (4.9% in 2016).

DETERMINATIONS BY APPEALS OFFICERS IN 2017

The following gives a statistical breakdown on the outcomes of determinations by Appeals Officers by reference to whether the appeal was dealt with summarily or by way of an oral hearing:

- **Oral Hearings:** (39.9%) 5,412 of the 13,556 appeals finalised by Appeals Officers in 2017 were dealt with by way of oral hearings. 3,444 (63.6%) of these had a favourable outcome. In 2016, 65.1 % of the 6,527 cases dealt with by way of oral hearings had a favourable outcome.
- **Summary Decisions:** (60.1%): 8,144 of the appeals finalised were dealt with by way of summary decisions. 3,678 (45.2%) of these had a favourable outcome. In 2016, 42.1% of appeals finalised by way of summary decision had a favourable outcome.

PROCESSING TIMES IN 2017

During 2017, the average time taken to process all appeals was 23.6 weeks (20.5 weeks in 2016).

Of the 23.6 weeks overall average

- 13.6 weeks was attributable to work in progress in the Department (10.9 weeks in 2016)
- 0.3 weeks was due to responses awaited from appellants (0.3 weeks in 2016)
- 9.7 weeks was attributable to ongoing processes within the Social Welfare Appeals Office (9.3 weeks in 2016).

It is noted that the average weeks in the Department will include cases that have been referred back to the customers 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 process type, the overall average waiting time for an appeal dealt with by way of a summary decision in 2017 was 19.8 weeks (17.6 weeks in 2016), while the average time to process an oral hearing was 26.4 weeks (24.1 weeks in 2016). The average waiting time by scheme and process type are set out in Table 6.

The time taken to finalise appeals reflects all aspects of the appeals process which includes:

- seeking the Department's submission on the grounds for the appeal;
- further medical assessments by the Department in certain illness related cases;
- further investigation by Social Welfare Inspectors where required; and
- the logistics involved in arranging oral appeal hearings where deemed appropriate.

APPEALS BY GENDER IN 2017

A breakdown of appeals received in 2017 by gender revealed that 41.8% were from men and 58.2% from women. The corresponding breakdown for 2016 was 41.9% and 58.1% respectively. In terms of favourable outcomes in 2017, 59.7% of men and 61.1% of women benefited.

STATISTICAL TABLES:

Table 1: Appeals received and finalised 2017

Table 2: Appeals received 2011 – 2017

Table 3: Outcome of appeals by category 2017

Table 4: Appeals in progress at 31 December 2011 - 2017

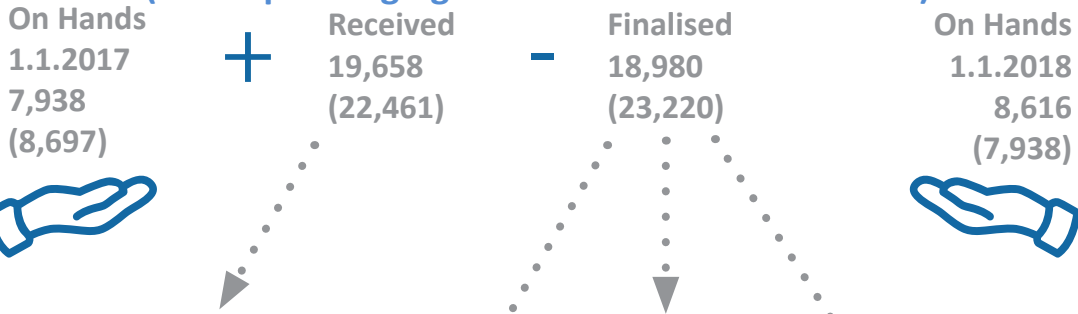
Table 5: Appeals statistics 1996 - 2017

Table 6: Appeals processing times by scheme 2017

Table 7: Appeals outstanding at 31 December 2017

Social Welfare Appeals Workflow Chart 2017

(Corresponding figures for 2016 are in brackets)



Trends

- SWA - 33.9%
- Jobseekers Allce (Paymts) - 17.5%
- Illness Benefit - 45.9%
- Jobseekers Allce (Means) - 26.6%
- Carers Allowance - 17.7%
- Family Income Supplement - 6.5%
- Invalidity Pension +1.4%
- Disability Allowance +3.4%
- Domiciliary Care Allowance +0.1%

AO Decisions
13,556 (71.4%)
[16,990 (73.2%)]

Revised Decisions
4,283 (22.6%)
[5,100 (22.0%)]

Withdrawn
1,141 (6%)
[1,130 (4.9%)]

Orals
5,412 (39.9%)
[6,527 (38.4%)]

Summary
8,144 (60.1%)
[10,463 (61.6%)]

Favourable
3,444 (63.6%)
[4,251 (65.1%)]

Unfavourable
1,968 (36.4%)
[2,276 (34.9%)]

Favourable
3,678 (45.2%)
[4,403 (42.1%)]

Unfavourable
4,466 (54.8%)
[6,060 (57.9%)]

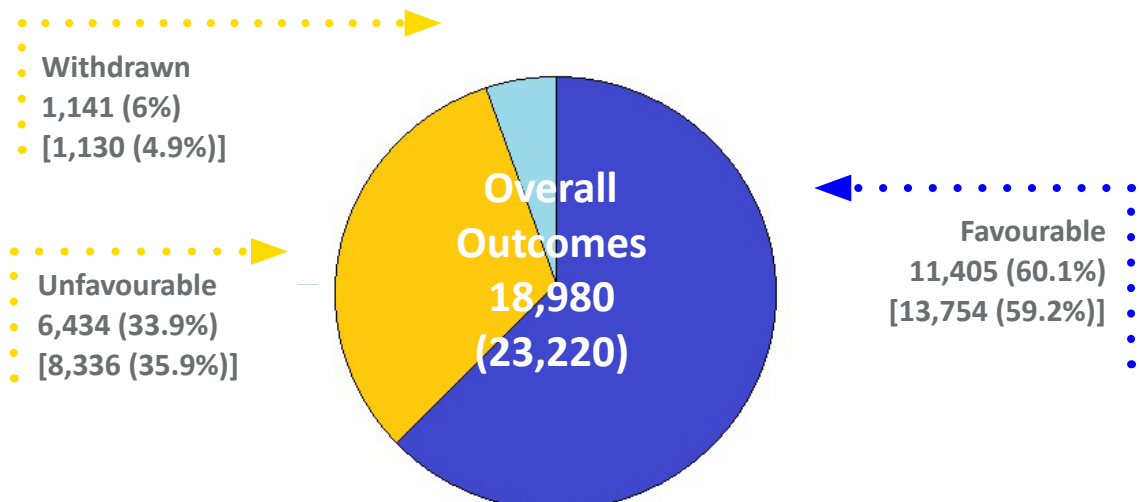


Table 1: Appeals Received and finalised 2017

	In progress 01-Jan-17	Receipts	Decided	Revised Decision	Withdrawn	In Progress 31 Dec 2017
PENSIONS						
State Pension (Non-Contributory)	179	370	237	78	28	206
State Pension (Contributory)	203	408	265	76	13	257
State Pension (Transition)	1	3	3	-	-	1
Widows', Widowers' Pension (Contributory)	13	45	23	7	1	27
Death Benefit	1	-	1	-	-	-
Bereavement Grant	1	1	1	-	-	1
TOTAL PENSIONS	398	827	530	161	42	492
WORKING AGE INCOME & EMPLOYMENT SUPPORTS						
Jobseeker's Allowance	809	1,676	1,080	309	184	912
Jobseeker's Transitional	17	41	20	10	7	21
Jobseeker's Allowance (Means)	838	1,504	977	264	212	889
One Parent Family Payment	156	244	153	54	50	143
Widow's Widower's Pension (Non-Contributory)	13	23	20	3	-	13
Deserted Wife's Allowance	-	1	-	-	-	1
Supplementary Welfare Allowance	610	1,302	940	229	180	563
Farm Assist	99	130	100	28	14	87
Pre-Retirement Allowance	1	2	-	1	-	2

Table 1: Appeals Received and finalised 2017 (continued)

	In progress 01-Jan-17	Receipts	Decided	Revised Decision	Withdrawn	In Progress 31 Dec 2017
Jobseeker's Benefit	223	545	310	117	52	289
Deserted Wife's Benefit	2	7	5	-	-	4
Maternity Benefit	22	84	62	8	1	35
Paternity Benefit	1	116	4	3	1	9
Adoptive Benefit	-	2	2	-	-	-
Treatment Benefits	1	1	1	-	-	1
Partial Capacity Benefit	32	38	30	11	4	25
TOTAL WORKING AGE - INCOME & EMPLOYMENT SUPPORTS	2,824	5,616	3,704	1,037	705	2,994
ILLNESS, DISABILITY AND CARERS						
Disability Allowance	1,376	5,077	4,256	563	115	1,519
Blind Pension	4	19	9	3	3	8
Carer's Allowance	1,394	3,200	2,564	780	72	1,178
Domiciliary Care Allowance	416	1,199	442	343	16	814
Carer's Support Grant	70	164	109	45	1	79
Illness Benefit	274	443	315	140	59	203
Injury Benefit	22	51	30	2	6	35
Invalidity Pension	382	1,381	634	691	23	415
Disablement Benefit	87	347	214	30	6	184
Incapacity Supplement	6	7	7	3	-	3
Medical Care	2	2	1	1	-	2
Carer's Benefit	39	110	62	39	3	45
TOTAL - ILLNESS, DISABILITY AND CARERS	4,072	12,000	8,643	2,640	304	4,485

Table 1: Appeals Received and finalised 2017 (continued)

	In progress 01-Jan-17	Receipts	Decided	Revised Decisions	Withdrawn	In Progress 31 Dec 2017
CHILDREN						
Child Benefit	187	473	269	154	15	222
Family Income Supplement	232	477	221	267	15	206
Back To Work Family Dividend	24	43	32	4	5	26
Guardian's Payment (Non- Contributory)	4	16	13	2	-	5
Guardian's Payment (Contributory)	14	34	29	4	-	15
Widowed Parent Grant	1	6	2	-	-	5
TOTAL - CHILDREN	462	1,049	566	431	35	479
OTHER						
Insurability of Employment	160	132	75	11	53	153
Liable Relatives	12	9	15	-	2	4
Recoverable Benefits & Assistance	10	25	23	3	-	9
TOTAL - ALL APPEALS	7,938	19,658	13,556	4,283	1,141	8,616

Table 2 Appeals received 2011 – 2017

	2011	2012	2013	2014	2015	2016	2017
PENSIONS							
State Pension (Non-Contributory)	317	231	279	323	348	397	370
State Pension (Contributory)	106	128	136	205	264	366	408
State Pension (Transition)	29	43	38	13	3	2	3
Widows', Widowers' Pension (Contributory)	17	30	40	49	40	49	45
Death Benefit	-	-	-	1	1	1	-
Bereavement Grant	66	71	78	63	6	3	1
TOTAL PENSIONS	535	503	571	654	662	818	827
WORKING AGE INCOME & EMPLOYMENT SUPPORTS							
Jobseeker's Allowance	3,404	3,050	2,644	2,610	2,058	2,031	1,676
Jobseeker's Transitional	-	-	-	-	34	43	41
Jobseeker's Allowance (Means)	3,465	3,240	2,923	2,648	2,174	2,050	1,504
One Parent Family Payment	1,055	938	612	573	368	313	244
Widow's Widower's Pension (Non-Contributory)	29	39	30	24	25	26	23
Deserted Wife's Allowance	4	1	2	2	1	-	1
Supplementary Welfare Allowance	3,129	5,445	4,084	2,889	2,125	1,970	1,302
Farm Assist	220	271	286	214	201	196	130
Pre-Retirement Allowance	1	-	-	3	-	-	2

Table 2 Appeals received 2011 – 2017

	2011	2012	2013	2014	2015	2016	2017
Jobseeker's Benefit	1,286	1,289	882	845	735	637	545
Deserted Wife's Benefit	20	8	11	7	19	7	7
Maternity Benefit	42	29	26	19	71	87	84
Paternity Benefit	-	-	-	-	-	1	16
Adoptive Benefit	2	6	-	1	-	-	2
Homemaker's	-	1	1	-	-	-	-
Treatment Benefits	3	3	5	-	3	5	1
Partial Capacity Benefit	-	67	70	33	42	42	38
TOTAL WORKING AGE INCOME & EMPLOYMENT SUPPORTS	12,660	14,387	11,576	9,868	7,856	7,408	5,616
ILLNESS, DISABILITY & CARERS							
Disability Allowance	5,472	6,223	6,836	5,554	6,435	4,912	5,077
Blind Pension	21	27	34	19	22	13	19
Carer's Allowance	2,199	2,676	3,869	2,907	3,188	3,887	3,200
Domiciliary Care Allowance	2,401	2,186	1,688	1,301	1,258	1,198	1,199
Carer's Support Grant	303	278	176	133	124	164	164
Illness Benefit	3,657	2,647	1,761	1,227	1,204	819	443
Injury Benefit	16	13	21	9	65	56	51
Invalidity Pension	2,285	4,765	4,501	2,571	1,857	1,362	1,381
Disablement Benefit	263	409	346	385	347	298	347
Incapacity Supplement	6	21	14	1	12	9	7
Medical Care	5	6	3	28	4	4	2
Carer's Benefit	160	183	115	121	93	95	110
TOTAL ILLNESS, DISABILITY & CARERS	16,788	19,434	19,364	14,256	14,609	12,817	12,000

Table 2 Appeals received 2011 – 2017

	2011	2012	2013	2014	2015	2016	2017
CHILDREN							
Child Benefit	824	675	663	659	552	595	473
Family Income Supplement	258	301	421	434	447	510	477
Back To Work Family Dividend	-	-	-	-	64	52	43
Guardian's Payment (Non-Contributory)	13	14	11	22	18	17	16
Guardian's Payment (Contributory)	31	46	42	42	49	38	34
Widowed Parent Grant	7	6	11	8	10	8	6
TOTAL - CHILDREN	1,133	1,042	1,148	1,165	1,140	1,220	1,049
OTHER							
Insurability Of Employment	99	79	95	91	156	151	132
Liabile Relatives	26	39	23	33	26	23	9
Recoverable Benefits & Assistance	-	-	-	2	26	24	25
TOTAL – ALL APPEALS	31,241	35,484	32,777	26,069	24,475	22,461	19,658

Table 3: Outcome of Appeals by category 2017

	Allowed	Partially Allowed	Revised DO Decisions	Disallowed	Withdrawn	Total
PENSIONS						
State Pension (Non-Contributory)	75 21.9%	34 9.9%	78 22.7%	128 37.3%	28 8.2%	343
State Pension (Contributory)	35 9.9%	12 3.4%	76 21.5%	218 61.6%	13 3.7%	354
State Pension (Transition)	1 33.3%	-	-	2 66.7%	-	3
Widows', Widowers' Pension (Contributory)	8 25.8%	-	7 22.6%	15 48.4%	1 3.2%	31
Death Benefit	-	-	-	1 100%	-	1
Bereavement Grant	1 100%	-	-	-	-	1
TOTAL PENSIONS	120	46	161	364	42	733
WORKING AGE INCOME/ EMPLOYMENT SUPPORTS						
Jobseeker's Allowance - Payments	349 22.2%	66 4.2%	309 19.6%	665 42.3%	184 11.7%	1,573
Jobseeker's Transitional	10 27.0%	4 10.8%	10 27.0%	6 16.2%	7 18.9%	37
Jobseeker's Allowance - Means	187 12.9%	82 5.6%	264 18.2%	708 48.7%	212 14.6%	1,453
One-Parent Family Payment	67 26.1%	19 7.4%	54 21.0%	67 26.1%	50 19.5%	257
Widow's/Widower's Pension (Non-Contributory)	7 30.4%	4 17.4%	3 13.0%	9 39.1%	-	23
Supplementary Welfare Allowance	304 22.5%	34 2.5%	229 17.0%	602 44.6%	180 13.3%	1,349

Table 3: Outcome of Appeals by category 2017 (contd.)

	Allowed	Partially Allowed	Revised DO Decisions	Disallowed	Withdrawn	Total
Farm Assist	22 15.5%	18 12.7%	28 19.7%	60 42.3%	14 9.9%	142
Pre-Retirement Allowance	-	-	1 100%	-	-	1
Jobseeker's Benefit	83 17.3%	21 4.4%	117 24.4%	206 43.0%	52 10.9%	479
Deserted Wife's Benefit	2 40.0%	1 20.0%	-	2 40.0%	-	5
Maternity Benefit	10 14.1%	3 4.2%	8 11.3%	49 69.0%	1 1.4%	71
Paternity Benefit	1 12.5%	-	3 37.5%	3 37.5%	1 12.5%	8
Adoptive Benefit	-	-	-	2 100%	-	2
Treatment Benefits	-	-	-	1 100%	-	1
Partial Capacity Benefit	15 33.3%	1 2.2%	11 24.4%	14 31.1%	4 8.9%	45
TOTAL WORKING AGE INCOME/ EMPLOYMENT SUPPORTS	1,057	253	1,037	2,394	705	5,446
ILLNESS, DISABILITY AND CARERS						
Disability Allowance	2,975 60.3%	70 1.4%	563 11.4%	1,211 24.5%	115 2.3%	4,934
Blind Pension	1 6.7%	1 6.7%	3 20.0%	7 46.7%	3 20.0%	15
Carer's Allowance	1,204 35.2%	161 4.7%	780 22.8%	1,119 35.1%	72 2.1%	3,416
Domiciliary Care Allowance	297 37.7%	10 1.2%	343 42.8%	135 16.9%	16 2.0%	801

Table 3: Outcome of Appeals by category 2017 contd

	Allowed	Partially Allowed	Revised DO Decisions	Disallowed	Withdrawn	Total
Carer's Support Grant	35 22.6%	2 1.3%	45 29.0%	72 46.5%	1 0.6%	155
Illness Benefit	118 23.0%	8 1.6%	140 27.2%	189 36.8%	59 11.5%	514
Injury Benefit	3 7.9%	-	2 5.3%	27 71.1%	6 15.8%	38
Invalidity Pension	365 27.1%	7 0.5%	691 51.3%	262 19.4%	23 1.7%	1,348
Disablement Benefit	86 34.4%	19 7.6%	30 12.0%	109 43.6%	6 2.4%	250
Incapacity Supplement	3 30.0%	1 10.0%	3 30.0%	3 30.0%	-	10
Medical Care	-	-	1 50.0%	1 50.0%	-	2
Carer's Benefit	23 22.1%	2 1.9%	39 37.5%	37 35.6%	3 2.9%	104
TOTAL - ILLNESS, DISABILITY AND CARERS	5,110	281	2,640	3,252	304	11,587
CHILDREN						
Child Benefit	68 15.5%	23 5.3%	154 35.2%	178 40.6%	15 3.4%	438
Family Income Supplement	76 15.1%	15 3.0%	267 53.1%	130 25.8%	15 3.0%	503
Back To Work Family Dividend	7 17.1%	-	4 9.8%	25 61.0%	5 12.2%	41
Guardian's Payment (Non-Contributory)	5 33.3%	1 6.7%	2 13.3%	7 46.7%	-	15
Guardian's Payment (Contributory)	13 39.4%	2 6.1%	4 12.1%	14 42.4%	-	33
Widowed Parent Grant	-	-	-	2 100%	-	2
TOTAL CHILDREN	169	41	431	356	35	1,032

Table 3: Outcome of Appeals by category 2017 contd

	Allowed	Partially Allowed	Revised DO Decisions	Disallowed	Withdrawn	Total
OTHER						
Insurability	34 24.5%	4 2.9%	11 7.9%	37 26.6%	53 38.1%	139
Liabile Relatives	-	4 23.5%	-	11 64.7%	2 11.8%	17
Recoverable Benefits & Assistance	3 11.5%	-	3 11.5%	20 76.9%	-	26
TOTAL APPEALS	6,493	629	4,283	6,434	1,141	18,980

Table 4: Appeals in Progress at 31 December 2011 - 2017

	2011	2012	2013	2014	2015	2016	2017
PENSIONS							
State Pension (Non-Contributory)	165	127	143	134	165	179	206
State Pension (Contributory)	91	106	74	97	149	203	257
State Pension (Transition)	22	39	26	9	4	1	1
Widows', Widowers' Pension (Contributory)	14	20	25	15	24	13	27
Death Benefit	-	-	-	1	1	1	-
Bereavement Grant	35	41	40	17	-	1	1
TOTAL PENSIONS	327	333	308	273	343	398	492
WORKING AGE INCOME & EMPLOYMENT SUPPORTS							
Jobseeker's Allowance	1,498	1,247	1,180	812	811	809	912
Jobseeker's Transitional	-	-	-	-	13	17	21
Jobseeker's Allowance (Means)	1,866	1,522	1,453	1,029	947	838	889
One Parent Family Payment	618	575	411	231	190	156	143
Widow's Widower's Pension (Non-Contributory)	18	23	16	9	9	13	13
Deserted Wife's Allowance	4	1	1	1	-	-	1
Supplementary Welfare Allowance	1,833	1,955	1,221	877	672	610	563
Farm Assist	121	161	176	102	118	99	87
Pre-Retirement Allowance	2	1	1	2	1	1	2
Jobseeker's Benefit	583	519	391	243	290	223	289

Table 4: Appeals in Progress at 31 December 2011 - 2017

	2011	2012	2013	2014	2015	2016	2017
Deserted Wife's Benefit	12	10	3	5	6	2	4
Maternity Benefit	20	21	14	6	26	22	35
Paternity Benefit	-	-	-	-	-	1	9
Adoptive Benefit	2	1	-	-	-	-	-
Homemaker's	-	1	1	1	-	-	-
Treatment Benefits	1	1	2	-	2	1	1
Partial Capacity Benefit	-	67	81	21	25	32	25
TOTAL WORKING AGE - INCOME & EMPLOYMENT SUPPORTS	6,578	6,105	4,951	3,339	3,110	2,824	2,994
ILLNESS, DISABILITY AND CARERS							
Disability Allowance	2,958	4,030	3,121	1,944	1,639	1,376	1,519
Blind Pension	14	8	13	6	10	4	8
Carer's Allowance	1,147	1,766	1,913	1,434	1,131	1,394	1,178
Domiciliary Care Allowance	1,385	1,113	736	462	562	416	814
Carer's Support Grant	166	153	94	71	57	70	79
Illness Benefit	2,021	1,460	683	351	335	274	203
Injury Benefit	9	11	15	9	25	22	35
Invalidity Pension	1,582	4,356	1,889	938	674	382	415
Disablement Benefit	278	254	186	164	160	87	184
Incapacity Supplement	14	23	16	16	11	6	3
Medical Care	27	25	18	14	1	2	2

Table 4: Appeals in Progress at 31 December 2011 - 2017 contd

	2011	2012	2013	2014	2015	2016	2017
Carer's Benefit	61	75	45	32	15	39	45
TOTAL - ILLNESS, DISABILITY AND CARERS	9,662	13,274	8,729	5,441	4,620	4,072	4,485
CHILDREN							
Child Benefit	603	403	311	273	193	187	222
Family Income Supplement	104	147	277	159	192	232	206
Back To Work Family Dividend	-	-	-	-	37	24	26
Guardian's Payment (Non-Contributory)	10	4	7	9	7	4	5
Guardian's Payment (Contributory)	32	26	24	17	18	14	15
Widowed Parent Grant	5	5	7	1	4	1	5
TOTAL - CHILDREN	754	585	626	459	451	462	479
OTHER							
Insurability of Employment	136	96	124	99	148	160	153
Liabile Relatives	31	21	32	15	10	12	4
Recoverable Benefits and Assistance	-	-	-	2	15	10	9
TOTAL - ALL APPEALS	17,488	20,414	14,770	9,628	8,697	7,938	8,616

Table 5: Appeals statistics 1996 – 2017

Year	On hands at start of year	Received	Workload	Finalised	On hands at end of year
1996	4,116	12,183	16,299	11,613	4,686
1997	4,686	14,004	18,690	12,835	5,855
1998	5,855	14,014	19,869	13,990	5,879
1999	5,879	15,465	21,344	14,397	6,947
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

Table 6: Appeals processing times by scheme 2017

	SWAO (weeks)	Dept. of Social Protection (weeks) ¹	Appellant (weeks)	Total
PENSIONS				
State Pension (Non-Contributory)	14.2	11.5	1.7	27.3
State Pension (Contributory)	12.9	20.0	0.3	33.3
State Pension (Transition)	38.4	21.0	1.0	60.4
Widows', Widowers' Pension (Contributory)	18.0	6.8	0.1	25.0
Bereavement Grant	12.2	2.9	-	15.1
WORKING AGE INCOME & EMPLOYMENT SUPPORTS				
Jobseeker's Allowance	11.2	19.2	0.2	30.6
Jobseeker's Transitional	10.0	13.6	0.4	24.0
Jobseeker's Allowance (Means)	12.2	21.9	0.1	34.2
One Parent Family Payment	13.1	22.9	0.2	36.2
Widow's Widower's Pension (Non- Contributory)	14.0	6.1	-	20.0
Supplementary Welfare Allowance	8.8	21.0	0.4	30.3
Farm Assist	11.9	27.2	0.2	39.4
Jobseeker's Benefit	11.4	19.1	0.1	30.5
Deserted Wife's Benefit	16.5	3.2	0.7	20.4
Maternity Benefit	9.5	4.4	-	13.9
Treatment Benefits	9.9	4.1	-	14.0
Partial Capacity Benefit	13.7	18.2	0.5	32.4
Paternity Benefit	8.4	5.7	-	14.1

Table 6: Appeals processing times by scheme 2017 (contd.)

	SWAO (weeks)	Dept. of Social Protection (weeks) ¹	Appellant (weeks)	Total
ILLNESS, DISABILITY AND CARERS				
Disability Allowance	8.1	9.2	0.5	17.8
Blind Pension	9.7	7.1	0.7	17.5
Carer's Allowance	8.9	9.4	0.5	18.7
Domiciliary Care Allowance	8.6	17.8	0.2	26.6
Carer's Support Grant	9.2	8.1	0.2	17.4
Illness Benefit	9.4	17.8	1.2	28.4
Injury Benefit	10.9	9.3	2.2	22.4
Invalidity Pension	8.9	8.6	0.2	17.7
Disablement Pension	12.4	9.8	0.2	22.4
Incapacity Supplement	14.0	38.4	-	52.4
Medical Care	4.7	16.9	1.5	23.0
Occupational Injury Benefit	10.9	9.3	2.2	22.4
Carer's Benefit	7.7	8.6	-	16.4
CHILDREN				
Adoptive Benefit	10.7	2.7	-	13.4
Child Benefit	11.0	12.6	0.4	24.0
Family Income Supplement	11.1	17.0	-	28.1
Back To Work Family Dividend	9.6	13.8	-	23.4
Guardian's Payment (Non-Contributory)	9.6	5.8	-	15.4
Guardian's Payment (Contributory)	14.6	6.0	0.1	20.7
Widowed Parent Grant	14.1	5.3	-	19.5
OTHER				
Insurability of Employment	39.3	19.6	0.3	59.2
Liable Relatives	21.7	2.7	-	24.5
Recoverable Benefits & Assistance	9.6	10.7	-	20.3
TOTAL – ALL APPEALS	9.7	13.6	0.3	23.6

¹It is noted that the average weeks in the Department will include cases that the Department have referred back to the customers for more information/clarification (rather than awaiting action in the Department). A breakdown is not available for report purposes.

