

INVESTIGATION REPORT:
MOTORISED TRANSPORT GRANT

Complainant:

**Mr Noel Ryan on behalf of his son,
Michael Ryan**

Public Bodies:

**The Department of Health
Health Service Executive**

An Investigation under section 4 of the Ombudsman Act 1980

**Office of the Ombudsman
September 2012**

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Acronyms used in this Report

AO	Appeals Officer
AMO	Area Medical Officer
DDMBA	Disabled Drivers Medical Board of Appeal
HSE	Health Service Executive
MTG	Motorised Transport Grant
PMC	Primary Medical Certificate
SAMO	Senior Area Medical Officer

Introduction

This is a report of an Investigation by the Ombudsman into a complaint which arose from the refusal of the Health Service Executive (HSE) to award a Motorised Transport Grant (MTG) to a young Donegal man, Michael Ryan, whose grant application was made in February 2010. The HSE refused the application on the grounds that Mr. Ryan did not meet the medical criteria for eligibility. Subsequently, a HSE Appeals Officer upheld this decision.

Following investigation, detailed in this report, the Ombudsman upheld the complaint.

The investigation looked at the actions of the HSE, which decided Mr Ryan's application, as well as those of the Department of Health which has overall responsibility for the MTG scheme.

The report sets out the responses of the Department and of the HSE to a draft of the report (both of which are at Appendix 4). While the HSE supplied a detailed commentary on the draft, the Department noted its findings but did not comment on the content. The HSE Appeals Officer was also given an opportunity to comment on an earlier draft of the report and availed of that opportunity.

Part 1: The Complaint

1. An outline of the Complaint

In July 2010 Mr. Ryan's father complained to the Ombudsman about the refusal, by the HSE, of his application for a MTG for his son. The HSE's refusal of the grant was on the basis that Mr. Ryan did not meet the relevant medical criteria. The applicant's father believed that his son's condition was such that he did meet the medical criteria. Furthermore, he contended that his son met the other eligibility criteria which relate to income, age, and the need to have transport. Mr. Ryan (Senior) drew attention, in particular, to the fact that, while the MTG scheme is aimed primarily at helping people retain employment, it may also be awarded in exceptional circumstances to "... a person with a severe disability who lives in very isolated circumstances", though in such cases, the person's "disability must prevent them from using public transport and they must have severe transport difficulties". Mr. Ryan (Senior) contended that his son should qualify on the basis of exceptional circumstances.

A Brief History of the Motorised Transport Grant

The MTG scheme is a non-statutory scheme established in 1968 under a circular issued by the Department of Health (the Department). The main consideration in establishing this scheme was to provide a grant to persons with disabilities for the purchase/adaptation of a car in order to obtain employment. Other "less compelling" considerations mentioned in the initial circular were that *"it would enable the disabled person to reside at home or in a hostel rather than in an institution, or if the home is very isolated that transport would enable the disabled to maintain social contacts"*. Therefore, right from the inception of the scheme, it was recognised that the grant could be awarded in cases where disabled persons needed transport in order to maintain social contacts.

In February 1974 the Department issued a revised circular. In it, the Department urged the health boards to *"take a sympathetic approach to the making of a grant to a person who has not already taken up employment but who would be able to do so if transport difficulties were overcome."* A significant change was that the scheme was now to be extended to facilitate people with disabilities in self-employment. Also, the circular noted that hitherto in some cases grants had been paid to a person with a disability, qualified to drive, *"living in isolated circumstances and who has serious transport difficulties...even though the matter of holding a job did not arise"* and encouraged health boards to consider such cases more generally. (Both the 1968 and 1974 circulars are somewhat vague as to whether grants should actually be paid in such cases.) Finally, the circular urges the health boards to give "sympathetic consideration" to situations in which a "severely handicapped person" is unable to drive and must be driven to and from work; in such cases, a grant might be paid on the understanding that the car would be driven by another person.

In March 1974 the Department wrote to the health boards devolving responsibility to Community Care Programme Managers *"to judge cases on their merits within the terms of the scheme as laid down in Circular No. 7/68 and modified in ...February 1974 and within budgetary limits"*. This letter lists five criteria as the "chief indications" for when a grant should be paid; these criteria appear to exclude (a) people living in isolated circumstances who cannot work and (b) people who have employment but are incapable of driving.

The MTG scheme was not modified, apart from changes to the grant rates, for many years thereafter.

In July 2002 the Department issued a more comprehensive circular to replace those of 1968 and 1974. On this occasion the Department specified, under the heading "Medical Criteria", that the applicant must have a *"severe disability"* and that this disability *"must impede him/her from using public transport"*. For the first time, a lower age limit (17 years) and an upper age limit (65 years) were prescribed.

This was notwithstanding the enactment of the Equal Status Act 2000 which prohibited discrimination on the grounds of age. In 2008 the Department accepted that the upper age provision in the MTG scheme was in contravention of the Equal Status Act and it dropped the upper age limit. The lower age limit of 17 years is unremarkable given the purposes of the scheme.

Also, for the first time, a detailed means test was included. In this circular, it was made clear that the grant could be paid either to retain employment or to obtain employment. Also, an explicit "exceptional circumstances" clause was included which said: *"The grant may also be considered in exceptional circumstances for a person with a severe disability, subject to the above age limits, who lives in a very remote location and whose disability impedes him/her from using public transport"*.

Further circulars were issued by the Department in March 2007 and July 2008. The 2007 circular confined eligibility (other than under the heading of "exceptional circumstances) to circumstances in which the grant would enable a person retain employment; this was at odds with the earlier circulars which recognised that the grant could support both the obtaining and the retaining of employment. Some changes were made also to the wording of the "exceptional circumstances" provision. Another change of some significance was that the applicant's disability was no longer required to be such as to "impede him/her from using public transport", although a similar provision was now to be applied under the "exceptional circumstances" clause.

The July 2008 circular, which is still in force, was issued following the Department's acceptance that the imposition of an upper age limit contravened the Equal Status Act 2000. Other than deleting the upper age limit, the July 2008 circular is in all other respects the same as that issued in March 2007.

Copies of all of the Department's circulars pertaining to Motorised Transport Grant are contained in Appendix 3 of this Report.

2. The Preliminary Examination and Commencement of the Investigation

2.1. Preliminary Examination

The Ombudsman's preliminary examination involved detailed scrutiny of the relevant HSE files as well as an exchange of correspondence and other engagement with the Health Service Executive. Following the preliminary examination, the Ombudsman took the view that Mr. Ryan had been affected adversely by the decision of the HSE and that this decision might have been taken on the basis of one or more of the grounds of maladministration identified at section 4(2)(b) of the Ombudsman Act 1980. Accordingly, the Ombudsman decided to investigate the complaint under section 4 of the Ombudsman Act 1980. Because of its overall responsibility for the MTG scheme, and the fact that the HSE's actions were taken in purported compliance with that scheme, the Ombudsman decided to join the Department of Health to the investigation.

On 6 December 2011 the Ombudsman notified both the HSE and the Department of the investigation. (The Statement of Complaint sent to both parties is at Appendix 1.) In notifying the Department that it was being joined to the complaint, the Ombudsman's Office explained that, as *"the Motorised Transport Grant scheme is administered under the direction of Circulars issued by the Department of Health, the investigation will examine the Department's role in overseeing the operation of the scheme and providing clear rules."* As the MTG scheme is an administrative scheme under the control and direction of the Department of Health, it was necessary to include that Department's actions relating to the scheme in general in the investigation in order to (1) explain the context in which the specific case arose and (2) explore any general issues which might arise during the course of the investigation of the specific complaint.

2.2. The Conduct of the Investigation

The Ombudsman looked, in particular, at the following matters in the course of her investigation:

- A. The procedures followed by the medical officers in forming their views on the medical eligibility of the applicant.

- B. The actions of the Appeals Officer in making her decision to uphold the original decision.
- C. The legal and administrative context in which the scheme is operated by the HSE and the Department of Health.

The responses of the Department and of the HSE to the notification of the investigation are at Appendix 2.

Both the Department and the HSE provided the Ombudsman with relevant material covering both the particular case and the MTG scheme more generally. All relevant submissions, reports, records and files were examined by the Ombudsman's Office.

The following people were either interviewed or supplied relevant information in the course of the investigation:

- Mr. Ryan (Senior)
- Dr. Nadia Ghoniem, HSE Area Medical Officer
- Dr. Lynne McBride, HSE Senior Area Medical Officer
- Ms. Eithne O'Sullivan, HSE Appeals Officer
- Dr. Cate Hartigan, HSE Assistant National Director, Disability Services
- Ms Bairbre Nic Aongusa, (former) Director, Office for Disability and Mental Health, Department of Health
- Dr Jacinta Morgan, Chairperson, Disabled Drivers Medical Board of Appeal.

Administration of the Motorised Transport Grant

The MTG scheme is administered by the HSE on the basis of the 2008 circular issued by the Department of Health. Following an application, the usual first step is to apply the means test. Where the applicant's means exceed the specified level the application will be refused. If the means are below the specified level, the application will then be considered to see if the applicant meets the medical criteria of suffering from a severe disability. This is assessed by an Area Medical Officer (AMO) of the HSE who will give an opinion on the matter. Usually, the AMO opinion will be considered by the Senior Area Medical Officer (SAMO). Assuming the AMO opinion is endorsed by the SAMO, this opinion is then communicated to the "authorising officer" who will decide on the application.

Where the applicant is found to have a severe disability, but is not seeking the grant to retain employment, it is necessary to consider whether the exceptional circumstances clause will apply, that is, whether the applicant lives in very isolated circumstances, whether the disability prevents the use of public transport and whether the applicant has serious transport difficulties. Information on these issues may be collected by the AMO and/or by the local Community Welfare Officer who will have been involved in the means test. Again, the ultimate decision on the application is taken by the "authorising officer". Where the application is refused, there is a right of appeal to a HSE Appeals Officer.

3. The Facts of the Case

An important factor in this investigation is that Mr. Ryan was found, on appeal, to be entitled to a Primary Medical Certificate (PMC). In Co. Donegal the HSE uses a common medical assessment to cover both MTG and PMC applications. The facts set out below are taken from the HSE's files on Mr. Ryan's MTG and PMC applications.

3.1. Applications and Assessments

Mr. Ryan suffers from a profound intellectual disability, autism and grand mal epilepsy. He has no speech, does not respond to commands and is doubly incontinent. He is hyperactive. He cannot walk independently in public places as he would pose a risk of injury to himself and others. These facts, documented on its file, are not disputed by the Health Service Executive.

Michael Ryan was 23 years old when his parents applied for the MTG on his behalf on 21 February 2010. They had already, on 19 January 2010, applied on his behalf to the HSE for a Primary Medical Certificate. As the HSE Donegal uses the one form for the provision of medical details in the case of both PMC and MTG applications, the medical details provided by the Ryans for PMC purposes were used also to determine the subsequent MTG application. In fact, the HSE's medical assessment of Mr. Ryan was done on 8 February 2010, two weeks prior to the making of the MTG application. It is the practice in Donegal to obtain information relating to the eligibility requirements of both the PMC and MTG schemes at the same medical assessment. The outcome of that assessment was that Mr. Ryan was found not to be medically eligible for the PMC and, in principle, not medically eligible for the Motorised Transport Grant. Thus, when his parents applied on his behalf on 21 February 2010 for the MTG, Mr. Ryan had in principle already been found ineligible for that grant.

In their application, the Ryans described their son as "*mentally disabled and autistic ... epileptic and would be hyperactive*". In terms of how this affected his mobility, his parents said that their son "*would be unable to walk at all alone for a number of reasons. Firstly due to medication his balance would be unstable. Also his inability to sense danger prevents him*

from being allowed to walk alone.” They said that, while their son does not use a stick when walking, “whoever is with him would restrain and support him”.

Primary Medical Certificate (PMC):

This is a certificate issued by the HSE which certifies that a person is a severely disabled and permanently disabled person for the purposes of the Disabled Drivers and Disabled Passengers Regulations 1994. The benefits of this certificate include refunds of Vehicle Registration Tax, VAT and Excise Duty when buying a car.

To qualify for a PMC, the applicant will be regarded as severely and permanently disabled where he/she meets one of the following tests:

1. Be wholly or almost wholly without the use of both legs.
2. Be wholly without the use of one of their legs and almost wholly without the use of the other leg such that they are severely restricted as to movement of their lower limbs.
3. Be without both hands or without both arms.
4. Be without one or both legs.
5. Be wholly or almost wholly without the use of both hands or arms and wholly or almost wholly without the use of one leg.
6. Have the medical condition of dwarfism and have serious difficulties of movement of the lower limbs.

Mr. Ryan's parents said he needed a car to bring him to and from a day care centre, respite care, medical appointments and "[for] pleasure as he enjoys getting out". In answer to a question on whether the car needed to be adapted, they said that as their son is *"very active and often in an uncontrolled manner a stronger than normal seat and one which would make access to the car easier would be beneficial"*. His parents also commented that getting their son in and out of a car *"can be difficult as he is uncooperative and his legs have to be lifted into the car. It is proving to be more of a strain as Michael gets older"*.

The medical assessment of 8 February 2010 was conducted by a AMO of the Health Service Executive. In her assessment report, the AMO recorded that Mr. Ryan was very hyperactive

and *“running and jumping in clinic room”*. As regards the level of mobility, she recorded that Mr. Ryan could walk more than 50 yards *“without aid”*¹.

Under the heading *“Relevant clinical history related to disability/mobility assessment”*, the AMO recorded that Mr. Ryan needs total assistance in bathing and dressing, that he is incontinent, has no speech and does not respond to commands. The AMO noted, under the heading *“Other information relevant to the allowance applied for”*, that his parents were seeking to have his car seat changed for a more suitable one with a sufficient restraint *“to keep him stay still”* in the car. The AMO also noted under this heading that Mr. Ryan *“can’t use public transport because of his behaviour in public and he can’t travel on his own”*. The AMO had available on the form a choice of five options ranging from *“Total assistance”* to *“None required”*. Despite the level of disability noted above, the AMO recorded her view that Mr. Ryan was able to use public transport with *“close supervision only”*. The option *“Close supervision only”* was option number four of the five options available.

Following this assessment, the opinion expressed by the AMO was that Mr. Ryan did not meet the medical criteria either for the MTG or for the Primary Medical Certificate. The AMO assessment was endorsed by her Senior Area Medical Officer. On 8 March 2010 the HSE informed Mr. Ryan that he did not qualify for the PMC as *“your disability does not come within the categories specified”*. On 8 April 2010 the HSE informed him that his MTG application had been refused as *“your medical condition does not satisfy the criteria of the Motorised Transport Grant scheme”*. In both instances, he was told of his right to appeal the refusal.

The HSE file shows that, following the means test, Mr. Ryan was found to be potentially eligible for a MTG payment of €5,020. However, this payment was subject to his satisfying the other conditions of the scheme.

