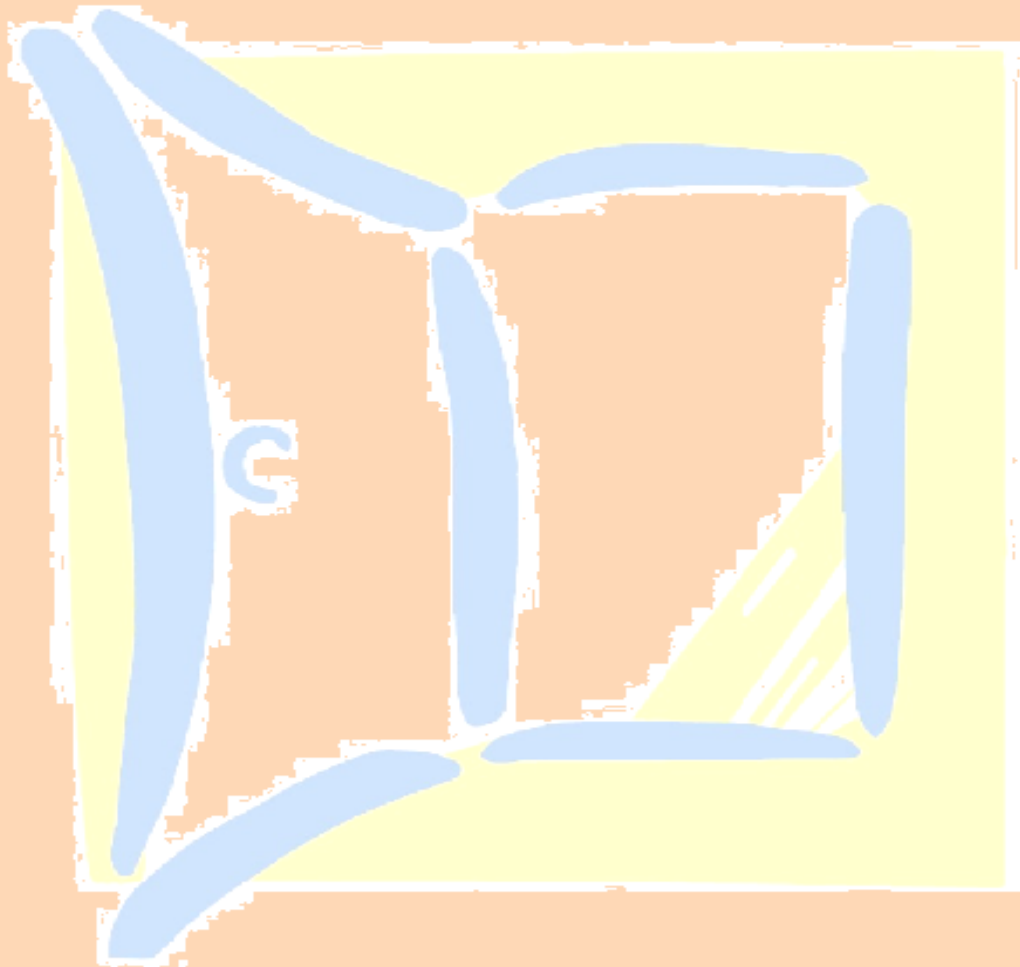


Social Welfare Appeals Office

Annual Report 2011



**Report by the Chief Appeals Officer on the activities
of the Social Welfare Appeals Office in 2011**



Ms. Joan Burton T.D.
Minister for Social Protection
Áras Mhic Dhiarmada
Dublin 1

June 2012

Dear Minister,

In accordance with the provisions of section 308 (1) of the Social Welfare Consolidation Act 2005, I hereby submit a report on the activities of the Social Welfare Appeals Office for the year ended 31 December 2011.

Yours sincerely,

A handwritten signature in blue ink that reads "Geraldine Gleeson". The signature is written in a cursive style.

Geraldine Gleeson
Chief Appeals Officer

Contents

Introduction	1
Statistical Trends	2
Social Welfare Appeals Office	12
Meetings and Consultations	14
Organisational and Operational Matters	17
Case Studies	18
Appendix 1 - Organisation Chart	37



Social Welfare Appeals Office
D'Olier House
D'Olier Street
Dublin 2

Telephone: Locall 1890 74 74 34
Fax: (01) 671 8391
e-mail: swappeals@welfare.ie
www.socialwelfareappeals.ie

PRN A11/0655
ISSN 1649-7309

INTRODUCTION

2011 was another challenging year as the high level of appeals received by my office continued unabated and our customers continued to experience significant delays. Nonetheless, I am happy to report that the number of decisions finalised in 2011 was 34,027 or 20.8% ahead of the 28,166 cases finalised in 2010 (which itself was 58% ahead of 2009). This indicates that the measures put in place over the last two years are now working. These measures included the assignment of 12 additional Appeals Officers, the re-employment of some retired officers for 18 months, more efficient processing and enhanced IT systems. Another sign of improvement is that in 2011, for the first time since 2008, the number of cases finalised exceeded receipts and the backlog reduced from a high of 21,000 to 17,488. While the processing times remained stubbornly high, this was a function of the catch up situation as we reduced the backlog of cases and, at the time of writing, the processing times have reduced significantly.