Table 7: Appeals outstanding at 31st December 2017

Scheme	In progress in Social Welfare Appeals Office	Awaiting Department response	Awaiting Appellant response	Total
Jobseeker's Allowance/Benefit	713	504	5	1,222
JA Means/Farm Assist	589	380	7	976
Supplementary Welfare Allowance	199	357	7	563
Disability Allowance	959	527	33	1,519
Carer's Allowance	815	343	20	1,178
Domiciliary Care Allowance	239	551	24	814
Invalidity Pension	236	171	8	415
Illness Benefit	110	89	4	203
Child Benefit	101	119	2	222
Other schemes	906	593	5	1,504
Totals	4,867	3,634	115	8,616

Chapter 3

Social Welfare Appeals Office 2017



THE BUSINESS OF THE OFFICE

3.1 Organisation

Staffing Resources

The number of staff serving in my Office at the end of 2017 was 84, which equates to 79.4 full-time equivalents (FTE).

The staffing breakdown is as follows:

Posts	Full-time Equivalent
1 Chief Appeals Officer	1.0
0 Deputy Chief Appeals Officer (vacancy)	0.0
1 Office Manager	1.0
38 Appeal Officers (3 work-sharing)	36.9
3 Higher Executive Officers (1 work-sharing)	2.8
14 Executive Officers (3 work-sharing)	13.2
27 Clerical Officers (6 work-sharing)	24.5
Total	79.4

3.2 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 competence. The importance of continuous professional development cannot be overestimated and this has continued to be a priority for my Office during 2017.

A comprehensive formal programme of training for Appeals Officers was developed in recent years by professional trainers working with experienced Appeals Officers and is regularly reviewed and updated. 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 unique and highly valued aspect of the role.

The formal training modules deal with all aspects of the quasi-judicial 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.

During 2017, six 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, 17 Appeals Officers attended a two day training programme covering the legal aspects of the Appeals Officer role.

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

3.3 Process Improvements

Our ability to deal well with the high volume of appeals we receive is highly dependent on the staff of the Office and I would like to pay tribute to their work in the course of 2017. As was the case in 2016 a number of staff availed of retirement or moved to take up posts in other areas within the Department or in other organisations and this loss of experience caused us some difficulties during the year. However, as newly appointed staff come on board I expect to see some process improvements in 2018.

In recent years significant efforts and resources have been devoted to reforming and streamlining the appeal process. In keeping with the need to ensure that the systems and processes used in the Office support staff in dealing with the work we completed a Business Process Review in 2017 of our current processes, organisation structure, use of technology and the overall "end to end" customer experience. A number of actions have been identified to improve those processes and workflows in order to increase efficiency. Some of these improvements can be implemented in the short term. Others will inform a bigger project which will seek to utilise existing technology in the Department which includes building on the existing IT platform with the addition of document management and customer case management capabilities. While the project will take some time to complete the new structure should reduce the Office's reliance on paper files and will radically change the current processes.

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 will continue to monitor processing times and ensure that every effort is made to reduce the time taken to process an appeal. However, the drive for efficiency must be balanced with the competing demand to ensure that decisions are consistent and of high quality and made in accordance with the legislative provisions and the general principles of fair procedures and natural justice.

In my Annual Report for 2016 I made reference to a number of judgments of the High Court delivered in 2015/2016 that dealt in detail with those aspects of a decision which must be present to ensure that the decision is rational and the requirement on a deciding body to give reasons for its decision so as to enable the person receiving the decision to be in a position to make a reasoned decision whether to appeal that decision or to understand whether further or different evidence might be needed on a fresh application. I also outlined that the Court emphasised that it must be evident from the decision that the decision maker engaged with the evidence and directed his/her mind adequately to the issue. The Court has outlined that it is incumbent on the decision maker to set out the facts of the case, the disputes in relation to those facts, the reasons why the decision maker preferred the facts advanced by one party, or has come to an interpretation based on those facts and the weight accorded to those facts.

As we continue to seek improvements in our processes and procedures and being informed by the judgments of the High Court I have developed a structured format for the recording of all decisions of Appeals Officers. The new structure requires that all decisions set out details of the question under appeal, the relevant legislation governing the appeal question, a summary of the facts of the case, the evidence presented and an outline of the evaluation of the evidence.

I am conscious that the introduction of this structured format impacted negatively on processing times in 2017 but I am confident that the approach will have a positive impact on the quality and consistency of decisions and on processing times once it has bedded down.

3.4 Operational Matters

Parliamentary Questions

During 2017, 295 Parliamentary Questions were put down (341 in 2016) in relation to the work of my Office. Replies were given in Dáil Éireann to 237 of those questions. 55 questions were transferred to the relevant scheme area of the Department and the remaining 3 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 6,731 hardcopy enquiries and email representations were received from appellants or from public representatives on their behalf during 2017 (5,845 in 2016).

In addition, a total of 11,684 enquires were received by email in 2017¹.

Freedom of information

A total of 179 formal requests were received in 2017 (248 in 2016) under the provisions of the Freedom of Information Acts. Of these requests 175 were in respect of personal information and 4 requests were in respect of non-personal information.

3.5 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. In the main, this feedback is provided through regular meetings with the Department's Decisions Advisory Office (DAO). In addition, ad-hoc meetings are convened from time to time with management of particular scheme areas to discuss specific issues which may arise. Other opportunities during 2017 to provide feedback to the Department included the Chief Appeals Officer's continued attendance at meetings of the Department's Illness Programme Board which has oversight of the policy and process issues arising in relation to schemes which have a medical criterion.

Meetings with Decisions Advisory Office

During 2017, my Office met on a number of occasions with the head of the DAO and her staff. This

¹The figure of 11,684 includes enquires received by email directly from the Department of Employment Affairs and Social Protection.

opportunity to provide feedback and discuss issues arising on appeal is very welcome as it allows my Office the opportunity to highlight issues that may only come to light on appeal and which could improve the overall decision making process.

Among the issues discussed with the DAO during 2017 were:

- Developments emerging from the case-law of the Courts which are of interest to both my Office and the Department.
- Given the number of appeal cases that arise where a person's right to reside in the State is at issue both Offices agreed that this matter would be a standing item on our Agendas. Discussions revolve around the application of the governing legislation relating to the operation of the habitual residence condition and in particular the need to consider if a person has a right to reside in the State as part of the assessment of whether a person is habitually resident in the State.
- The application of principles of EU Social Security Regulations, including a discussion on the equal treatment provisions and mutual recognition of facts.
- Issues relating to the assessment of means for various schemes and in particular the treatment of accrued savings in the context of State Pension Non-Contributory. While acknowledging that people in receipt of all social welfare payments must notify the Department of any change in circumstances, there was also a recognition that people may not always be aware that their means have exceeded the threshold and in this respect the CAO suggests that the Department consider more frequent information campaigns.
- The need to set out clearly the legislative provisions underpinning revised decisions of Deciding Officers and in particular the need to utilise Section 302 of the Social Welfare Consolidation Act 2005 which outlines the effect of such decisions.
- The scope of legislative provisions permitting decisions makers to exercise discretion in certain circumstances.

3.6 Meetings of Appeals Officers

Two formal meetings of the Appeals Officer group were held in April and October 2017 and in addition a number of informal meetings took place throughout the year. As many of our Appeal Officers are located outside of our headquarters in Dublin and given that a number of Appeals Officers are recently assigned to my Office, these meetings provided a valuable opportunity to share knowledge and experience, discuss issues of common interest and to promote best practice in decision making.

Consistency in decision making continues to be a major focus of the Appeals Office particularly 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 both conferences in 2017 to this topic. At the October conference two workshops were dedicated

to the issues of cohabitation and habitual residence with a particular focus on legislation governing right of residence in the State. The objective of both workshops was to achieve a common understanding of the issues involved in particular cases, the weight to be given to various types of evidence, where the burden of proof lies and the interpretation of legislative provisions. Relevant case law from the Courts, including from the European Court of Justice, was also considered by participants in the workshops.

We devoted a considerable period of time during the October conference to the issue of evaluation of evidence. As part of this session I was very pleased to have Mr. Mel Cousins B.L. from the School of Social Work and Social Policy at Trinity College Dublin present on the key elements to be considered in evaluating evidence and provide an account of recent developments and challenges in this area.

I am also pleased to report that the newly appointed Secretary General of the Department, Mr. John McKeon, presented at our conference in October. The session provided a valuable opportunity for Appeals Officers to hear of the many developments within the Department itself and to hear first-hand the Secretary General's vision for the future development of policies and programmes of the Department in the context of the ever evolving societal and economic changes.

3.6.1 Caselaw from the Courts

The conferences provided a useful opportunity for Appeals Officers to consider, discuss and clarify various aspects of the judgments delivered by the Courts.

A number of judgments issued by the High Court in January and February 2017 relating to the backdating of Child Benefit to a date earlier than the date of grant of refugee status were of interest to Appeals Officers and were discussed in detail at our conference in April.

While a number of the cases did not specifically refer to an Appeals Officer's decision the judgments are nonetheless of immense importance to Appeals Officers.

In summary the Court has found that in respect of the nature of Child Benefit it is not an automatic right of the child and the Minister is entitled to make rules as to whom it should be paid. The Court rejected the argument that where there has been a grant of refugee status that there is an entitlement to backdating because of the nature of a declaration of refugee status being declaratory in nature of a pre-existing right. A declaration sought that specified parts of Section 246 of the Social Welfare Consolidation Act 2005 are in breach of EU law and repugnant to the Constitution was refused by the Court.

A judgment of the High Court delivered in October 2017 relating to entitlement to State Pension Non-Contributory Pension and the application of Section 246 (5) of the Social

Welfare Consolidation Act 2005 was discussed at our conference in October.

The judgment also dealt in detail with the application of EU Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015). The case revolved around the point in time at which the “unreasonable burden” assessment should be applied in considering if a person has a right to reside in the State. The applicant argued that the test should be applied at some future date following the award of a payment – in this case State Pension Non-Contributory- whereas the respondent argued that the test must be applied at the date of application for the payment concerned. In considering the case-law of the European Court of Justice and of the national Courts, the High Court concluded that the case-law did not support the proposition that the “unreasonable burden” assessment can only be undertaken after a person has been in receipt of the benefit claimed for a specific period of time.

In December 2017, the Supreme Court heard an appeal against a High Court judgment delivered in 2014 which upheld the then Chief Appeals Officers' determination that the applicant was not entitled to the concurrent payment of Widow's Contributory Pension and State Pension Transition, notwithstanding that entitlement to both pensions was established on different PRSI records. In dismissing the appeal, the Supreme Court held that Section 247 of the Social Welfare Consolidation Act 2005 provides that only one such benefit is payable and that the Court is bound by that Section unless the provision is found to be unconstitutional or in conflict with EU law.

3.7 Litigation

There were six applications for judicial review of decisions in 2017. Judgment has been delivered in one of the cases, one application has been heard and judgment is awaited, two cases were settled and the remaining two cases are ongoing.

In addition to the judicial review applications, there were two appeals to the High Court on a point of law pursuant to Section 327 of the Social Welfare Consolidation Act 2005. 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. Both of these cases are ongoing.

Chapter 4:

Case Studies

An Introduction



The case studies included in this Chapter represent a sample of appeals determined during 2017. My Office deals with appeals covering a wide and diverse group of people including families, people in employment, unemployed people, 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 provisions of the EU Residence Directive 2004/38/EC on the right to reside in the State.

All social welfare appeals arise from adverse 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, cohabitation, care required and/or care provided and PRSI contribution conditions.

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 appeal decision. 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 Employment Affairs and Social Protection (DEASP). 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 following Index provides a short reference to the case studies featured.

4.1 Children and Family

2017/01 Child Benefit – Question at issue: Habitual residence condition

2017/02 Child Benefit – Question at issue: Backdating of payment

2017/03 Child Benefit – Question at issue: Whether the child is in full-time education

2017/04 Child Benefit – Question at issue: Extended payment of Child Benefit

2017/05 Domiciliary Care Allowance – Question at issue: Backdating of claim

2017/06 Domiciliary Care Allowance – Question at issue: Whether the eligibility criteria were met at an earlier date

2017/07 Guardian's Payment (Contributory) – Question at issue: Eligibility

2017/08 Guardian's Payment (Contributory) – Question at issue: Whether the eligibility criteria were met at an earlier date

2017/09 One-Parent Family Payment – Question at issue: Eligibility (cohabitation and means)

2017/10 One-Parent Family Payment – Question at issue: Overpayment whilst child in care

4.2 Working Age – Illness, Disability and Carers

2017/11 Illness Benefit – Question at issue: Eligibility (medical)

2017/12 Illness Benefit – Question at issue: Eligibility (medical)

2017/13 Invalidity Pension – Question at issue: Eligibility (contributions)

2017/14 Invalidity Pension – Question at issue: Eligibility (medical)

2017/15 Invalidity Pension – Question at issue: Eligibility (medical)

2017/16 Disability Allowance – Question at issue: Eligibility (medical)

2017/17 Disability Allowance – Question at issue: Eligibility (medical)

2017/18 Disability Allowance – Question at issue: Eligibility (medical)

2017/19 Disability Allowance – Question at issue: Eligibility (medical)

2017/20 Disability Allowance – Question at issue: Eligibility (medical)

2017/21 Disability Allowance – Question at issue: Eligibility (medical)

2017/22 Disability Allowance – Question at issue: Eligibility (medical)

2017/23 Disability Allowance – Question at issue: Eligibility (medical)

2017/24 Disability Allowance – Question at issue: Eligibility (medical)

2017/25 Disability Allowance – Question at issue: Eligibility (habitual residence condition)

2017/26 Disability Allowance – Question at issue: Eligibility (medical and means)

2017/27 Disability Allowance – Question at issue: Eligibility (medical)

2017/28 Carer's Allowance – Question at issue: Means and overlap of entitlement between schemes

2017/29 Carer's Allowance – Question at issue: Full-time care requirement and working/studying more than 15 hours per week

2017/30 Carer's Allowance – Question at issue: Eligibility (medical - care required)

2017/31 Carer's Allowance – Question at issue: Eligibility (provision of full-time care)

2017/32 Carer's Benefit – Question at issue: Employment in the 26 weeks prior to commencement of Benefit

2017/33 Carer's Benefit – Question at issue: Duration of payment

2017/34 Disablement Benefit (OIB) – Question at issue: Workplace accident

4.3 Working Age – Income Supports

2017/35 Family Income Supplement – Question at issue: Eligibility (maintenance)

2017/36 Family Income Supplement – Question at issue: Eligibility (assessment of weekly income)

2017/37 Family Income Supplement – Question at issue: Amount of weekly FIS payable (calculation)

2017/38 Farm Assist – Question at issue: Eligibility (means)

2017/39 Jobseeker's Allowance – Question at issue: Eligibility (habitual residence condition)

2017/40 Jobseeker's Allowance – Question at issue: Overpayment (Departmental error)

2017/41 Jobseeker's Allowance – Question at issue: Eligibility (means)

2017/42 Jobseeker's Benefit – Question at issue: Eligibility (Substantial loss of employment)

2017/43 Jobseeker's Benefit – Question at issue: Eligibility (whether a person is unemployed)

2017/44 Jobseeker's Benefit – Question at issue: Eligibility (availability for work)

2017/45 Supplementary Welfare Allowance – Question at issue: Eligibility (payment in exceptional circumstances)

2017/46 Supplementary Welfare Allowance – Eligibility (Rent supplement and overpayment)

4.4 Retired, Older People and Other

2017/47 Recoverable Benefits & Assistance – Question at issue: Eligibility (contributions)

2017/48 State Pension (Non-Contributory) – Question at issue: Eligibility (means)

2017/49 State Pension (Non-Contributory) – Question at issue: Claim against estate

2017/50 State Pension (Contributory) – Question at issue: Contribution conditions

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4.5 Insurability of Employment

- 2017/56 Insurability** – Question at issue: Whether a person had been employed or self-employed

4.6 Reviews under Section 318 of the Social Welfare Consolidation Act 2005

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- 2017/318/62 Jobseeker’s Allowance**– Question at issue: Whether an Appeals Officer had erred when partially allowing an appeal in relation to an overpayment
- 2017/318/63 Carer’s Allowance** – Question at issue: Whether full-time care and attention was being provided
- 2017/318/64 Carer’s Allowance (CA)** – Question at issue: Whether full-time care and attention was required
- 2017/318/65 Disability Allowance (DA) and One Parent Family (OPF)** – Question at issue: Whether the appellants were cohabiting
- 2017/318/66 Jobseeker’s Benefit (JB)** – Question at issue: Whether the appellant was “genuinely seeking work” for the purposes of Jobseeker’s Benefit
- 2017/318/67 Jobseeker’s Benefit** - Question at issue: Eligibility (qualifying contribution conditions)
- 2017/318/68 State Pension (Non-Contributory)** – Question at issue: Overpayment assessed (means)
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- 2017/318/70 State Pension (Contributory)** – Question at issue: Increase for Qualified Adult (means)

4.1 Case Studies

Children & Family

2017/01 Child Benefit Oral Hearing

Question at issue: Habitual residence condition

Background: The appellant applied for Child Benefit in February 2017 in respect of his three children. The claim was disallowed on habitual residence condition grounds. The Department argued that the appellant and his children only came to live in Ireland in January 2017, that the appellant arrived without arranging any work in advance and with no means of financial support and that he had to seek emergency social welfare payments from the Department upon arrival. Prior to moving here, he had lived all his life in the UK with his only link to Ireland being his mother and younger sister who live here.

Oral hearing: The appellant, in his thirties, was born and raised in the UK. His father is English and his mother is Irish. They separated when he was a child and his mother and sister returned to Ireland while he remained in the UK with his father. He came to Ireland for most of the school holidays to stay with his mother and to spend time with his grandparents and other extended family.

The appellant and his ex-partner have three children. They lived in the UK and the appellant supported the family with a variety of jobs. His partner experienced health problems and was in receipt of a disability payment. In 2016 the relationship broke down and he left the family home. After spending Christmas in Ireland with his mother, he decided to move over permanently if his ex-partner would allow him to bring the children with him to live in Ireland. She agreed and he moved over with the children in January 2017. Initially they moved in with his sister and her family.

The appellant stated that he and his partner had always intended to move to Ireland as he has much stronger family ties here than in the UK. He applied for Supplementary Welfare Allowance, One Parent Family Payment and Child Benefit soon after arriving in Ireland in February 2017. He had very little money and received a few Exceptional Needs Payments from the Department. However, his stated intention was to find work and the evidence showed he had applied for several jobs. He also began doing odd jobs for friends and other family members and managed with that money and help from his family to move into his own rented house. He had recently been offered a job but could not take it up as he needed an Irish Safe Pass card and could not afford the course. He was just about managing to get by but would love to set up his own business after he gets more established. He intends to remain in Ireland permanently as the majority of his family members are in Ireland. Two of his children are attending primary school since February 2017 and are doing well.

Consideration: It is a qualifying requirement for Child Benefit that a person is deemed to be habitually resident in the State. Section 246 of the Social Welfare Consolidation Act 2005 provides that in determining whether a person may be regarded as habitually resident, particular attention must be paid to the following: the length and continuity of residence in the State; the length and purpose of any absence from the State; the nature and pattern

of employment; main centre of interest, and future intentions as they appear from all the circumstances.

The Appeals Officer considered that the appellant had established a centre of interest in the State with effect from February 2017, when two of his children started school in Ireland. The Appeals Officer noted that the appellant was working, doing odd jobs as a handyman, and had secured rented accommodation. He also noted the appellant's stated intention to remain in Ireland permanently where his support network to help him raise his children is much greater than in the UK. In the circumstances, the Appeals Officer concluded that the appellant was habitually resident in the State with effect from February 2017.

Outcome: Appeal allowed.

2017/02 Child Benefit Summary decision

Question at issue: Backdating of payment

Background: The appellant had been in receipt of Child Benefit up to 2013 when she temporarily moved to Australia. She returned to Ireland in June 2014 but only submitted an application for Child Benefit in February 2017. She was awarded Child Benefit from March 2017 and requested that her payment be back-dated to cover the period June 2014 to February 2017.

Consideration: Social Welfare legislation provides that a person who fails to make a claim for Child Benefit within the prescribed time shall be disqualified for payment in respect of any day before the date on which the claim is made. This legislation, however, does allow for the backdating of a Child Benefit claim where it is accepted that there was good cause for the delay in making the claim and where entitlement throughout the period in question is established.

The appellant stated that the reasons for the delay in submission of her claim was the volume of information and paperwork requested for both the Child Benefit form and the habitual residency questionnaire she had to complete. She stated that she experienced difficulty in gathering specific information and documents which were both valid and up to date. She also stated that she and her husband had a number of significant life events that contributed to the difficulty in obtaining all of the requested information for the application including: settling into new jobs, transitioning their child into school, renewing passports, renewing immigration stamps and negotiating the terms of her husband's uncertain short term employment contracts. She said that the application required some form of document for each of these events and it was difficult to have these ready and up to date at the same time.

The Appeals Officer concluded that, while noting these reasons, he must also take into account the fact that the form for application Child Benefit itself includes an information page and guidance on how to complete the form. It clearly informs all potential claimants that they

could lose out on the benefit unless they complete and return the application within 12 months of the month in which the family either came to live in Ireland or the date either a claimant or a claimant's spouse commenced employment in Ireland.

The appellant became a qualified person for the receipt of Child Benefit in June 2014, the date she returned to live in Ireland. She would have seen the guidance on the application form and this would have given her sufficient time to source the documentation required to support her application. She had previously been in receipt of Child Benefit up to the date she temporarily moved to live in Australia in 2013, so she was therefore aware of the existence of the payment and her potential entitlement. Although she stated that she experienced difficulty in gathering supporting documentation, there is no evidence that she contacted the Child Benefit section of the Department to discuss this difficulty as a cause of delay and sought any advice/guidance prior to the date she formally submitted her application in February 2017.

The Appeals Officer concluded that the appellant's explanation of her reasons for the delay in applying for Child Benefit did not amount to good cause, as provided for in legislation.

Outcome: Appeal disallowed.

2017/03 Child Benefit Oral Hearing

Question at issue: Whether the child is in full-time education

Background: The appellant had been in receipt of Child Benefit from a date in 1999. Following correspondence from the school regarding non-attendance, Child Benefit entitlement was reviewed and disallowed on the grounds that her child was over 16 and was not 'in full-time education'. The appellant contended that her child was being bullied at school. She had tried to get the school to address the issue and made efforts to get him into another school but there were no places available and she notified the Department of Education and Skills that her child was now at home.

Oral hearing: The appellant was accompanied by an NGO advocate and the Home School Liaison Officer from the school. The Deciding Officer also attended at the request of the Appeals Officer. The Appeals Officer noted that the appellant had submitted substantial evidence that her son was being bullied at school. The appellant confirmed that he had not attended school formally since September because of this bullying and was now being home-schooled, although due to some confusion he was not registered with the Department of Education and Skills for approval for home tuition. The Appeals Officer noted that in order to be deemed a qualified child for the purposes of Child Benefit, it was a legislative requirement that once a child reached 16 years, he or she must be in full-time education. As this child was now being home-schooled, the question at issue was whether the child met the condition of being in full-time education as provided for in legislation.

The representative from the Department stated that, in addition to the stated definition of 'full-time education' for those over sixteen years of age, they sometimes accept, on an administrative basis, that this condition is being met where the child is being home- schooled. The Department has to satisfy itself that the child concerned is partaking in a full- time course of study and they usually request a time table, list of subjects studied, information about registration for State Exams etc. The appellant stated that she was a former teacher and that her son works at his studies full-time every day. He is in fifth year, studying eight subjects and will sit his Leaving Cert in June 2019. She said that after he left school in September, she made extensive but unsuccessful efforts to get him a place in another school and that she had now got a place for him, starting the following September.

The Home School Liaison Officer confirmed the child is still registered at their school, that teachers there have been supportive and willing to facilitate study at home including providing him with notes of class lessons every week. He has been submitting exam papers for summer and Christmas exams to the school who correct them. The Department's representative then advised that the situation sounded very akin to home schooling and that, if the appellant provided the requisite information about routine, timetable, registration for exams etc. and a letter from the school, she would be willing to review and reconsider the decision made to disallow the Child Benefit claim. The appellant later provided evidence of same to the Appeals Officer, including confirmation that she had now applied to the Department of Education and Skills for registration on the home school register and of a school place the following September for her son.

Consideration: The governing legislation provides that a child over sixteen must normally be in full-time education in order for Child Benefit to be paid. Article 160 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) outlines the criteria for determining when a child may be regarded as 'receiving full- time education'. This involves 'attending on a full-time basis a course of full-time education by day at an institution of education' or "being on a Department of Education and Skills register for home-schooling'. The Appeals Officer observed that the 'institutions of education' as defined in legislation under Article 3 did not include a provision for home- schooling. She observed that the case therefore hinges on the meaning of the phrase 'full- time education' as it applies in this context and that the term 'attending a course by day at an institution of education' does not cover the scenario of home schooling.

The Department indicated at the oral hearing, that they were willing to re-consider the additional evidence and to decide it on the basis of an administrative decision, whereby they would apply alternative criteria to the term 'full-time education' if satisfied that the appellant's son was being home-schooled on a full-time basis. The Appeals Officer, whilst acknowledging a positive administrative decision in such cases concluded that the existing legislation does not actually allow for this interpretation.

Nevertheless, the Appeals Officer observed that the appellant had demonstrated that in this instance there was a significant amount of co-operation and interaction with the school. Whilst not physically attending the school, her son was still registered as a pupil there. He worked at home on a full-time rostered basis, was doing eight Leaving Certificate subjects, had notes and grinds organised for these subjects. The school provided ongoing support, supervision and on-line updates to him. In addition, they allowed him to both sit and have end of term exams corrected. The Appeals Officer concluded that, for all intents and purposes, the appellant's son could therefore be considered as attending full-time education at the school, as the school/pupil role is fulfilled in a similar manner.

Outcome: Appeal allowed.

2017/04 Child Benefit Summary decision

Question at issue: Extended payment of Child Benefit

Background: Prior to her son's 16th birthday, the Department advised the appellant that while payment of Child Benefit ceases at age 16 years, it may be extended to age 18 years where a child is in full-time education or is 'physically or mentally disabled'. In order that payment would continue, she was asked to supply certification in respect of her son. In response, she stated that he had mental health issues, and she submitted a National Educational Psychological Service (NEPS) report. She also provided details of correspondence in which a Psychologist had outlined the difficulties he was experiencing, and had made a number of referrals for him. This evidence was referred to the Chief Medical Advisor of the Department, with a request for an opinion as to whether he might be held to meet the definition provided for in the governing legislation. The Medical Assessor indicated that he considered that the medical evidence was not approved, and the appellant was asked if she wished to provide additional medical evidence. In response, she submitted an assessment completed by the Child Adolescent and Mental Health Services (CAMHS), which outlined issues raised during the assessment, and a plan to provide support for the child and his parents. Ultimately, the claim was disallowed on grounds that the medical evidence was not sufficient to establish a basis for extended payment of Child Benefit.