3.2. Appeals

Mr. Ryan’s parents appealed both the MTG and PMC refusals on his behalf. The PMC appeal was successful following his assessment in Dublin by the Disabled Drivers Medical Board of Appeal² (DDMBA) on 29 April 2010.

¹ By *“without aid”*, the AMO was recording that the applicant could walk without the aid of a stick, walking frame etc. Aid given by another person to the applicant to assist his mobility was excluded from consideration.

The MTG appeal was lodged on 5 May 2010 - shortly after the success of the PMC appeal. The MTG appeal included a letter from Mr. Ryan's GP, two letters from his day centre and a copy of the Certificate from the Disabled Driver's Medical Board of Appeal. The GP certified that Mr. Ryan *"is severely mentally handicapped with features of Autism and also suffers from Grand Mal epilepsy. He is doubly incontinent..."*. A staff nurse at the day centre stated that Mr. Ryan *"requires 24 hour care and will always require this."* She noted that he is fully mobile but that his mobility is *"extreme and classified as hyperactive. ...he has no awareness of safety for himself or others, this poses great risks when [he] can run (despite being held) in the path of traffic or other environmental dangers"*. A separate letter from the day centre stated that Mr. Ryan was attending the centre and noted that the *"HSE W does not provide transport and therefore his parents are required to transport [him] in and out of the Day Centre daily"*.

The copy of the PMC, provided in support of the appeal on the MTG application, stated that Mr. Ryan is *"a severely and permanently disabled person who meets one or more of the medical criteria set out in the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994"* and described his disablement as *"... wholly or almost wholly without the use of both legs."*

In fact the HSE had already been informed by the DDMBA that Mr. Ryan had been successful in his PMC appeal. The Chairperson of the DDMBA wrote to the relevant SAMO on 29 April 2010 sending her a copy of the actual certificate as well as a copy of the DDMBA assessment notes, made when Mr. Ryan attended for the appeal. The Chairperson's notes included the following: *"Epileptic, 2- weekly grand-mal seizures- would injure himself. Never walks alone- requires one with him at all times- distractible/very unsafe. Dangerous walker. Meets criteria A."*³ One of the other DDMBA members included the comment: *"Can not walk on his own"*. The assessment was co-signed by the three clinicians sitting on the Disabled Driver's Medical Board of Appeal.

On 19 May 2010 (following receipt of the MTG appeal) the SAMO wrote to the DDMBA Chairperson asking to discuss its decision in Mr. Ryan's case. The SAMO observed that *"we*

² The DDMBA is a statutory independent appeal board comprising three medical doctors, at least one of whom is a consultant, which sits for this purpose at the National Rehabilitation Hospital in Dublin.

³ This is that the PMC applicant is *"wholly or almost wholly without the use of both legs."*

do assess quite a few young adults with Autism/Learning Disability for mobility allowances ... [we] may need to review the criteria we are using. (in the past tended, on balance, only to grant PMC where Autism/severe LD rendered the adult virtually wheel chair bound, although they retained the use of their lower limbs)." There is a file note to show that the Chairperson rang the SAMO on 1 June 2010 but the content of their discussion is not recorded. The SAMO made no comment on the case when passing it to the Appeals Officer.

On 9 June the HSE Appeals Office recorded its decision not to uphold the appeal against the refusal of the MTG on the grounds that the applicant "*does not meet the medical criteria as assessed by medical officers of the HSE.*" The decision letter to the applicant, confusingly, is dated 2 June 2010. Mr. Ryan's father complained to the Office of the Ombudsman on 7 July 2010.

Part 2: The HSE

4. Some Issues from the HSE File

In the course of the Ombudsman's Examination of the HSE file, some issues emerged:

- The HSE in Donegal referred to the MTG scheme as based on a circular dated March 2009. In fact, the most recent MTG circular to issue from the Department of Health is from July 2008. While the March 2009 document is in significant respects the same as the July 2008 circular, its existence means that some staff of the HSE may not be acting on the basis of the correct circular.⁴ The Department has, at the time of writing this report, told the HSE that MTG circulars can be issued only by the Department.
- The HSE told the Ombudsman that it provides transport for clients attending the day centre attended by Mr. Ryan, that this transport was available to him, but that his parents had opted not to use it. The Ombudsman accepted this information at the time and informed the Ryans that, in these circumstances, she would not pursue their complaint further.⁵ It then transpired that the information was incorrect. The HSE had never made any transport available to Mr. Ryan. The only transport in his locality is SITT (*Seirbhís Iompair Tuaithe Teoranta*), a rural transport initiative which receives funding from the HSE, but which is not at all suitable for Mr. Ryan for attending the day centre. In the words of one of the staff of the centre, "...because of his high needs he would pose a huge risk on SITT transport for himself and others". The HSE apologised for the error, which appeared to have arisen from a failure to check the facts at local level.
- The SAMO, in an email reply to the Ombudsman's Office, explaining how the refusal decision was reached in the case, said: *"We apply a strict interpretation of the guidelines available to us, and in the case of the [MTG], we ally the assessment along the medical criteria outlined in the Primary Medical Certificate. These criteria have been accepted by the HSE as a list of conditions that describe "severe and*

⁴ The Appeals Office has said that it is aware that the 2008 Circular is the correct one and is the document used in dealing with appeals. The provenance of the 2009 document was explained as having emanated from a National Review Group (comprising HSE staff) set up by the Department of Health. However, this Office has noted another MTG case where a decision of July 2012 cited the Department of Health Guidelines "as revised in 2009".

⁵ The availability of transport to the day centre could be regarded as an important consideration in whether the exceptional circumstances clause of the MTG scheme should be invoked.

permanent" disability, for the purposes of the 1994 regulations of Section 92 of the 1989 Finance Act". This was confusing on two counts, firstly, because the PMC is an entirely separate scheme from the MTG with a different purpose (tax concessions) and with narrow, prescriptive criteria and, secondly, in this particular case the applicant had, in fact, been awarded a PMC on appeal.

5. The operation of MTG by the HSE in Co. Donegal

In its submission to the Ombudsman (at Appendix 2) the HSE explains that a review of the operation of the MTG scheme in Co. Donegal was begun in 2009 and continued into subsequent years. The circumstances prompting the review were:

- a significant increase in the number of applications;
- the removal of the upper age limit of 65 years in 2009;
- the publication of the national document "*Towards excellence in Clinical Governance – A Framework for integrated Quality, Safety and Risk Management across HSE Providers*"; and
- necessary cost containment measures.

The HSE in Donegal obtained information (through "*informal communication*") which indicated that "*other regions [of the HSE] aligned their assessments much more strictly with the medical criteria of the Primary Medical Certificate, particularly on the Eastern side of the country*". The submission goes on to say that, "*it became apparent that Donegal had an excessive number of applications, and awarded a disproportionate number of MTGs, when compared to other areas of the country*". This view, according to the HSE, was supported by statistics obtained for other areas of the country for a six month period in 2010. This led to a review in Co. Donegal of the medical criteria for the grant. In order to help in standardising assessments, an algorithm⁶ was developed for use by the medical officers when assessing "*severe disability*" for MTG applications. However, the Ombudsman understands that this algorithm is in use in Co. Donegal only and is not used in the rest of the country.

The term "*severe disability*", in the context of the MTG in Co. Donegal, is now taken to mean a severe disability which results in permanent, serious restriction of movement of lower limbs or where walking would cause severe complications or where the person is so disabled as to meet the PMC medical criteria. Other forms of disability (for example, sensory disability, learning disability) are discounted as not coming within this ambit unless

⁶ Defined as a set of prescribed computational procedures for solving a problem or achieving a result.

the person involved also has a co-morbidity which affects mobility.⁷ There is a more detailed discussion of these issues later in this report.

The current HSE Assistant National Director for Disability Services, when interviewed for this investigation, expressed the view that the medical criteria for the PMC are, in fact, used as a guideline by Medical Officers around the country when assessing eligibility for the MTG scheme. However, she could not confirm that every HSE area took the same approach.

It is clear from information provided in response to a Dáil Question⁸ (see table hereunder) that there has been a very marked increase in the level of rejections of MTG applications in Co. Donegal since 2010. Between 2007 and 2011 the success rate of applications dropped from 75% to 25 per cent.

Year	Applications Approved	Applications Refused
2007	145 (75%)	47 (25%)
2008	179 (72%)	67 (28%)
2009	143 (62%)	86 (38%)
2010	192 (63%)	113 (37%)
2011 (to end October 2011)	41 (25%)	125 (75%)

Data supplied by the HSE in response to a PQ -- October 2011.

⁷ HSE submission Appendix 2 and information supplied by SAMO at interview with Ombudsman staff

⁸ PQ 31083/11. Reply from HSE direct to Caoimhghín Ó Caolain TD dated 25 October 2011

The available statistics indicate that there may be social and geographical factors influencing the large number of MTG applications in the Donegal area⁹:

- In 2006, there were 12,214 persons with a disability living in private households in Co. Donegal. While not all of these would have a severe disability, it is nevertheless a relatively high number given the population of the county (147,264 in 2006).
- Donegal is the fourth largest county in the State in terms of landmass and has one of the highest percentages of its population (75% or 110,679) living in rural areas compared to the State average of 39.3 per cent.
- The most popular mode of transport to work in Co Donegal in 2006 was by car (approximately 67% of the working population or 37,085 people). Only 1.8% of the working population, or 1,015 people, used public transport to get to work.
- There are 37,004 households located in the Aggregate Rural Areas within Co. Donegal of which 16.4% or 6,055 households do not have a car. The corresponding figure for the State as a whole is 11.4 per cent.

There appears to be a view within the HSE Donegal that, relative to other parts of the country, it has too many MTG recipients. In this context, it is worth noting that, for the three year period 2009-2011 there were, according to the HSE, 946 MTG awards made nationally; of these 382 (40%) were from Co. Donegal.

There is no obvious basis for believing that HSE Donegal was not operating the MTG appropriately simply because its applications numbers were higher than in other parts of the country. Rather, the low number of applications elsewhere raises questions as to whether a scheme with such a low uptake is reaching its target groups. This Office has not carried out an analysis of how each HSE area has approached the administration of the scheme. Neither has the Department, nor the HSE nationally, conducted such an analysis.

⁹ Statistics are from the publication *Planning for Inclusion in County Donegal 2009*, by the Research and Social Policy Unit, Donegal County Council. The Census 2011 figures on persons with disabilities have not yet been published.

6. The Decision to Refuse

The current circular setting out the eligibility conditions for the MTG is at Appendix 3. The sole medical condition is that the applicant must be “a person with a severe disability”. The circular does not elaborate on what constitutes a “disability” nor on what constitutes a “severe disability”. No directions or guidance have been issued, either by the Department of Health or by the HSE nationally, to guide decision makers on the interpretation of these terms. An applicant who is found by the HSE not to be “a person with a severe disability” cannot qualify for the grant.

The HSE’s medical officers accepted that Mr. Ryan has a profound learning disability, that he suffers grand-mal epilepsy and that he cannot walk unaccompanied as he would pose a risk to himself and others. However, they appear to have been taking the view that, in the context of the MTG, in order to meet the test of “*severe disability*” the applicant must not be physically mobile. As it was clear that Mr. Ryan was able to walk, and thus physically mobile, he was not found eligible.

Under the algorithm developed by the HSE in Co. Donegal, a MTG applicant will meet the medical eligibility where the answer is YES to any one of these questions:

1. *“Does the applicant have a severe disability that affects their mobility sufficient that they meet the criteria for PMC ?”*
2. *“Has the applicant had a CVA/brain injury/CNS condition/chronic arthropathy/RTA causing severe disability resulting in serious restrictions of movement of the lower limbs?”*
3. *“Does the applicant have a cardiovascular disease to such an extent that they have severe mobility restrictions and limitations, to include persons with post heart surgery restrictions or persons awaiting heart surgery, persons with lung and respiratory difficulties where walking would cause severe complications?”*

Unless YES is the answer to one of these three questions, a Co. Donegal applicant will not be found to satisfy the medical test for the Motorised Transport Grant.

When the SAMO was interviewed for the purposes of this investigation, she elaborated on the question of whether the PMC medical criteria will always be sufficient to qualify for the

Motorised Transport Grant. Taking the example of dwarfism, which apparently will qualify a person for a PMC, the SAMO said that this condition by itself would not satisfy the MTG medical test. This, according to the SAMO, is because dwarfism does not affect mobility; in using the algorithm the emphasis is on functional mobility. The SAMO said that this was appropriate in determining what severe disability means in the context of a scheme which seeks to improve a person's ability to travel, through the provision of transport.

The SAMO commented that this approach (functional mobility) mirrors that underpinning the Disabled Drivers Parking Permit¹⁰ scheme. To qualify for the permit, the practical test applied is that an applicant must not be able to walk 50 yards except with the support of a crutch. According to the SAMO, this test is used as an assessment tool in MTG applications. In the case of Mr. Ryan, because he was capable of walking 50 yards without the aid of a crutch, he was seen as ineligible for the Motorised Transport Grant.

The SAMO made it clear that in assessing Mr. Ryan for the MTG (and for the PMC), the HSE did not take account of his intellectual disability and of how this affects his mobility. The algorithm focuses solely on physical ability to walk. The fact that Mr. Ryan was awarded a PMC at appeal stage may seem to amount to a YES answer to the first of the algorithm questions. However, the HSE in Donegal pointed out that its algorithm question asks whether the person has a *“severe disability that affects their mobility sufficient that they meet the criteria for PMC ?”*, and, in this case, the HSE did not accept that YES was the correct answer in Mr. Ryan’s case. This, in effect, appears to be a rejection of the appeal decision of the DDMBA which found that Mr. Ryan’s mobility problems were such that they did meet the criteria for the Primary Medical Certificate.

¹⁰ This is a statutory scheme. For the purposes of this scheme, a disabled person is defined as a “person with a permanent condition or disability that severely restricts his or her ability to walk.” [S.I. No. 239/2011] Medical officers of the HSE are involved in assessing these applications.

6. The MTG Appeal

The HSE Appeals Office has provided information¹¹ on how it deals with MTG appeals generally and on the appeal decision in the Ryan case. In general, in dealing with MTG appeals, it takes account of a number of matters, including the terms of the scheme, the information supplied to it on the appellant's file (which includes details of the means assessment and of the assessment by the Medical Officers) as well as any new information provided in the course of the appeal.

In this case, the Appeals Office did have additional evidence and information, not available when the first decision was made, which it was required to consider. The principal change which had occurred, since the refusal of the MTG, was that the PMC had since been granted on appeal. The DDMBA Chairman had informed the HSE of this decision, and, in addition to providing the HSE with a copy of its appeal notes, made it clear that the DDMBA had taken the view that Mr. Ryan is "*wholly or almost wholly without the use of both legs*".

The Appeals Officer who decided this case stated that the overriding consideration, in making the decision in the case of Mr. Ryan, was the HSE Medical Officer's opinion that he did not meet the medical test of "*severe disability*". The Appeals Officer shared the view of the SAMO that the test of "*severe disability*", which is a prerequisite to MTG eligibility, should be understood in terms of functional mobility. She took the view that the decision of the DDMBA was not sufficient to displace the existing decision, which was based on the opinion of the HSE's Medical Officers. In particular, the Appeals Officer noted that the other documents supplied with Mr. Ryan's appeal (letters from his GP and from the day care centre) made it very clear that Mr. Ryan could walk.

The Appeals Officer explained, when she was interviewed for the purposes of this Investigation, that, generally, she would not dispute a Medical Officer's opinion. However, in cases where she felt the appeal merited further consideration of the medical evidence, she would refer the case to a different Medical Officer of the HSE West for an opinion. She did not seek the views of another Medical Officer in this case, as the decision, which she

¹¹ Interview with Ombudsman staff on 26 January 2012 and letter of 13 July 2012 from Appeals Officer to Office of the Ombudsman.

reviewed, had been made in accordance with the scheme guidelines, and was consistent with decisions made in similar cases.

The Appeals Officer also said that she could not comment on the DDMBA decision to grant a PMC, which certified the applicant to be “*wholly or almost wholly without the use of both legs*”, when all the evidence confirmed him to be fully mobile. The fact that it is unsafe for Mr. Ryan to be allowed walk on his own, and that he must always be supervised and restrained when walking, did not (in the opinion of the Appeals Officer) compromise his functional mobility.

The Appeals Officer said that, at the time she considered the appeal, she was aware of the letter from the SAMO to the Chairperson of the DDMBA and did not make her decision on the appeal until after the SAMO had spoken to the Chairperson on 1 June 2010. She, in turn, spoke to the SAMO before making her decision. The content of neither conversation is recorded by any of the parties involved. In any event, the Appeals Officer has stated very clearly that, in her view, the assessment of Mr. Ryan’s medical eligibility was a matter for the SAMO and the decision on whether or not he had a “severe disability” was one to be taken by the SAMO and not by the Appeals Officer. Nevertheless, the Appeals Officer contends that she adopted an independent approach in making her decision; she instances the fact that she did not “*seek to adopt the decision of a body with (sic) [which] is a separate and distinct statutory body to the HSE*”, presumably, the Disabled Drivers Medical Board of Appeal.

In this case Mr. Ryan was not seeking the MTG with a view to retaining employment; and, if he were to qualify, it would have to be on the basis of the “exceptional circumstances” provisions in the scheme. Because the Appeals Officer upheld the decision that he was not “*severely disabled*”, it was not necessary for her to look at whether or not the “exceptional circumstances” provision would apply¹².

¹² In her letter of 13 July 2012 to this Office, the Appeals Officer said: “*I believe that it is also important to note that [Mr.] Ryan does not live in very isolated circumstances. He lives with his family and he attends a Day Care Centre a couple of times a week. I also understand that one of his parents drives him ... and that this fact would not change even if the MTG is granted. I was aware at the time of the issues with regard to his travelling on public transport on his own and that he could use public transport only with the assistance of another person.*”

While it is not immediately relevant, it is nevertheless appropriate to draw attention here to a matter which has a direct bearing on one of the provisions of the “exceptional circumstances” clause. In order to qualify under this clause, the applicant’s disability “must prevent [him] from using public transport and [he] must have serious transport difficulties”. While no decision was made on this matter, relevant information was gathered in the course of the application and appeal.

The HSE was made aware at the time of the appeal, if not earlier, that there is no public transport available to Mr. Ryan and that, due to his medical condition, he cannot travel on any form of public transport. The AMO who saw him recorded that Mr. Ryan was able to use public transport but “*with close supervision*”. The AMO said¹³ that she ticked this box with the agreement of Mr. Ryan’s mother. However, this is at odds with the views of the three DDMBA clinicians who saw him and is at odds also with the views of the staff at the day care centre who are well acquainted with Mr. Ryan’s condition. In a letter to the HSE dated 29 July 2011, the centre said that Mr. Ryan, “*has no awareness of safety for himself or others and because of his high needs he would pose a huge risk on SITT transport for himself and others*”. It seems from this that it is highly unlikely, even if it were available, that he could use any form of public transport safely, even with close supervision. Mr. Ryan’s father told the Ombudsman’s Office that it was simply impossible for his son to use public transport, even with close supervision. He said that, even in a car, he must be physically restrained and constant verbal reassurance is necessary.

¹³ At interview with Ombudsman staff. But the AMO’s assessment notes also record: “Can’t use public transport bec[ause]of his behaviour in public and he can’t travel on his own”.

7. Disabled Drivers Medical Board of Appeal

The Disabled Drivers Medical Board of Appeal (DDMBA) is an independent statutory body¹⁴ whose members are appointed by the Minister of Finance. While HSE Medical Officers assess an applicant's eligibility for the PMC in the first instance, appeals are dealt with by the Board. The current DDMBA chairperson is a Consultant in Rehabilitation Medicine in the Acquired Brain Injury Service at the National Rehabilitation Hospital and there are four ordinary members all of whom are experienced medical practitioners drawn from diverse clinical backgrounds. The adjudicating panel at each appeal session consists of the Chairperson and two ordinary board members who together decide appeals against the refusal of PMC applications.

Under the algorithm in use for MTG assessments in the HSE Donegal, the first step poses the question: "*Does the client have a severe disability that affects their mobility sufficient that they meet the criteria for the PMC?*" If YES is the answer then, on the face of it, the applicant will have satisfied the medical condition for the grant. For reasons already described above, both the Medical Officers and the Appeals Officer of the HSE decided that the award of the PMC did not mean that Mr. Ryan satisfied the medical condition for the grant.

The Chairperson of the DDMBA has told¹⁵ this Office that the Board has had a number of conversations about cases like Mr. Ryan's with HSE Medical Officers. While no notes were made of the conversation of 1 June 2010 in this case between the Chairperson and the SAMO, the Chairperson was clear that she would have said what she always says in such cases. She would have explained that the key question in such cases is whether the applicant has effective use of his legs. In a case where walking can involve potential injury to the self or to others, the DDMBA would see that person as not having effective use of his legs. Mr. Ryan was noted at the DDMBA assessment as being an extremely unsafe walker. The DDMBA also commented that he certainly could not use public transport even with supervision as he needs to be restrained from injuring himself (and potentially from causing injury to others, a point made by the day care centre at the appeal stage). From the

¹⁴ <http://www.revenue.ie/en/tax/vrt/leaflets/drivers-passengers-with-disabilities-tax-relief-scheme.html>

¹⁵ An Ombudsman staff member observed the DDMBA at its work and spoke subsequently to its Chairman. The Ombudsman very much appreciates this assistance.

perspective of the DDMBA, these are not unusual considerations in the case of young adults who suffer from Autism who may also, (as in this case), suffer from epilepsy.

Part 3: The Department of Health

8. The Department's View

The Department of Health was not aware of the MTG review conducted in HSE Donegal nor of the arrangements put in place following that review. While the HSE in Co. Donegal believed that "*other regions aligned their [MTG] assessments much more strictly with the medical criteria of the Primary Medical Certificate* ", this belief does not appear to reflect the actual position in the other regions.

In early 2011 the then Minister for Health¹⁶ raised with her Secretary General information she had that there had been a change in the medical eligibility criteria for the MTG and that, in fact, the criteria applicable to the PMC were being applied to MTG applications. In making enquiries on this with the HSE, the Department was conscious that each of the schemes has its own medical eligibility criteria and that the PMC is based on statute while the MTG is an administrative scheme. It is clear from material on the Department's files that while the PMC is based on strict medical criteria, it saw the MTG as based on more general medical criteria. It is clear from the tenor of the enquiries it made with the HSE that the Department did not believe it was correct to apply the PMC medical criteria to MTG applications.

When the Department raised the matter with the HSE, the HSE response stated that "*there has been no corporate decision to change eligibility criteria and the two Schemes are operated quite separately*". However, subsequently, the HSE told the Department that one of the Assessment Officers in Donegal had applied incorrect criteria for the MTG "some time ago" on foot of which two unnamed applicants were refused the grant; however, both applicants were awarded the MTG on appeal.¹⁷

In late November 2011 Donegal Senator Brian Ó Domhnaill sought a Seanad adjournment debate on: "*The need for the Minister for Health to clarify why genuine and previously... granted MTG applications are being refused (Details supplied)*". In the event, the debate did not take place due to the absence of the Senator. However, the Department had prepared briefing material for the Minister in the event that the debate would proceed. The information supplied to the Department by the HSE was that the four applicants concerned

¹⁶ Ms. Mary Coughlan TD, herself a representative for Donegal South-West.

¹⁷ The Appeals Officer interviewed as part of this investigation could not recall any such cases and was unaware of the incident described.

were, at that time, awaiting the outcome of their respective appeals. The HSE also commented: "*[p]rior to 2011 the HSE (Donegal) was in a position to approve... grants on a discretionary basis. Due to the increasing number of applications, cost factors and the need to ensure equity in applying the qualifying criteria it is no longer feasible to allow discretionary grants.* "

The Department of Health official who had charge of the Office for Disability and Mental Health at that time said, when interviewed for the purposes of this Investigation, that she understood from this that the HSE was seeking to ensure that a standardised approach to interpretation of the circular was being adopted throughout the country. She indicated that this could entail people who had previously received the grant being refused it under new, more consistent approaches. She also expressed the view that the operation of the scheme was a matter for the HSE but, if there were problems with it, the Department could have been contacted; however, no such contact was, in fact, made.

9. Responsibility for the MTG Scheme

Since its inception in 1968 the MTG has remained an administrative scheme without a statutory basis. The Department of Health has said that it would be preferable to operate the scheme on a statutory footing. However, it has said this option has not been pursued in recent times because of a Government decision¹⁸ that the Department should focus on its core functions in delivering a health service and transfer responsibility for income support schemes to the Department of Social Protection. While responsibility for some other schemes¹⁹ has transferred to the Department of Social Protection, the MTG was not transferred. The Department says that policy proposals relating to the scheme have been formulated and are awaiting decision by the Minister for Health.

The Department stressed at interview that while the overall policy of the scheme is the responsibility of the Department, the administration of the scheme is a matter for the Health Service Executive. Included under “administration”, according to the Department, is the matter of defining what is meant by the term “*severe disability*”. The HSE appears to agree with this approach saying that its Medical Officers are well placed to determine such matters. On the other hand, the Department’s circulars of 2007 and 2008 give quite detailed definitions of other terms in the area of training and work²⁰ and it does seem anomalous that the term “*severe disability*” is not defined in the circular.

The failure of the Department to define the term “*severe disability*” for MTG purposes contrasts with its approach in the case of the Mobility Allowance, which is another administrative scheme operated by the HSE on the basis of a circular from the Department of Health.²¹ The Mobility Allowance, according to the circular, is a payment “for severely handicapped persons”; however, the circular then goes on to say that the “*essential medical criterion for the grant of the allowance is that the applicant is unable to walk, even with the use of artificial limbs or other suitable aids, or is in such a condition of health that the*

¹⁸ Government Decision S22485H June 2003. A further Decision [S14010 D] made in September 2007 directed that the MTG scheme be retained by the Department of Health with the intention of examining its future in the context of mainstream transport policy.

¹⁹ For example, Supplementary Welfare Allowance and Domiciliary Care Allowance are now the responsibility of the Department of Social Protection.

²⁰ The terms defined are: Rehabilitative Training, Sheltered Work, Sheltered Employment and Supported Employment.

²¹ The Ombudsman published an investigation report, *Too Old to be Equal?* dealing with Mobility Allowance in April 2010; see <http://www.ombudsman.gov.ie/en/Reports/InvestigationReports/April2011-TooOldtobeEqual/>

exertion required to walk would be dangerous. ... The inability to walk must be likely to persist for at least one year ...”.

9.1. Circuit Court Case

A Circuit Court decision from 2010 also sheds light on the issue of overall responsibility for the MTG scheme.

In 2010 the Circuit Court dealt with an appeal by the HSE against a decision of the Equality Tribunal in a case²² involving the Mobility Allowance. In 2009 an Equality Officer had decided in favour of a claimant who had been refused the Mobility Allowance by the Health Service Executive. The claim, in brief, was that the HSE took too narrow a view of what constituted a disability for the purposes of the scheme. The Equality Officer found that the HSE had given no consideration to the fact that factors other than physical disabilities may be relevant in assessing mobility. In the particular case, the claimant had serious mental health problems and the Equality Officer found that the HSE’s failure to have regard to this fact, for the purposes of determining eligibility for the Mobility Allowance, meant that it did not *“allow for assessment that is compatible with the broad definition of disability as set out in the Equal Status Acts.”* The HSE did not dispute the substance of this finding; rather, its Circuit Court appeal was on the basis that the Equality Tribunal process should have been directed, not against itself, but against the Department. The appeal was successful with the Court finding that the Equality Tribunal process should have been directed against the Department rather than against the Health Service Executive.

This Circuit Court case revolved around issues of interpretation of a crucial term in the Mobility Allowance scheme. Despite being the body which administers the scheme, the HSE was found by the Court not to be legally responsible for the matter. The significance of this Circuit Court judgment, in the present context, is that it assigns clear responsibility for the Mobility Allowance scheme to the Department. Given that the MTG scheme is so similar to the Mobility Allowance scheme, it is reasonable to assume that it is the Department also which has responsibility for the MTG scheme.

²² Health Service Executive v Gary Quigley, (unreported Circuit Court 26 April 2010)

In its response to the draft of this report, the Department noted the Ombudsman's finding and made no comments on the content.

Part 4: The Ombudsman's Analysis

10. Interpreting “severe disability”

The Equality Tribunal decision²³ referred to above is of particular relevance to the question of interpreting the term “severe disability” as used in the MTG scheme. The Equality Officer found that the terms of the Mobility Allowance scheme are defective in that they reflect a very narrow view of what constitutes mobility. The claimant in the case suffered from schizophrenia, agoraphobia and depression and could not use public transport. The HSE took the view that he did not meet the requirement of being “unable to walk” and thus rejected his claim. In her decision, the Equality Officer observed:

*“... I note that there is an obvious failure to assess the intellectual and/or psychological capacity of the applicant in relation to their mobility. I find that the current clinical assessment does not, in its current format, allow for assessment that is compatible with the broad definition of disability as set out in the Equal Status Acts. **The concept of mobility in the [Mobility Allowance] circular is construed in such a narrow manner that it fails to recognise that in severe cases a person’s intellectual and/or psychological health may restrict their mobility as effectively as some physical disabilities do.** I find that this is a clear omission and it is obvious that the mobility allowance has not been updated to comply with the requirements set out in the Equal Status Acts (enacted in October 2000). ...*

Based on the foregoing, I strongly recommend that the Health Service Executive (in partnership with the Department of Health and Children if necessary) examine the various allowance schemes governing people with disabilities to ensure that they and the associated assessment processes comply with the requirements of the Equal Status Acts.” [Our emphasis]²⁴

These findings, whose substance has not been challenged by the HSE or by the Department, apply equally to the operation of the MTG scheme. It is clear that, in assessing Mr. Ryan for the purposes of the MTG scheme, the HSE Medical Officers failed to take account of the impact on his mobility of his intellectual disabilities; instead, they focused on the narrow

²³ DEC-S2009-012; decision published at <http://www.equalitytribunal.ie/Database-of-Decisions/2009/Equal-Status-Decisions/DEC-S2009-012-Full-Case-Report.html>

²⁴ The same Equality Officer made virtually identical findings in another mobility allowance case where the claimant had Downs Syndrome [DEC-S2009-011]

approach of “functional mobility” and whether or not he was physically capable of walking. In taking this approach, which was upheld by the Appeals Officer, the HSE personnel were out of line with the practice of the DDMBA and continuing with an approach of which the Equality Tribunal had been very critical more than one year earlier.