In an appeal against that decision, the appellant stated that her son continued to suffer mental health issues and depression; he did the Leaving Cert Applied (LCA) because he could not be around large numbers of people and there had been six pupils in the LCA class, and he was not doing a Post Leaving Cert (PLC) course or other training because he was still not stable and not yet ready to interact with people. She referred to the medical evidence provided, and submitted that payment of Child Benefit until his 18th birthday would help her to help him.

Consideration: Social welfare legislation provides for the extended payment of Child Benefit, between 16 and 18 years of age, where a child is in full-time education or is, by reason of

physical or mental infirmity, incapable of self-support and likely to remain so for a prolonged period. Accordingly, the question to be determined was whether the appellant's son could be regarded as incapable of self-support 'by reason of physical or mental infirmity', and likely to remain so for a prolonged period.

The Appeals Officer noted the details of the medical evidence submitted and the appellant's assertion that her son continued to experience depression and mental health issues, and that he was not attending a PLC or other course, having completed the LCA, as he felt unable to interact with people. In the circumstances, she concluded that the evidence established that he met the definition of a qualified child provided for in the legislation governing extended entitlement to Child Benefit.

Outcome: Appeal allowed.

2017/05 Domiciliary Care Allowance Summary Decision

Question at issue: Backdating of claim

Background: The appellant applied for Domiciliary Care Allowance (DCA) in October 2016 in respect of the care of her son and was awarded the payment with effect from 1 November. On her application form the appellant indicated that she had not applied for the payment earlier as they had only recently been made aware of DCA by their friends. She appealed the decision, seeking to have it backdated. She stated that at the time of the child's diagnosis in October 2015 they were not made aware of the allowance. She also referred to both herself and her husband experiencing health issues around this time. The Department disallowed the application for backdating stating lack of awareness was not considered good cause to backdate a claim. The Department stated that information relating to the DCA scheme is widely available and applicants are expected to make themselves aware of their rights and entitlements.

Consideration: Section 241(4A) of the Social Welfare Consolidation Act 2005 provides that a claim for Domiciliary Care Allowance may be back-dated for a maximum of six months where it has been shown that there was good cause for the delay in making the claim. Based on the specific circumstances of this particular case, the Appeals Officer found that there was a "good cause" to explain the delay in claiming DCA at an earlier date. While the Department contended that lack of knowledge does not constitute a "good cause", the legislation is not prescriptive in that regard. While lack of knowledge in relation to failure to apply for other social protection schemes may not reasonably constitute good cause, the Appeals Officer found that DCA should be regarded on a case by case basis as its reach was beyond the contingencies normally associated with recourse to the Department. The Appeals Officer found the failure to apply was due to an assumption on the appellant's behalf that there was nothing to apply for. He found this assumption to be reasonable and understandable due to the dearth of information provided by all service providers at the time of her son's diagnosis. He found that it was reasonable that the appellant would not

have realised that, in the circumstances of the child's diagnosis, there may have been recourse to a payment from the Department. He concluded that this constituted "good cause" for the delay in applying for the payment and the appeal was allowed for a period of six months, the maximum period allowable for backdating under the legislation.

Outcome: Appeal allowed.

2017/06 Domiciliary Care Allowance Oral hearing

Question at issue: Whether the eligibility criteria were met at an earlier date

Background: The appellant had applied for Domiciliary Care Allowance (DCA) for her son, aged 7, who had a diagnosis of severe autism. The appeal in this instance initially appeared to be the backdating of a DCA application made in February 2016. However on review of the file it was noted that the appellant had originally applied for DCA in 2014 and was disallowed in February 2015. There was a letter on the file dated August 2015 addressed to the DCA section of the Department requesting that the letter be accepted as a late appeal. There was no evidence as to whether this letter had ever been forwarded to the Social Welfare Appeals Office for consideration as a late appeal. Having reviewed all the evidence the Appeals Officer treated the case as an appeal of the February 2015 decision to refuse DCA.

Oral hearing: The appellant and her former husband attended the hearing. The appellant described significant turmoil in her life at the time she was refused DCA in February 2015, including bereavement, illness and marital and home difficulties. She was out of work on sick leave for stress and her focus was on having the HSE assessments completed on her son so that he could avail of the necessary supports and services. She was unable to return to work full-time because of her son's care needs and worked part-time hours from home, which had since finished. Her son had a full-time SNA in mainstream school but still could not cope and from January 2015 he started in a specialist ASD Unit. The appellant confirmed that her child's condition had not changed since her application in 2014 and that the results of the medical assessment submitted at that time had not changed. Given the available reports and evidence on file including the Department's awarding of DCA in 2016, the Appeals Officer did not consider it necessary to explore any further the issue of the appellant's son being a 'qualified child' for the purposes of DCA.

Consideration: The Appeals Officer dealt with the appeal as a late appeal of the initial decision of February 2015, based on the personal circumstances outlined by the appellant at the oral hearing. She concluded that the evidence presented with the 2014 application was very similar to the evidence presented with the 2016 application which was allowed by the Department. She concluded that it had been established that the appellant's son met the definition of 'qualified child' for Domiciliary Care Allowance with effect from November 2014, when she first applied.

Outcome: Appeal allowed.

2017/07 Guardian's Payment (Contributory) Oral Hearing

Question at issue: Eligibility

Background: The appellant applied for a Guardian's Payment in respect of her grandson. The application was rejected on the grounds that the child did not satisfy the definition of an orphan under Section 2(1) of the Social Welfare Consolidation Act 2005: *"orphan" means a qualified child –(a) both of whose parents are dead, or (b) one of the parents is dead or unknown or has abandoned and failed to provide for the child, as the case may be and whose other parent – (i) is unknown, or (ii) has abandoned and failed to provide for the child.*

The Deciding Officer noted that the child's father maintained contact with his son and stays overnight with him every weekend. The child's father provides school uniforms, books, clothes and footwear for his son. The child's father had stated that he could not care for his son due to his medical problems and that the child's best interests are served by being in the care of the appellant, the child's grandmother.

The child's grandmother appealed the decision not to grant her a Guardian's Payment and made a statutory declaration stating that her grandson had been in her care since the death of his mother in May 2016. She stated that the child had never lived with his father because of his mental health difficulties and that he is not capable of caring for the child. While the child stays with his father over weekends, this arrangement can and often is cancelled at short notice when the father is unable to cope. The appellant asserted that she was acting in loco parentis and her son, the child's father, was not providing for the child.

Oral Hearing: An oral hearing was held and the appellant attended with a solicitor from an independent law centre. It emerged that the appellant had been appointed legal guardian of the child. The appellant stated that even before the death of the child's mother, the child mostly stayed with her. Child Benefit had been granted to the appellant. The solicitor for the appellant argued that the case turned on the definition of abandonment and examined the Department's guidelines on the question. It was unlikely that the child's father would assume care of the child due to his mental health problems. While contact was maintained, the level of contact was not consistent or dependable and was subject to the father's wellbeing at any one time. The solicitor contended that once a week contact is not a substitute for day-to-day care and responsibility. It was argued that the lack of involvement by the father in the child's welfare had to be taken into account. The appellant attended to all of the child's medical, educational and financial needs. The solicitor referred to a previous Appeals Officer's decision, highlighted in the Social Welfare Appeals Office Annual Report 2015 (2015/04 Appendix 1), which also looked at the issue of abandonment and failure of duty. She argued that occasional financial contributions do not constitute financial support. The evidence was that the child's father only provided some contributions towards school uniform, school books and footwear. She also stated that contact and staying overnight once a week was insufficient grounds for rejecting the application.

Consideration: The Appeals Officer accepted that the child's father had made no real financial support available for him and was unable to provide the child with appropriate care and attention. The Appeals Officer noted the Supreme Court ruling [2002] IESC 75 in which that Court held that failure of duty towards a child does not necessarily or invariably amount to abandonment but that the requirement of abandonment is not to be considered in isolation, separate from the failure of duty. 'It is 'such failure' of duty that may amount to abandonment.' The Appeals Officer took into account the death of the child's mother, the lack of any adequate financial provision by the child's father, the father's mental health problems and the child's ongoing reliance on his grandmother for all his needs as evidenced by her appointment as legal guardian. He concluded that occasional contact and intermittent financial support cannot be taken to counteract what amounts to abandonment and failure to provide. The Appeals Officer held that the appellant had taken over the rights and duties of a parent in respect of the upbringing of the child. The appellant had the right to make all major decisions affecting the child's upbringing. The Appeals Officer found that the appellant was responsible for the overall welfare of the child and the child's surviving parent was not fulfilling any such role.

Outcome: Appeal allowed.

2017/08 Guardian's Payment (Contributory) Summary decision

Question at issue: The eligibility criteria were met at an earlier date

Background: The appellant applied for Guardian's Payment (Contributory) in respect of her sibling who had been living with her for many years. This payment was awarded, and was backdated for 6 months in line with the provisions of the governing legislation. The appellant requested that her claim be backdated for a further period to 2013. The Department refused to backdate the claim to 2013 on the grounds that there was no basis for backdating in excess of the 6 month period. The appellant stated that she did not claim for Guardian's Payment at the prescribed time due to lack of knowledge.

Consideration: The Appeals Officer referred to the Department's "Guidelines on Claims and Late Claims" which provide that: "In the case of Guardian's payment (Contributory) and Guardian's payment (Non-Contributory), a previous claim for the orphan as a qualified child on another social welfare payment may be accepted where the scheme conditions are fully satisfied". The Appeals Officer noted that the appellant brought the above Guidelines to the attention of the Department and that the Department did not respond to this. The Appeals Officer also noted that the Guidelines provide that: "*Where information was supplied on a claim form for a particular scheme that should have alerted the Department to the fact that the person was entitled to another DSP scheme which is refused, the date of the earlier claim may be accepted as the date of claim for the appropriate entitlement*".

The Appeals Officer noted that the appellant was in receipt of a child dependent increase for

her sibling on her Jobseeker's Allowance claim since June 2013. He also noted that when the appellant approached the Department for information regarding her entitlements for her sibling, she was only told about the child dependent increase and was never informed about the Guardian's Payment. The Appeals Officer, having considered all the available evidence, and giving particular weighting to the Department's own Guidelines on late claims, concluded that the appellant's claim for Guardian's Payment should be backdated to the date of her Jobseeker's claim in 2013, provided all the other conditions for the scheme have been met.

Outcome: Appeal allowed.

2017/09 One-Parent Family Payment Oral hearing

Question at issue: Eligibility (cohabitation and means)

Background: The Department disallowed the appellant's claim for One Parent Family Payment (OFP) payment on the grounds that the appellant had failed to show that she was not cohabiting or that her means were below the maximum rate of €217.80 weekly.

Oral Hearing: The appellant attended the hearing with a representative. The Social Welfare Inspector (SWI) was also in attendance, at the request of the Appeals Officer. The SWI read out her report which concluded that the appellant did not reside at her parents' address as she had claimed. This contention followed from a visit to her parents' address by the SWI in relation to the appellant's sister's claim for Jobseeker's Allowance. The appellant was not listed as residing at the address on the appellant's sister's claim at that time. The SWI submitted that the appellant had moved to a large rented house and must have been in a position to pay the costs of living there and on that basis must have been receiving financial assistance from her son's father in this regard. The SWI submitted that the appellant was asked to provide details of her son's father's income as she was benefitting from this income and that these details had not been provided.

The appellant submitted that she was resident at her parent's address having moved out of the rented accommodation following the breakdown of the relationship with her son's father. She submitted that she had no means and was being financially assisted by her parents. She was receiving weekly maintenance of €30 from her son's father who she stated now lived with his parents. The appellant's representative at the hearing confirmed that to his knowledge the appellant's son's father resided at his parents' address. The appellant submitted that she had been unable to meet her loan repayment to the Credit Union and that at times she had needed to get food parcels from a local food bank. This was confirmed by her representative.

Consideration: The Appeals Officer considered the evidence available. The Department was of the view that the appellant did not reside in her parents' address and was being supported by the father of her son. The evidence available did not however support this conclusion. From

the evidence available the Appeals Officer concluded that the appellant resides at her parents' address and is not living in a cohabiting relationship and that her means are well below €217.80 weekly.

Outcome: Appeal allowed.

2017/10 One-Parent Family Payment Oral hearing

Question at issue: Overpayment whilst child in care

Background: The Department made a revised decision that the appellant was not entitled to One Parent Family Payment (OFP) for an approximately 15 month period from September 2015 to December 2016 when her son was in foster care. As a result of this decision, an overpayment of almost €15,000 was assessed against the appellant. In appealing the decision, the appellant stated that her son was only ever under interim care orders of 28 days duration and that every month she expected the order to be lifted. During the care period the appellant received help for significant health issues. She states she had daily access to her son and continued to buy all his clothes and food and paid for any extracurricular activities at his crèche whilst he was in care.

Oral hearing: The appellant attended the hearing with a representative from her local Citizens Information Centre (CIC). The appellant, who is in her mid-twenties and has an almost three year old son, developed mental health and alcohol/drug problems soon after the birth of her child. She took part in a one-month treatment programme in January 2015 during which time her son was cared for by her mother. However she relapsed and her son was taken into care in September 2015. He was placed into the care of the appellant's brother and his wife. In November/December 2015 the appellant once again had to go into a treatment centre and remained there for a few months.

Every month the appellant went to court to try to get her son returned as he was only on 28 day interim orders. She stated that both the HSE and Tusla were aware that she was in receipt of OFP. She maintained that during all that time she continued paying for essentials for her son and also had to continue paying rent on their house as every month she expected him home. She remained her son's legal guardian and saw him every day except when she was away for treatment. From summer 2016 he began staying for overnights in her house and was officially returned to her in January 2017. She is claiming OFP since his return to the family home.

The CIC representative did not consider that it was appropriate for the Department to raise an overpayment considering that the appellant would have been on an alternative social welfare payment if she had not been receiving OFP, as she had no other income. The CIC representative also pointed out that the appellant had received the notice of overpayment just after her son had resumed living with the appellant and this had a very negative effect on her well-being.

Consideration: The Appeals Officer was satisfied from the evidence that the Department was correct and that the appellant had no right to continued payment of OFP once her son was taken into care. Based on the oral hearing it was equally clear that the appellant never set out to defraud the Department or to claim anything to which she was not entitled. As she was keeping a home for her son to return to and generally had daily contact with him, she incorrectly, believed that she was still entitled to payment of OFP. The Appeals Officer also noted that the appellant had continued paying for much of her son's upkeep and, as the representative of the CIC pointed out, the appellant would clearly have had an entitlement to a different payment such as Disability Allowance if the OFP had been stopped.

The Appeals Officer noted the very difficult circumstances for both the appellant and her young son. The Appeals Officer considered that a decision with retrospective effect with the consequence of raising an overpayment would be grossly unfair on the appellant. While the Appeals Officer upheld the Department's decision that the appellant had no entitlement to OFP he decided that the application of Section 302(b) of the Social Welfare Consolidation Act 2005 was appropriate and determined that the decision should take effect from 7 December 2016. In those circumstances no overpayment arose.

Outcome: Appeal allowed.

4.2 Case Studies

Working Age –
Illness, Disability
and Carers

2017/11 Illness Benefit Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her 30s, had a certified incapacity of back pain and had been in receipt of Illness Benefit for some months. Prior to the onset of incapacity, she had been working as a sales assistant. Following a medical examination by the Department, her claim was disallowed on grounds that she was no longer deemed to be incapable of work and was not entitled to Illness Benefit under the provisions of the governing legislation (Section 40(3) (a) of the Social Welfare Consolidation Act 2005). The Medical Assessor was of the opinion that the appellant was mildly affected with regards to lifting and carrying and was capable of a return to work taking the normal precautions with her back. The appellant submitted further medical evidence in support of her appeal including a letter from her GP stating that she had ongoing lower and upper back paraesthesia into her arms and legs. It was reported that the x-rays of the appellant's cervical and lumbar spine showed spondylolisthesis. She also submitted MRI results detailing cervical disc protrusion, initial spondylosis and there was also a reference to a hernia.

Oral hearing: The appellant reported that she had worked as a shop assistant in a retail store. She reported that her back problem started about three years ago. She had MRIs which showed disc protrusions. She said that she had massage and needle therapy for her back and neck and it improved her symptoms for a short time. Her back symptoms became problematic again and she resumed taking medication. She said that she continues to suffer from pain in her mid-back and the lower left side of her back. She said that she had recently commenced physiotherapy to help treat her condition. She submitted medical evidence from a Senior Clinical Physiotherapist regarding the ongoing issues with spinal processes and disc protrusions. It was also confirmed that the appellant had been referred for a course of physiotherapy at a hospital.

Consideration: The Appeals Officer considered the overall evidence of the case including the medical evidence from the Senior Clinical Physiotherapist regarding the appellant's ongoing issues and had regard to the fact the appellant was undergoing treatment for her condition. She was satisfied that the appellant was currently incapable of work.

Outcome: Appeal allowed.

2017/12 Illness Benefit Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her 30s, had a certified incapacity of back pain and had been in receipt of Illness Benefit for over one year. Prior to the onset of incapacity, she had been working as a carer. Following a medical examination by the Department, her claim was disallowed on grounds that she was no longer deemed to be incapable of work and was not

entitled to Illness Benefit under the provisions of the governing legislation (Section 40(3)(a) of the Social Welfare Consolidation Act 2005). The Medical Assessor was of the opinion that the appellant was mildly affected with regards to walking, climbing stairs, bending/kneeling/squatting and lifting/carrying and that she was capable of sedentary/semi-sedentary work. The appellant submitted a letter from her GP in support of her appeal, stating that her back pain had been giving her trouble intermittently over the last year and she had never, in that time, been well enough for employment.

Oral Hearing: The appellant reported that she had problems with her back since she was in her 20s. She reported that she was referred to a medical specialist in this regard about 8 – 9 years ago and was advised that she may need surgery in the future. She also reported that her back was affected by a road traffic accident some years later. She was treated with medication, injections and physiotherapy at that time. She reported that she had a back x-ray in 2016 but she was not sure of the results. She had not attended a medical specialist in relation to her back in recent times. She reported pain in her back, leg, shoulder, elbow and hand. She takes medication. She reported that she has good and bad days and there are days when she can get no relief from the pain. The appellant reported that she knows that she cannot return to her work as a carer and she considered herself unfit for any work at the time of the hearing.

Consideration: The Appeals Officer considered the overall evidence before her including the findings of the Department's Medical Assessor and the letter from the appellant's GP. The appellant's account of how she was affected by her medical condition was noted. It was also noted that whilst the appellant provided a comprehensive account regarding the impact of her condition, the Appeals Officer was of the opinion that the appellant had not submitted sufficient medical evidence in support of the range of issues as described in relation to her back, shoulder, arms and leg. The Appeals Officer also noted that the appellant had not attended a medical specialist in relation to her back condition in recent years. The Appeals Officer concluded that whilst the appellant may not be able to resume her work as a carer due to her incapacity, she considered that the appellant was not incapable of work for Illness Benefit purposes.

Outcome: Appeal disallowed.

2017/13 Invalidation Pension Summary decision

Question at issue: Eligibility (contributions)

Background: The appellant submitted an application for Invalidation Pension in April 2017. The application was disallowed by the Department as the appellant did not have the required number of contributions to qualify for the scheme. The legislation requires that a person must have at least 260 contributions paid at PRSI Class A, E, or H rate, since first starting work and have 48 qualifying contributions paid or credited in the contribution year prior to the year in

which the claim is made. Departmental records indicated that the appellant had significantly less than the required number. The letter of disallowance advised the appellant that if he believed that the records held by the Department were incorrect then he should submit those details and the matter would be examined. In his letter of appeal the appellant focused on his medical issues. He offered no information on any additional contributions.

Consideration: The Appeals Officer noted that the evidence provided by the Department credited the appellant with 219 contributions since he entered into insurable employment. The appellant did not offer any evidence or make any claim that there may be additional contributions to be considered. On the basis of the information available, the Appeals Officer was satisfied that the appellant did not have 260 PRSI contributions paid at the appropriate rate since entry into insurable employment and so could not qualify for an Invalidity Pension.

Outcome: Appeal disallowed.

2017/14 Invalidity Pension Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her early 40s, had been in receipt of Illness Benefit until her entitlement under the scheme (payment for two years) ceased. She made a claim for Invalidity Pension which was rejected on grounds that she was not permanently incapable of work.

Oral Hearing: The appellant reported that her medical conditions were back pain and depression/anxiety. Her back pain started during pregnancy. She had an epidural during the delivery and since then she has had back trouble. Her depression/anxiety started during her pregnancy and did not settle after the birth of her son. She outlined her medications and that she had anti-inflammatory injections for back pain between 2014 and 2016. She sometimes used heat packs and used support belt for her back. She had massages and therapies but they were of no help. She had been referred for an MRI scan but has not been called for this yet. She has not yet seen an orthopaedic specialist. With regard to her depression/anxiety she started taking medication in early 2015 and has been on this since. The dose was never increased. She was not attending any mental health services or counselling. She said that some days she did not go outside the front door. She reported that her child kept her going. Her father was recently diagnosed with vascular dementia and this did not help her condition. Her husband worked and she looked after their child, which she could manage most days. With regard to housework she could not do anything that involved bending, lifting or pulling. She could not Hoover. Her husband did the cooking and shopping. She had her own car and could drive but only short distances. The appellant made the point that she had been on Illness Benefit and had an appeal with the Social Welfare Appeals Office and her appeal was successful. However, she had not received any social welfare payments since August 2016 as her benefit exhausted.

Consideration: For purposes of her claim to Invalidity Pension, the Appeals Officer noted that the appellant was required to establish that she was permanently incapable of work. In accordance with Article 76(1)(a) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007), she had to demonstrate that immediately before the date of claim she had been continuously incapable of work for a period of one year and that she was likely to remain incapable of work for at least a further year. As the appellant had already shown that she was incapable of work for a year prior to applying for Invalidity Pension (as evidenced by payment of Illness Benefit for this period) she needed to be considered incapable of work for a further year from the date of claim. The Appeals Officer noted that the appellant's GP completed a medical report in connection with her Invalidity Pension application and outlined her condition as chronic back pain which he anticipated would preclude her from returning to work for 6-12 months. He indicated that she was severely affected in lifting/carrying, moderately affected in bending/kneeling/squatting, sitting/rising, standing, climbing stairs/ladders and walking and mildly affected in balance/co-ordination. All other activities were indicated as normal. In a further letter, the GP stated that the appellant was on long term anti-depressants and long term anti-inflammatory pain killers. Her back problems were ongoing and despite extensive physiotherapy, she still had a lot of pain and was on a waiting list for an MRI. Having considered both the medical evidence and the evidence adduced at oral hearing, with particular reference to the GP's assessment that the appellant's condition would preclude her from returning to work for 6-12 months, the Appeals Officer was not satisfied that it had been established that the appellant would remain incapable of work for a further 12 months from the date of application for Invalidity Pension. Therefore, she could not be considered permanently incapable of work.

Outcome: Appeal disallowed.

2017/15 Invalidity Pension Oral hearing

Question at issue: Eligibility (medical)

Background: The appellant, aged 50, applied for Invalidity Pension which was refused on the grounds that she was not permanently incapable of work. Her medical conditions included rheumatoid arthritis, hypercholesterolemia and depression.

Oral hearing: The appellant explained that in addition to the medical problems listed above, she also suffered from liver dysfunction arising from prescribed medications for her arthritis. As a result, her GP had to reduce the dosages of essential medication for her arthritic symptoms. The appellant reported being in a lot of pain with movement in her hands, knees and feet frequently restricted. She also suffers from severe anxiety and depression but medical reactions to her arthritis medication restrict the pharmacological treatment of her mental health issues. The appellant reported that she continued to work for 3 years while very ill before she became so incapacitated that she had to stop working. The appellant stated that she would love to work again but because of her medical conditions she simply cannot.

Consideration: Article 76(1) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) defines ‘permanently incapable of work’ for the purposes of Invalidity Pension. Either, at the time of making a claim, a person has been continuously incapable of work for twelve months and is likely to remain incapable of work for a further twelve months, or the person has been incapable of work for less than twelve months but is likely to remain incapable of work for life. From the medical evidence and the evidence adduced at oral hearing, the Appeals Officer was satisfied that it had been established that the appellant was likely to remain incapable of work for life and therefore met the medical criteria for Invalidity Pension.

Outcome: Appeal allowed.

2017/16 Disability Allowance Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant’s claim for Disability Allowance was refused on the grounds that he was not substantially restricted from undertaking suitable employment, as set out in the governing legislation. The appellant had been in receipt of Supplementary Welfare Allowance for over one year prior to his application, on illness grounds. The initial medical report from the GP gave his medical conditions as back pain, low platelets, gastritis, and gout. He stated that the appellant had an MRI, was attending the outpatient department at a local hospital, and was being treated with a combination of medication and physiotherapy. In the ability/disability profile on the medical report, the GP indicated that the appellant was moderately affected in lifting/carrying, bending/kneeling/squatting, and climbing stairs/ladders, and was normal in all other abilities.

Consideration: In a letter supporting the appeal, the appellant’s GP elaborated further on the issue of back pain. He also stated that the appellant had a serious bowel problem which results in “*frequent bowel movements, up to 15 times per day*” which was being investigated by a hospital. On consideration of both the original and the new medical evidence, the Appeals Officer was of the opinion that the combined effect of the joint pain and of the gastritis, which manifested itself in the form of frequent and uncontrollable bowel movements, on a daily basis, were sufficient to meet the legislative requirement that the appellant was substantially restricted from taking up work. Given that both of these medical conditions are currently under investigation with specialists, he was satisfied that the appellant would reasonably be expected to remain substantially restricted for a further period of 1 year. The decision was made in accordance with Section 210 of the Social Welfare Consolidation Act 2005 and Article 137 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) which sets out the medical eligibility criteria for Disability Allowance.

Outcome: Appeal allowed.

2017/17 Disability Allowance Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in her mid-50s, was intellectually impaired since birth. She had previously been in receipt of Disability Allowance. The current application was made in August 2016 and was refused by the Department on the grounds that the appellant was not considered to be substantially restricted in undertaking suitable work, having regard to age, qualifications and experience. A letter from the appellant's GP stated that the appellant was not able to manage her own affairs and had always lived at home. He also indicated that in her advancing years it was likely that she would become more dependent and require further care. A letter from the appellant's father stated that the appellant attended special needs schools and then spent time with Rehab and RehabCare. At the time of application she was involved in rehabilitative work for 6 hours a week. A letter from RehabCare stated that she required and would continue to require support indefinitely for accessing and participating in social, cultural, recreational, health and wellbeing and occupational activity.