11. The HSE's Approach to the MTG scheme

It is striking that the HSE in Donegal appears to have developed its own approach to the administration of the MTG with little or no reference to the HSE nationally. Given that one of the aims in establishing the HSE, more than seven years ago, was to promote consistency of approach and of standards, it is surprising that such apparent unilateral action should happen²⁵.

The HSE has told this Office that the HSE in Donegal developed guidelines for use by the Medical Officers there and that these guidelines were to ensure a standardised approach in the absence of national standardisation. However, these guidelines are not in use in other HSE areas. Donegal uses its own forms, designed to obtain particular information from the applicants, which are not used elsewhere. The March 2009 "Department of Health" Circular supplied to this Office by the HSE in Donegal, and supplied also with the HSE submission to the Ombudsman on this investigation, was not in fact issued by the Department of Health and is not used in other HSE areas.

The HSE in Donegal did quite a lot of work in reviewing the scheme and developing new work practices. In principle, this may be laudable. But it has not resulted in a standardised approach to the assessment of "severe disability" throughout the country. While the HSE Donegal says it believed it was aligning itself with the practise elsewhere, no evidence was produced to support this. It seems not to be the case that all other areas of the HSE are allaying the medical assessment for the MTG with the medical criteria for the Primary Medical Certificate.

In fact a senior official of the HSE informed the Department in early 2011, following the query raised by the then Minister for Health, that "... *there has been no corporate decision to change eligibility criteria and the two Schemes [PMC and MTG] are operated quite separately*". In addition, this Office has seen cases from other areas of the HSE which suggest that a person with a learning disability, but who can walk, may satisfy the MTG medical criteria. The current Director of the Disability Services Office of the HSE (who had not been supplied with a copy of the HSE submission to this Office when it issued)

²⁵ "At the HSE, our task is to build a health and social care system that is sustainable and capable of delivering nationally consistent high quality services"
http://www.hse.ie/eng/services/publication/corporate/intro_to_hse.pdf

acknowledged that the approach around the country to the interpretation of "*severe disability*" may not be consistent. In fact, there is no evidence that the HSE at national level has sought to achieve clarity and consistency in the operation of the MTG scheme across the country. Clearly, it is highly desirable that the HSE (in conjunction with the Department) would conduct such an exercise to ensure that services are delivered equitably and that people in similar situations, regardless of address, are treated similarly.

Even if it were the case that the medical criteria for the PMC are being used widely as a method of assessing medical eligibility for the MTG scheme, this approach is questionable. The MTG and PMC schemes were developed with different aims. The same applies to the approach whereby the criteria to qualify under the Disabled Drivers Parking Permit (DDPP) scheme are applied to MTG applicants. There may be an administrative convenience involved in applying the criteria for one scheme (such as the PMC or the DDPP) to another scheme; however, the fact remains that these schemes are separate schemes with different objectives and different bases.²⁶ It can hardly be good administrative practice to use the criteria of one scheme as a proxy for another, quite separate, scheme except where such an approach is provided for explicitly.

The statutory criteria for the PMC and for the DDPP are specific and relatively narrow. Nevertheless, in the case of the PMC it is clear that that the appeals authority (DDMBA) seeks to apply these criteria in a pragmatic way. The MTG scheme, on the other hand, is intended to assist severely disabled people retain employment²⁷ and in addition, assist severely disabled people who would otherwise suffer social isolation. The application, in the case of the MTG in Co. Donegal, of an extremely restrictive interpretation of the term "*severe disability*" has the consequence that the entire scheme (including the "exceptional circumstances" element) is being curtailed. In so far as one can discern a clear intent on the part of the Department of Health, which has overall responsibility for the MTG scheme, it does not envisage that a narrow and restrictive approach should be applied in interpreting the term "*severe disability*".

²⁶ The PMC and the DDPP are both statutory schemes whereas the MTG is an administrative scheme.

²⁷ In the original scheme, the objective was to assist severely disabled individuals obtain employment.

It is clear that the current approach by the HSE in Co. Donegal to interpreting the term “*severe disability*”, in the context of the MTG scheme, is unacceptably restrictive. It flies in the face of the very explicit 2009 finding of the Equality Officer, cited earlier in this report, who was very critical of the “*failure to assess the intellectual and/or psychological capacity of the applicant in relation to their mobility*” and who recommended to the HSE and to the Department that they should “*examine the various allowance schemes governing people with disabilities to ensure that they and the associated assessment processes comply with the requirements of the Equal Status Acts*”.

In the particular case of the Ryans, whose complaint has led to this present investigation and report, it is clear that the MTG application was rejected following a medical assessment based on criteria which were unduly restrictive and not representative of the general approach across the HSE nationally. It is reasonable to ask whether there may have been other cases in Co. Donegal in recent years where MTG applications were rejected based on the same unacceptable criteria. The Ombudsman has in fact received a disproportionate number of other MTG complaints from Co. Donegal in recent times²⁸ which include people who had received the grant before and who, despite no improvement in their disability, are now deemed not to have a “*severe disability*”. It will be necessary, following this investigation, to pursue these complaints further with the Health Service Executive.

One of the reasons cited for the work done by the HSE in Donegal in reviewing the interpretation of “*severe disability*” was “*a significant increase in the number of applications*”. This is not a sound reason for the reinterpretation of a qualifying condition and by so doing, effectively curtailing the scheme in a particular area. If the allocation of funds is a difficulty (although this has not been made explicit by the HSE) a fairer approach would be to develop a system of prioritisation with qualified applicants being placed on a waiting list for payment. This is what the HSE does in the case of the Nursing Home Support Scheme when funding for recently approved applicants is not available.

²⁸ At the time of writing this report, 47 complaints about the MTG scheme had been received by the Ombudsman since January 2010, 33 of which were from Donegal.

12. The HSE Appeals Process

The MTG appeals process is not a statutory process; it is referred to in quite cursory terms in the Department's governing circular. Nevertheless, in providing that there should be an appeals process, it seems reasonable to suppose that the Department intends that process to operate along the same lines as a properly constituted appeals system²⁹. As with any proper appeals system, one would reasonably expect that it would be based on independence, authority and fair procedure. Following this model, the Appeals Office should make a fresh decision based on all of the information and evidence available at the time of the appeal decision.³⁰

The position of the HSE Appeals Officer who decided the appeal in this case is that she *"cannot interfere with a clinician's medical opinion"*³¹. She said that she would, from time to time, raise queries with the clinician or ask another medical officer for a second opinion. In this particular case, however, she accepted the SAMO's opinion that Mr. Ryan has not got a *"severe disability"* in the sense in which that term has been interpreted in the HSE Donegal. The Appeals Officer did not seek to clarify with the DDMBA why it had made the decision to certify Mr Ryan as *"wholly or almost wholly without the use of both legs"* although she was of the opinion that this statement did not accord with the facts as documented by the HSE and others.

In the case of Mr. Ryan, the Appeals Officer had available to her additional information bearing on Mr. Ryan's disability which had not been available to the Medical Officers when they made their initial assessment. This consisted of the PMC appeal decision and the notes of the DDMBA, two letters from the day centre attended by Mr. Ryan and a letter from Mr. Ryan's General Practitioner. It appears this additional information did not cause her to question the opinion of the Medical Officers; rather, she saw this information as confirming their opinion that Mr. Ryan is mobile. Thus, she did not feel the need to seek the opinion of another Medical Officer from within the HSE West and, in the course of dealing with the

²⁹ For example, the Social Welfare Appeals Office operates an independent appeals service and its method of operation is well known to those working in the welfare services.

³⁰ In what seems to be a departure from appeal procedures to date, in an appeals process not including the AO in this present case, a decision was made in July 2012 in another MTG case in which the consideration of the appeal was described by the decision-maker as a *"de novo appeal process"*; MTG was awarded in this instance.

³¹ Appeals Officer's letter to this Office 13 July 2012

appeal, it appears the Appeals Officer did not engage with any other party, whether within the HSE or otherwise.

It has to be of concern that the Appeals Officer felt it was not open to her to reject the opinion of the HSE Medical Officers. It is a feature of appeal systems involving medical criteria that, very frequently, there will be contradictory medical opinions put before the Appeals Officer. In such circumstances, the Appeals Officer has to weigh the merits of the respective medical opinions and, in effect, choose between them. The Appeals Officer is entitled to obtain further professional opinion where necessary but it is she who must decide the appeal. The Appeals Officer must exercise both independence and authority in making a decision, and must be free to choose one opinion over another, following a proper evaluation of the evidence³².

It is very relevant also that the Appeals Officer appears to share the view of the HSE Donegal that the term “*severe disability*”, in the context of the MTG, refers to a disability involving a severe and permanent restriction of movement in the lower limbs, or where walking would cause severe complications or where the person is so disabled as to meet the PMC criteria. In this view, there is no scope for having regard to the consequences for mobility of psychological or intellectual disabilities. One might reasonably expect an independent Appeals Officer to challenge the appropriateness of this restrictive approach and particularly so in the light of the decision of the DDMBA which, quite evidently, took account of the consequences for mobility of psychological or intellectual disabilities. The DDMBA decision, made by three experienced clinicians, should have informed the Appeals Officer’s decision.

The approach of the Appeals Officer would seem to be more akin to that of a reviewer rather than of someone who is deciding the case afresh on the basis of all of the information and evidence then available. All in all, on the evidence of this particular case, it would appear that the MTG appeals function in the HSE Donegal is not operating satisfactorily.

³² In correspondence with this Office, the AO said that she does operate independently and with authority and abides by the appropriate rules. She believes that the decision she made in this case was arrived at independently, having taken account of relevant information and was a reasonable decision made in accordance with her understanding of the Department’s guidelines.

13. The Department of Health's Approach to the MTG Scheme

Overall responsibility for the MTG scheme rests with the Department of Health. It is difficult to avoid the conclusion that the Department did not give adequate attention to the operation of the scheme over the years. In this respect, the Department's performance appears similar to that in the case of the Mobility Allowance which was the subject of an earlier Ombudsman investigation.³³

There are some significant indications of a lack of proper engagement by the Department with this scheme.

- The Department acknowledged³⁴ that it would have been preferable to seek a statutory basis for the scheme but that the proposed transfer of Departmental responsibility for it was a primary focus in recent years. Nevertheless, since September 2007 it has been clear that responsibility for the scheme would be remaining with the Department of Health. The scheme has continued to operate on an administrative basis for 44 years. While it is possible to operate a scheme fairly and efficiently without statutory authority, it is not a sound practise to continue to do so for such a long period of time. The rights conferred by a statutory scheme are clearer and have a firmer basis in law than those conferred by an administrative scheme. Had the scheme been placed on a statutory footing, for example, at the time the HSE was established, it would have made inconsistencies in administering it less likely. The Department has failed to ensure that the MTG scheme is administered fairly and consistently across the country.
- The Department's circulars governing the scheme, including the current circular, lack clarity of objective as well as clarity in the use of specific terms such as "*severe disability*" and "*exceptional circumstances*". While the Department's files show that there were a number of working groups which reviewed the scheme, particularly in the last ten years, none of them appears to have addressed the interpretation of "*severe disability*". The changes brought about by these groups were few. While it

³³ Too Old to Be Equal (April 2011)

<http://www.ombudsman.gov.ie/en/Reports/InvestigationReports/April2011-TooOldtoBeEqual/>

³⁴ At interview with Ombudsman staff

is reasonable to delegate the operation of the scheme to the HSE, the HSE has not been given sufficient direction as to its operation.

- The Department has failed to monitor the operation of the scheme in any sustained way. An examination of its files shows that the Department's interventions have generally been reactive rather than proactive. For example, the fact that 40% of all MTG awards for the period 2009 – 2011 are from one county (Donegal) should have attracted the attention of the Department. But it appears this was not the case.
- The Department has not acted on the strong recommendation³⁵ of the Equality Tribunal in February 2009 that it should examine "*the various allowance schemes governing people with disabilities to ensure that they and the associated assessment processes comply with the requirements of the Equal Status Acts*"; instead, it has allowed the continuation in operation of an approach based on a narrow understanding of "severe disability" which, in the words of the Equality Tribunal, is not "compatible with the broad definition of disability as set out in the Equal Status Acts".

The Department has several times said³⁶ that it is currently reviewing the policy and operation of various disability payments. In her investigation of a Mobility Allowance complaint (see note 32 above), the Ombudsman commented as follows:

"The fact remains that, despite all the talk of reviews over several years, there has not to date been a comprehensive review of the Mobility Allowance and of related schemes intended to benefit people with disabilities. More particularly, and despite the specific promises, there has not been a review to ensure that existing schemes (including Mobility Allowance) comply with the Equal Status Act. An intention to undertake a review at some future date is not a justification for continuing with a practice which is already known to be illegal."

This comment applies with almost equal strength to the Department's approach to the MTG scheme.

³⁵ DEC-S2009-012; decision published at <http://www.equalitytribunal.ie/Database-of-Decisions/2009/Equal-Status-Decisions/DEC-S2009-012-Full-Case-Report.html>

³⁶ On 21 April 2011, for example, the Secretary General of the Department assured the Ombudsman that the Department intended to implement its review of the Mobility Allowance scheme "within six months as recommended" by the Ombudsman. This recommendation has not yet (September 2012) been honoured.

The Department has pointed out that the MTG scheme is a tiny part of the overall Health budget; while this is very true, this is not a sound reason for neglecting the scheme. In fact, much work has been done on the key issue of what is meant by the term “*severe disability*”. Two relevant and significant reports were the Indecon Report on the Cost of Disability³⁷ in February 2004 and the Interdepartmental Review of the Disabled Drivers' Scheme of 2002³⁸. Of particular interest, in the context of this present investigation, is the DDMBA commissioned research into alternative approaches to the assessment of mobility using grading or scoring systems to ensure equality of treatment for applicants to schemes for the disabled. This research, which is outlined in the Interdepartmental Review of 2002, would be useful to any review of policy in this area.

Based on the material set out above, arising in the context of an investigation of one particular complaint, it is clear that there is certainly a need to review the MTG scheme and decide both its aims and how it might best meet the needs of its target group.