Consideration: Having assessed the evidence the Appeals Officer concluded that the appellant was substantially restricted in undertaking work and this will continue for the foreseeable future, and she therefore met the medical eligibility criteria for Disability Allowance.

Outcome: Appeal allowed.

2017/18 Disability Allowance Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in his mid-50s, had a diagnosis of Crohn's disease, colitis and bowel obstruction and applied for Disability Allowance in March 2017. He was disallowed on medical grounds. The ability/disability profile completed by the appellant's GP stated that the appellant was moderately to severely affected by his condition in the area of continence. He was moderately affected in the area of reaching, manual/dexterity, lifting/carrying, bending/kneeling/squatting, sitting/rising, standing, climbing stairs/ladders and walking. The appellant's condition started in 2014 and the GP indicated that it was unclear how long the condition would last. The appellant had had several hospital admissions, and underwent surgery in the summer of 2017. He had been prescribed multiple medications for his condition.

Consideration: The Appeals Officer examined the question as to whether the appellant's medical condition could be held to be a substantial restriction in carrying out suitable employment 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 legislation. She concluded that the appellant was suffering from a substantial restriction in carrying out suitable employment and that, as this condition had lasted for approximately three years at the time

of the application and that as his symptoms had not settled and he had had recent surgery, it could be reasonably expected to continue for the foreseeable future.

Outcome: Appeal allowed.

2017/19 Disability Allowance Summary Decision

Question at issue: (medical)

Background: The appellant, in his 30s, applied for Disability Allowance and was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specific disability that may reasonably be expected to continue for a period of at least a year. The appellant had a diagnosis of generalised anxiety disorder and alcohol dependence. He was prescribed both Lustral and Ativan and was attending a Consultant Psychiatrist. The ability/disability profile was completed by his GP in October 2016 and indicated that he was severely affected in mental health/behaviour, but normal in the other 15 areas.

Consideration: An updated GP report from January 2017 stated that some element of training and activity may be beneficial for the appellant but that he also believes his current condition renders him substantially restricted in undertaking work which would otherwise be suitable taking into account his age, experience and qualifications. Having carefully examined all the evidence in this case, and paying particular attention to the GP's updated report, the Appeals Officer concluded that appellant was severely affected by his mental health issues and that this constituted a substantial restriction in undertaking suitable work.

Outcome: Appeal allowed.

2017/20 Disability Allowance Oral hearing

Question at issue: Eligibility (medical)

Background: The appellant's claim for Disability Allowance was rejected on the grounds that he was not substantially restricted from working, as set out in the governing legislation. He had been in receipt of a Jobseeker's Allowance immediately prior to making his application. His GP stated his main medical condition was lower back pain which started twenty years previously. He also referred to alcohol dependency but did not elaborate further on this.

Oral hearing: At the hearing the appellant stated that he left school at Junior Certificate level and did an apprenticeship as a barman. Most of his employment had been as a barman and it was the only work he was qualified to do. He advised the Appeals Officer that his back pain was intermittent and only flared up 3 times per year. On further discussion of his problems with alcohol, it emerged that the appellant had a significant alcohol dependency issue. The appellant revealed that he had a long-established, heavy dependency on alcohol, and that he had to consume a considerable amount of alcohol to muster the courage to appear

at the oral hearing. He further revealed that he had been in a residential alcohol treatment programme on four separate occasions in recent years.

Consideration: The main medical grounds included in the application form were related to back pain and back problems. From the appellant's account of how this condition affected his daily life, the Appeals Officer was not satisfied that he was substantially restricted due to this specific condition. However, it was clear that the appellant had a significant alcohol dependency issue, as certified by his GP and from the information that he provided at the appeal hearing. In particular, despite his statement that he attended a residential alcohol treatment programme on four occasions, he continued to have a strong dependency on alcohol. Given the fact that he trained as a barman, and that this would be his main profession should he be seeking to return to work, the Appeals Officer was of the opinion that his alcohol dependence would substantially restrict him from working, given his qualifications and experience, and that this condition was likely to continue for more than one year.

Outcome: Appeal allowed.

2017/21 Disability Allowance Oral hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her early 50s, had a diagnosis of breast cancer and chronic anxiety. Her claim for Disability Allowance was refused on medical grounds. The GP indicated that she was moderately affected in mental health/behaviour, continence and lifting/carrying, and mildly affected in standing. The GP outlined the appellant's cancer treatment which consisted of surgery, chemotherapy and radiation. Following completion of the treatment, she remained on Tamoxifen daily. She suffered with right hand pain and swelling due to seroma which required aspiration. She also suffered with chronic anxiety and depression and was on antidepressant medication since the diagnosis.

Oral hearing: The appellant described the treatment she had undergone for breast cancer and noted that she would remain on Tamoxifen for 5 to 10 years. She stated that she gets seroma on the site of the surgery and had this aspirated on a number of occasions in 2016. She had not had it drained since, and had some swelling at the time of the appeal hearing. She reported that she was now cancer free at the time and was having annual mammograms. The appellant described suffering with swelling of her right hand since her treatment. She was right handed and found lifting difficult due to this. She reported taking paracetamol for pain when needed and having to be careful with her hands and wearing gloves when doing tasks. Her toes were also sore due to her treatment and she had to wear open shoes/sandals. She said that treatment brought on early menopause and she suffered with severe sweating which woke her at night. She was tired every morning and had no energy. She suffered with incontinence and wore pads. This problem may have been as a result of pregnancies but she was reluctant to follow up with investigations as she had had enough hospital treatment for her cancer. She attended a cancer care group for massages and reflexology. The appellant

reported that that she had suffered with anxiety since her diagnosis. She was on anti-depressant medication since then. She did not attend any formal counselling but talked to people at the cancer care group. She found physical tasks at home difficult and required a lot of assistance from her family with cooking and housework.

Consideration: Having had the benefit of the oral hearing the Appeals Officer was satisfied that the GP's opinion was reflective of the appellant's own assessment of her health situation. While noting the appellant's cancer treatment had been successful she still suffered the residual effects of the treatment and suffered with chronic anxiety since her diagnosis. The Appeals Officer was satisfied that the appellant was substantially restricted in undertaking suitable work and that this restriction was likely to continue for a further 12 months.

Outcome: Appeal allowed.

2017/22 Disability Allowance Oral hearing (not heard)

Question at issue: Eligibility (medical)

Background: The appellant, in her late-30s, had a third level education and a history of being in employment. She had a medical diagnosis of anxiety, depression and headaches. She made a claim for Disability Allowance and this was refused by the Department on medical grounds. Her GP indicated that she was mildly to moderately affected by her conditions in the areas of continence and mental health/behaviour. The medical report also indicated that her medical conditions were expected to last 3-6 months. The appellant, in her letter of appeal, submitted that she suffered from bad depression and migraines despite being advised by her medical team that her illness would not necessarily impact on her ability to work again. The appellant disputed this assertion and stated that she was bed bound most days through illness and consequently would be ringing in sick if in employment.

Oral hearing: The appellant did not attend the scheduled oral hearing and did not seek a rescheduling of the hearing. As a consequence, the Appeals Officer made a decision based only on the documentary evidence before him. He concluded that the medical evidence was insufficient to establish that the medical qualifying criteria pertaining to the Disability Allowance scheme had been met by the appellant in this instance. He decided that the appellant had not demonstrated that she had a disability that had continued or may have reasonably been expected to continue for a period of at least one year nor had she shown that by reason of that disability that she was substantially restricted in undertaking suitable employment having regard to her age, qualifications and experience.

Outcome: Appeal disallowed.

2017/23 Disability Allowance Oral hearing

Question at issue: Eligibility (medical)

Background: The appellant, in his late-50s, was educated to Leaving Certificate standard and has not been in insurable employment in over a decade. He had a diagnosis of depression, anxiety and diabetes, diagnosed in 2012. The GP indicated that his condition severely affected him in the area of mental health/behaviour. He made a claim for Disability Allowance and this was refused on medical grounds.

Oral hearing: The appellant attended the hearing unaccompanied and stated that he had not worked regularly for some 15-20 years and was living alone, avoiding any form of social interaction or contact with people. Such was the severity of his mental health issues that he withdrew from society to a point where he stopped collecting his social welfare payments and was financially destitute for a number of years. He stated that he had gone for periods of years without speaking to anyone; his only contact with the outside world was irregular contact with two family members. He lived frugally and cited times where he had less than €20 per week to get by on. This situation persisted until his family intervened and sought professional help in an attempt to source a regular income for the appellant and to ensure that he was linked in and engaging with medical and mental health services. Prior to applying for Disability Allowance the appellant had not attended a GP since childhood. He had worried and agonised about attending the oral hearing for weeks in the lead up to same and was clearly discomfited whilst in attendance. The appellant submitted additional information in support of his appeal which opined that the appellant was not medically capable of engaging in paid employment during his ongoing rehabilitation.

Consideration: The Appeals Officer concluded that the medical evidence and the credible evidence adduced at oral hearing was sufficient to establish that the appellant had a disability that had continued for a period of at least one year, and was likely to continue for a further year, and that by reason of that disability that he was substantially restricted in undertaking suitable employment having regard to his age, qualifications and experience.

Outcome: Appeal allowed.

2017/24 Disability Allowance Oral hearing

Question at issue: Eligibility (medical)

Background: The appellant, in his mid-40s, had a diagnosis of myoclonic jerks and applied for Disability Allowance. The GP indicated that he was moderately affected in the area of consciousness/seizures and all other areas were assessed as normal. Additional medical evidence was submitted in the form of a letter from a consultant in internal medicine/geriatrics, stating that a CT brain scan was normal, his symptoms had settled down with prescribed medication, and it appeared his myoclonic jerking had been associated with binge drinking. The claim for Disability Allowance was refused by the Department on medical

grounds. In an appeal against that decision, the appellant submitted that he was still not feeling well, continued to have seizures now and then, and that he had stomach problems and low back problems.

Oral hearing: The appellant reported that he had been employed as a security officer but was one of a number of staff who had been let go. He said he had also been involved formerly in running a sports club. The appellant advised that the myoclonic jerks had started about four and a half years ago and that he had been referred for neurological assessment (in line with medical evidence provided). He stated that a lump had been removed from his back and reported that it is niggling but not sore, and that he takes paracetamol if pain relief is required. The appellant reported that the consultant neurologist had taken him off medication and advised that he make a further appointment if the jerking started again. He indicated that he had not experienced myoclonic jerks in the meantime. The Appeals Officer reviewed the medical evidence with the appellant, making reference to the point concerning binge drinking and the appellant stated that he now takes a social drink only.

The appellant said that the experience of jerking has left him feeling afraid to work. He reported that he sleeps poorly but that his GP will not prescribe medication as he might become addicted. He made reference to the stomach problems referred to in his appeal letter saying that he had recently had a scope and biopsy done and was prescribed medication. In conclusion, he said he was feeling down about having had to give up sports following removal of the lump on his back.

Consideration: The Appeals Officer, in reviewing the evidence, noted the appellant's diagnosis and the GP's assessment of the degree to which it affected his abilities. She also noted the medical evidence, reviewed at oral hearing and confirmed by the appellant, that he is no longer experiencing myoclonic jerking. The Appeals Officer concluded that the appellant could not be deemed to be substantially restricted in undertaking suitable employment, taking into account his age, experience and qualifications.

Outcome: Appeal disallowed.

2017/25 Disability Allowance Summary Decision

Question at issue: Eligibility (habitual residence condition)

Background: The claim for Disability Allowance was disallowed by the Department on two grounds: that that appellant did not meet the medical qualifying criteria for the scheme and she was not habitually resident in the State. As part of the appeal process the appellant's case was reviewed by the Department and then deemed to meet the medical criteria. Therefore, the issue remaining to be determined by the Appeals Officer was whether the appellant was habitually resident in the State.

The relevant legislation in this case is Section 246 of the Social Welfare Consolidation Act 2005 and Article 5 of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548/2015.)

Consideration: The Appeals Officer referred to the relevant legislation: Section 246 of the Social Welfare Consolidation Act 2005 and Article 5 of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015.) In order to be habitually resident, a person must first establish that they have the right to reside. Article 5 of the Regulations provides for "*permission for permitted family members to enter the State*". *This article applies to a person "who is the partner with whom a Union citizen has a durable relationship, duly attested"*. The documentary evidence indicated that the appellant was living with her partner. The Appeals Officer noted it was open to the appellant to apply directly to the Irish Naturalisation and Immigration Service for a decision that she be treated as a "permitted family member" in order to establish her right to reside in the State but until the appellant established her right to reside in the State, she could not be assessed for habitual residence for social welfare purposes.

Outcome: Appeal disallowed.

2017/26 Disability Allowance Summary Decision

Question at issue: Eligibility (medical and means)

Background: The appellant, in his early 40s, made a claim for Disability Allowance which was disallowed on two grounds: he did not meet the medical qualifying criteria and his means were deemed to be in excess of the statutory limit of €380.70, for his circumstances. The Appeals Officer examined each of these questions separately.

Consideration: The appellant had a diagnosis of cauda equina syndrome and lumbar back pain. The Appeals Officer having assessed the medical evidence including details of relevant investigations, attendance at specialists and physiotherapy, prescribed medication, and the GP's assessment as to the severity of the degree to which his condition affected his ability across a range of areas, concluded that the appellant was substantially restricted in

undertaking suitable employment, and met the medical condition for Disability Allowance. Accordingly, the appeal was allowed on that point.

In relation to means, the Appeals Officer noted that means had been assessed with reference to the appellant's partner's earnings from employment. Having examined the evidence, including details of earnings shown on the pay slips submitted, the Appeals Officer concluded that the appellant's means had been assessed correctly and in line with the provisions of the governing legislation. In the circumstances, although the medical eligibility for the scheme had been met, the means were in excess of the statutory limit, and the appellant was not eligible for Disability Allowance.

Outcome: Appeal disallowed.

2017/27 Disability Allowance Oral hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her early 20s, had completed secondary education and had no employment history. She had a heart condition SVT (supraventricular tachycardia) which caused chest pain and palpitations. A medical report completed by her GP in January 2016 indicated the expected duration of the condition to be 12-24 months. On the ability/disability profile, the GP indicated that she was moderately affected in 4 areas, mildly affected in 2 areas, and the remaining 10 were normal. A report from a consultant cardiologist in February 2017 referred to recurring episodes of palpitations every 1-3 months, with episodes usually occurring while at rest. It was felt medication was not reducing frequency of symptoms.

Oral hearing: The appellant attended the hearing with a close relative who explained that the appellant suffered from a heart condition which caused periodic episodes of chest pain and rapid heartbeat at a rate of 150-160 beats per minute which was stated to be twice the normal rate. The history of the appellant's heart condition was recalled since onset. She was on a waiting list for electrophysiology study and ablation, as recommended by the cardiologist.

Consideration: The Appeals Officer considered the medical evidence which confirmed that the appellant suffered from a heart condition which caused periodic episodes of pain and rapid heartbeat. The occurrence of such episodes was stated to be 3-4 in a six month period resulting in debility for 2 days or so. The appellant indicated reluctance to over-exert or come under any type of stress until a corrective procedure had been tried. Having regard to the impact on the appellant as a consequence of her diagnosis and taking into account the frequency of acute episodes the Appeals Officer found that the illness should not result in a substantial restriction from all suitable work. While acknowledging the appellant's reluctance to engage in onerous and stressful activity, the Appeals Officer concluded that a wide variety of sedentary type occupations should be possible.

Outcome: Appeal disallowed.

2017/28 Carer's Allowance Summary Decision

Question at issue: Means and overlap of entitlement between schemes

Background: The appellant's entitlement to Carer's Allowance was reviewed based on her means from her husband's insurable employment. She was informed her payment would cease from 14 April 2017 as she was assessed with means of €261.23 per week which exceeded the statutory limit appropriate to her family circumstances. This assessment was based on her husband's income details for the full year of 2016. She appealed this decision and provided recent pay slips for her husband's income. The Department reviewed her entitlement on the basis of these new income details for her husband and decided that she should be assessed with means of €181.26 per week. These means were assessed from a backdated date of 5 January 2017.

Consideration: The Appeals Officer reviewed the means calculation and was satisfied that the revised means were correct and calculated in accordance with the legislation.

However, he also noted that the appellant was in receipt of Illness Benefit until 31 March 2017 which meant that she was getting half rate Carer's Allowance. He pointed out that while she was receiving Illness Benefit payment, she had not been entitled to an increase in her Carer's Allowance in respect of her children. However, when the Illness Benefit ended on 31 March 2017, and she was entitled to Carer's Allowance at the full rate appropriate to the means assessable, she would also be entitled to an increase for her two dependent children and would therefore be on a higher rate of payment from 1 April 2017. The Appeals Officer also noted that, as with all means tested payments, the appellant was entitled to seek a review of her entitlement at any time if her means decreased. Equally, she was required to inform the Department if her means increased.

Outcome: Appeal partially allowed.

2017/29 Carer's Allowance Summary Decision

Question at issue: Full-time care requirement and working/studying more than 15 hours per week

Background: The appellant applied for Carer's Allowance in respect of his father in January 2016 and was refused by the Department on two grounds: that the caree did not meet the medical criteria for the scheme and the appellant was working/studying for more than 15 hours per week outside the home. The medical evidence showed that the caree suffered from multiple significant medical conditions. The GP indicated that the conditions would continue indefinitely, that he was attending a number of specialists on an ongoing basis, that he was severely affected in manual dexterity, standing and walking, and profoundly affected in lifting/carrying and climbing stairs/ladders. The appellant was attending a part-time course in legal studies.

Consideration: In order to meet the medical eligibility criteria for Carer's Allowance, the person being cared for must have such a disability that he/she requires full time care and attention from another person. The Appeals Officer was satisfied that the nature of the caree's multiple medical conditions and the severity of these conditions, as certified by the GP, was such that he required continual supervision and frequent assistance throughout the day in connection with normal bodily functions, as well as continual supervision in order to avoid danger to himself. In accordance with Section 179(4) of the Social Welfare Consolidation Act 2005, the Appeals Officer was satisfied that full time care and attention was required.

Section 136 of Social Welfare (Consolidated Claims Payments and Control) Regulations, 2007 (S.I. No. 142 of 2007) states that a carer may, subject to adequate provision being made for the care of the relevant person, engage in employment/self-employment/training for a maximum of 15 hours per week. The evidence presented by the appellant's place of study confirmed that he was a student and attended tuition on average every 2nd weekend over a 16 hour period for 14 weekends. The appellant clarified that the average number of hours that he attended classes was 8.75 hours per week and that he was able to care for his father as well as continue with his studies. The Appeals Officer was satisfied that the aggregate duration of the appellant's course of study did not exceed 15 hours per week and therefore the appellant satisfied this condition in respect of his Carer's Allowance application.

Outcome: Appeal allowed.

2017/30 Carer's Allowance Oral hearing

Question at issue: Eligibility (medical – care required)

Background: The appellant's claim for Carer's Allowance was disallowed on the grounds that her partner who was in her early 30s was not so invalided or disabled as to require

full time care and attention. Her partner had a diagnosis of fibromyalgia, IBS and severe lower back pain. The GP had assessed her abilities as severely affected in lifting/carrying and moderately affected in mental health/behaviour, reaching, manual dexterity, bending/kneeling/squatting, sitting/rising, standing, climbing stairs/ladders and walking. He stated that she required assistance with basic activities of daily living such as dressing, sitting and standing, and with using the toilet and personal hygiene. She could not do any housework or lift her child.

Oral Hearing: The appellant attended the hearing accompanied by her partner for whom she had applied for Carer's Allowance. As well as the fibromyalgia, IBS and back pain she had been diagnosed 6 months ago with pubis symphysis and was awaiting a review with a gynaecologist in relation to this. She had been reviewed by an orthopaedic specialist with regard to her back problem but they were prevented from doing anything until the pelvic problem was further investigated. She outlined her medications. She was due to start physiotherapy for her back and pelvis. She required a wheelchair or rollator for mobility when outside the home.

The appellant outlined the care she provided for her partner. She assisted her getting in and out of bed, dressing, bathing, washing hair, and toileting. She also helped her with mobility and assisted her when arising and when sitting. She did all of the housework and cooking. She had to do all physical activities with their child as her partner was not able to do these.

Consideration: The Appeals Officer noted that in order to qualify for Carer's Allowance, the legislation requires that the person receiving care must be so impacted by an illness/ disability as to require 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. She noted the medical evidence submitted which outlined the extent of the appellant's partner's symptoms which were on-going and severe and were markedly limiting in terms of basic activities of daily living. She also noted the appellant's testimony provided at oral hearing as to the nature of the care that she provides on a daily basis. The Appeals Officer concluded that the appellant's partner required full-time care and attention and that the need for such care was likely to last for at least 12 months.

Outcome: Appeal allowed.

2017/31 Carer's Allowance Oral hearing

Question at issue: Eligibility (provision of full-time care)

Background: The appellant's claim for Carer's Allowance was disallowed on the grounds that she was not providing full-time care and attention to the caree. She did not reside with the caree but called to his home every day. The caree was 73 years of age and had a diagnosis of emphysema, cognitive impairment, low back pain, heart disease and anxiety. His GP provided a letter of support for the Carer's Allowance application, listing his medical conditions and noting that the caree was very dependent on the appellant on a daily basis.

Oral hearing: The appellant explained that she called to the caree's home every morning to physically help him out of bed. She explained that he would not get up or take his medications if she was not there. She would bring him to the bathroom, wash him, assist him to dress, and give him his medications in the morning, afternoon and night-time. She explained that, if left alone, he would not take his medications. She encouraged him to get out of the house and brought him for a walk each day. She helped him to undress again at night-time, into bed and then returned to her own home. He would stay in bed until she returned the following day. She brought him to all medical appointments, and helped to calm him when he was feeling anxious or having a panic attack.

Consideration: The Appeals Officer noted that the available medical evidence supported the appellant's contention that, as a result of restrictions in the caree's abilities, he required assistance with washing, dressing and mobilising. He also noted that the caree had poor memory and that, despite strong medical recommendations that he was at high risk of stroke and should take warfarin to thin his bloods, he refused to do so. This evidence supported the appellant's contention that, if she did not administer his medications to him at the appropriate times he would not take them and would be a danger to himself. The Appeals Officer was satisfied that the caree required full-time care and attention as legislatively prescribed, and so the remaining question to be answered was whether this care was being provided. The appellant's evidence was that she called to the caree's home every day, seven days per week at about 12 noon and remained with him to provide this care on a continuous basis from mid-day until he went to bed at night. The Appeals Officer decided that this evidence established the appellant provides full-time care and attention, as legislatively prescribed.

Outcome: Appeal allowed.

2017/32 Carer's Benefit Summary Decision

Question at issue: Employment in the 26 weeks prior to commencement of Benefit

Background: The appellant applied for Carer's Benefit in July 2016 in respect of her mother. Her application was refused as she did not satisfy the employment conditions for the 26 week period immediately prior to the date of her application. The evidence was that from February 2016 the appellant had reduced the number of hours she worked to 15 hours per week. In her letter of appeal the appellant referred to the Carer's Leave Act 2001 and the condition that you must not work outside of the home for more than 15 hours per week while on carer's leave. She also stated that if she had the information regarding having to work a minimum of 16 hours per week for any eight weeks of the 26 week period immediately prior to the date that carer's leave would commence, she could have arranged with her boss to work 16 hours per week.

Consideration: Section 100 of the Social Welfare Consolidation Act 2005 states that it is a condition for eligibility for Carer's Benefit that a person must work a minimum of 16 hours per week for any eight weeks in the 26 week period immediately prior to the date that carer's leave would commence. The Appeals Officer concluded that the statutory conditions were not fulfilled in this case; the appellant had not established that she worked a minimum of 16 hours per week for at least eight weeks in the 26 week period immediately prior to her application, and regrettably the appeal could not succeed. The appellant was advised that it was open to her to apply for a means tested Carer's Allowance instead of Carer's Benefit, where this work condition rule did not apply.

Outcome: Appeal disallowed.

2017/33 Carer's Benefit Summary Decision

Question at issue: Duration of payment

Background: The appellant applied for Carer's Benefit In August 2016 in respect of care provided to her son. This application was disallowed as she had previously received Carer's Benefit for a period of 64 weeks in 2010/2011 and for 40 weeks in 2012/2013, a total of 104 weeks. The Department pointed out in the decision letter that she had already claimed her full entitlement to Carer's Benefit in respect of her son and consequently she was not eligible to claim Carer's Benefit for any further periods. The appellant contended that as she had worked for three years since she last applied for Carer's Benefit, she should be allowed to re-qualify.

Consideration: The Appeals Officer referred to Section 103 of the Social Welfare Consolidation Act 2005 which states that *“a carer who has been in receipt of carer’s benefit for 104 weeks, whether consecutive or not, in respect of full-time care and attention being provided to a relevant person, shall not thereafter be entitled to that benefit in respect of full-time care and attention being provided to the same relevant person”*. The Appeals Officer concluded the appeal could not succeed.

Outcome: Appeal disallowed.

2017/ 34 Disablement Benefit (OIB) Summary Decision

Question at issue: Workplace accident

Background: The appellant’s application for Disablement Benefit under the Occupational Injuries scheme was disallowed on the grounds that he failed to establish that he suffered personal injury caused by an accident arising out of and in the course of his insurable employment. The appellant had back problems which he stated were caused by an injury at work.

Consideration: The governing legislation is Section 90(5) of the Social Welfare Consolidation Act 2005 which defines an occupational accident as an accident which (a) arises out of and in the course of his or her employment, (b) the employment is insurable (occupational injuries) employment, and (c) payment of occupational injuries benefit is not precluded because the accident happened while the person was outside the State. The Appeals Officer noted and considered the appellant’s grounds of appeal, the medical evidence submitted and two separate Social Welfare Inspector’s reports from October 2016 and December 2016. These reports concluded that there was no evidence to support that a specific workplace accident had occurred in this instance. The employer also denied that any specific accident or a report of an accident had occurred. None of the evidence supported the appellant’s contentions that a single or indeed specifiable workplace accident took place which may have caused the appellant’s back injury or back problems. In addition, the medical evidence certified that the appellant had a pre-existing osteoarthritic condition prior to the date on which he made complaints regarding a work place injury. The Appeals Officer concluded that it had not been established that the appellant suffered a personal injury caused by an accident arising out of and in the course of his insurable employment for the purposes of his Disablement Benefit claim.

Outcome: Appeal disallowed

4.3 Case Studies

Working Age –
Income Supports

2017/35 – Family Income Supplement Summary Decision

Question at issue: Eligibility (maintenance)

Background: The appellant applied for Family Income Supplement (FIS) in 2016. His 15 year old son was residing with his ex-partner and the appellant voluntarily paid €30 per week in maintenance. His ex-partner was living with a partner and was not receiving a social welfare payment, apart from Child Benefit. Family Income Supplement was refused to the appellant on the basis that the child was not residing with him and he was not wholly or mainly maintaining his ex-partner.