³⁷ Indecon Report on Cost of Disability available at www.nda.ie/cntmgmtnew.nsf/O

³⁸ Disabled Drivers and Disabled Passengers (Tax Concessions) Scheme – Interdepartmental Review Group, Report to Minister for Finance September 2002 available at www.finance.gov.ie/documents/publications/other/taxconrevgrpl.pdf

Part 5: Findings and Recommendations

14. Findings

15. Arising from this investigation the Ombudsman makes the following findings:³⁹

1. That the development by the HSE Donegal of an approach for deciding medical eligibility for the Motorised Transport Grant scheme had the effect of restricting eligibility under the scheme. In addition, as the approach was developed for its own area only, for the purposes of implementing a national scheme, this action amounts to an undesirable administrative practice as well as being contrary to fair or sound administration.

2. That Michael Ryan was affected adversely by the refusal of his application for a Motorised Transport Grant and that this refusal reflects an approach to the term "severe disability" which is improperly discriminatory, imposed without proper authority and is otherwise contrary to fair or sound administration.

3. That the HSE Appeals Office did not exercise appropriate independence or authority in carrying out its functions in the course of Mr. Ryan's appeal. Furthermore, in deciding the appeal, it did not have proper regard to relevant legislation (the Equal Status Acts) or to the import of the documentary evidence provided to the HSE by the Disabled Drivers Medical Board of Appeal and by other parties. Consequently, the decision on the appeal in this case was taken on irrelevant grounds, was based on incomplete information and was contrary to fair or sound administration.

4. That the Department of Health failed in its responsibility to oversee the implementation by the HSE of the Motorised Transport Grant scheme and failed also to provide the HSE with adequate and clear guidance in relation to the scheme and that these failures were contrary to fair or sound administration.

³⁹ These findings reflect the language of section 4(2)(b) of the Ombudsman Act 1980 which identifies seven categories of maladministration. These apply where an action was or may have been (1) taken without proper authority, (2) taken on irrelevant grounds, (3) the result of negligence or carelessness, (4) based on erroneous or incomplete information, (5) improperly discriminatory, (6) based on an undesirable administrative practice, or (7) otherwise contrary to fair or sound administration.

16. Recommendations

Based on the findings set out above, the Ombudsman makes the following recommendations:

- That the HSE undertake an immediate review of Michael Ryan's Motorised Transport Grant application in the light of the findings of this investigation and in the light, in particular, of the 2009 comments and recommendations of the Equality Officer on the need to have regard to the broad definition of disability set out in the Equal Status Acts; the Ombudsman further recommends that this review be conducted by HSE staff (both medical and administrative) not previously involved in the Ryan case and that the review be finalised within six weeks of the date of this report.
- That the HSE review all Motorised Transport Grant applications which were refused by the HSE West on the basis of the revised approach taken by the Donegal Medical Officers since 2009 ; that this review be undertaken in the light of the findings of this investigation and in the light, in particular, of the 2009 comments and recommendations of the Equality Officer on the need to have regard to the broad definition of disability in the Equal Status Acts; the Ombudsman further recommends that these reviews be completed within six months of the date of this report and that a report on the outcome of the reviews be sent to the Ombudsman.
- That the HSE undertake a review of its appeal arrangements under the Motorised Transport Grant scheme in the light of the findings of this investigation, with a view to

ensuring all Appeals Officers have the freedom to exercise authority and independence in carrying out their functions and that the outcome of this review be given effect within six months of the date of this report.

- That the Department of Health revise the terms of the Motorised Transport Grant circular governing the scheme, to provide explicitly that the term "severe disability" is to be understood in the light of the findings of this investigation and in the light, in particular, of the 2009 comments and recommendations of the Equality Officer on the need to have regard to the broad definition of disability set out in the Equal Status Acts; the Ombudsman further recommends that the revised Motorised Transport Grant circular be issued to the HSE within six weeks of the date of this report.

EMILY O'REILLY
OMBUDSMAN

September 2012

Part 6: Appendices

Appendix 1: Statement of complaint

Noel Ryan

Co. Donegal

on behalf of his son, Michael Ryan

Mr Ryan has complained to the Ombudsman about the decision of the Health Service Executive (HSE) to refuse the application made in February 2010 on behalf of his son for a Motorised Transport Grant (MTG). Mr Ryan believes that his son meets the eligibility requirements for the grant as he is severely disabled and his circumstances are such that the MTG should be granted relying on the exceptional circumstances clause in the scheme. He contends that the decision to refuse the grant is unfair and has adversely affected his son.

Appendix 2: Responses of the Department of Health and the HSE to the Ombudsman's notification of investigation

Department of Health Response:



12 January 2012

*Recd
13/1/2012*

Fintan Butler
Senior Investigator
Office of the Ombudsman
18 Lower Leeson Street
Dublin 2

Your Reference: HC4/10/1994

Dear Mr Butler,

Your letter of 6th December addressed to the Secretary General of the Department, regarding Donegal and the decision of the Health Service Executive (HSE) to refuse a motorised transport grant to his son, has been forwarded to me for reply.

The Department is arranging for our policy and information files in relation to the motorised transport grant to be sent to you in the near future.

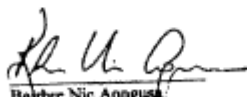
The Department's initial position is that a decision in relation to individual applications for allowances/grants is entirely a matter for the HSE through their assessment and appeals procedures.

The primary purpose of the motorised transport grant is to assist people with a disability in retaining employment. The eligibility criteria are directed specifically at its target group, namely those in employment who, without the grant, would be unable to retain said employment.

The Department has no immediate plans to revise the current circular. However, the Department is in the process of reviewing the policy underpinning the grant. It is not envisaged that any changes will be made to the circular prior to any decision on foot of the review. In the meantime, the Health Services Executive will continue to operate the motorised transport grant in accordance with the current circular.

If you have any queries please contact Harry Harris at 6354073 or Margaret Dorney at 6353023.

Yours sincerely


Bairbre Nic Aongusa
Director
Office for Disability and Mental Health

An Roinn Sláinte / Department of Health
 Teach Mairéad Ní Ailéáilín 2 Páirt 101 01 635 4000 E-phost/Email mh@doh.gov.ie
 Mionúilíon Dublin 2 Faca/Fax 01 635 4001 Súilíní/Grádasáil/Web www.doh.ie



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Investigation by the Office of the Ombudsman into the refusal of an application for Motorised Transport Grant by HSE, Donegal:

Applicant – _____, Co. Donegal via his parents

Our reference : OMB 392. _____ Ombudsman's ref: HC4/10/1994

_____, Ms _____, applied for Primary Medical Certificate on _____ behalf on 19th January 2010 and a Motorised Transport Grant application was received on 22nd February 2010.

_____ was assessed by Dr. Ghoniem, Area Medical Officer, for both grants on 8th February 2010. At that time he did not meet medical criteria for either Primary Medical Certificate or Motorised Transport Grant. During that assessment, he was mobile without aid with no limitation of movement of his lower limbs, although he needs close supervision and would require close supervision when using public transport because of his Autism and Learning disability. He is described as very active and "running around the room" when assessed in clinic. The medical file was forwarded to the Senior Medical Officer, Dr Mc Bride.

A letter was sent to _____ on 8th March, 2010, advising that he did not meet the medical criteria for Primary Medical Certificate and following assessment of both medical and financial files, the Community Care Administrator wrote to _____ on 8th April 2010 advising that his medical condition did not satisfy the criteria for Motorised Transport Grant.

An appeal for the Primary Medical Certificate was lodged to Dr. Morgan in the Appeals Board in Dublin on 23rd March. He was assessed by Dr. Morgan and Team on 29th April 2010 and the decision to decline PMC was overturned and he was granted it on condition (a), namely; "The applicant is wholly or almost wholly without the use of both legs." This clearly at odds with the findings of the HSE's medical officer who assessed for PMC and MTG application on the 8th February, 2010.

Correspondence re decision of Medical Board of Appeal was received in Donegal HSE West on 24/3/2011. Dr Mc Bride discussed this with line manager, Dr Mason, Principal Medical Officer who advised that as it was not standard practise, in the past, to award the PMC to mobile clients with Intellectual Disability and that we should write to Dr Morgan as we would welcome opportunity to discuss this further. Correspondence was sent to Dr Morgan in May 2011. Dr. Morgan contacted Dr. Mc Bride by phone, 1/6/2011, who advised that on the day he was assessed by Board of appeal he met the criteria. Medical Board of Appeal notes state "2-weekly grand mal seizures- would injure himself, never walks aloneunsafe, dangerous walker, meets category "a".

parents had also appealed the decision to refuse the Motorised Transport Grant and files were sent to Ms. Eithne O'Sullivan, Regional Appeals Officer, on 19th May 2010. On review of the file, the decision to refuse Motorised Transport was upheld by the Regional Appeals Officer and this was communicated to on 2nd June 2010.

At the time of assessment in February, 2010, was fully mobile with no restriction of his lower limbs and although he suffers from Learning Disability, Autism and hyperactivity and requires close supervision. At the time of assessment he was deemed not to meet the criteria for either the Primary Medical Certificate or Motorised Transport Grant as outlined above.

Medical Assessment.

The Ombudsman has stated, in correspondence "*The Ombudsman considers that the information the HSE has provided to the Office confirms that does suffer from a severe disability (Profound Intellectual disability, Autism and Epilepsy)*".

At the time of his assessment the clinical judgement was that he did not meet the medical criteria for either Primary Medical Certificate or Motorised Transport Grant for the following reasons:

When was assessed in March, 2010, his mobility level at the time of assessment was that he was mobile, he could walk unaided and that although he obviously would require supervision on transport, as all clients with moderate to severe learning disability would do. Due to current standardised interpretation of the medical criteria for Motorised Transport Grant it was deemed he did not meet the criteria to be described as

“severely disabled” with respect to the Motorised Transport Grant. This grant relates to the transportation of clients who can be described as “severely disabled”.

Clinicians are required to offer medical opinion in clinical assessment as to whether a client’s condition can be described as a “severe disability”. The grant(s) being assessed are grants and allowances which relate to mobility and transportation of a severely disabled individual. Clinicians assess what effect a disability has on a client’s clinical condition and the how a client’s mobility is impaired as a result of this disability. Clinicians also endeavour to assess whether a client’s disability can be classified as “severe”, taking into account how severely impaired their mobility is, as a result of their disability.

The HSE, Donegal, Medical Officers apply a standardised interpretation of the guidelines available and, in the case of the Motorised Transport Grant, they ally the assessment along the medical criteria outlined in the Primary Medical Certificate. These criteria have been accepted by the HSE as a list of conditions that describe “severe and permanent” disability, for the purposes of the 1994 regulations of Section 92 of the 1989 Finance Act.

The HSE, Donegal, continually monitors and audits processes and methods of assessment, in order to deliver a standardised, reliable and equitable service.

If a client cannot be described as “severely disabled” with regards to the medical criteria for the Motorised Transport Grant, the “exceptional circumstance” clause could not be considered.

Criteria and Guidelines for Assessment of Motorised Transport Grant Applications

In the past, in HSE West, Donegal, the decisions regarding MTG grants were often weighted, taking into account the degree to which the conditions of the “exceptional circumstance” clause appeared to be present. MTG had occasionally been approved on a discretionary basis, and, indeed, the interdepartmental report to the minister of Finance in 2002(1), a comprehensive review of the Disabled Drivers Tax Concessions grant, which also addressed the MTG grant, states;

“It is clear that the Motorised Transport Grant was targeted at facilitating the entry of persons with disabilities into the workforce. However ... furthermore the scheme is confined to those whose disability impedes the use of public transport. It is not automatically available to those who do not have access to public transport per se. From this it could be concluded that the purpose of the scheme is to address a lack of mobility arising from a person’s disability, as opposed to the lack of available transport.

The criteria for MTG appear to have been deliberately stated in broad terms. While the reason for this has not been recorded it seems reasonable to assume that this was to allow the Senior Medical officers in the health boards some discretion in determining the merits of individual applications.”

In 2009, due to removal of the upper age limit, given that people over 65 have a level of disability due often to a combination of chronic illnesses rather than a primary disability and, in the absence of medically explicit national guidelines for the term “severe disability” in the MTG document (unlike those available for other grants within the scheme, i.e. Mobility Allowance and the Primary Medical Certificate), the team had to consider how to equitably apply the criteria of “severely disabled”.

In 2009, joint meetings, involving key stakeholders, were convened by the Principal Medical Officer (PMO) at the time, to address specifically the medical eligibility for MTG and the decision making process around same, in order to deliver a standardised, auditable, equitable service across County Donegal. Members of this review group included the PCCC Administrator, Physical and Sensory Disability Services Manager, a Disability Advocate and two Senior Medical Officers involved in disability assessment.

The circumstances that precipitated this work were

- a) significant increase in number of applications
- b) the removal of the upper age limit of age 65 from the MTG grant
- c) the publication of the national “Framework” document “Towards Excellence in Clinical Governance(2009)”, through which the concept of “clinical governance” is operationalised.
- d) Necessary cost containment measures.

The above meetings and subsequent documentation and guidelines agreed by all key stakeholders addressed the following elements from the “Framework” document;(2)

- Clear accountability arrangements
- Policies, Procedures and Guidelines
- Monitoring and review of systems

The summary of these meetings was prepared by the PMO in a document; Motorised Transport Grant Review Decision Meeting for Medical Eligibility November 2009, and discussed at a subsequent meeting between PMO, General Manager and PCCC Administrator to discuss agreed consensus between key stakeholders involved in MTG assessment. Please see excerpt below;

“This group considered the historical profile of clients who had received the MTG and the criteria for Primary Medical Certificate, The Irish Wheelchair Association Guidelines on Assessing Disability and other disability assessment tools. The group developed the following as an algorithm to facilitate AMOs and SMOs to decide when the applicant had “a severe disability” in the context of the MTG regulations.

NB:- The MTG is a mobility grant and relates to functional disability in this context. These guidelines do not classify people as “disabled” or “not disabled” for any other purpose”.

In addition to the above factors, in 2010 we obtained the statistics for the number of MTG applications for other areas of the country during a six month period in 2010. Also, informal communication between PMO Donegal, and other PMOs in the country alerted us to the fact that some other regions aligned their assessments much more strictly with the medical criteria of the Primary medical Certificate, particularly on the Eastern side of the country. From the statistics we received and, looking back at national figures for awarding the MTG, it became apparent that Donegal had an excessive number of applications, and awarded a disproportionate number of MTGs, when compared to other areas of the country. Interpretation of these figures further endorsed the standardisation of our decision making processes to align Donegal, in the absence of any defined national guidelines, with apparent national decision making processes. Hence, clients who may have been awarded the MTG in the past, due to the current, standardised, interpretation of the guidelines, both on the medical criteria and on the criteria for the “exceptional circumstance” clause, may now be declined

This work continued through into 2010 and in 2011 as the HSE(Donegal), in the interest of good clinical governance and delivering an equitable service in line with what appeared to be happening nationally. An audit of a number of cases (2009) was conducted to ensure that the Algorithm and Assessment form developed to ensure standardisation of assessments was applicable and would not discriminate between one client and another. In other words, all those involved in the review group wanted to ensure that, irrespective of diagnosis, all clients with a similar level of functional disability, i.e. “severe”, would meet the medical criteria for the MTG , when assessors employed the algorithm and assessment form.