Consideration: Section 227 of the Social Welfare Consolidation Act 2005 and Article 13(6) of S.I. 142 of 2007 contained the key relevant legislative provisions in this case. The appellant argued, citing Article 13(6) in particular, that a qualified child who is residing with one parent and living apart from the other parent and who is not claiming or in receipt of any benefit or assistance, should be regarded as residing with the other parent if that other parent is contributing substantially to the child's maintenance. The Appeals Officer found that the appellant was contributing substantially to the maintenance of his child by paying maintenance of €30 per week since 2004. Article 13(6) was found to apply in this case and the child was regarded as residing with the appellant for the purposes of FIS.

Outcome: Appeal allowed.

2017/36 Family Income Supplement Summary Decision

Question at issue: Eligibility (assessment of weekly income)

Background: Social welfare legislation prescribes that Family Income Supplement (FIS) may be paid as a financial support to a parent who is engaged in remunerative full-time employment as an employee for at least 19 hours per week for a weekly level of pay which is less than the levels prescribed in the legislation. In this case, an application for Family Income Supplement was disallowed on the grounds that the weekly family income, as assessed at a net amount of €525.74 per week for FIS purposes, exceeded the applicable limit of €511 per week.

The appellant contended that her total earnings for the calendar year 2017 derived from only 38 weeks employment as she was availing of special unpaid leave from work for a period of 13 weeks during the year. She contended that her 38 weeks' earnings for the year should therefore be apportioned over the entire 52 weeks in the year in calculating the value of her weekly family income level for FIS purposes. She explained that, by way of arrangement with her employer, the total income payable for her 38 weeks' employment during the year was paid to her in 52 equalised weekly instalments throughout the year.

Consideration: Social welfare legislation prescribes that in order to be eligible for FIS, a person must be engaged in remunerative full-time employment of at least 38 hours per fortnight. The Appeals Officer concluded that the 13 weeks of unpaid leave from work did not represent weeks of remunerative full-time employment within the terms of the social welfare legislation governing entitlement to FIS. It was determined that those 13 weeks could not, therefore, be included for the purpose of calculating average weekly family income. The earnings paid throughout the period of unpaid leave derived from the appellant's employment at other times during the year and were paid to her merely as an income-continuance arrangement. The Appeals Officer decided that the period of unpaid leave from work, during which there was no employment nor any earnings directly attributable to that period, should not be taken into account for the purpose of calculating average weekly earnings from employment for FIS purposes.

Outcome: Appeal disallowed.

The Appeals Officer's decision was upheld by way of a Section 318 review carried out by the Chief Appeals Officer in this case.

2017/ 37 Family Income Supplement (FIS) Summary Decision

Question at issue: Amount of weekly FIS payable (calculation)

Background: This appeal concerned the amount of a weekly Family Income Supplement (FIS) payment awarded to the appellant in this case, specifically €38.00 per week for a 52 week period. The appellant drew attention to a decrease in her earnings and income after the 52 week FIS payment period had commenced.

Consideration: The rules that govern FIS payments are set down in Part 6 of the Social Welfare Consolidation Act 2005 and Article 173 of S.I. 142 of 2007. Article 173(1)(a) states that: "weekly family income shall be calculated or estimated insofar as it comprises earnings from employment as an employee, by reference to the weekly average or gross amount of such received 2 months prior to the date on which the claim is made where such earnings are received at monthly intervals, or in the 4 weeks prior to such date where such earnings are received at weekly or fortnightly intervals".

The legislation further provides that where a Deciding Officer or Appeals Officer considers that where the periods mentioned above would not suffice to determine the amount of weekly family income, she/he may have regard to such other periods which appear to be appropriate for that purpose.

The Department assessed the appellant's employment earnings from three separate monthly payslips, which had been provided by the appellant. The Appeals Officer noted that the appellant's earnings had indeed dropped after the commencement of the 52 week FIS

payment period, however, under the legislation, once a FIS payment is determined, that same payment amount is payable for a 52 week period, save in particular circumstances defined in the legislation, which were not applicable in this particular case.

Outcome: Appeal disallowed.

2017/38 Farm Assist Oral Hearing

Question at issue: Eligibility (means)

Background: The appellant had been in receipt of a Farm Assist payment with effect from a date in 2012. Following a review by the Department in July 2016, means of €302 were assessed. The appellant asked for a review of that decision. The Department conducted a further review and means of €270 were assessed, with effect from September 2016. The means assessed were based on the appellant's farm income and the value of capital available to him, including savings and investments and the value of assessable shares. The value of a retirement fund amounting to over €52,000 was also taken into account as assessable savings because the particular policy appeared to be open-ended and the funds appeared to be available to be withdrawn at any time upon request.

Oral hearing: The Social Welfare Inspector read his report, which included a letter from the appellant's insurance company stating that the policy was open-ended and that if the appellant cashed it in or made a withdrawal from the policy, the company may apply an early encashment charge. The appellant's accountant argued that the rules governing the fund provided that he could only draw down the equivalent of 4% of the capital per year and could not draw down the full value of the pension until he reached the age of 75 or until such time as he received a minimum guaranteed annual income for life of at least €12,700 per annum. It was argued that this guaranteed income would have to be in the form of another pension or a payment such as the State Old Age Contributory Pension, which he would receive at 66 years of age. The Appeals Officer asked why the insurance company stated in its letter that the policy is open-ended and that if the appellant cashed in or made a withdrawal from the policy that the insurance company may apply an early encashment charge. The accountant responded that if the appellant had a guaranteed annual income for life of at least €12,700 then he could cash it in, but that he did not have that at present and would not have it until he is over 66.

The Appeals Officer asked the appellant if he had applied to the insurance company to test the system and to try to cash in the policy. He said that he had not but that they could try that and revert with the result. The hearing was adjourned pending the outcome of the enquiry. The accountant advised the Appeals Officer some four weeks later stating that the appellant had applied to cash in his retirement fund and that he was turned down because a full encashment of the policy is not permitted by legislation. An annual withdrawal of up to 4% of the value of the fund was all that was allowable. A copy of the company's refusal letter was attached with the correspondence.

Consideration: The Appeals Officer identified the governing legislation as Section 215(2)(c) and Schedule 3 of Part 2 of the Social Welfare Consolidation Act 2005. The Appeals Officer concluded that, based on this additional evidence, the means assessed from capital should only have been assessed on the value of his shares as legally the appellant did not have access to the €54,000 pension fund. There was no dispute in relation to the other sources of means. The new, considerably lower, means figure then applied from September 2016.

Outcome: Appeal allowed.

2017/39 Jobseeker's Allowance Oral Hearing

Question at issue: Eligibility (habitual residence condition)

Background: The appellant, an EU national, applied for Jobseeker's Allowance. That application was refused on the basis that the appellant was not regarded as being habitually resident in the State. The Department's decision was based on the 'five factors' outlined in the legislation and found that the appellant had not worked since arriving in Ireland, did not have sufficient resources to support herself, and that her right of residence had expired.

Oral Hearing: According to her evidence, the appellant came to Ireland with her partner on foot of a job offer he had. The couple was apparently confident that between the resources they brought with them and his earning potential he could support both of them while she looked for employment. The promised job did not last, however, as a contractual dispute arose almost immediately after her partner started work. Despite being highly qualified in IT, he failed to secure alternative employment. The couple became homeless and there was evidence on file from various organisations to attest to their presence in the State for the previous two years. Despite the difficulties encountered, the appellant and her partner stated that they were determined to remain in Ireland. She had secured employment shortly before the appeal hearing and at the time he was still looking for employment.

Consideration: The habitual residence condition is a two part provision which requires the establishment of a right of residence and then an assessment of the person's situation in accordance with the 'five factors' outlined in Section 246 of the Social Welfare Consolidation Act 2005. The Department had decided that the right of residence had expired and that the five factors were not satisfied.

Right of residence

Right of residence is governed by Regulation 6 of S.I. 548 of 2015 (the European Communities (Free Movement of Persons) Regulations 2015). All EU citizens have an unqualified right of residence for up to three months. Thereafter, the right of residence (and associated entitlements) is qualified and paragraph (3) requires that the person:

*“(i) is in employment or in self-employment in the State,
(ii) has sufficient resources for himself or herself and his or her family members not to become an unreasonable burden on the social assistance system of the State, and has comprehensive sickness insurance in respect of himself or herself and his or her family members,
(iii) is enrolled in an educational establishment accredited or financed by the State for the principal purpose of following a course of study there and has comprehensive sickness insurance in respect of himself or herself and his or her family members and, by means of a declaration or otherwise, satisfies the Minister that he or she has sufficient resources for himself or herself and his or her family members not to become an unreasonable burden on the social assistance system of the State, or
(iv) subject to paragraph (4), is a family member of a Union citizen who satisfies one or more of the conditions referred to in clause (i), (ii) or (iii).”*

While the appellant came to Ireland with her partner, they were not married and so the Appeals Officer concluded that she did not meet the definition of a ‘family member’ contained in this legislation or any of the other criteria set out above. Accordingly, he decided she must establish that she is entitled to be resident in her own right.

The appellant stated that she came to Ireland to look for work and on that basis the Appeals Officer decided that she came within the terms of Regulation 6(2) of S.I. 548 of 2015 which states:

“(2) A Union citizen to whom Regulation 3(1)(a) applies, who has entered the State seeking employment, and his or her family members, may continue to reside in the State for a period that is longer than 3 months where the Union citizen concerned can satisfy the Minister that he or she continues to seek employment and has a realistic prospect of being engaged in employment.”

Subsequent to her claim for social welfare, she did commence employment and so her residence became based on Regulation 6(3)(i) as set out above, from the date of commencement of that employment.

The Appeals Officer also had regard to Regulation 17(2)(a), which provides that a person to whom Regulation 6(1) or 6(2) applies shall not be entitled to receive assistance under the Social Welfare Acts. Paragraph (b) of the same Article does, however, allow recourse to exceptional needs payments. Accordingly, the Appeals Officer found that at the time of claiming Jobseeker’s Allowance the appellant had an established right of residence as a jobseeker, but that status did not and does not confer any entitlement to access the social assistance system of which Jobseeker’s Allowance is part.

An assessment under the ‘five factors’ set out under Section 246 of the Act of 2005

Based on supporting documentation from voluntary bodies dealing with people who are homeless, the Appeals Officer accepted that the appellant had been in the country since the summer of 2015. The Appeals Officer accepted that the appellant’s centre of interest was now in Ireland. The appellant had experienced very serious difficulties over the previous two years,

but had persisted with her efforts to make a life in Ireland and had finally secured permanent employment. However, the Appeals Officer found that at the time of claiming Jobseeker's Allowance her status was as a jobseeker only and while that gave her a right of residence in accordance with EU legislation, that status did not confer any right to access the social assistance system.

Outcome: Appeal disallowed.

2017/40 Jobseeker's Allowance Summary Decision

Question at issue: Overpayment (Departmental error)

Background: The appellant was in receipt of Jobseeker's Allowance. She claimed assistance when her husband's claim was stopped as it was considered he was in full-time education. Some months later, the appellant's husband re-applied and his payment was reinstated. However, the Department failed to apply the maximum payment provisions that apply to a couple with the result that the appellant and her husband each received the full payment of €432 per week in respect of the family. This resulted in an overpayment of almost €14,000. The error only came to light when the appellant informed the Department that she had commenced a Tús scheme.

Consideration: The Appeals Officer identified the relevant legislation as Section 144 of the Social Welfare Consolidation Act 2005. Based on the legislation and the facts of the case, it was clear that the appellant was overpaid Jobseeker's Allowance. However, the overpayment arose in this case because of a Departmental error. From enquiries made by the Appeals Officer, it appears that a maximum payment indicator was not inserted on the appellant's claim record and as a result both she and her husband received full payments. The Appeals Officer noted that when the appellant's husband re-claimed Jobseeker's Allowance, he clearly stated on his application form that the appellant was already receiving full payment in respect of the family. According to the letter of appeal, the couple had numerous interactions with the Intreo Centre over the course of their claims and always went there together when issues or queries arose. Their ongoing engagement with various activation measures was also mentioned. The appellant also got statements of payments received on four occasions for submission to the university where she studied in the UK. The letter of appeal also states that the couple had never claimed separately before, and they were not aware of the level of payment each would receive. Given their ongoing engagement with the Intreo Centre, they assumed they were receiving their correct entitlement.

The Appeals Officer considered that the over-payment was due to Departmental error. The Appeals Officer acknowledged that it could be argued that the appellant should have realised she was receiving too high a payment, however, given the ongoing engagement with the Department during the claims, the fact that the couple had not claimed separately

before and that the appellant's husband declared her payment when re-claiming assistance, an assumption on their part that they were receiving the correct payment was not unreasonable. Having considered the appellants' submission and that of the Department, and given the circumstances in which the overpayment arose, the Appeals Officer considered it fair to revise the decision in this case to eliminate the overpayment. He applied Section 302(c) of the Social Welfare Consolidation Act 2005, which gives discretion to vary the effective date of a decision.

Outcome: Appeal allowed.

2017/41 Jobseeker's Allowance Summary decision

Question at issue: Eligibility (means)

Background: The appellant had been in receipt of Jobseeker's Allowance for some nine years when a decision was made to disallow her claim on grounds that she had failed to establish that her weekly means were not in excess of the limit provided for in the governing legislation. The reason cited was that her husband had failed to supply documentation to a Social Welfare Inspector in connection with a review of his claim. In an appeal against that decision, she stated that the decision had been made without contacting her to hear her side of the story. She submitted that her financial circumstances were strained and that she was feeling in some distress as a consequence.

Consideration: The Appeals Officer noted that, as the appellant had asserted, no notice appeared to have been given to her to indicate that her claim was under review or to invite her to comment. She noted that the evidence indicated that the review of her husband's social welfare claim appeared to be ongoing, and that there was nothing to indicate that any decision had been made regarding his entitlement. Given that the appellant's claim had been in payment for some time, there was a burden of proof to be discharged before it was disallowed. Having had regard to her grounds of appeal, the Appeals Officer concluded that such a burden had not been discharged and that the manner in which the appellant's claim had been disallowed was in conflict with the duty to act fairly.

Outcome: Appeal allowed.

2017/ 42 Jobseeker's Benefit Summary Decision

Question at issue: Eligibility (substantial loss of employment)

Background: The appellant's Jobseeker's Benefit claim was disallowed on the basis that she had not lost at least one day of insurable employment per week (the 'substantial loss condition').

Consideration: One of the qualifying conditions for receipt of Jobseeker's Benefit is that an applicant has to show that his/her working week has been reduced by at least one day below the level normally worked and also that there has been a loss of earnings. The governing legislation covering the condition of substantial loss of earnings is set out in Section 62(1)(d) of the Social Welfare Consolidation Act 2005 and Article 49 of S.I. No. 142 of 2007.

The Appeals Officer noted that the appellant worked 182 days in an almost 12 month period, which resulted in an average of four days per week. At the time of making the Jobseeker's Benefit claim, the appellant was still working four days per week. Therefore, the 'substantial loss condition' was not satisfied at the date of claim as required under the legislation in order for a Jobseeker's Benefit payment to be awarded.

Outcome: Appeal disallowed.

2017/43 Jobseeker's Benefit Summary Decision

Question at issue: Eligibility (whether a person is unemployed)

Background: The Appellant, a married woman, applied for Jobseeker's Benefit at the start of July 2016. She was employed as a part-time school secretary by two different schools. She was employed for two hours per day in both schools for the academic year. An academic year was understood to be 40 weeks. One school decided to pay for her 40 weeks of work over a 52 week period as it was more convenient to their banking practices. The Department decided that she was not entitled to Jobseeker's Benefit from her date of claim as she was not considered to be unemployed at that time because she was being paid by one school over the summer holiday period. The appellant appealed on the basis that she was not working over the summer as the schools were closed and the only reason she was being paid for the period was because the school chose to set up her payment this way because it suited their system.

Consideration: Social welfare legislation provides that a person may be disqualified for receipt of Jobseeker's Benefit if they are not unemployed. Section 62 of the Social Welfare Consolidation Act 2005 provides that a person shall be entitled to Jobseeker's Benefit in respect of any day of unemployment which forms part of a period of interruption of employment. One of the schools confirmed the appellant's description of her work pattern and undertook to alter their payment methods if their current system was incorrect. It was confirmed that the school was closed during the holiday periods (two weeks at Christmas; two weeks at Easter; and eight weeks in July and August) and the appellant was paid for those periods. The Appeals Officer found that the appellant should not have been penalised because her employer chose an unusual pay system. The Appeals Officer considered that the appellant

was in fact unemployed from early July 2016 when she applied for the payment.

Outcome: Appeal allowed.

2017/44 Jobseeker's Benefit Summary decision

Question at issue: Eligibility (availability for work)

Background: The appellant made a claim for Jobseeker's Benefit, stating that he had chosen to reduce his hours of work with a factory in order to look for work as an electrician. His claim was disallowed by the Department as it was found that he did not meet the requirement of being available for full-time employment as he had chosen a reduction in working days and hours. Subsequently, he enquired about making a claim for Jobseeker's Allowance as he understood that a penalty disqualification for a specified period only would apply on the grounds that he had left his employment voluntarily. The Department noted that he was a casual worker and advised that the same criteria applied to Jobseeker's Benefit and Jobseeker's Allowance in terms of the requirement to be available for work. In his appeal, the appellant stated that he had been employed in the factory for twelve years, working in extreme conditions which included standing with no opportunity for movement and in freezing temperatures and that, as a consequence, he experienced chronic back pain. He submitted that he was available for work and was seeking employment, but with better working conditions.

Consideration: The Appeals Officer noted that Section 62(5)(a)(ii) of the Social Welfare Consolidation Act 2005 outlines the qualifying criteria for receipt of Jobseeker's Benefit and includes a requirement to be capable of and available for employment. She noted also that a person is required to show that they are willing and able, at once, to take up an offer of suitable full-time employment, as prescribed in Article 15 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations (S.I. No. 142 of 2007). The Appeals Officer concluded that the appellant could be held to meet the qualifying requirement of being available for work in connection with his claim to Jobseeker's Benefit, in line with the provisions of the governing legislation. She noted that he had provided a signed statement to that effect and that there was no evidence to the contrary. In addition, she considered that the details outlined in his appeal were such as to support his contention that he had reason at that point in time to reduce his hours and to seek alternative employment.

Outcome: Appeal allowed.

2017/45 Supplementary Welfare Allowance (Rent Supplement) Summary Decision

Question at issue: Eligibility (payment in exceptional circumstances)

Background: The appellant had been in receipt of Rent Supplement up to the end of December 2016 when she had to vacate her rental accommodation which was to be sold by the landlord. She moved into new accommodation at the end of December 2016 and re-applied for Rent Supplement. This application was returned to her with a request from the Department for further information in relation to the landlord and the ownership of the property. According to the evidence, it didn't become evident to the appellant until the end of February 2017 that the person she had rented from was not the owner of the property she was renting and that he was in fact sub-letting to her. As a result, she was unable to produce documentation in order to establish the ownership of the property and her claim was refused. Under the Supplementary Welfare Allowance scheme, a Rent Supplement may be paid, subject to the conditions of entitlement as laid down in social welfare legislation being met. In certain cases, where there are exceptional circumstances and entitlement is not met, a supplement may be awarded in lieu of Rent Supplement under Article 38 of Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S.I. No. 412 of 2007).

Consideration: The Appeals Officer noted that the appellant had been assessed as having a housing need, that she had to borrow the money to pay her rent which left her in financial difficulty, and she had since had to move accommodation. She concluded that the appellant did not establish that she had an entitlement to a Rent Supplement while resident at the address. However, in circumstances where the appellant had a housing need, acted in good faith and was left in financial difficulty through no fault of their own, the Appeals Officer considered this to constitute 'exceptional circumstances' and decided that she should be paid an accommodation supplement under Article 38 set out above.

Outcome: Appeal allowed.

2017/46 Supplementary Welfare Allowance Summary Decision

Question at issue: Eligibility (Rent Supplement and overpayment)

Background: The appellant had made an application for Rent Supplement which was awarded from mid-December 2014. On review, her Rent Supplement claim was closed from early February 2016 as she was found by then to be a full-time student and not participating in an approved government education scheme for the academic period of 2014 to 2016. She was told there had been an overpayment of Rent Supplement of almost

€3,000 as Section 190(1) of the Social Welfare Consolidation Act 2005 set down conditions for the payment that she did not meet. It provides: 'A person shall not be entitled to receive supplementary welfare allowance while attending a course of study within the meaning of section 148, other than in the circumstances and subject to the conditions that may be prescribed.'

Consideration: The appellant contended in her appeal that she had called to the Department prior to being granted Rent Supplement about an Illness Benefit claim and had informed the Department then that she was a full-time student. She stated that she was informed by an officer that she should put this writing and she contended that she did so. She received correspondence from the Department in mid-October 2014 stating that her application for permission to undertake an education/training course under the conditions for receipt of Illness Benefit had been granted.

Having reviewed all of the available evidence in this case, the Appeals Officer was satisfied that there was no intention on the part of the appellant to misrepresent the situation as regards her entitlement to Rent Supplement. While the appellant perhaps should have informed the Rent Unit separately that she was a full-time student, the appellant was of the understanding that she had in effect done so after she had called to the Department in person in late 2014 and had written to it regarding same. The appellant had afterwards received correspondence from the Department stating that permission was granted to undertake an education/training course, which she understood to have been granted on the basis of complete information.

It was also noted by the Department that the appellant was called to the clinic to discuss the matter in early February 2016, however, a decision regarding the claim was not issued in writing until January 2017. The appellant was told verbally of the conclusion the Department had reached and was given the option to appeal in late 2016.

The Appeals Officer concluded that the assessment carried out by the Department regarding the Rent Supplement was correct, however, given the circumstances of the case, the Appeals Officer decided in accordance with the provisions of Section 319(c) of the Social Welfare Consolidation Act 2005 that the effective date of that decision should be the date it was issued in writing to the appellant, namely, mid-January 2017. This had the effect of negating any overpayment.

Outcome: Appeal allowed.

4.4 Case Studies

Retired, Older

People & Other

2017/47 Recoverable Benefits & Assistance Summary decision

Question at issue: Eligibility (contributions)

Background: The appellant in this case was a solicitors' firm representing an injured client to whom the Department had been paying Illness Benefit and Invalidity Pension. The solicitors had taken a personal injuries compensation case for their client. The Department issued a statement of recoverable benefits in relation to their client, which stated that the sum to be recovered was a 'nil' amount. A second statement issued by the Department at a later date stated that the amount to be recovered was a larger amount, having been the amount paid by way of Illness Benefit and Invalidity Pension. The appellant contended that they did not receive the second statement until a later date and that this prejudiced them in court proceedings where the earlier statement had been relied upon. They appealed the amount stated on the second statement of recoverable benefits in the light of the mistake made in the first statement.

Consideration: The contentions of the appellant were that a statement of recoverable benefits showing a nil amount was relied upon in court proceedings. The appellant contended that the statement of recoverable benefits that was later issued by the Department showing a higher amount was sent to a former solicitor and was not received by them until after the court hearings had commenced. The Department contended that the solicitors for the compensators had applied for a renewed statement of recoverable benefits and that the appellant had not informed the Department that there had been a change in the solicitors for the injured party. The original solicitors remained on the Department's file as representatives of the injured party.

The Department submitted that where a request is made for a renewed statement of recoverable benefits, there is a possibility that the original statement may change. The Department accepted that the statement of recoverable benefits first issued was not correct, but further submitted that the injured party's original solicitors had already submitted Form RBA02 (request for statement) to the Department and listed the settlement date of the case.

The Appeals Officer noted that the Department had issued its statement of recoverable benefits in accordance with the provisions of Section 343PA(1) of the Social Welfare Consolidation Act 2005 and that this statement was forwarded to the relevant compensator as well as to the named legal representatives of the injured party. It was forwarded in accordance with the information that was available to the Department at the date of issue of the statement.

The Appeals Officer concluded that the Department acted in accordance with its legal responsibilities and that the second statement of recoverable benefits was correctly issued.

Outcome: Appeal disallowed.

2017/48 State Pension (Non-Contributory) Summary Decision

Question at issue: Eligibility (means)

Background: The appellant applied for State Pension (Non-Contributory) in March 2016 and was disallowed in December 2016 on the basis that he had failed to disclose his means.

Consideration: The evidence indicated that the appellant had been given numerous opportunities to provide the information requested by the Department to establish his entitlement to a State Pension (Non-Contributory). The Appeals Officer found that the appellant was specifically asked on 22 September 2016 to provide the last two pension payslips, four recent pay slips from his employment, a bank statement and evidence of car insurance.

By the time of the appeal, the appellant had not provided any reason for not producing the requested documentation. The Appeals Officer concluded that the appellant had not provided the requested information and as a result his means could not be established.

Outcome: Appeal disallowed.

2017/49 State Pension (Non-Contributory) Oral hearing

Question at issue: Claim against estate

Background: Following the pensioner's death, solicitors acting in the administration of the estate submitted a schedule of assets to the Department, in line with the requirements of the governing legislation. State Pension (Non-Contributory) had been awarded with effect from a date in 1988, and paid on the basis of a nil means assessment. The case was referred to a Social Welfare Inspector for a retrospective assessment of means.

The Inspector reported that the deceased held shares (17%) in a limited company, which was a holding company for some 20 acres of land, with company accounts having valued its assets at some €320,000. In addition, he obtained details as to the value of the lands held by the company. The Deciding Officer noted that the principal activity of the company was the letting of land, and he concluded that the land was an investment and fell to be assessed on a capital value basis. He made a decision revising entitlement throughout the period that pension had been paid and assessed an overpayment of some €50,000, with a claim for repayment being made against the estate.

In an appeal against the decision, made on behalf of the executors, it was asserted that the valuation used for the property owned by the company was unrealistic and not in line with commercial reality; that the shares had not been valued, only the property was; that there was no recognition of loans to the company, and no account had been taken of the costs of realising the value in the company or the control exercisable by the shareholder; that the

deceased had no power to force a sale of the property, and that she had no interest in the debts owed by the company.

Oral hearing: The evidence in the case was examined, including statements as to the value of the shares held and details outlined in the company accounts. Submissions were made on behalf of the Department and by the legal representatives appointed by the appellant (the executors), and by family representatives.

The appellant's legal representatives submitted that the figure of €320,000 referred to authorised share capital, that is, the value to which shares can be issued. It was submitted that a shareholder holds a share in the company and not in the land, reference being made to the fact that a company is a separate legal entity.

It was submitted further that, at 17%, as a minority shareholder, the deceased would have had no right to force a sale: in effect, she was locked into that as it could never have been realised unless with the agreement of all shareholders; the company would have had to wind itself up to distribute the cash. It was submitted that assets might make shares valuable, or not, but what was at issue was the value of the shares.

In addition, a copy of a case study published in the SWAO Annual Report 2016 was submitted; this referred to an overpayment of State Pension (Non-Contributory) assessed against an estate (2016/28). Attention was drawn to the Appeals Officer's statement that overpayments, arising from a revised decision under Section 302 (a) or 302 (b), must be individually justified and the larger the overpayment, the greater the burden of proof and justification required.

The family representatives submitted that the deceased had never derived any benefit from her shares and that the land held by the company had been in the family for many years and had been spread amongst a number of families at the time it was inherited; it had been put into a corporate environment because it made it easier to deal with on the basis of shares. It was submitted that the deceased had been totally dependent on her pension and that, at the time of her claim, she would not have regarded the shares at issue as an asset as they had never yielded anything.

Consideration: The legislation relied upon for the decision is outlined in the Social Welfare (Consolidation) Act 2005: Rule 1 of Schedule 3, Part 3, in relation to the assessment of means and Section 302 (b) in relation to the effect of revised decisions, providing for the implementation of a retrospective assessment.

The Appeals Officer was persuaded that the submission made on behalf of the appellant (the executors) was well founded, that is, that the deceased held a share in the company and not in the land, the company being a separate legal entity, and further that, as a minority shareholder, she could not have forced a sale of the land.

She noted that Schedule 3, Part 3, Rule 1, provides for the assessment of the value of property (not being property personally used or enjoyed) which is invested or is otherwise put to profitable use by the person or which, though capable of investment or profitable use, is not invested or put to profitable use. Having examined the evidence, including that adduced at oral hearing, the Appeals Officer concluded that it had not been established that there was a basis for an assessment of the capital value of the land held by the company at issue in the retrospective assessment of the deceased's means, having regard to the provisions of the governing legislation.

Outcome: Appeal allowed.

2017/50 State Pension (Contributory) Summary Decision

Question at issue: Contribution conditions

Background: The appellant applied for State Pension (Contributory) in July 2012 when she was 75 years old. The appellant's application was refused on the basis that she did not have at least 260 paid full rate social insurance contributions before her 66th birthday. The appellant contacted Scope Section in the Department which determines questions concerning the insurability of employment and her case was reviewed. It was accepted that the appellant was in a business partnership with her late husband. On this basis, outstanding PRSI contributions were paid in September 2016 for the tax years 1988 to 1996. The appellant was also credited with having paid contributions for the tax years 2000 - 2002.

Consideration: In this case a number of decision letters issued to the appellant as monies were outstanding in relation to PRSI contributions. The last decision letter issued in November 2016 stating that the appellant did not qualify for the State Pension (Contributory) under Section 110(1) of the Social Welfare Consolidation Act 2005, as the appellant had not paid self-employment contributions in respect of at least one contribution year before attaining pensionable age. However, the Appeals Officer noted that in a decision letter from June 2016, the Department acknowledged that the appellant had 156 paid contributions for the years 2000 - 2002. It had also been confirmed by the Revenue Commissioners that PRSI has been paid in full for these years and that these payments were made before 31 December 2002.

The Scope Section of the Department made a retrospective decision stating that the appellant was in partnership with her late husband from 1988 until 1996. Outstanding PRSI due was calculated at €4,043.80 and was paid on 5 September 2016.

The Appeals Officer concluded that the appellant had more than 260 paid contributions and that all outstanding contributions had been paid. State Pension (Contributory) was payable from 5 September 2016 based on the appellant's PRSI contributions.

Outcome: Appeal allowed.

2017/51 State Pension (Contributory) Summary Decision

Question at issue: Overpayment (qualified adult)

Background: The appellant was awarded a State Pension (Contributory) from February 2001. His pension included an increase for a full-rate qualified adult payment (IQA) in respect of his wife. He completed and returned a review form that had been issued to him in May 2016. He informed, in the completion of this questionnaire, that his wife had been self-employed since 1 January 2009. He provided information in relation to her income from this self-employment and evidence that this employment and income had been declared and appropriate returns made to the Revenue Commissioners. He received a revised decision informing him that he was not entitled to receive any qualified adult payments for the period January 2011 to January 2013 and that he was only entitled to receive a reduced rate qualified adult payment for the period January 2013 to April 2016 resulting in an overpayment of €29,700 for the period from January 2011 to April 2016.

Consideration: The Appeals Officer was satisfied that this revised decision was appropriately made under Section 302(b) of the Social Welfare Consolidation Act 2005. Section 302(b) provides that a decision shall take effect from the date that the Deciding Officer shall determine having regard to the new facts or new evidence and the circumstances of the case. This legislative provision allows discretion in determining the appropriate date from which a revised decision should take effect.

The Appeals Officer was satisfied that the appellant was unaware of his obligation to inform the Department of a change in his wife's income circumstances and of its implications for his entitlement to an IQA, given that he was in receipt of a pension based on insurance contributions he had made. He asserted he had no change in his circumstances that prompted him to contact the Department and, given his own age and that of his wife, an annual review by the Department would have been more appropriate rather than allowing an escalation of the debt he was now deemed to have incurred. He made the case that he and his wife are honourable people and make their returns as required.

The Appeals Officer deemed the issue of 'reasonableness' to be a relevant factor in determining the date from which this revised decision should take effect. He took into consideration that the claim not been reviewed by the Department from the date it was awarded in February 2001 up to May 2016 and that the appellant had reasonable grounds to assert, not being reminded of same, that he was unaware of his obligation to inform the Department of a change in his wife's income circumstances and of its implications for his entitlement to an IQA. The Appeals Officer deemed, in the absence of a review and a reminder of the qualification criteria for an IQA, it was reasonable for the appellant to assume a continued entitlement to the IQA payment he had been getting.

Outcome: Appeal allowed.

2017/52 State Pension (Contributory) Summary Decision

Question at issue: Rate of pension

Background: The appellant had a 48 year working life from the date she entered insurable employment up to the year before she reached State Pension retirement age. The Department informed her that she had a total of 1,489 reckonable PRSI contributions paid and credited over her working life and that this gave her a yearly average at 31 contributions per year, entitling her to a State Pension (Contributory) of €209.70. The appellant asserted that she had a total contribution record at 1799 contributions throughout her working life and that she should be entitled to State Pension (Contributory) at a higher rate.

Consideration: The appellant had worked in both the private and public sector during her working career. She had 310 contributions as a public servant in addition to her 1,489 contributions paid and credited while working in the private sector. However, the 310 contributions she paid as a public sector employee were at a modified rate of PRSI and were not reckonable in the determination of her entitlement to a State Pension (Contributory). Therefore, the Appeals Officer concluded that her entitlement had been correctly assessed, based on a total reckonable PRSI contribution record of 1,489 contributions over a 48 year work history, giving a yearly average at 31 contributions. This was in the band 30 – 39 and entitled her to a State Pension (Contributory) at €209.70 per week from the date she turned 66 years of age (in 2016).

The appellant, as she had a mixed insurance record, in addition to having an entitlement to a State Pension (Contributory) based solely on her full rate PRSI contributions, also had a potential entitlement to a pro-rata pension based on a combination of her full and modified rate contributions. This entitlement is legislatively assessed in accordance with the following formula:

A X (B / C) where –

A is the rate of State Pension (Contributory) which would be payable if all of the contributions were full-rate contributions,

B is the number of full rate contributions, and

C is the total number of all contributions, both full and modified rates added together.

The Appeals Officer calculated the appellant's entitlement to a pro-rata pension, on this basis as follows:

A was $1,799/48 = 37.5$ average contributions per year. 37.5 years is in the band 30 -39 contributions per year. The legislative amount of entitlement in this band is €207.90 per week.

B in this case was 1,489 and

C was 1,799.

The pro-rata entitlement was $€207.90 \times 1,489/1,799 = 207.90 \times 82.8\% = €172.10$.

The appellant's pro-rata pension entitlement was less than her entitlement to a State Pension (Contributory) based solely on her full rate contributions. Therefore she was better off on her State Pension (Contributory).

Outcome: Appeal disallowed. (The appellant was receiving her correct rate of pension.)

2017/53 State Pension (Non-Contributory) Summary Decision

Question at issue: Eligibility (means)

Background: The appellant applied for a State Pension (Non-Contributory) in June 2016. The evidence before the Appeals Officer outlined that the appellant was in receipt of weekly payments of £126.14 per (British State Pension) and £30.29 (British Civil Service Pension). The appellant also had savings in a number of bank accounts, both Irish and British. As the currency in this case was both in Sterling and Euro, it was necessary for the Department to apply a conversion rate to the appellant's Sterling pension and British Ulster Bank account. The rate applied in this instance was £1.32523. This rate was taken from the Department's quarterly exchange rate commencing in July 2016.

The Department calculated total means from income as follows:

British State Pension:
 $£126.14 \times 1.32523 = \mathbf{€167.16}$

British Civil Service Pension:
 $£30.29 \times 1.32523 = \mathbf{€40.14}$

Total weekly means assessed
 from income: **€207.30**

Means from capital was calculated as follows:

British Ulster Bank	$£18425.36 \times 1.32523$	€24,417.84
Permanent TSB		€17,097.70
Permanent TSB		€11,525.89
Capital		€53,041.43
Less disregard		€20,000.00
Total Means from capital		€33,041.43

Total weekly means assessment from capital €82.00

Total weekly means from income and capital €289.30

The evidence presented by the appellant for consideration was that for the months of June and July 2016, her monthly income for her British pensions was significantly reduced and she requested that her claim be reassessed on the basis that her pension for the two months was €809.12 and €744.22 respectively. This was due to the fall in the value of Sterling against the Euro.

Consideration: The Appeals Officer noted that the British Ulster Bank account was a joint account held between the appellant and another person. The Appeals Officer also noted that the appellant was single and therefore found that this capital should not be treated as 'household capital', i.e. the person in this case was not the appellant's partner or spouse, therefore it was proper that the capital in the Ulster Bank Account should be split on a 50/50 basis and therefore the total means from capital should be reassessed as €53,041.43 less €12,208.92, less a disregard of €20,000. Total means from capital should have read €20,832.51, therefore, the weekly means from capital should have been assessed as €33.33. The conversion rate applied in this case was correct and in line with regulations at the time.

The Appeals Officer was satisfied that the means, allowing for the reduction of means in respect of means from capital as outlined above, resulted in the appellant's means being in excess of that required to be eligible for a reduced rate of State Pension (Non-Contributory). The method applied in the Department's calculation of means was carried out in accordance with the relevant regulations.

Outcome: Appeal disallowed.

2017/54 State Pension (Non-Contributory) Oral hearing

Question at issue: Backdating

Background: The appellant had been in receipt of Carer's Allowance in respect of care provided to her husband since January 2006. At the time of application the appellant was advised that she could only apply for Carer's Allowance or State Pension (Non-Contributory). Legislation changed in 2007 and the appellant may have been entitled to the State Pension (Non-Contributory) and half-rate Carer's Allowance, but was unaware that the legislation had changed.

Oral hearing: The appellant attended the hearing with her daughter. It was stated that the situation was unfair and that she never had any communication from the Department that she may have had an entitlement to State Pension (Non-Contributory) and half-rate Carer's Allowance.

The appellant stated that she would have applied immediately if she had received any correspondence from the Department. The appellant had the original letters in relation to her Carer's Allowance application and the relevant booklet that indicated a person could claim for Carer's Allowance or the State Pension (Non-Contributory), but not both.

Consideration: The Department's submission stated that a media campaign commenced in July 2007, which advised those on Carer's Allowance about the new half-rate scheme. It further stated that as the appellant was in receipt of Carer's Allowance at the time, she would have been notified about the introduction of half-rate Carer's Allowance, however, there was no evidence on file regarding this notification.

On the other hand, the Appeals Officer had direct credible evidence from the appellant that she never received any notification of the changes to the scheme and that she would have applied immediately for State Pension (Non-Contributory) if she had been made aware of it. The appellant had an information booklet/correspondence from the time she made her original application for Carer's Allowance, which indicated that the appellant dealt with her affairs in an organised manner.

The Appeals Officer found that it was not unreasonable for the appellant to expect that the Department should inform a person in receipt of Carer's Allowance of a possible entitlement to State Pension (Non-Contributory) and half-rate Carer's Allowance when the legislation was introduced in 2007. There was no evidence that the Department had notified the appellant of the change in legislation.

The circumstances in which a claim may be backdated for more than six months are set out in Article 186 of S.I. No.142 of 2007 (Social Welfare (Consolidated Claims, Payments and Control Regulations) 2007), which provide for further back-dating, but only in circumstances where the delay in claiming was due to information given by an Officer of the Minister or where the person was incapacitated and could not make a claim.

The Appeals Officer concluded that the appellant had shown grounds that the delay in making her claim was as a result of no information having been given by an Officer of the Department when there was a legitimate and reasonable expectation that this information would be provided as she was a customer of the Department at the relevant time.

Outcome: Appeal allowed.

2017/55 State Pension (Contributory) Oral Hearing

Question at issue: Increase for Qualified Adult

Background: The appellant was awarded a State Pension (Contributory) from 21 February, 2016 but was refused an increase for a qualified adult (IQA) for his wife, as she was assessed as having means from savings, a pension and farming. The appellant disagreed with the means assessment from farming.

Oral Hearing: The appellant and a Social Welfare Inspector attended the hearing. The Social Welfare Inspector outlined the basis of the farming means assessment. He stated that the farming means assessment was a snapshot in time and that the figures used were based primarily on actual expenditure and receipts and that the appellant also had income from forestry. The appellant informed that his sale of cows was particularly high at that time, but that they were not normally as high. He stated that he had to provide housing and feedstuffs to fatten his sheep and lambs. He contended that his income should be looked at over a 3 to 5 year period. The appellant stated that he had different holdings and this was why his mileage was so high. He stated that farming was a pure lottery and that he was not making anything from farming and it was worse last year. The appellant stated that he would send in his accounts for 2015 and 2016.

Consideration: The appellant submitted further information subsequent to the hearing, which consisted of two single sheets of farming profit and loss accounts for the year ended 31 December 2015 and 31 December 2016. These documents appeared to be aides for completing a Form 11 for tax purposes. The Appeals Officer noted that on the expenses side there was no detailed breakdown of expenses. Based on the verified evidence on file, the income on the 2015 sheet appeared to be understated. The calculations completed by the Department were based on verified expenditure and receipts. While the Appeals Officer noted that the appellant stated that the cattle sales were particularly high for 2015 and he was keeping fewer cattle by the time of the hearing, the Appeals Officer also noted that the feedstuffs expenditure as per the Department's figures were also particularly high and were not repeated. The documentation submitted by the appellant subsequent to the oral hearing did not provide any further clarification to his income/expenditure.

In the circumstances, the Appeals Officer did not consider the farm means assessment to have been unreasonable, having regard to farm size, stock level and the level of subsidies. The Appeals Officer concluded that means were assessed correctly in this case.

Outcome: Appeal disallowed.

4.5 Case Studies

Insurability of Employment

2017/56 Insurability of Employment Oral hearing

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

Background: The issue arose when a worker sought a determination from the Department in relation to his employment status. He had been working for a company as an employee until 2009 when he was made redundant. He was then re-engaged under a contract for services in 2010 and continued to work until 2013 when a disagreement arose and the contract was terminated. The question at issue was whether the worker had been working under a 'contract of service' or working under a 'contract for services' by the company in question. Scope Section in the Department had decided that the worker had been self-employed and working under a contract for services. The worker appealed that decision.

Oral Hearing: The appellant worker was represented by a union official and the company was represented by a barrister.

Consideration: The Appeals Officer found that the first matter to be decided was whether a mutuality of obligation existed as this test was the irreducible minimum of a contract of service. The High Court judgments of *Minister for Agriculture and Food v Barry & Ors* [2008] and *Ahktar Mansoor v Minister for Justice, Equality and Law Reform* [2010] were relied upon. In those cases, the High Court described the mutuality of obligation test as the requirement for the employer to provide work for the employee and the employee to complete the work. The Appeals Officer found that there had been an expectation that the worker would perform the work in return for an agreed rate of remuneration. Once the company had secured the contract, there was an expectation that the appellant worker would provide his services for the agreed amount and for the duration of the contract. While there was no written contract between the parties and the fees charged were negotiated on a project by project basis, the appellant worker was paid an hourly rate on the production of an invoice for the hours worked.

The Appeals Officer found that the nature of the appellant worker's responsibilities and his commitment to a prolonged service provision, in return for an agreed payment, all served to indicate that a mutuality of obligation existed between the parties.

The evidence submitted indicated that the appellant worker had undertaken to provide his services throughout the period of the contract in return for an agreed rate of payment. The company, in return, had provided the worker with the assurance that he would be engaged for the duration of the substantial projects. This was not an 'on-call' service as in the High Court cases cited above.

Having found that a mutuality of obligation existed, the Appeals Officer then turned to the question of whether the worker had been working under a 'contract of service' or a 'contract for' service.

He examined the case under the Code of Practice for Determining Employment or Self-Employment Status of Individuals. He found that the appellant worker did have his own business and had described himself as an independent contractor and there was evidence of self-employment and entrepreneurial activity.

The Appeals Officer found that the appellant worker was not subject to financial risk arising from substandard work but was at risk had he not been able to fulfil the terms of the stated contract.

In relation to the provision of services, the Appeals Officer considered that the appellant worker did assume responsibility for investment in and management of his enterprise, but seemed to have had little opportunity to profit from sound management in the scheduling and performance of engagements and tasks. The worker had, however, entered into the contract with his eyes open and accepted that he had experience of what was involved with such contracts and he had negotiated his rate of pay with that knowledge.

The Appeals Officer considered that it had been a reflection of the worker's expertise and reputation that he had control over the work done, how it was done, when and where it was done. That expertise demanded that the appellant worker perform the work personally. It was noted that the appellant worker had not provided any significant equipment and machinery necessary for the job, other than the small tools of the trade or equipment. The worker had always worked on the company's site.

It was noted that the appellant worker costed and agreed a price for the jobs and was not obliged to carry his own insurance. The hours worked were dictated by site management, as were considerations such as health and safety. There was agreement that the invoices submitted by the worker varied depending on the type of work, the location of the site, provision of accommodation etc.

The Appeals Officer found that the case had many of the features of both *Castleisland Cattle Breeding Society Limited v Minister for Social and Family Affairs* [2004] and *Henry Denny & Sons (Ireland) Limited v The Minister for Social Welfare* [1997]. In both cases, the worker(s) had a contract from the company for whom the work was done, which described the status of the worker as that of an independent contractor. In both cases, the Supreme Court found that this was not conclusive, so that the decision-maker was bound to examine and have regard to what the real arrangement on a day to day basis between the parties was. As in *Castleisland*, this appellant worker had previously been employed by the company as an employee but had then become engaged as a contractor. The Supreme Court held that there was nothing wrong with this approach, provided it was a bona fide arrangement. The Court found that the company had made no secret of their reasons for changing the method of procuring services, which was to cut losses in the company. The Court found that there is nothing unlawful about a company deciding to engage people on an independent contractor basis rather than on a servant basis, but also pointed out in the *Henry Denny* case that in determining whether the new contract is one 'of service' or 'for services' the decision maker must look at how the

contract is worked out in practice as mere wording cannot determine its nature.

Referring to a UK Court of Appeal case, the Appeals Officer noted the observations of Lord Justice Ralph Gibson in *Calder v H Kitson Vickers Ltd* [1988]: "the fact that the parties honestly intend that between themselves the contract should be a contract for services and not a contract of service is not conclusive, but it is a relevant fact, and...it may afford strong evidence that that is their real relationship." In *Castleisland*, the Supreme Court noted that the workers knew well the reason why their contracts of service were terminated and that the redundancy arrangements were entered into entirely in the context of planned new arrangements involving contracts with independent contractors. The most important consequence was that the independent contractors became self-employed for tax purposes and had to carry their own insurance.

The Appeals Officer found that the appellant worker in this case was fully aware that he was not being re-engaged as an employee in 2009 after he had been made redundant. He did not seek employee status. Furthermore, he did not question his status for another 5 years after he found himself in dispute with the company. The Appeals Officer regarded it as significant that the worker had claimed tax relief on expenses incurred in the course of his declared self-employment.

The Appeals Officer considered the basis that the appellant worker had belatedly questioned his employment status. He regarded it as significant that the motivation had been the admitted disagreement between the parties. In *Castleisland*, the Supreme Court held that the circumstances in which the worker entered into the contract was of great importance in considering whether there had been a contract 'of' or a contract 'for' services. In a reference to the payment of redundancy and the change of contractual arrangements for tax purposes, the Court stated: "*...so much for the circumstances in which the contract was entered into and to which, for the reasons I have indicated, I attach great importance. I believe that the same importance should have been attached to these circumstances by the appeals officer.*"

The Appeals Officer concluded that there had been a mutuality of obligation between the appellant worker and the company and the relationship between the parties comprised elements of a contract of service and a contract for services. On balance, the Appeals Officer considered that the evidence submitted pointed to a contract for services rather than a contract of service.

Outcome: Appeal disallowed.

4.6 Case Studies

Section 318

Reviews

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

INTRODUCTION

Provisions of Section 318: Section 318 of the Social Welfare Consolidation Act 2005 allows the Chief Appeals Officer to revise the decision of an Appeals Officer in certain circumstances and provides as follows:

The Chief Appeals Officer may, at any time, revise any decision of an appeals officer, where it appears to the Chief Appeals Officer that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts.

This section of my Report includes a summarised account of a sample of the reviews carried out by me in 2017. In each case, and in accordance with Section 318 of the 2005 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 must consider whether the Appeals Officer may be held to have erred in relation to the law or the facts.

Like the case studies in the previous Chapters, the reviews included in this Chapter of my Report represent an abridged account of the salient features in each case and all personal details have been anonymised.

2017/318/57 Domiciliary Care Allowance (DCA)

Question at issue: Whether the eligibility criteria are met

Grounds for review: It was asserted that the Appeals Officer's consideration of the medical evidence was inaccurate and incomplete and that the decision was not compatible with the facts and evidence submitted in support of the claim. It was submitted that the evidence pointed to a finding that the appellant's son met the legislative condition of requiring substantially more care and attention on a continual or continuous basis in excess of that required by a child of the same age without the condition.

Background: The appellant's son, who was 9 years of age, had a diagnosis of ADHD and dyslexia. In 2016 the appellant made a claim for Domiciliary Care Allowance (DCA). Documentary evidence submitted with the claim and subsequent appeal included medical evidence, a psychological and educational report and a report from the Principal of the school attended by the child.

The appellant's claim for DCA was disallowed as the Deciding Officer of the Department considered that, although accepting that the child had a disability, the qualifying criteria as regards substantial care and attention had not been met in line with the provisions of the relevant legislation.

The Appeals Officer held an oral hearing and concluded that while additional care was required it had not been established that the requirement for substantial additional care on

a continuous basis, as provided for in the legislation, had been met.

Review: A qualified child for the purposes of the payment of domiciliary care allowance is set out in Section 186C of the Social Welfare Consolidation Act 2005 which provides as follows:

“186C.—(1) A person who has not attained the age of 16 years (in this section referred to as the ‘child’) is a qualified child for the purposes of the payment of domiciliary care allowance

where—

- a. the child has 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,*
- b. 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,*
- c. the child—*
 - i. is ordinarily resident in the State, or*
 - ii. satisfies the requirements of section 219(2),*
- d. the child is not detained in a children detention school.”*

In the course of my review, I considered all of the evidence which was before the Appeals Officer and the additional evidence submitted in the context of the request for a review. The medical evidence was not in dispute and it was clear that the child met the criteria for a diagnosis of ADHD & dyslexia. There was also a diagnosis of asthma.

The additional evidence submitted reported on observations made of the child in his school based on a checklist from the Autism Ireland website and indicated difficulties in areas of language and communication, social interaction with peers, hyperactive behaviour and sensory issues.

The parents’ daily diary outlined a degree of intervention with the child in all aspects of their daily activities from dressing, washing, meal times, playing, doing home-work, that could not be regarded as insignificant.

While the child attended main stream school and was generally doing well in class, the criteria for a special needs assistant in school was met and the child had a shared SNA and access to extra resource hours. In addition, the child attended a home-work club after school to help with additional reading and writing activities, social skills and home-work which he refused to do at home.

From my review of the file I was satisfied that the Appeals Officer gave careful consideration to all of the evidence and set out the difficulties presenting in this case and this was not in dispute. What was in dispute was the weight the Appeals Officer afforded to that evidence.

Having reviewed the medical reports and the information provided in relation to the child's care requirements and by the child's parents as set out in the daily diary, I was satisfied that the evidence indicated that the care and attention required could be held to be substantially in excess of that normally required by a child of the same age and, as such, met the qualifying criteria outlined in the governing legislation.

Outcome: Decision revised and appeal allowed.

2017/318/58 Insurability of Employment

Question at issue: Insurability of employment prior to career break and whether a career break constitute a break in service?

Grounds for review: The Department in its request for a review of the Appeals Officer's decision contended that the Appeals Officer erred in law and that the decision of the Deciding Officer which was based on the provisions set out in Article 83(1)(e) of the Social Welfare (Consolidated Contributions and Insurability) Regulations, 1996 [S.I. No. 312 of 1996], as amended was correct.

The Department attached circulars issued by the Department of Education and Skills which outline that a teacher on career break remains an employee of the employer for the duration of the absence and the absence does not constitute a break in service for PRSI purposes.

Background: The person concerned was employed as a permanent teacher with the Department of Education and Skills since 1 August 1988 and was formally admitted to a superannuation scheme on 16 April 2007. The person availed of a career break in the period from 1 September 2007 to 31 August 2008.

A Deciding Officer in the Department determined that the period during which the person availed of a career break did not constitute a break in service and that the employment from 16 April 2007, that being the date the person entered the superannuation scheme, to date is covered by the modified Regulations paragraph 83(1)(e) of S.I. No. 312 of 1996, and is therefore insurable under the Social Welfare Acts at the modified rate of PRSI Class D.

On appeal, the Appeals Officer determined that the career break constituted a break in service and in those circumstances the Appeals Officer determined that from September 2008, the person is insurable at the PRSI Class A rate.

Review: There were essentially two questions at issue in this case:

- i. What was the correct Class of PRSI applicable to the person prior to availing of a career break? and
- ii. Does a career break constitute a break in service in this case?

It was not disputed that the person concerned was employed by the Department of Education and Skills in a **permanent** capacity as a teacher since 1 August 1988. During the period from 1 August 1988 to the point at which the person was formally admitted to the superannuation scheme (16 April 2007) the person was not permanent and pensionable. It was only when the person joined the superannuation scheme on 16 April 2007 that the person became **permanent and pensionable**.

Section 14 of the Social Welfare Consolidation Act 2005 provides that Part 2 of the Act may be modified in its application to certain employments and persons employed in certain specified employments. The modifications are set out in Regulations and currently contained in Chapter 1 of Part IV of the Social Welfare (Consolidated Contributions and Insurability) Regulations, 1996 [S.I. No. 312 of 1996], as amended.

Article 83(1)(e) of the Social Welfare (Consolidated Contributions and Insurability) Regulations, 1996 [S.I. No. 312 of 1996] provide that:

“Certain public service employees.