During this process (2009-2010) standardised tools such as the “Hauser ambulatory Index” were looked at, as were the conditions under which a client is awarded a Disabled Parking Permit by the IWA – noting that this is for clients who are described as “disabled”, where the MTG applies to clients who are “severely disabled”. The latter document states “when assessing any applicant with any of the above conditions/disabilities, ... if an assistive device e.g. crutch, stick etc significantly restores the applicant’s ability to walk to the extent that the person can walk without severe limitations to a distance that is greater than 50 metres, the applicant will not qualify for the Disabled Parking permit”.

The Medical Research Council, UK, provides “Clinical grading scale employed for functional assessments” looking at how a client can be assessed as mildly, moderately or severely disabled with respect to functional impairment.

Registration criteria for eligibility for the National Physical & Sensory Disability Database were also reviewed, in particular, relating to sensory disability (blindness and deafness etc). In particular, for a client to be eligible for inclusion on the Database they must fulfil the criteria of requiring “specialised health and personal support services”. The general consensus from the review group that fully mobile, sensory disabled clients would not usually be functionally disabled from a mobility aspect and thus not meet the criteria for the MTG , unless co-morbidity was present that affected their mobility. Between 2010 and 2011, the Algorithm and Assessment

form have been reviewed and minor alterations made to further standardise our clinical assessment of a client to continue to reflect the level of functional disability

Given that [redacted] was not considered to be 'severely disabled' within the meaning of the Motorised Transport Grant scheme, he could not be considered under the terms of the 'exceptional circumstances' criteria which concern such issues as social or geographical isolation, availability of suitable public or private transport.

(1) "Disabled Drivers and Disabled passengers(Tax concessions)scheme- Interdepartmental review Group -report to Minister for Finance 2002, available on line full text

(2) "Towards excellence in Clinical governance- " A Framework for integrated Quality, Safety and Risk Management across HSE Providers" . Version 1 , January 2009, available on line full text.

Appendix 3: Department of Health Circulars on Motorised Transport Scheme 1968-2008

Department of Health Circular of March 1968:



seol any fheagra chun:-
(address any reply to):-
AN RUNAÍ
(The Secretary)

AN ROINN SLAINTE
(Department of Health)
TEACH AN CIRUSTAIM
(Custom House)
BAILE ÁTHA CLATH I
(Dublin 9)

Máirtín, 1968

Circular No. 7/68

MOTORISED TRANSPORT FOR DISABLED PERSONS

A Chara,

I am directed by the Minister for Health to state that the question of motorised transport and/or adaptations to motorised transport for disabled persons and the principles which, in our circumstances, should govern the provision of these appliances have been under consideration. In the case of many severely disabled persons, transport is only one of the problems involved and questions of special accommodation and equipment, nursing, living expenses, home helps and other aids should have priority over the provision of motorised transport.

In the selection of cases for the provision of motorised transport, the chief indication should be that it is essential to earn a living. Other less compelling considerations are that it would enable the disabled person to reside at home or in a hostel rather than in an institution, or if the home is very isolated that transport would enable the disabled to maintain social contacts. It is considered that for the present, the need to have motorised transport in order to obtain employment should be an essential qualification for assistance by health authorities. The Minister would be prepared to consider a contribution of up to 75% of the cost of motorised transport in cases so qualified, subject to a maximum contribution of £300 in any case. Some of the voluntary bodies working for the disabled are prepared to use part of their funds in assisting in the provision of motorised transport and health authorities should co-operate with these bodies in working out the assistance to be given.

Before arriving at a decision to contribute towards the cost of providing motorised transport, health authorities should satisfy themselves that the person concerned is capable of holding down a job and this might be established by providing him with hired transport to and from his employment for a trial period. They should also be satisfied as regards his mental and physical capacity to drive the vehicle and that he is qualified to hold a driver's licence. The making of grants should be on condition that the health authority will not be called upon at any future date to contribute towards the running expenses.

If a special assessment of the value of motorised transport is considered necessary, the National Rehabilitation Centre would be available to assist.

Mise, le meas,

Department of Health Circular of February 1974:



seol any threagra chun:-
(address any reply to):-
AN RUNAÍ
(The Secretary)

AN ROINN SLAINTE
(Department of Health)
TEACH AN CHUSTAIM
(Custom House)
BAILE ÁTHA CLIATH
(Dublin 1)

Feabhra 1974

MOTORISED TRANSPORT FOR DISABLED PERSONS

Dear Chief Executive Officer,

I am directed by the Minister for Health to refer to the scheme of grants to disabled persons towards the purchase or adaptation of motorised transport (Circular 7/18 of 6/3/1968 refers) and to say that the scheme has been reviewed in the light of the experience of its operation in recent years and of the representations which have been made in relation to its scope by interested parties and organisations. While the Minister does not propose to alter the underlying principle of the scheme which is intended to facilitate the employment of seriously disabled persons who come within the main criteria, he will give sympathetic consideration to proposals of the following nature:-

1. It is felt that Health Boards might adopt a sympathetic approach to the making of a grant to a person who has not already taken up employment but who would be able to do so if transport difficulties were overcome. This approach might be adopted where there is reasonable grounds (having regard to the advice of a Placement Officer or otherwise) that a person has a real prospect of securing employment once transport is available.
2. The position of self-employed disabled people who need a car to continue working might also be sympathetically considered. The Minister feels that it would be contrary to the spirit of the scheme to deal too rigidly with this type of case and he would be prepared to consider claims for a grant if it facilitated the person in transacting his business and provided the Health Board were satisfied that the person's level of income did not exceed what would normally be accepted as qualifying for a grant at present.
3. Where a disabled person is living in very isolated circumstances and has serious transport problems grants have on occasion been approved, where the person concerned was a qualified driver even though the matter of holding a job did not arise. The Minister desires that the Health Boards generally should be aware of the position in this regard.
4. Some severely handicapped persons, who are incapable of managing the controls of a car or where on medical grounds it is inadvisable for them to drive, must be driven to and from work. Sympathetic consideration might be given for the purpose of the scheme to allowing a grant for the purchase of a car in the name of the disabled person subject to the understanding that he will be driven by another person - whose name will be notified to the Board - to and from his place of employment.

The Minister has also asked me to say that the maximum grant payable towards motorised transport may be increased from £400 to £500 and he will be prepared to sanction proposals up to that maximum as from 1st April 1974.

Yours sincerely,

To Chief Executive Officer



DEPARTMENT
OF HEALTH AND
CHILDREN
AN RÁD NÓ
SLAINTE AGUS LEANAÍ

Spionnóg
Heath & Children

MOTORISED TRANSPORT GRANT

MOTORISED TRANSPORT GRANT

Establishment and Legal basis

The Motorised Transport Grant was introduced in 1968 by way of Circular 7/68. The guidelines were reviewed and modified in letters of 19 February 1974, 15 March 1974 and 15 January 1998.

Criteria Eligibility:

A Health Board may pay a grant towards the purchase of a car and/or adaptations to a car being purchased by a person with a severe disability who is 17 years or older and up to 65 years of age, where such a car is essential for him/her to obtain or retain employment. Self-employed persons who satisfy the criteria of eligibility may also be considered (subject to above age limits). In cases, where application is made on the basis of obtaining or retaining employment or self employment, the Board must be satisfied that the applicant is capable of holding down a job, has the physical capacity to drive the vehicle and is qualified to hold a driver's licence (full or provisional). However, qualified persons with a disability who are incapable of driving or who have been medically advised not to drive, and who have to be driven to and from his/her place of employment will only be considered eligible for a grant provided that he/she will be driven by another named person to and from his/her place of employment. The car must be purchased in the name of the person with a disability.

N.B.

Where a Health Board has substantial concern regarding an eligible applicant's capacity to undertake employment, payment of the Motorised Transport Grant should be deferred for such time as the Board requires to make a decision on the ability of the person to maintain employment. In the meantime, temporary funding, e.g. funding towards the cost of taxi fares can be provided towards the cost of transport to and from the applicant's place of employment.

Exceptional Circumstances

The grant may also be considered in exceptional circumstances for a person with a severe disability, subject to above age limits, who lives in a very remote location and whose disability impedes him/her from using public transport.

Medical Criteria:

- The applicant must have a severe disability; and
- The applicant's disability must impede him/her from using public transport

Determination of amount payable:

The means of the applicant and the applicant's spouse/partner, if any, are taken into account. Means are determined on the basis of gross income less statutory deductions including income from assets, investments, lettings etc.
less:

- Allowances in respect of rent and mortgage repayments.

MOTORISED TRANSPORT GRANT

The following should NOT be considered as means:

- An allowance received from an organisation approved by the Minister for Health & Children or the Minister for Enterprise, Trade & Employment while undergoing a course of rehabilitative or vocational training
- Blind Welfare Allowance
- Carers Allowance/Benefit
- Child Benefit
- Domiciliary Care Allowance
- Foster Care Allowance
- Higher Education Grants
- Income up to a maximum amount approved in employment of a therapeutic or rehabilitative nature.
- Living Alone Allowance
- Monies received from charitable organisations other than remuneration
- Special compensation awards that are exempted by legislation, e.g. Hep C, Thalidomide
- Supplementary Welfare Allowance
- Travel and Meal Allowances paid to participants on Government Approved Schemes

Relevant Information:

A Motorised Transport Grant of up to 75% of the actual cost of purchasing/adapting a car, which takes into account the trade-in value of a car being replaced, may be provided, up to a limit determined by income. Where a person qualifies for both the Disabled Drivers & Disabled Passengers (Tax Concessions) Scheme and the Motorised Transport Grant, the Motorised Transport Grant should not exceed the net outlay incurred, taking into account the benefit of the Disabled Drivers & Disabled Passengers (Tax Concessions) Scheme.

The payment of a Motorised Transport Grant is subject to the condition that the Health Board will **not** be called upon at any future date to contribute towards the running costs of the vehicle. In this context, a Mobility Allowance recipient cannot qualify for the Motorised Transport Grant. Similarly, a person who has received the Motorised Transport Grant in the previous three years cannot qualify for Mobility Allowance. Where a Mobility Allowance recipient wishes to avail of a Motorised Transport Grant, Mobility Allowance should cease from the date of payment of the Motorised Transport Grant.

When a grant has previously been paid towards the purchase of a vehicle, a grant towards replacement of the car will not normally be payable, unless due to extenuating circumstances, until three years from the date that the previous grant was paid. Such extenuating circumstances might include fire or theft of the car for which the grant was previously paid. However, any insurance settlement would have to be considered in determining the amount of a grant in such circumstances. Payment of a further grant where a person is up-grading his/her car should not be considered in such extenuating circumstances.

MOTORISED TRANSPORT GRANT

Net income to be calculated as gross salary/wages of applicant(s), less statutory deductions, together with any income derived from investment, letting, etc, less:

1. Outgoings on house (rent, etc.) in excess of the amount as prescribed as per medical card guidelines;
2. Income disregarded by the Department of Social Community & Family Affairs not to be assessed, i.e. income up to a maximum amount approved in employment of a therapeutic or rehabilitative nature; and
3. Regular medical needs up to Drugs Payment Scheme limit.

Note: All valid driving licences (including a valid provisional licence) may be accepted for approval of grant.

The applicant is defined the person with a disability.

Appeals

Applicant must be notified (in writing) of the outcome of any decision on application or review (favourable and unfavourable). In the event of an unfavourable decision, formal notification should be issued informing the applicant of his/her right of appeal and indicating where he/she should send the appeal.

Tommy Wilson



DEPARTMENT
OF HEALTH AND
CHILDREN
AN BUREAU
SLAINTE DOUS LEANAÍ

Department
Health, 2007

MOTORISED TRANSPORT GRANT (MTG)

With effect from 23rd March 2007

Establishment and Legal basis

The Motorised Transport Grant was introduced in 1968 by way of Circular 7/68. The guidelines were reviewed and modified in letters of 19 February 1974, 15 March 1974 and 15 January 1998.

Eligibility:

The Health Service Executive may pay a grant towards the purchase of a vehicle and/or adaptations to a vehicle being purchased by a person with a severe disability who is 17 years or older and under 66 years of age, where a vehicle is essential for him/hers to retain employment (see "Training and Work Definitions"). Self-employed persons who satisfy the criteria of eligibility may also be considered (subject to above age limits). The vehicle must also be purchased and registered in the name of the person with the disability and the applicant must hold a driver's licence (full or provisional). However, qualified persons with a disability who are incapable of driving or who have been medically advised not to drive, and who have to be driven to and from his/her place of employment will only be considered eligible for a grant provided that he/she will be driven by another named person to and from his/her place of employment. In these circumstances it is not necessary for the vehicle to be purchased and registered in the name of the person with the disability.

Training and Work Definitions

Rehabilitative Training: Rehabilitative Training (RT) focuses on the enhancement of an individual's core functional skills, life skills and social skills. The level of outcome from rehabilitative training is not predetermined, but dependent on the development capacity of each individual. RT is considered a health service, and therefore, trainees are **not eligible to apply for the MTG.**

Sheltered Work: Sheltered work is undertaken by people with disabilities in facilities specifically established for that purpose. People engaged in sheltered work retain their statutory entitlements and usually get a small discretionary additional weekly payment from the work provider. Sheltered work is considered a health service, and therefore, attendees at a sheltered workshop are **not eligible to apply for the MTG.**

***Sheltered Employment:** Sheltered Employment is an enterprise established specifically for the employment of people with disabilities and which is in receipt of special funding from the State. The employees are paid competitive wages, pay income tax and PRSI, have contracts of employment and their employment is protected by labour legislation. Sheltered employees are **eligible to apply for the MTG.**

***Supported Employment:** Supported employment is paid employment in an integrated setting with ongoing supports in the open labour market. The person is engaged under a contract of employment, receives remuneration and pays income tax and pay related social insurance. The Employment Support Scheme operates on the basis that employers receive a subsidy towards the cost of reduced productivity by employees with a disability. Supported employees are **eligible to apply for the MTG.**

* A person is considered to be "in employment" where they are liable for PRSI and PAYE and Superannuation deductions (where relevant). They must also have a contract of employment and be protected by Labour Legislation.

Exceptional Circumstances

Eligibility for the grant may also be considered in "Exceptional Circumstances" other than for employment retention, for a person with a severe disability who lives in very isolated circumstances subject to the above conditions. Additionally their disability must prevent them from using public transport and they must have serious transport difficulties.

NB Public Transport does not include "Taxi"

A. Determination of Amount Payable

Means

Assessment of Means

The means of the applicant and the applicant's spouse/partner, if any are taken into account. Means are determined on the basis of gross income less P.A.Y.E, PRSI and Superannuation deductions including income from assets, investments, letting etc. The full weekly payments in respect of rent and mortgage should be deducted from income to arrive at the net income for purposes of assessment.

Assessment of Income from Capital/Savings/Investments as based on assessment used by DSFA. The following table is applicable for the assessment of income from Capital/Savings/Investments up to 30/05/07

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Over €40,000	€4.00 per €1,000

*If applicant is married/cohabiting with another person, then above formula is applied to half the joint capital/savings/investments.

The following table is applicable for the assessment of income from Capital/Savings/Investments applicable from 01/06/07

Capital :	Weekly means assessed :
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Over €70,000	€4.00 per €1,000

The following should NOT be considered as means:

- Blind Welfare Allowance;
- The Household financial gain received, by virtue of the fact that the spouse/partner is receiving Carers Allowance/Benefit.

Where applicants spouse/partner is receiving Carers Allowance/Benefit, the actual amount of Carers Allowance/ Benefit is ignored and the applicants assessable income is determined as being the primary payment that he/she is receiving in respect of himself/herself, plus the Supplementary Welfare Allowance Adult Dependents rate plus the child dependants allowance rate(s) of his primary payment (where relevant).

Where Carers Allowance/ Benefit is being paid to a person who is providing care and attention for the applicant and who is not the applicants spouse/partner, the Carers Allowance/Benefit is ignored and the applicant is assessed solely on his/her assessable income.

- Child Benefit
- Domiciliary Care Allowance
- Foster Care Allowance
- Higher Education Grants
- Income up to a maximum amount approved in employment of a therapeutic or rehabilitative nature. Such persons would be receiving a payment from DSFA eg. DA, IP etc. and who have been approved by them for employment of a therapeutic or rehabilitative nature.
- Living Alone Allowance
- Monies received from charitable organisations other than remuneration
- Special compensation awards that are exempted by legislation, e.g. Hep C, Thalidomide
- Supplementary Welfare Allowance
- Travel and Meal Allowances paid to participants on Government Approved Schemes.
- Repayments received under the Health (Repayment Scheme) Act 2006.

Income Guidelines

Net Income

*Up to National Average Industrial Wage
(From 01/01/2007 €31,251.48)*

Maximum Grant

€4917.20

Any Net Income in excess of the National Average Industrial Wage (last yearly available data from the Central Statistics Office) is deducted from the maximum grant payable, i.e. €4,917.20 on a Euro by Euro basis.

Grant Payable

The maximum Motorised Transport Grant currently is €4,917.20 (2007). A grant of 75% of the actual purchase outlay, which takes account of any entitlement to Vehicle Registration Tax (VRT) exemption and Value Added Tax (VAT) refund under the

Disabled Drivers and Disabled Passengers (Tax Concessions) Scheme, for those who are beneficiaries and the trade-in value of a vehicle, may be paid up to the maximum available grant less any excess amount over the National Average Industrial Wage figure (€31,251.48, from 1/1/07).

Relevant Information:

The payment of a Motorised Transport Grant is subject to the condition that the Health Service Executive will not be called upon at any future date to contribute towards the running costs of the vehicle. In this context, a Mobility Allowance recipient cannot qualify for the Motorised Transport Grant. Similarly, a person who has received the Motorised Transport Grant in the previous three years cannot qualify for Mobility Allowance. Where a Mobility Allowance recipient wishes to avail of a Motorised Transport Grant, Mobility Allowance should cease from the date of payment of the Motorised Transport Grant.

When a grant has previously been paid towards the purchase of a vehicle, a grant towards replacement of the vehicle will not normally be payable until three years from the date that the previous grant was paid, except in extenuating circumstances. Such extenuating circumstances might include fire or theft of the vehicle for which the grant was previously paid. However, any insurance settlement would have to be considered in determining the amount of a grant in such circumstances. Payment of a further grant where a person is up-grading his/her vehicle should not be considered in such extenuating circumstances.

Calculation of Grant Payable

See attached sheet

B. Procedure

- The applicant must complete an official application form and send it to the local Community Services Office.
 - He/she should also give details of existing employment.
 - Evidence of income must be supplied.
 - Administration should date stamp the application form and keep a record of the relevant details.
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- On completion of the financial and medical assessment it should be then returned to administration.
- Based on the information supplied on the financial assessment and medical assessment and the eligibility criteria the Health Service Executive's relevant authorising officer(s) for the area makes a decision on entitlement.
 - Administration should send it to the area SMO for medical assessment and to Community Welfare Services/appropriate section for financial assessment.
 - Administration should also check if the applicant has applied for or received a Primary Medical Certificate for the purposes of the Disabled Drivers & Disabled Passengers (Tax Concessions) Scheme.
 - Verification of the value of any vehicle being traded-in should also be obtained.

**MOTORISED TRANSPORT GRANT
CALCULATION SHEET**

A	Cost of New Vehicle	€ _____															
	Less																
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C	Trade-In Value of Old Vehicle € _____																
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Signed: _____

Date : _____



MOTORISED TRANSPORT GRANT (MTG)

With effect from July 2008

Establishment and Legal basis

The Motorised Transport Grant was introduced in 1968 by way of Circular 7/68. The guidelines were reviewed and modified in letters of 19 February 1974, 15 March 1974 and 15 January 1998 and circulars of July 2002 and March 2007.

Eligibility:

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available grant less any excess amount over the National Average Industrial Wage figure (€31,251.48, from 1/1/07).

Relevant Information:

The payment of a Motorised Transport Grant is subject to the condition that the Health Service Executive will not be called upon at any future date to contribute towards the running costs of the vehicle. In this context, a Mobility Allowance recipient cannot qualify for the Motorised Transport Grant. Similarly, a person who has received the Motorised Transport Grant in the previous three years cannot qualify for Mobility Allowance. Where a Mobility Allowance recipient wishes to avail of a Motorised Transport Grant, Mobility Allowance should cease from the date of payment of the Motorised Transport Grant.

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Calculation of Grant Payable

See attached sheet.

B. Procedure

- The applicant must complete an official application form and send it to the local Community Services Office.
- He/she should also give details of existing employment.
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- Administration should date stamp the application form and keep a record of the relevant details.
- A copy of the supporting documentation must be taken and initialed by the viewing officer.
- The original supporting documentation together with an acknowledgement of the application must be sent to the applicant.
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- Based on the information supplied on the financial assessment and medical assessment and the eligibility criteria the Health Service Executive's relevant authorising officer(s) for the area makes a decision on entitlement.
- Administration should send it to the area SMO for medical assessment and to Community Welfare Services/appropriate section for financial assessment.
- Administration should also check if the applicant has applied for or received a Primary Medical Certificate for the purposes of the Disabled Drivers & Disabled Passengers (Tax Concessions) Scheme.
- Verification of the value of any vehicle being traded-in should also be obtained.
- A decision may be taken, in principle, to approve the application and issue notification prior to purchase of the vehicle but the grant will only be paid pending receipt of the necessary supporting documentation to establish bona fide vehicle

purchase and necessary vehicle adaptations, i.e. receipted invoices, vehicle registration certificate, etc.

- In relation to successful applications, the Health Service Executive's relevant authorising officer(s) for the area will notify the applicant of the details of the determination.
- Applicants should be provided with a reminder of their legal obligation to ensure adequate insurance coverage, road tax, driver's licence (where applicable) etc. Applicant should also be informed that the Health Service Executive will not be liable for any ongoing vehicle running costs, maintenance, etc.
- The Motorised Transport Grant will then be paid on receipt of a dated and detailed invoice/receipt.

C. Appeals

Applicant must be notified (in writing) of the outcome of any decision on application or review (favourable and unfavourable). In the event of an unfavourable decision, formal notification should be issued informing the applicant of his/her right of appeal and indicating where he/she should send the appeal. The applicant should appeal within 21 days of receipt of letter of refusal.

**MOTORISED TRANSPORT GRANT
CALCULATION SHEET**

A	Cost of New Vehicle	€ _____
	Less	
B	VAT & VRT (only if PMC Holder) € _____	
C	Trade-In Value of Old Vehicle € _____	
D	Total Deductions (B + C)	€ _____
E	Actual Cost of Vehicle (A-D)	€ _____
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G	Nett Income in Excess of National Average Industrial Wage	€ _____
	<u>MTG Approved</u>	
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I	75% of Actual Cost of Vehicle (MTG of up to 75% of Actual Cost of Vehicle is provided)	€ _____
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Signed: _____		Date : _____

Appendix 4: Responses of the Dept. of Health and Children and the HSE to the Draft Report.

Dept. Of Health and Children's Response:



20 August 2012

Your Reference: HC4/10/1994

Fintan Butler
Senior Investigator
Office of the Ombudsman
18 Lower Leeson St.
Dublin 2

Dear Mr Butler,

I refer to your letter and enclosure of 25th July 2012 in relation to the Ombudsman's investigation of a complaint by [redacted] regarding an application by his son [redacted] for a motorised transport grant.

The Department has no representations to make in respect of your investigation report relating to this case. The Department notes your finding.

The Department's position remains that a decision in relation to individual applications for allowances/grants and the administration of the scheme, is entirely a matter for the HSE through their assessment and appeals procedure. I would also remind the Ombudsman that the Department is considering the future of the Motorised Transport Grant and in this context the findings in your investigation relating to the scheme is timely.

Yours sincerely


Colm Desmond
Principal Officer

Tuis Aire do
Sábhailteacht  Other
Patient Safety  First

Grádaire: 01-635-4000 / 01-635-4001

An Roinn Sláinte / Department of Health
Teach Inseán Bialaí Áras Cluain 2 Fón/Tel: (01) 635 4000 Ríphost/E-mail: info@health.gov.ie
Hawkins House Dublin 2 Fón/Fax: (01) 635 4001 Sábhairde Grádaire/Web: www.doh.ie

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HSE's Response:

HSE response to the Draft Report on the Ombudsman Investigation into the Refusal of a Motorised Transport Grant by the Health Service Executive.

Please find below the HSE's observations and commentary on the draft report on the Ombudsman Investigation into the Refusal of a Motorised Transport Grant by the Health Service Executive.

Re: Points 1, and 2 of draft report:

The Motorised Transport Grant (MTG) is administered by the HSE on the basis of Circulars issued by the Department of Health (DoH). The purpose of the MTG is to assist severely disabled people to retain employment or alternatively MTG may be granted in exceptional circumstances, where the applicant lives in very isolated circumstances and their disability prevents them from using public transport and they have serious transport difficulties.

It is clear that the main purpose of the MTG as per the DoH Circular 2008 is to enable severely disabled people to retain employment and that it is only in exceptional circumstances that the Grant may be approved for a person who lives in very isolated circumstances. Whether the applicant lives in very isolated circumstances is the main alternative to the retention of employment. It is also to be noted that the inability to use public transport and having severe transport difficulties are additional criteria to the applicant living in very isolated circumstances. The interpretation within the draft report would appear at variance with the HSE's understanding.

The written complaint to the Office of the Ombudsman was on the grounds that Mr. [redacted] should qualify on exceptional circumstances. The HSE Appeals Office did not investigate this aspect of Mr. [redacted] complaint because Mr. [redacted] was confirmed as not being medically eligible and that was the basis of the original refusal. The appeal to the HSE appeals office was on the grounds of very limited use of his limbs.

On the basis of the information available to the HSE appeals office in applying the DoH Circular 2008 it was considered that Mr. [redacted] would not meet the criteria of exceptional circumstances. Firstly, he did not live in very isolated circumstances in that he lives with his family, he attended the day centre and there is reference to his enjoying outings. Secondly, he did not have severe transport difficulties in that he was driven to the day centre and on outings in the family car, and thirdly, (although conflicting statements are available) he could use public transport at least if assisted. The question of whether the applicant could use public transport and whether he had severe transport difficulties only comes into consideration if the applicant lives in very isolated circumstances, which Mr. [redacted] did not. No evidence was provided to support a claim that Mr. [redacted] lived in very isolated circumstances.

1

Re: Point 4 of draft report

The HSE Medical Officers record the results of a physical examination on a form. However, it is not correct to state that Mr. [redacted] was refused MTG on the basis of an examination for the PMC. The finding on physical examination by the Medical staff that Mr. [redacted] was medically ineligible for the MTG was the reason that he was refused. Mr. [redacted] did have a proper medical examination relevant to determining his eligibility for the MTG.

Re: Appeals as stated in the draft report

This aspect deals mainly with the medical aspects. The clerical error regarding dates is of no apparent significance.

Re: Point 5 of draft report

Paragraph 1

There is no material difference in the DoH Circular 2008 and the HSE's version of it circulated in 2009. The main differences relate to the financial assessment and average industrial wage. Average Industrial Wage in 2008 was €36,800 and in 2009 was €33,445. There was a longer list of income not to be taken into account for means testing in the 2009 Circular.

Note the **attached** correspondence from Mr. Michael Smith confirming that the 2009 Circular circulated by the HSE was approved by the DoH.

Note also the **attached** correspondence from the DoH confirming that the HSE could update certain aspects of their Circular. Mr. Michael Smith was the Chairperson of the National Health Board Working Group on disability related allowances which worked under the auspices of the DoH to review existing circulars. He issued the 2009 document to the Appeals Officer (North West) for circulation to the National Appeals Officers Group, which she did, having ascertained that these had been approved by the DOH. (copy **attached**)

Please see **attached** an e-mail from Mr. Smith circulating the 2009 document to the members of the working group from other HSE areas for onward distribution. These documents show that Community Services in Donegal were using the correct information and were using the same details of the MTG scheme as were issued to the rest of the country.

The Appeals Office was not involved in this issue, nor was it aware that there was a complaint made to the Office of the Ombudsman at that point in time. The matter sent to the HSE was referred to as a complaint and was being addressed in accordance with the complaints procedure.

The following footnote in the draft report "*The availability of transport to the day centre could be regarded as an important consideration in whether the MTG application should succeed*" gives rise to the following query: Is the Office of the

Ombudsman regarding the MTG as a means of providing transport to day centres for people with disabilities?

If so, this would appear to be at variance with the criteria set down in the DoH Circular 2008 for the MTG, i.e. the HSE may pay a grant towards the purchase of a vehicle or an adaptation of a vehicle being purchased by a person with a severe disability who is 17 years or over where a vehicle is essential for him or her to retain employment. Eligibility for the grant may also be assessed in "exceptional circumstances", other than for employment retention, for a person with a severe disability who lives in very isolated circumstances subject to the above conditions. Additionally, the disability must prevent them from using public transport and they must have serious transport difficulties subject to a means test. Any net income in excess of the net average industrial wage is deducted from the maximum grant payable. An application for the MTG should only succeed if the eligibility criteria are met. It is correct to say that the HSE assists with transport to day centres but not by means of the MTG as this is not the purpose of the grant..