83. (1) This article applies to persons who-

.....

(e) having been, on the 5th day of April, 1995, in non-pensionable employment as a teacher in -

i. a national school;

ii. a comprehensive or community school established by the Minister for Education;

iii. a secondary school where the person received incremental salary in accordance with the rules made by the Minister for Education for the payment by him of such salary to secondary teachers;

iv. domestic science training college recognised by the Minister for Education,

.....”

subsequently cease to be so employed but immediately upon such cessation become employed in a pensionable capacity as a teacher in any of the said schools or training college, as the case may be;

Article 83(2) sets out how the provisions shall be modified.

I concluded that the person concerned came within the provisions of Article 83 (1)(e) in that the person was on 5 April 1995 in a **non-pensionable employment** as a teacher, subsequently ceased to be **so employed**, but immediately became employed in a **pensionable capacity**

when admitted to the superannuation scheme on 16 April 2007. In those circumstances the employment contribution payable should have been at the modified rate.

Circular Letter 0010/2011 issued by the Department of Education and Skills to the managerial authorities of recognised primary, secondary, community and comprehensive schools and to the Chief Executive Officers of Vocational Education Committees sets out at Paragraph 12.1 that *'the teacher on a career break remains an employee of the employer for the duration of the absence and the absence does not constitute a break in service for PRSI purposes.'*

In Paragraph 12.2 of the same Circular, teachers seeking to maintain their Social Welfare entitlements during a career break are advised to contact the Department of Social Protection for advice **prior** to taking a career break.

The Terms and Conditions of Employment for Registered Teachers in Recognised Primary and Post Primary Schools [Edition 1 of 30 September 2016] sets out the same provision in Section 10.

In summary, I considered that the Appeals Officer erred in not considering the correct PRSI position of the person concerned in 2007 when the person was admitted to the superannuation scheme and erred in relying on legal advice and a subsequent appeal case both of which dealt with a different set of circumstances.

Outcome: Decision revised and appeal disallowed.

2017/318/ 59 Child Benefit

Question at issue: Habitual residence

Grounds for review: That the Appeals Officer erred in law in his decision of January 2008 on the basis that as the appellant was granted One Parent Family Payment and deemed to be habitually resident in the State this would mean that she is habitually resident for the purposes of Child Benefit.

Background: The appellant, who is an EU national and came to Ireland with her parents and siblings in 2006, applied for Child Benefit in respect of her child who was born in May 2007. The claim was disallowed on the grounds that she did not satisfy the condition of being habitually resident in the State. The appellant was subsequently awarded Child Benefit with effect from June 2009, therefore the appeal covered the period from June/July 2007 (date of application for Child Benefit) to June 2009 (when Child Benefit was awarded by the Department). An Appeals Officer disallowed the appeal on the grounds that the appellant did not meet the habitual residence condition at the date of claim for Child Benefit in June/July 2007. The Appeals Officer noted that:

The Appellant has only been resident in Ireland from June 2006. Having considered all of the evidence I am not satisfied that the Appellant has established that she is habitually resident in the State, being here less than 2 years, having no record of employment in this State or permit to work in this State.

Review: Habitual residence is a question of fact depending on the circumstances of each case, decided in accordance with the statutory provisions set out in Section 246 of the Social Welfare Consolidation Act 2005. Section 246(4) sets out five factors to be taken into account when deciding whether a person is habitually resident in the State.

In my review I noted that Section 246 of the Social Welfare Consolidation Act 2005 applicable at the time of the appellant's application for Child Benefit contained a provision that *"...it shall be presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless the person has been present in the State or any other part of the Common Travel Area for a continuous period of 2 years ending on that date."*

While this provision was removed from the legislation in its entirety with effect from July 2014 by the Social Welfare and Pensions Act 2014, it was never a requirement to be resident in the State for a period of 2 years - or for any period - the provision was at the time of its operation a rebuttable presumption.

I was of the view that the Appeals Officer erred in law in stating that he was *'not satisfied that the Appellant has established that she is habitually resident in the State, being here less than 2 years...'* In this respect I considered that the Appeals Officer had effectively applied a minimum period of residence and did not consider at all if the appellant had rebutted the presumption as provided for in the governing legislation.

I noted also the Appeals Officer's additional reasoning stated that *'having no record of employment in this State or permit to work in this State'* he was not satisfied that the appellant could be regarded as being habitually resident in the State. While the nature and pattern of the person's employment in the State is set out in the governing legislation as a factor to be considered in determining if a person is habitually resident in the State, it is only one factor to be considered. I noted that at the time of the Appeals Officer's consideration of the appellant's appeal in January 2008, the appellant was 17 years of age and she was 16 years of age at date of application for Child Benefit. Like any other 16 or 17 year old one would not expect to find any significant record of employment. In this respect I found the Appeals Officer's decision in relation to his consideration of the appellant's record of employment to be unreasonable.

It has been the Department's policy to apply 'once and done' approach in considering if a person is habitually resident in the State such that if a person has been found to satisfy the condition for one scheme/payment type then that decision should stand unless there has been a significant change in circumstances or new facts or evidence emerge.

It is that very fact that the appellant had asked me to apply to her application for Child Benefit. Although some key papers relating to the appellant's claim history were no longer available, my review of the file indicated that the appellant had been awarded Supplementary Welfare Allowance (not One Parent Family Payment as submitted) for the period 12 July 2007 to 24 June 2009 which largely coincided with the period under consideration for Child Benefit. As receipt of Supplementary Welfare Allowance is also subject to satisfying the habitual residence condition I could only assume that the Department was satisfied that the appellant was habitually resident in the State in the period in question and that in keeping with the 'once and done' approach the decision should stand for the purposes of the appellant's application for Child Benefit.

Outcome: Decision revised and appeal allowed.

2017/318/60 Child Benefit

Question at issue: Right to reside in the State

Grounds for review: The Department in its request for a review of the Appeals Officer's decision contended that the Appeals Officer erred in law in finding that the appellant had a right to reside in the State.

Background: The appellant in this case came to Ireland in 2003 with her mother and siblings to join her father who had been living and working in Ireland since 2001.

At the time her child was born in 2006 the appellant's residence was based on a student visa and she claimed and received Child Benefit up to October 2008. Her claim was suspended at that time when she failed to reply to a Residency Certificate issued by the Department in August 2008. The claim was finally disallowed in December 2008 when the appellant failed to make contact with the Department.

By November 2015 the appellant had regularised her residence in the State and her claim for Child Benefit was awarded from that date. The appellant sought to have payment of Child Benefit backdated to 2008. The Appeals Officer while noting that the appellant did not have a right of residence from about 2008 when her student visa expired allowed the appeal based on the difficulties the appellant faced in seeking to have her residency status regularised. The Department requested a review of that decision on the grounds that the Appeals Officer erred in law in allowing the appeal.

Review: In order to qualify for Child Benefit a person must, amongst other conditions, satisfy the condition of being habitually resident in the State. This is a two stage process involving establishing a right of residence and assessing the person's situation under the factors outlined in Section 246 (4) of the Social Welfare Consolidation Act 2005. Section 246 (5) provides that a person who does not have a right to reside in the State shall not, for the purposes of this Act, be regarded as being habitually resident in the State.

The various categories of people who shall be regarded as having a right of residence for the purposes of Section 246 (5) are set out in Section 246 (6) of the Social Welfare Consolidation Act 2005. Section 246 (8) provides that where a person is granted a right of residence under the Immigration Acts

“he or she shall not be regarded as being habitually resident in the State for any period before the date on which the declaration or permission concerned was given or granted as the case may be and, in the case of a declaration or permission deemed to be given, for any period before the date on which the declaration or permission concerned was originally given.”

The Courts have confirmed that this provision has the effect of removing any discretion when considering the back-dating of a claim.

Having reviewed the Department’s request for a review of the Appeals Officer’s decision and having regard to the legislative provisions I concluded that the appellant did not have a confirmed legal right of residence in the State. Her right of residence was only established when she was granted leave to remain by the Irish Naturalisation and Immigration Service (INIS). The legislation is clear and provides that a person without a right of residence cannot be regarded as being habitually resident in this State. Furthermore, Section 246(8) of the Social Welfare Consolidation Act 2005 precludes the payment of benefit for any period before the granting of a right of residence under the Immigration Acts. In those circumstances I concluded that in back-dating the appellant’s application the Appeals Officer erred in law.

Outcome: Decision revised and appeal disallowed.

2017/318/61 Domiciliary Care Allowance (DCA)

Question at issue: Whether a payment should be backdated more than 6 months

Grounds for review: That the Appeals Officer erred in not backdating a payment of Domiciliary Care Allowance to a date several years prior to the claim being made. The date in question was the date upon which the appellant had been granted a permanent residential status under an international protection programme. The grounds for backdating centred around the absence of a full and proper medical diagnosis of the appellant’s son’s condition while they were living in special accommodation and were receiving legal and other advice and assistance from various State or State-funded bodies. The argument, in essence, was that the “system” had failed them and if a proper medical examination had been carried out at an earlier point, an application for the appropriate payment would likely have been triggered without undue delay.

Background: A claim for Domiciliary Care Allowance was received in the Department in relation to the appellant’s son and was duly awarded. The appellant requested that the Department backdate the allowance to the date she had come to Ireland several years earlier

on the basis that she was not aware of her entitlement to this payment until shortly before the application was made. On review, the Department found that there was no 'good cause' for backdating the payment. On appeal, an Appeals Officer allowed backdating of six months.

Review: The general provisions relating to claims and payments are contained in Part 9, Chapter 1 of the Social Welfare Consolidation Act 2005. 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) goes on to provide that:

"(a) 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 is made.

(b) Notwithstanding paragraph (a), where a deciding officer or an appeals officer is satisfied that

- i. on a date earlier than the first day of the month following the day on which the claim was made, apart from satisfying the condition of making a claim, the person became a qualified person within the meaning of section 186D(1) (inserted by section 15 of the Social Welfare and Pensions Act 2008), and*
- (ii) throughout the period between the earlier date and the date on which the claim was made there was good cause for the delay in making the claim, the person shall not be disqualified for receiving payment of domiciliary care allowance in respect of any such period referred to in subparagraph (i) which does not exceed 6 months before the first day of the month following the date on which the claim is made."*

In summary, Section 241(4A) provides that a Deciding Officer or an Appeals Officer, in circumstances where a person fails to make a claim within the prescribed time, may backdate a claim where there was 'good cause' for the delay and the period of backdating is limited to 6 months.

The Appeals Officer was satisfied that 'good cause' was established in this case and accordingly allowed backdating for the 6 month period permitted under the legislation.

I noted that social welfare legislation makes provision in certain specific circumstances to backdate other benefit and assistance payments for a period longer than 6 months but there is no such provision for further backdating of Domiciliary Care Allowance. Of relevance is Article 186 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) which provides that:

- (1) Where a claim in respect of any benefit is made in respect of any period which is greater than that allowed under section 241(2)[of the Social Welfare Consolidation Act 2005], the period in*

respect of which payment may be made before the date on which the claim is made shall be extended to a period calculated in accordance with this article, where it is shown to the satisfaction of a deciding officer or an appeals officer that the person was entitled to the benefit.

However, the benefits specified in Section 241(2) do not include Domiciliary Care Allowance. While a request was made that discretion be exercised by me in reaching a decision in recognition of the very specific and difficult circumstances of the appellant, it is the case that the governing legislation does not give such discretionary power to the Chief Appeals Officer. Section 318 of the Social Welfare Consolidation Act 2005 provides only that the Chief Appeals Officer may revise a decision of an Appeals Officer where it appears to her that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts. Such error on the part of the Appeals Officer was clearly absent in this case.

Outcome: Decision not revised.

2017/318/62 Jobseeker's Allowance

Question at issue: Whether an Appeals Officer had erred when partially allowing an appeal in relation to an overpayment

Grounds for review: The Department contended that the Appeals Officer had erred in law in arriving at her decision, which was somewhat favourable to the appellant, in that the appellant appeared to have acknowledged during interview that the full details of all her financial means should have been provided at the date of application but were not.

Background: The appellant had been employed on a casual basis and applied for Jobseeker's Allowance at a date when her employment was reduced to three mornings per week. She would have been entitled to Jobseeker's Benefit based on her social insurance contributions but she was assessed by the Department as having no financial means and on that basis received a higher rate of Jobseeker's Allowance which she opted to receive. A review of her claim was carried out by the Department a couple of years later when the Department received information from the Revenue Commissioners which outlined interest earned on accounts held by the appellant. Her claim was referred for investigation and she was invited to attend for interview with a Social Welfare Inspector. The appellant disclosed at that point that she held three other bank accounts which she had not declared when she made her claim. The capital amounts were duly assessed and an overpayment in the amount of over €15,000 in relation to the Jobseeker's Allowance was calculated.

At appeal, the appellant acknowledged that she should have declared that she had savings, but also asked whether she had any other entitlement during the period at issue. She repaid in full the amount assessed as having been overpaid. The Appeals Officer concluded that the revised decision should have been made with reference to the provisions of Section 302(b) rather than 302(a) of the Social Welfare Consolidation Act 2005 and, accordingly, the overpayment could be offset against the entitlement that she would have had to Jobseeker's Benefit

during the period. The appeal was therefore partially allowed, with the reduced amount of overpayment to be calculated by the Department.

Review: Section 302 of the Social Welfare Consolidation Act 2005 provides for the date of effect of revised decisions as follows:

302.—A revised decision given by a deciding officer shall take effect as follows:

- a. where any benefit, assistance, child benefit, family income supplement, continued payment for qualified children or back to work family dividend will, by virtue of the revised decision be disallowed or reduced and the revised decision is given owing to the original decision or determination having been given, or having continued in effect, by reason of any statement or representation (whether written or verbal) which was to the knowledge of the person making it false or misleading in a material respect or by reason of the wilful concealment of any material fact, it shall take effect from the date on which the original decision or determination took effect, but the original decision or determination may, in the discretion of the deciding officer, continue to apply to any period covered by the original decision or determination to which the false or misleading statement or representation or the wilful concealment of any material fact does not relate;*
- b. where any benefit, assistance, child benefit, family income supplement, continued payment for qualified children or back to work family dividend will, by virtue of the revised decision be disallowed or reduced and the revised decision is given in the light of new evidence or new facts (relating to periods before and after the commencement of this Act) which have been brought to the notice of the deciding officer since the original decision or determination was given, it shall take effect from the date that the deciding officer shall determine having regard to the new facts or new evidence and the circumstances of the case;*

Section 302(a) of the Social Welfare Consolidation Act 2005 relates to situations where there is evidence that the person deliberately gave false or misleading information or deliberately concealed relevant information. The standard of proof is a high one and there must be evidence, not just that the person gave false information or withheld relevant information, but also that he/she did so deliberately.

Having considered the documentary and oral evidence, the Appeals Officer concluded that the Department's Deciding Officer had incorrectly relied on Section 302(a) rather than Section 302(b) in determining the effect of the revised decision. In partially allowing the appeal, the Appeals Officer found that the Department's decision as to the appellant's financial means was correct, but that the appellant still had an underlying entitlement to Jobseeker's Benefit based on her PRSI contributions which was not offset, but should have been offset, against the overpayment of Jobseeker's Allowance, thus serving to reduce the sum at issue.

I concluded that the Appeals Officer's evaluation of the evidence and her conclusion that the standard of proof required by Section 302(a) of the 2005 Act had not been fulfilled was

correct and that Section 302(b) should instead have been the legal basis used.

Outcome: Decision not revised.

2017/318/63 Carer's Allowance

Question at issue: Whether full-time care and attention was being provided

Grounds for review: The appellant requested a review of an Appeals Officer's decision on the grounds that the Appeals Officer erred in fact and/or law in concluding that the care the appellant was providing to another person could not be regarded as full-time care and attention within the meaning of social welfare legislation.

Background: The appellant applied for Carer's Allowance, but this was rejected by the Department, including on review, on the grounds that he was not providing full-time care and attention. Following an oral hearing, the appeal was also disallowed on the same grounds.

Review: The relevant legislation in this case is Chapter 8 of Part 3 of the Social Welfare Consolidation Act 2005 and Chapter 4 of Part 3 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007).

The key legislative provisions in this case are:

Section 179(1) of the Act of 2005, which provides for a definition of "carer" as follows:

"carer" means—

- a. *person who resides with and provides full-time care and attention to a relevant person, or*
- b. *person who, subject to the conditions and in the circumstances that may be prescribed, does not reside with but who provides full-time care and attention to a relevant person."* and

Section 179(4) of the Act of 2005, which provides as follows:

"(4) For the purposes of the definition of 'relevant person' in this Chapter, a person shall not be regarded as requiring full-time care and attention unless the person has such a disability that he or she—

- a. *requires from another person—*
 - i. *continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or*
 - ii. *continual supervision in order to avoid danger to himself or herself, and*
- b. *is likely to require such full-time care and attention for at least 12 consecutive months."*

Article 57(1)-(3) of S.I. No.142 of 2007 also provides that where it is shown to the satisfaction of a Deciding Officer or an Appeals Officer that adequate provision has been made for the care of the relevant person, a carer may engage in employment where the aggregate duration

of the activities outside the home shall not exceed 15 hours per week and the earnings derived from employment outside the home shall not exceed €332.50 per week.

The issue before the Appeals Officer was to determine if the appellant was providing full time care and attention within the meaning of the legislation. In reviewing the Appeals Officer's decision I didn't concern myself with a large number of written comments submitted by the appellant in relation to the Appeals Officer's report and instead focussed on the evidence relating to the core issue that was before the Appeals Officer.

I reached a number of conclusions in this review. Firstly, I concluded that the inclusion of certain, arguably extraneous, information by the Appeals Officer did not of itself render the decision erroneous by reason of a mistake of fact or law. It was simply an attempt by the Appeals Officer to grapple with detailed comments made and information provided by the appellant. Secondly, I found no evidence that the Appeals Officer had drawn certain inferences that the appellant had alleged were tainted with sexism in the context of male carers. Thirdly, I agreed with the appellant's contention that there is no requirement that a carer must or should know what social welfare payments a caree is receiving.

Of more central relevance, however, was my finding that the Appeals Officer had correctly identified the relevance of the fact that there were a number of parties providing care in this case. That several people were providing care was relevant to the question of whether full time care and attention was being provided specifically by the appellant. That is not to say that other family members are not permitted to help with the caring role, but I found that the Appeals Officer was correct to identify how much care the appellant was providing within that context in order to assess whether it constituted full-time care and attention.

In conclusion, I found that the contentions advanced by the appellant did not identify any error of fact or law which rendered the decision of the Appeals Officer erroneous.

Outcome: Decision not revised.

2017/318/64 Carer's Allowance

Question at issue: Whether full-time care and attention was required

Grounds for review: It was submitted that an Appeals Officer erred both in law and in fact in his consideration of an appeal in relation to whether full-time care and attention was required by a person who was already in receipt of Disability Allowance. In summary, it was contended that the Appeals Officer failed to fully assess the application in a manner compatible with natural and constitutional justice, fair procedures and the relevant Departmental guidelines; that the Appeals Officer overlooked or afforded insufficient weight to significant medical evidence, including evidence of mental ill health; and that the Appeals Officer appeared to discriminate against mental health disabilities in favour of

physical disabilities.

Background: The appellant submitted a claim for Carer's Allowance in respect of the care of her husband but this was rejected, including on review, by the Department on the basis that the person being cared for did not meet the care requirements as set out in Section 179(4) of the Social Welfare Consolidation Act 2005. That decision was appealed and was again rejected, including on review, by an Appeals Officer.

Review: The relevant legislation in this case is Chapter 8 of Part 3 of the Social Welfare Consolidation Act 2005 and Chapter 4 of Part 3 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007).

The key legislative provisions in this case were:

Section 179(1) of the Act of 2005, which provides for a definition of "carer" as follows:

"carer" means—

- a. person who resides with and provides full-time care and attention to a relevant person, or*
- b. person who, subject to the conditions and in the circumstances that may be prescribed, does not reside with but who provides full-time care and attention to a relevant person."*

And section 179(4) of the Act of 2005, which provides as follows:

"(4) For the purposes of the definition of 'relevant person' in this Chapter, a person shall not be regarded as requiring full-time care and attention unless the person has such a disability that he or she—

- a. requires from another person—*
 - i. continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or*
 - ii. continual supervision in order to avoid danger to himself or herself, and*
- b. is likely to require such full-time care and attention for at least 12 consecutive months."*

There are therefore, two main requirements to be met in order to be entitled to Carer's Allowance: that the carer must be providing full-time care and the caree must require that full-time care. It was clear from the Deciding Officer's decision that the claim was disallowed on the basis that it was considered that the care required did not meet the statutory requirements, but the question of the care being provided was not at issue. While the question of the care provided is an important element to be considered, I did not agree with the appellant's contention that the primary focus of the appeal should have been on the care provided by her.

With regard to the legislative requirements, I noted that the Appeals Officer had incorrectly paraphrased the applicable legislation in that he set out that the legislation in relation to the care required must be "on a continuous and continual basis for period of at least 12 months".

This is incorrect as the legislation does not specify that the care required must be continuous (as in all of the time), but rather that the care requires from another person:

continual supervision (as in frequently or on a regular basis) and frequent assistance throughout the day in connection with normal bodily functions, **OR** continual supervision in order to avoid danger to himself or herself.

This error appeared to have been central to the Appeals Officer's overall consideration of the appeal and in this respect I found that the Appeals Officer misdirected himself as to the level of care required as set out in the governing legislation.

In the course of my review I also reviewed all of the evidence which was before the Appeals Officer, including the medical evidence which indicated the caree was severely affected in relation to his mental health (there was a diagnosis of depression) and in relation to several aspect of his physical mobility and well-being (there was a diagnosis of epilepsy and ongoing repercussions from a past spinal fracture).

The Department's guidelines on Carer's Allowance, which are provided to facilitate medical assessors in determining eligibility for Carer's Allowance, were referred to in the grounds for review wherein 'Mental Health and Suicidal Intent' is listed as a condition for which Carer's Allowance would automatically be granted. The guidelines specify that the condition must be recent and medically confirmed.

Having reviewed the evidence, I formed the view that the Appeals Officer had factually erred in his account of the caree's medical history and had overlooked significant details relating to those medical conditions and resulting care needs. I found that the Appeals Officer did not have due regard to the medical evidence relating to the appellant's mental health in that he had incorrectly noted that the caree had not been attending psychiatry services when the evidence on file showed that he was attending a Consultant Psychiatrist. For that reason alone, I was satisfied that the Appeals Officer had erred and the decision should be revised.

It appeared to me that the Appeals Officer had also discounted significant medical and oral evidence in favour of his own observations during the limited period of time available for the oral hearing and that the medical evidence indicated that the caree required continual supervision in order to avoid danger to himself, in line with Section 179(4)(a)(ii) of the Social Welfare Consolidation Act 2005.

I also concluded that in incorrectly paraphrasing the governing legislation, the Appeals Officer misdirected himself and applied an incorrect legal standard.

Outcome: Decision revised and appeal allowed.

2017/318/65 Disability Allowance (DA) and One Parent Family (OPF)

Question at issue: Whether the appellants were cohabiting

Grounds for review: The appellants disagreed with an Appeals Officer's finding that they were cohabiting (as opposed to co-residing) during a period of almost 5 years, which resulted in two significant overpayments being calculated for repayment to the Department, and contended that there were errors of both fact and law in his decisions.

The alleged errors included:

- the wrongful reliance on and inferences drawn by the Appeals Officer on incomplete and defective documentary evidence obtained via a social media platform (Facebook) as submitted by the Department;
- the wrongful reliance by the Appeals Officer on 'statements of admission' signed by both appellants, which they argued indicated co-residence only, which had never been denied by them, and not cohabitation;
- the failure of the Department, and subsequently the Appeals Officer, to apply the Department's guidelines in relation to cohabitation;
- the misrepresentation of information provided by one of the appellants at the oral hearing in relation to whether or not utility services were provided to a mobile home at the main residence in which one appellant stated he was living;
- the failure of the Department to conduct a home visit or to investigate the alleged couple's financial arrangements in order to fully consider whether cohabitation existed and the Appeals Officer's apparent reliance on the Department's flawed assertions in that regard.

Background: The appellants separated several years ago. Subsequently, one appellant was awarded One Parent Family Payment and the other was awarded Disability Allowance as a single person. Later investigations by the Department revealed that one appellant had returned to the family home, but neither appellant had notified the Department of this fact. Consequently, the Department found that they had been cohabiting for almost 5 years, resulting in two significant overpayments arising for the period.

During the course of the investigations which led to the Department's decisions and at the oral hearing, the appellants repeatedly contended that their marital relationship had long deteriorated and that they had separated, and that one appellant moved back into the family home for health reasons only. They consistently contended that they were co-residing, but not cohabiting, and that co-residence is not proof of cohabitation.

Review:**Legislation/Guidelines:**

The governing legislation relating to cohabitation and the grounds for disqualification of One Parent Family Payment where cohabitation is established are as follows:

Section 2(1) of the Social Welfare Consolidation Act, 2005 provides:

“cohabitant” means a cohabitant within the meaning of section 172(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

Section 172(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provides:

For the purposes of this Part, a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.

Section 175 of the Social Welfare Consolidation Act 2005 provides:

A person referred to in section 173(1) shall not, if and so long as that person is a cohabitant, be entitled to and shall be disqualified for receiving payment of one- parent family payment.

In the case of Disability Allowance, where a person is cohabiting, the governing legislation provides that account shall be taken of the income of their cohabiting partner for the purposes of the means test for that payment.

Burden and Standard of Proof:

The Department, in its guidelines on cohabitation, accepts that “where an entitlement may be disallowed, limited or withdrawn, the onus is on the Department to establish that cohabitation exists”.

In this particular case, the effect of the revised decisions was very significant in that an overpayment totalling approximately €75,000 was assessed against the appellants.

In the circumstances, the standard of proof was high and the burden/onus was on the Department to make an evidence-based case that it is highly probable that the appellants were residing with each other during the entire period in question in an intimate and committed relationship in accordance with the governing legislation.

I found that in doing so the Department must, at a minimum, have followed its own guidelines on investigating cohabitation. Those guidelines list the criteria by which cohabitation can be established and state that no single criterion can necessarily support a decision and that evidence, or lack of it, in any criterion may not necessarily be conclusive. Those criteria are:

- The duration of the relationship
- The basis on which the couple live together
- The degree of financial dependence of either adult on the other and any agreements in respect of their finances
- The degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property
- Whether there are one or more dependent children
- Whether one of the adults cares for and supports the children of the other
- The degree to which the adults present themselves to others as a couple

The available evidence suggested that neither the Department nor the Appeals Officer appeared to have considered evidence in this case in line with these criteria. It was my view that in failing to establish that the Department had applied the above criteria in determining whether cohabitation existed during the entire period of the revised decisions, the burden of proof was not discharged, and the Appeals Officer made an error of law in determining the appeals.