The HSE Senior Area Medical Officers' reference to "a strict interpretation of the guidelines available to us" meant that they adhere to the provisions of the DoH Circular 2008 which sets down criteria for administration of the MTG.

Re: Point 6.0 of draft report

Various paras

The statistics for those in receipt of MTG in Donegal as compared to other counties will clearly demonstrate that Donegal has a far higher number of people in receipt of the MTG in proportion to its population than any other county in Ireland. The draft report acknowledges that no comparative study has been carried out, however serious issues have been raised in the draft report regarding the approach adopted in Donegal towards the administration of the MTG.

The position was that one of the essential criteria to qualify for the MTG is that the applicant must be medically eligible for it. The question of medical eligibility and what constitutes 'Severe Disability' in the context of the MTG is a medical matter. There is a recent e-mail from the DoH confirming this. The Senior Area Medical Officer was fully aware of the position of the DDMBA and she did not indicate any wish to change the medical decision that Mr. Maguire did not meet the medical criteria for the MTG.

Re: Point 7 of draft report

This point is mainly about the medical criteria.

Re: Point 8 of draft report

The HSE Appeals Office was aware of the DDMBA decision but taking into account the information from the Area Medical Officer and the Day Centre Nurse, it appeared that the medical determination of the two HSE Medical Officers was reliable and should be accepted. The information from the Area Medical Officer that Mr. . was "running and jumping" in the clinic and the information from the Day Centre

Nurse that Mr. . . . was "fully mobile, was hyperactive and could run in spite of being held", was very difficult to reconcile with the DDMBA determination that Mr. . . . "was wholly or almost wholly without the use of both legs". The Office of the Ombudsman is indicating that the DDMBA has carried out an assessment in the context of effective use of the legs. This is not the criteria in the DoH circulars and in any case it raises new issues of interpretation. The Appeals Office, had information about conflicting medical opinions (but about two different schemes) and it exercised its independent judgement and believed that the opinion of the HSE Medical Officers was credible in the context of the MTG.

Re: Point 9 of the draft report

The Appeals Office accepted the medical decision of the HSE Medical Officers. While the Appeals Office regarded the assessment of medical eligibility as a medical matter, it did note that other information supported the finding of the HSE Medical Officers. From the perspective of a non medically qualified person (as in the case of the Appeals Officers) and in the common sense interpretation of the statement: "Wholly or almost wholly without the use of one or both legs", it was very difficult to reconcile this statement with the confirmation that the person could walk, run and jump.

It is again worth noting that the main qualifying condition under exceptional circumstances is that the applicant lives in "very isolated circumstances".

As Mr. . . . did not live in very isolated circumstances, the issue of whether he could use public transport was not directly relevant. In any case, it is well confirmed (Mr. . . . mother's statement to the AMO and the confirmation from the day centre) that Mr. . . . can use public transport with assistance and supervision.

Re: Point 10 of draft report

As stated above in assessing applicants for the MTG the interpretation of "Severe Disability" in the context of the MTG is a clinical matter and medical staff who are employed by the HSE carry out this work.

It was noted (footnote, page 24) that an Ombudsman staff member observed the work of the DDMBA but no observation was made of the work of the HSE Medical Officers.

Re: Point 11 of the draft report

It is important to restate that the DoH Circular letters for the implementation of the MTG and the MA have not been changed. Please see the **attached** e-mail dated 25/06/2012 confirming that while the DoH has not issued a definition of severe disability for application by Medical Officers in assessing eligibility for the MTG scheme, the Department's position has always been that the assessment of severe disability is a matter for individual medical officers in the HSE. This correspondence indicates that the Department is aware that there were internal attempts within and between health boards to standardise medical criteria.

On a point of information the DoH did form a Group in 2004 to deal with the issue of medical eligibility for the Health allowances and schemes and a number of meetings were held.

It can be accepted that there is an urgent need to get a medical consensus of what constitutes severe disability in the context of the MTG, MA and PMC.

Re: Point 12.0 of the draft report

This whole aspect of the draft report deals with the position in Donegal. It is accepted that a standardised approach throughout the country would be helpful. Please see reference to what has and is being done in this regard at the end of this document.

From observations from the appeals from around the country it appears that there is a reasonably consistent approach to assessing eligibility for the MTG and the appeals process which operates.

It does not appear to the HSE that there is an extremely restrictive interpretation of the assessment criteria for MTG eligibility in Donegal or that the entire scheme is being curtailed. The statistics and any review of the cases in receipt of MTG in Donegal will confirm this.

The draft report acknowledges (page 33) that 40% of all MTG awarded in the period from 2009 to 2011 were from Donegal, which is evidence that the scheme is not being curtailed in a discriminatory way.

Re: page 29,

The draft report confirms the correct purpose of the MTG scheme and it does not include the provision of general transport services for those with severe disability. This is relevant to the comments made earlier in this document about the availability of transport for Mr. . . . to attend the day centre.

As stated above, it appears to the HSE from considering appeals from many parts of the country that the assessments in Donegal are not out of line with the approach adopted nationally.

Re: HSE Appeals

It is correct that there is no statutory appeals procedure in the case of the MTG and the only written statement by the HSE (on the internet) refers to the review. Given that there is no statutory appeals procedure for the MTG, is it reasonable to compare the administrative process of the scheme to statutory appeals processes, such as those relating to the statutory Social Welfare schemes.

The HSE Appeals Office did exercise independence and authority in deciding that the assessment of medical eligibility by the HSE Medical Officers should be accepted. This was the judgement of the Appeals Office.

The Appeals Office has consistently stated the view that the assessment of severe disability is a medical matter and personal views of Appeals Officers are not the determining factor.

The HSE will be reviewing the appeals procedure for the MTG scheme.

Summary comments

The statistics relating to those in receipt of the MTG for each of the counties in the country clearly demonstrate that the administrative process used in Donegal in relation to the MTG is not restrictive in nature.

The assessment of severe disability for MTG is a matter for the individual Medical Officers employed by the HSE. The position of the Department of Health as set out in the attached e-mail confirms that this is and has always been the position.

It is, however, difficult to understand the finding that the HSE Medical Officers did not have proper authority to make their decision. HSE Medical Officers have the authority to decide medical eligibility for the MTG.

It would appear from the draft report that the Office of the Ombudsman sees the MTG scheme as one the purpose of which is to meet the essential transport needs of those with severe disabilities. Evidence for this comes from the following two references: the confirmation that the complaint would not be pursued further if the HSE had been providing transport for Mr. . . . to attend the day centre (page 14) and the footnote statement that *"The availability of transport to the day centre could be regarded as an important consideration in whether the MTG application should succeed. It is true that the HSE assists with transport to day centres but not by means of the MTG. Clearly an application for the MTG should only succeed if the criteria of eligibility are met.* It appears that it can only be in this context that the findings of discrimination can be made.

It is understandable and reasonable that the Office of the Ombudsman should pursue their effort to obtain a change in the nature of the scheme. However, it is not reasonable that in attempting to obtain this, there should be such criticism of all levels and categories of staff in the HSE (who dealt with this case) who are genuinely and sincerely applying the terms of the existing scheme as set out in the DoH circular. It is certainly not reasonable, acceptable or justified to have singled out the Appeals Office for such criticism.

The decision of the Appeals Office to disallow the appeal was based on the very relevant ground that Mr. . . . did not meet the medical criteria of eligibility as determined by the HSE Medical Officers. It seems strange that this the Office of the Ombudsman finds irrelevant.

HSE Appeals Services - Update.

- A national appeals service (excluding Dublin/North East area) was established on the 1st July 2011. Significant discussions on reorganisation took place from 2009 onwards in relation to the type of appeals service to be

developed for the health services post the transfer of Supplementary Welfare Allowance to the Department of Social Protection. Work is ongoing to further enhance and develop the HSE Appeals service.

- Discussions have been ongoing with the relevant personnel with a view to developing an appropriate appeals procedure relating to the health services where an opportunity to appeal is offered. The one main exception is the Nursing Homes Support Scheme (NHSS) where there is a statutory appeals procedure as set out in the NHSS Act 2009. The availability of agreed and HSE approved appeals procedures will eliminate many of the difficulties identified in the appeals procedure and stated in the current draft report.
- Discussions have commenced with senior HSE personnel regarding the arrangements which must be improved for standardised practices where clinical decisions taken by clinical personnel are involved.
- Efforts are continuing to get agreed interpretations of key elements of the criteria of eligibility for certain services/allowances, such as MTG. This as will be appreciated is a slow process.
- Continued communication is being maintained with the DoH/HSE regarding whether any changes are envisaged in the terms of the various criteria of eligibility for services/allowances.

HSE
22nd August 2012

Response from HSE Donegal Community Services:



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Ballybofey
Co. Donegal
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3rd August, 2012.

Re: Ombudsman's Report on MTG Appeal in Donegal

Having carefully read and considered the Ombudsman's report on the above, we wish to make the following points in so far as they relate directly to the operation by the HSE of the MTG scheme in Donegal.

1) The Ombudsman's report makes comment on the fact that HSE Donegal were assessing applications on the basis of a circular of March 2009 and that therefore we may be acting on the basis of an incorrect circular. Careful perusal of the two circulars shows that the only difference between the 2008 and the 2009 circulars relate to the financial criteria (which are less restrictive in the 2009 circular) and therefore is not relevant to the substance of the Ombudsman's report in this instance. However, for the record we wish to state the HSE Donegal operate the MTG scheme in line with the Department of Health(DoH) circular of 1st Dec 2008.

2) We would like to highlight that when Mr. [redacted] was assessed by the Area Medical Officer, he was seen to be "running around the clinic room", "jumping" and was described as "hyperactive". It is not reported by the Medical Officer that he was ataxic or that his gait was unstable per se. It was noted that his parents reported that due to his medication that his balance was unstable, however, as this was not observed during assessment, and in the absence of supporting documentation from a Consultant Neurologist or Physician, and in light of his clinical presentation on the day of assessment, the conclusion would be that his balance did not appear to be adversely affected. All of the above supports the clinical judgment that there was no functional impairment to his mobility.

We are not relating the statement of his parents that "their son would be unable to walk alone" or that his inability to sense danger prevents him from being allowed to walk alone". However, as outlined in our general statement to the Ombudsman on 12/11/2011 the criteria for MTG have been deliberately stated in broad terms leaving it therefore open to the interpretation of the Medical Officer. It seems reasonable to assume that this was to allow the Senior Medical officers in the health boards some discretion in determining the merits of individual applications.

Historically, in the absence of clear definition of "severe disability", our practice was determined by relevant circulars, evidence based best practice, standardized disability assessment tools, guidance documents and reports prepared by the Principal Medical Officers and discussions which took place at Principal Medical Officer (PMO) national meetings in order to determine how the definition of "severe disability" is interpreted in other HSE areas.

3) The Ombudsman's report states that in order to help in standardizing assessments, "an algorithm was developed for use by the medical officers when assessing severe disability for MTG applications" and that this is not in use elsewhere in the country. This on one hand, gives the impression that Donegal are assessing applications for MTG differently to their counterparts in the rest of the country when in fact all the algorithm does is to provide guidelines and outline the steps and decision points in the assessment process. However, later in the report, the Ombudsman makes a comparison of the Donegal applications to ones in Kerry but then raises issues as to the application of the scheme in the latter county and in so doing states that there is no obvious basis for believing that the HSE Donegal has been operating the scheme inappropriately.

4) The Ombudsman's report states that there appears to be a view within the HSE Donegal that relative to other parts of the country it has too many MTG recipients. There was concern in Donegal that we were approving higher numbers of applicants and this caused our PMO at the time naturally enough to review our practice. As part of that she linked with colleagues in other parts of the country to see did we need to re-align ourselves with what was happening nationally. However, we wish to stress that all decisions were made on the basis of clinical assessment and not on the basis of the number of applicants.

5) The Ombudsman's report states that the HSE Donegal appears to have developed its own approach to the administration of the MTG and that we have developed guidelines and forms that are not in use elsewhere and that we were relying on the medical assessment for the MTG with the PMC. We wish to make it clear that we drew up guidelines primarily to ensure consistency of internal practice in the absence of national standardization. Also, discussions of national PMO groups lead our PMO at the time, to conclude that this was the case in many areas of the country. Secondly, the form we developed for medical assessment was designed for two purposes, namely the streamlining of administration procedure and far more importantly, for the convenience of applicants, who in many cases will apply for both an MTG and a PMC sequentially and thus rather than being brought in for two medical assessments, the new system allowed for them to be dealt with in one. Also, if clinical assessment indicated that a client met the medical grounds of another of the mobility related grants, other than the one they applied for, in order to deliver a fair and equitable service, the client would be advised of same. Given, by definition, the nature of the applicants for these schemes and as named in the report the large land mass of the county (involving long journeys) we believe that this was a continuous to be a valuable, fair and efficient method of administration, based on the best interest and convenience of its users.

The criteria for the two schemes are then applied to the medical information arising from the assessment in order to come to a decision as to the applicant's eligibility for either scheme. We do not feel that the Ombudsman's report properly recognizes this but seems instead to miss the point and criticizes us for treating the two schemes as in effect the same.

6) The Ombudsman's report says that in using the algorithm which was developed, an MTG applicant will meet the criteria of medical eligibility where the answer is yes to the question "does the applicant have a severe disability that affects their mobility sufficient that they meet the criteria for PMC" and go on to state that as the applicant was awarded a PMC on appeal that that was in effect a "yes" to that question and this should have resulted in the applicant being granted the MTG. However this ignores a discussion with the SMO quoted in the report that clearly shows that the eligibility for the PMC does not grant an automatic right to an MTG, and vice versa, and that the algorithm is a guidance document for use by AMOs. Therefore we

do not believe that it is fair to conclude that we do not operate the schemes independently of one another despite criticism of us on this very point as mentioned in point five above.

7) The report criticizes us for using medical criteria which are too restrictive and not representative of the general approach across the HSE nationally. We feel the Ombudsman report somewhat contradicts itself on the second point by having earlier acknowledged that there is no national approach. On the former point, we used some common standardized and internationally recognized tools in informing decisions in determining the criteria for severe disability - all of which is clearly outlined in a previous general statement to the Ombudsman 12/12/2011. We also took note of how it is described in the PMC scheme and the PMO had discussions with her colleagues nationally on the matter (see above). However, we do accept that we need to consider the findings of the Ombudsman in this case in relation to our future practice and that this needs to happen in conjunction with the Department of Health.

8) The report finds that our processes were too restrictive and improperly discriminatory, essentially, as we had not taken account of the findings of the Equality Officer in relation to mobility schemes in general. However, as acknowledged by the Ombudsman, the DoH is responsible for the overall policy of the scheme, the HSE is only responsible for its administration and in our view therefore we are bound to try and operate it as fairly as possible on the basis of the DoH circular pertinent to same. We, therefore take issue with this finding as to operate it on the basis of the Equality Officer's findings in the absence of direction to that effect from the DoH would have been inappropriate for us purely administrators of the scheme.

Many thanks.

Yours sincerely,

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