Financial Interdependence:

The available evidence regarding financial dependence/agreements in respect of finances pointed to a joint mortgage which pre-dated the break-up of the marriage. Apart from this, the couple appeared to have separate bank accounts etc. and there was no evidence on file of any further investigation/enquiry by the Department or the Appeals Officer to establish financial interdependence (this point was also made by the appellants in seeking this review).

Signed Statements:

The Department and the Appeals Officer placed significant evidential value on statements drafted by a Social Welfare Inspector and signed by the appellants in concluding that cohabitation a period of almost 5 years had been admitted or proven therefrom. From my review of the case, I did not accept that the statements could be taken as proof of cohabitation. Both appellants repeatedly denied cohabitation but admitted to co-residence.

I noted that they provided plausible explanations as to why one appellant returned to and remained in the family home during that period despite the alleged breakdown of their marital relationship.

On a related matter, I noted also that the contention that one appellant had lived for part of that time in a mobile home attached to the family home was rejected by the Appeals Officer, but that the appellants contended later that the Appeals Officer misrepresented a response at the oral hearing in relation to the whether utility services were directly connected to the mobile home. Whatever the actual situation, I was of the view that the conflict in this regard – and indeed with regard to whether or not there were separate living arrangements in the family home – could have been verified if the Social Welfare Inspector had paid a visit to the family home at some stage during his investigation of this case. As this did not happen, the conclusion reached was not on solid ground.

Social Media/ 'Facebook' Evidence:

The 'Facebook' evidence appeared to have been viewed by the Department and subsequently by the Appeals Officer as the key determining evidence pointing to cohabitation in this case. However, alternative explanations for many of the photographs in question were provided by the appellants, in particular in relation to photographs of family events and a holiday which they contended they attended not as a couple, but individually, along with a significant number of other family members.

I noted also that there were a number of photographs and posts among the Facebook evidence which could point to an intimate and committed relationship of the kind that is envisaged in the governing legislation (in particular the alleged renewal of marriage vows), however, the appellants contended that those Facebook postings were posted by other family members as a prank. All of the explanations provided by the appellants were rejected out of hand by the Social Welfare Inspector, the Deciding Officer, and by the Appeals Officer, without any further investigation or attempt by the Department to seek confirmation or denial from the third parties allegedly involved.

While I accepted, on the face of it, that the Facebook evidence appeared to point, at a minimum, to a cordial relationship between the appellants, I was of the view that the alternative explanations adduced by them cast some doubt on that evidence and may have merited further investigation by the Department. In particular, it was my view that the photographic evidence of the presence of the appellants attending family events together did not in any way prove cohabitation within the meaning of the governing legislation.

With regard to the issue of Facebook evidence generally, I did not accept the appellants' contention that an Appeals Officer must be an expert on Facebook or other forms of social media in order to properly determine an appeal involving evidence of this nature. In determining an appeal, an Appeals Officer must of course give due consideration to and weigh

up all of the evidence presented, including evidence of social media interactions, in order to decide on the weight which should be applied to that evidence and/or the veracity of same.

Conflicting Statements:

I felt it was significant that the veracity of directly conflicting assertions made by one of the appellants and a Social Welfare Inspector was decided by the Appeals Officer in favour of the Social Welfare Inspector, despite the fact that there was a signed statement on file from the Inspector confirming that the appellant's version of events "may have happened" and this possibility was apparently reconfirmed by the same Inspector at the oral hearing.

In light of all of the above, I accepted that the question of whether or not cohabitation existed during the period in question had not been proven by the Department and was not properly explored by the Appeals Officer. In misdirecting himself on where the burden of proof lay, the Appeals Officer appeared to have accepted at face value much of the evidence adduced by the Department and in doing so placed an unreasonable burden of proof on the appellants to show that they were not in a cohabiting relationship.

Outcome: Both decisions revised and appeals allowed.

2017/318/66 Jobseeker's Benefit

Question at issue: Whether the appellant was 'genuinely seeking work' for the purposes of Jobseeker's Benefit

Grounds for review: It was asserted that the Appeals Officer erred in fact and in law by failing to take proper account of the evidence submitted by the appellant in relation to his efforts to seek employment. It was asserted that too high a threshold was imposed by the Appeals Officer on the appellant in meeting the statutory requirement that a job seeker must be 'genuinely seeking work'. Further evidence of the appellant's efforts to seek employment to date was also submitted.

Background: The appellant applied for Jobseeker's Benefit in May 2016. A disallowance for the first nine weeks of unemployment was imposed on the grounds that the appellant had lost his job through his own misconduct – this was not disputed by the appellant. In September 2016 a Deciding Officer of the Department advised the appellant that he was not entitled to payment of Jobseeker's Benefit on the grounds that he had not made reasonable efforts to genuinely seek employment, with effect from mid-July (the period immediately after the nine week disallowance). The Appeals Officer held an oral hearing which was also attended by the Deciding Officer. The Appeals Officer, in making his decision, took into consideration the information provided by the appellant on UP19 forms (forms provided by the Department of Employment Affairs and Social Protection which ask a claimant to provide details of his/her job-seeking efforts), oral evidence adduced at the hearing, as well as further letters from potential employers submitted after the hearing which confirmed that the appellant had

enquired about or applied for jobs with them in the summer of 2016. The Appeals Officer concluded that “in the relevant period” the appellant had not established that he was genuinely seeking but was unable to obtain suitable employment as set out in legislation, and the appeal was disallowed. The Appeals Officer noted that the “relevant period” referred to the weeks between the appellant making his initial claim for Jobseeker’s Benefit, and the date on which his claim was disallowed.

Review: The legislative provisions relating to entitlement to Jobseeker’s Benefit are set out in Section 62 of the Social Welfare Consolidation Act 2005, as amended. Section 62 (5) (a) (iii) provides that:

“Entitlement to benefit.

62 (5) For the purposes of any provision of this Act relating to jobseeker’s benefit –

(a) a day shall not be treated in relation to an insured person as a day of unemployment unless on that day –

.....

(iii) he or she is genuinely seeking, but is unable to obtain, employment suitable for him or her having regard to his or her age, physique, education, normal occupation, place of residence and family circumstances,”

The circumstances in which a person shall be regarded as genuinely seeking employment are set out in Article 16 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 – S.I. No 142 of 2007:

“16. (1)a person shall be regarded as genuinely seeking employment if he or she can show, to the satisfaction of the Minister, that he or she has, in the relevant period, taken reasonable steps which offer him or her the best prospects of obtaining employment.

(2) For the purpose of sub-article (1) “steps” shall include –

(a) applications for employment made to persons –

- i. who have advertised the availability of employment, or*
- ii. who appear to be in a position to offer employment,*

(b) seeking information on the availability of employment from –

- i. employers,*

- ii. *advertisements*
 - iii. *persons who have placed advertisements which indicate that employment is available, or*
 - iv. *employment agencies,*
- (c) *availing of reasonable opportunities for training which is suitable in his or her circumstances,*
- (d) *acting on advice given by an officer of the Minister or other placement service concerning the availability of employment, and*
- (e) *taking steps towards establishing himself or herself in self-employment.*
- (3) *or the purpose of this article, the taking of one step on a single occasion during the relevant period shall not be sufficient unless taking that step on that occasion, in that period, is all that is reasonable for the person concerned to do.*
- (4) *In determining for the purposes of this article whether, in a relevant period, a person has taken the steps which are reasonable in his or her case, regard shall be had to his or her circumstances, including in particular –*
- a. *his or her skills, qualifications and experience,*
 - b. *the steps which he or she has taken previously to seek employment,*
 - c. *the availability and location of vacancies for employment,*
 - d. *the duration of his or her period of unemployment, and*
 - e. *his or her family circumstances.*
- (5) *or the purposes of this article, “relevant period” means the period in respect of which the person concerned has made a declaration in accordance with articles 52 and 118.”*

In reviewing this decision, I noted in particular that the Appeals Officer considered that the ‘relevant period’ he was concerned with was the period of the 9 week disallowance and it appears that it was the lack of evidence of efforts to genuinely seek employment in this period that ultimately led to the decision to disallow the claim. However, it was not clear to me from my review of the file that the appellant was ever advised that he would be required to be genuinely seeking employment in this period.

It seemed to me from the records before me that the first verifiable contact from the Intreo Centre asking the appellant about his efforts to seek employment was Form UP-19 form

that issued in early July 2016. That correspondence did not indicate that his efforts to seek employment should incorporate the period from the date of claim in May, which was the period immediately after the cessation of the appellant's employment and the period for which he had been disallowed Jobseeker's Benefit due to the circumstances in which he lost this job. The governing Regulations allow for some discretion in determining whether the steps taken by the person are reasonable in a particular case. I note that in this period the appellant had made some efforts in May 2016 and during Summer 2016 and given that he was not asked for such details until early July I consider that the steps taken by him were reasonable having regard to all the circumstances.

It appeared to me also that both decision makers may have placed too much emphasis on the fact that only a small number of the vacancies applied for by the appellant were advertised. If this was the case, it seemed to me to be a misinterpretation of the law. Article 16(2)(a) of S.I. No. 142 of 2007 provides that a person shall be regarded as genuinely seeking employment if he or she can show that they have made applications to persons who have advertised the availability of employment or who appear to be in a position to offer employment.

For the reasons I have outlined, I found that the Appeals Officer placed too high a requirement on the appellant in the relevant period, particularly in circumstances where it is not clear that the appellant was ever advised of the requirement or asked to provide evidence of his efforts to seek employment for this period. In addition, too much emphasis was placed on the fact that only a small number of the vacancies applied for were advertised. I considered that the appellant had provided evidence of his efforts to gain employment in the relevant period, in line with the legislative requirement.

Outcome: Decision revised and appeal allowed.

2017/318/67 Jobseeker's Benefit

Question at issue: Eligibility (qualifying contribution conditions)

Grounds for Review: The appellant asserted that that the Appeals Officer erred in law in finding that she did not have qualifying contributions as required by the governing legislation and further that the governing year as set out in legislation was not applicable in her case. The appellant also contended that she was entitled to seek gainful employment by working and earning a living to provide for herself and to rely on benefit paid from qualifying social insurance contributions made under contract.

Background: The appellant in this case applied for Jobseeker's Benefit in March 2016. A Deciding Officer of the Department determined that the appellant did not qualify for this payment on the grounds that she failed to meet the contribution conditions for establishing entitlement to Jobseeker's Benefit as set out in Section 64 (1) (b) (i) and (ii) of the Social

Welfare Consolidation Act 2005.

Review: The contribution and earnings conditions governing entitlement to Jobseeker's Benefit are set out in Section 64 of the Social Welfare Consolidation Act 2005 which provides as follows:

“Conditions for receipt.

64.—(1) *The contribution conditions for jobseeker's benefit are that the claimant—*

(a) *has qualifying contributions in respect of not less than 104 contribution weeks in the period between his or her entry into insurance and the day for which benefit is claimed,*

(b) *(i) has qualifying contributions or credited contributions in respect of not less than 39 contribution weeks, of which at least 13 must be qualifying contributions, in the second last complete contribution year before the beginning of the benefit year which includes the day for which the benefit is claimed, or*

and

(ii) has qualifying contributions in respect of not less than 26 contribution weeks in each of the second last and third last complete contribution years before the beginning of the benefit year which includes the day for which the benefit is claimed,

(c) *has—*

(i) *reckonable weekly earnings, or*

(ia) *reckonable weekly earnings, in the case of a person who immediately before the week of unemployment for which jobseeker's benefit was claimed -*

(I) *was in receipt of carer's benefit or carer's allowance and,*

(II) *was in receipt of jobseeker's benefit immediately before receiving a payment referred to in subparagraph (I),*

or

(ii) *in the case of a person who qualifies for jobseeker's benefit by virtue of having paid optional contributions, reckonable weekly income,*

in excess of €300 in the governing contribution year or has reckonable weekly earnings specified in paragraphs (a) to (c) of subsection (6) or, as the case may be, has reckonable weekly income specified in paragraphs (d) to (f) of subsection (6) in the periods specified in respect of those earnings or that income in those paragraphs.”

The duration of benefit is set out in Section 67 of the Social Welfare Consolidation Act 2005. Section 67 provides inter alia that a person can re-qualify for Jobseeker's Benefit if the person has been entitled to Jobseeker's Benefit for 234 (9 months) or 156 days (6 months) and has paid 13 PRSI contributions for at least 13 weeks begun or ended since the 156th for which he/she was entitled to that benefit.

It is clear that the conditions set out in Section 64 (1) require that a claimant must satisfy certain contribution conditions in order to qualify for a payment of Jobseeker's Benefit. In accordance with those statutory provisions the appellant's entitlement fell to be considered as follows:

She must have qualifying contributions in respect of not less than 104 contribution weeks in the period between her entry into insurance and the day for which benefit is claimed (2nd March 2016).

She must have qualifying contributions or credited contributions in respect of not less than 39 contribution weeks, of which at least 13 must be qualifying contributions, in the second last complete contribution year before the beginning of the benefit year which includes the day for which the benefit is claimed.

As the appellant's claim for benefit was made on 2nd March 2016, her entitlement fell in the first instance to be considered having regard to the 2014 contribution year that being the second last complete contribution year before her claim was made. The record on file showed that the appellant has a total of 32 credited contributions and no paid contributions. The appellant therefore failed to meet the contribution conditions set out in that part of the governing legislation.

As an alternative to meeting the contribution conditions in one contribution year the legislation provides for an alternative basis as set out in Section 64 (b)(ii). That alternative provides that a person may qualify for Jobseeker's Benefit if s/he has qualifying contributions in respect of not less than 26 contribution weeks in each of the second last and third last complete contribution years before the beginning of the benefit year which includes the day for which the benefit is claimed - in the appellant's case the contributions years to be considered were 2014 and 2013. In the 2014 contribution the appellant had 32 credited contributions and no paid contributions. In the 2013 contribution year the appellant had 13 paid contributions and no credited contributions.

It was the appellant's contention that the Appeals Officer erred in law in not considering if she had qualifying contributions in the 2015 contribution year and that the Appeals Officer should have exercised discretion as regards the contribution year to be taken into account.

However, for a claim made in 2016 as in the appellant's case, the governing contribution year in accordance with the governing legislation was 2014 or a combination of her contribution record in the years 2014 and 2013.

As the appellant failed to meet the contribution conditions set out in the governing legislation her claim for Jobseeker's Benefit could not be approved. The legislation does not provide the decision makers with any discretion with regard to the contribution years to be considered and it was therefore not open to an Appeals Officer to decide that a different contribution year should be considered.

Outcome: Decision not revised.

2017/318/68 State Pension (Non-Contributory)

Question at issue: Overpayment assessed (means)

Background: The appellant in this case was the legal personal representative of the deceased pensioner who applied for State Pension Non-Contributory in 2003 and known at the time as Old Age Non-Contributory Pension. A means assessment was conducted and the person concerned was assessed with weekly means of approximately €50 which derived from 'income received from renting his land'. He was awarded the pension at the rate of €101.50 with effect from June 2003.

The person concerned, who had been a farmer, sold his dwelling and lands in 2008 and lodged the proceeds of the sale to the bank. The Department only became aware of this following the death of the person concerned in 2015, when a schedule of assets was sent to the Department. A Deciding Officer, relying on Sections 301 and 302(b) of the Social Welfare Consolidation Act 2005, made a revised decision to the effect that, because of his increased means from the sale of the land, the person concerned had no entitlement to State Pension Non-Contributory from May 2008. An overpayment of almost €80,000 was assessed against the estate for the period from May 2008 to February 2015.

Following an oral hearing of the appeal in September 2017, the Appeals Officer disallowed the appeal.

Grounds for review: Legal representatives on behalf of the personal representative set out a number of grounds for my consideration in this review. The main point was that the farm had been disclosed as an asset at the time of the original application for the pension and that if it had not been sold there would not have been any questions raised regarding overpayments. It was also stated that the person concerned was advanced in years when he sold his house and lands and that his health deteriorated further and he became incapable of notifying the Department or enjoying the proceeds of the sale. The representative submitted that the Appeals Officer did not give sufficient weight to medical evidence provided in this regard. The representative also noted that the person concerned moved into a nursing home in 2008 following the sale and that this was notified to the Department; it was submitted that this would have been a good opportunity for the Department to review the appellant's pension entitlements, and that by failing to take this

opportunity, the Department contributed to the overpayment. The representative also referred to guidelines and case studies on welfare.ie and questioned why long standing practices of the Department appeared to have been ignored in this case.

Review: The primary legislative provisions governing entitlement to State Pension Non-Contributory are contained in Chapter 4 of Part 3 of the Social Welfare Consolidation Act 2005. In accordance with Section 153 (b) of the 2005 Act a person shall be entitled to State Pension Non-Contributory where among other things ‘the means of the person as calculated in accordance with the Rules contained in Part 3 of Schedule 3 [of the 2005 Act] do not exceed the appropriate highest amount of means at which pension may be paid to that person in accordance with section 156’.

In accordance with Part 3 of Schedule 3 means are assessed under cash income (including income from work), value of capital (which includes savings, investments, cash on hand and property but not the person’s own home) and income from property personally used.

When the person concerned applied for State Pension Non-Contributory in 2003, a means assessment was conducted and took account of income derived from the letting of his land, in accordance with the above provisions. The representative contended that an asset that was disclosed at date of application and later sold should not be assessed on the basis of its capital value. Section 251 (10) of the Social Welfare Consolidation Act 2005, which both the Deciding Officer and Appeals Officer relied on in their decision making, provides that *“Where a person is in receipt of assistance or has made a claim for assistance which has not been finally determined, and his or her means have increased since the date of latest investigation of those means, or, where no such investigation has taken place, since the date of making the claim, the person shall, within the period that may be prescribed, give or cause to be given to the Minister written notification of the increase.”*

The period prescribed for the purposes of section 251 is set out in Regulation 190(2) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) and in the case of State Pension (Non-Contributory) is defined as 3 months.

In assessing the value of capital, the law does not in any way distinguish the source of that money, even where it is contended that the capital was as a result of the sale of property or an asset that had already been disclosed. Clearly where the Act requires that a change in means must be disclosed and sets out a prescribed time for such disclosure, then that change in means constitutes a change of circumstances for the purposes of revising the original decision. I find no error of law in this regard.

It was further contended that the Appeals Officer did not give sufficient weight to the argument that the person’s health was deteriorating and became incapable of notifying the Department or enjoying the proceeds of the sale. My attention was drawn to a medical report from June 2016 providing a medical history. In this respect I did not find that the

Appeals Officer gave insufficient weight to the evidence that the person's health was deteriorating. The evidence on file indicated that the Deciding Officer considered that as the person concerned had capacity to sign an agreement to sell his residence and land then he should also at that time (or within 3 months) have notified the Department of the proceeds from the sale. It appeared that the Appeals Officer found no reason to disagree with that contention. In my view it was not unreasonable for the Appeals Officer to form this view.

In relation to the lack of review by the Department of the person's entitlement to the pension at an earlier point, while it may be desirable that the Department had reviewed the entitlement there is no legal obligation on the Department to conduct a review of a person's entitlement or continued entitlement. On the other hand there is a legal requirement on all recipients of social welfare payments to notify the Department of any change in circumstances that may impact on their entitlement.

Finally, the representative made reference to guidance to Deciding Officers published on the Department's website. It must be stressed that the case-studies outlined are merely guidance to Deciding Officers and as such do not have the weight of law. In any event the case-studies involved a different set of circumstances to this case and each individual case is considered on its own merits, in accordance with the governing legislation.

Outcome: Decision not revised.

2017/318/69 State Pension (Non-Contributory)

Question at issue: Overpayment assessed (means)

Background: Following the death of her husband in 2000, the appellant (deceased) applied for Widows Non-Contributory Pension. Her late husband was a farmer and died intestate. Under the rules of intestacy she was entitled to inherit two-thirds of her husband's estate, with her children having an entitlement to share equally the remaining one-third. At the time of application for the pension, solicitors for her husband's estate informed the Department that it was the intention of the appellant and her family to release all land to one of her sons who had taken over his father's farming and dealing activities. The appellant and the other children did not intend to exercise their intestacy rights. This was noted in the Social Welfare Inspector's (SWI) report at the time and the SWI recommended a further check be carried out in 6 months to check on the situation regarding the estate. The appellant was awarded Widows Non-Contributory Pension and in 2006 this was transferred over to State Pension Non-Contributory.

In 2004, it emerged that the land had development potential and part of the farm was sold for over €2m. A large portion of the revenue from the sale was used to purchase farms, farm equipment and stock for the appellant's son, under a family settlement. Smaller amounts of

money were paid to the appellant's other children and the appellant retained approximately €143,000 herself. This was not notified to the Department and the pension continued to be paid. In 2013, the appellant's entitlement came up for review following information provided by the Revenue Commissioners to the Department relating to DIRT.

Following an investigation by a SWI in March 2016, a Deciding Officer of the Department, relying on Section 302(a) of the Social Welfare Consolidation Act 2005, advised the appellant that payment of her pension had been withdrawn for the period from June 2000 to May 2015 and an overpayment of almost €150,000 was being assessed against her. Section 302(a) relates to situations where there is evidence that the person deliberately gave false or misleading information or deliberately concealed relevant information.

The decision was appealed and an oral hearing took place in January 2017. The Appeals Officer partially allowed the appeal, determining that the reassessment should commence not from 2000 but from September 2004, that being the date funds from the sale of the development land were received. He also decided that Section 302(b) of the Social Welfare Consolidation Act 2005 was more appropriate than 302(a) and should be applied. Section 302(b) relates to new facts or evidence brought to the attention of a Deciding Officer since the original decision or determination was made. The impact of this partial allowance was a reduction in the amount of overpayment, the precise amount to be calculated by the Department.

Grounds for review: Representatives of the appellant made a long and detailed submission in their request for a review of the Appeals Officer's decision. Among the main points raised was that the appellant was never an active owner of the assets involved, the assets were merely 'vested' in her as an administrator of her husband's estate. They also stated that while the farmlands suddenly increased in value because they had development potential attached to them, this was unexpected and not an outcome over which the appellant had control. They stated that the lands were ultimately and always to be for the benefit of the appellant's son who had taken over his father's farm. They also submitted that the partial allowance by the Appeals Officer was indicative of acceptance of the bona fide circumstances put forward on behalf of the appellant and the appeal should be allowed in full.

Review: I reviewed all the papers and submissions that were before the Appeals Officer at the time of his decision as well as the submission from the appellant's representatives requesting the review. In addressing the issues raised by the appellant's representatives, I was satisfied that the Appeals Officer fully understood that the appellant did not 'own' the estate of her late husband and rather that it was vested in her as administrator, and that he made his decision on that basis. I came to the view that the decision of the Appeals Officer would have been correct but for the fact that he failed to take account of the information provided to the Department by the appellant when she first applied for Widow's Non-Contributory Pension in 2000. The intentions of the appellant and her family as regards the estate of the appellant's late husband were clearly communicated to the Department at the outset. These intentions were noted in the SWI report which included a specific recommendation that a further check on the situation

regarding the estate be carried out in 6 months.

I noted that neither decision maker (the Deciding Officer nor the Appeals Officer) made any reference to the fact that at the very outset of the appellant's claim process, the Department knew of the intentions of the appellant and her family as regards the estate of the appellant's late husband. The fact that the estate increased in value due to the development value of the land did not in my view change the situation. While there is no legal obligation on the Department to conduct a review of a person's entitlement or continued entitlement, in this particular case I took into account the lack of a review over the period from September 2000 to December 2013 as it seemed to me that the Department failed to act on a clear recommendation of the SWI that a further check be carried out in 6 months.

In light of these considerations I concluded that the Appeals Officer erred in law and in the circumstances I revised the decision of the Appeals Officer and allowed the appeal. The effect of this revision was that no overpayment arose.

Outcome: Decision revised and appeal allowed.

2017/318/70 State Pension (Contributory)

Question at issue: Increase for Qualified Adult (means)

Background: In 2016, the appellant was awarded State Pension (Contributory) at the maximum personal rate. He also applied for an increase in respect of his wife, as a qualified adult. This was awarded but at a reduced rate of €124.40, because she was assessed with weekly means of €190. This derived from savings and investments held solely in the name of the appellant's wife, as well as from two bank accounts held jointly by the appellant and his wife. The appellant appealed the decision and the Appeals Officer disallowed the appeal on a summary basis, stating that the means had been correctly assessed by the Department, in line with the legislation.

Grounds for review: In requesting a review of the Appeals Officer's decision, the appellant contended that the means test should not include amounts in bank accounts held jointly by himself and his wife. He stated that the Department had misdirected itself in including a joint bank account which is funded solely from his income and this should be excluded from the assessment, and also that the Department had acted contrary to the operational guidelines set out on its website. He stated that the funds in the joint bank accounts came from his salary and pension alone and that his wife did not contribute to these.

Review: The main legislative provisions governing entitlement to State Pension Contributory are set out in Sections 108 to 113B contained in Chapter 15 of Part 2 of the Social Welfare

Consolidation Act 2005. Section 112 inter alia provides for increase in pension in respect of a qualified adult. "Qualified adult" is defined in Section 2(2) of the 2005 Act. Section 297 of the 2005 Act provides that Regulations may provide for entitling to an increase in respect of a qualified adult who would be entitled but for the fact that the person has income above the prescribed amount and that the amount of the increase to be set out in Regulations shall be less than the full rate. The Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007, (S.I. No. 142 of 2007) are the relevant Regulations.

Article 8 of S.I. 142 of 2007 provides that in assessing a person's means all income is taken into account including that derived from employment or self-employment and property/savings. The income which derives from the latter includes savings, deposits in banks, building societies, Post Office, credit unions or other financial institutions, shares, bonds etc.

The legislation makes no distinction between savings held solely or jointly and therefore in line with the governing legislation where an account is held jointly with another person, the entire asset is owned by each of the parties and may be assessed in full against each person. In its Guidelines, the Department sets out that an exception to this rule is where the second party is unaware that his or her name has been added to the account. This exception does not apply in this case.

The Department's Guidelines also provides that:

- If both parties are in receipt/claiming means-tested payments, the asset should be assessed on a shared basis or against one person only – this exception does not apply in this case;
- Where another name is added to the account purely for ease of withdrawal, or so that the second named party will inherit the money in the event of the death of the owner, and the money cannot be withdrawn on the sole signature of the second party - these circumstances did not apply in this case;
- In cases where joint account holders have contributed to the funds, or either party may withdraw on his/her sole signature, each should be assessed with an equal share. While the appellant stated that the credits in the joint bank accounts represented his salary and pension and as such that his wife did not contribute to the funds his evidence also is that she can make withdrawals from the accounts on her sole signature. There was no evidence that the signatures of both parties are required in order to make withdrawals. In the circumstances this exception does apply, with the result that half of the asset should be assessed when calculating his wife's means for the purposes of establishing entitlement to payment of an increase in respect of a qualified adult.

For the reasons outlined, I was satisfied that the Appeals Officer did not err in fact or law.

Outcome: Decision not revised.

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*The rates charged 1890 numbers may vary among service providers. These rates can be considerably higher from mobile network providers.