During 2011, we continued to review the way we work in order to further increase our capacity and improve our service to our customers. To this end, we have developed a new method of operating which will ensure the process will be quicker for appellants. An outline of the new model and the efficiencies gained are outlined in this report.

Following on from the transfer of the Community Welfare Service into the Department of Social Protection, 2011 also saw the merger of the Community Welfare appeals service and the Social Welfare Appeals Office (SWAO). Appeals in relation to supplementary welfare allowance are now made directly to the SWAO where previously they were made in the first instance to the Health Service Executive (HSE), and, in the event that a person was dissatisfied with the outcome of that appeal, he or she could then appeal to the SWAO. Following the merger this two-step process has ceased. Further details are outlined later in this report.

A major challenge in 2011 was to maintain high standards despite the continued pressure under which we were operating. To this end, throughout the year a lot of effort was put into training through targeted training courses and also through meetings of Appeals Officers to discuss issues and address consistency.

Overall, 2011 saw some significant transformation and I, along with my Deputy Mr Dan Kavanagh, would like to record our appreciation to all Appeals Officers and staff for their continued dedication and commitment in this regard.

Geraldine Gleeson

June 2012

Statistical Trends – 2011

Our main statistical data for 2011 is set out in commentary form below and in the "Workflow Chart" and tables which follow.

20,274 appeals on hands at the beginning of the year. That total workload was 6.4% higher than the workload of 48,400 for 2010.

Appeals Received in 2011

The number of appeals being made to the Social Welfare Appeals Office remains high. In 2011 the Office received 31,241 appeals. This is slightly less than the 32,432 appeals received in 2010 but still significantly higher than the number of appeals being received prior to 2009.

Clarifications in 2011

In addition to the 31,241 appeals registered in 2011, a further 3,894 appeals were received where it appeared to us that the reason for the adverse decision may not have been fully understood by the appellant. In those circumstances, the letter of appeal was referred to the relevant scheme area of the Department requesting that the decision be clarified for the appellant. We informed the appellant accordingly and advised that if they were still dissatisfied with the decision following the Department's clarification, they could then appeal the decision to my Office. During 2011, only 1,362 (34%) of the 3,894 cases identified as requiring clarification were subsequently registered as formal appeals. This is considered to be a very practical way of dealing with such appeals so as to avoid unnecessarily invoking the full appeals process.

Appeals Types in 2011

Following on from the merger in October 2011, the number of SWA appeals received increased by 206% when compared to 2010.

Appeals in relation to Invalidity Pensions increased by 123%; Domiciliary Care Allowance by 29%, and Disability Allowance by 13% while appeals in relation Jobseeker's Allowance decreased by 38% and Illness Benefit by 33%.

Workload for 2011

The workload of 51,515 for 2011 was arrived at by adding the 31,241 appeals received to the

Appeals Finalised in 2011

We finalised 34,027 appeals in 2011 which represented a 20.8% increase on 2010.

The appeals finalised were broken down between:

- Appeals Officers (74.6%): 25,390 were finalised by Appeals Officers either summarily or by way of oral hearings (17,499 or 62.1% in 2010),
- Revised Decisions (17.7%): 6,035 were finalised as a result of revised decisions being made by Deciding Officers before the appeals were referred to an Appeals Officer (7,282 or 25.9% in 2010), and
- Withdrawn (7.7%): 2,602 were withdrawn or otherwise not pursued by the appellant (3,385 or 12% in 2009).

Appeals Outcomes in 2011

The outcomes of the 34,027 appeals finalised in 2011 were broken down as follows:

- Favourable (42.2%): 14,366 of the appeals finalised had a favourable outcome for the appellant in that they were either allowed in
- way of summary decisions of which 4,094 (24.7%) had a favourable outcome for the appellant. In 2010, 18.9% had a favourable outcome.

Processing Times in 2011

During 2011, the average time taken to process all appeals was 32.5 weeks (28 weeks in 2010). However, if allowance is made for the 25% most protracted cases the average time fell to 23.2 weeks (19.4 weeks in 2010).

Of the 32.5 weeks overall average,

- 12.9 weeks was attributable to work in progress in the Department
- 1.7 weeks was due to responses awaited from appellants
- 17.9 weeks was attributable to ongoing processes within the Social Welfare Appeals Office

When these figures are broken down by process type, the overall average waiting time for an appeal dealt with by way of a summary decision in 2011 was 25.1 weeks, while the

full or in part or resolved by way of a revised decision by a Deciding Officer in favour of the appellant (42.7% in 2010),

- Unfavourable (50.1%): 17,059 of the appeals finalised were disallowed thereby upholding the decision of the Deciding Officer. (45.3% in 2010), and
- Withdrawn (7.7%): As previously indicated, 2,602 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (12% in 2010).

Determinations by Appeals Officers in 2011

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

- Oral Hearings (34.7%): 8,821 of the 25,390 appeals finalised in 2011 were dealt with by way of oral hearings, of which 4,237 (48%) had a favourable outcome. In 2010, 45% had a favourable outcome out of 5,514 cases dealt with by way of oral hearings.
- Summary Decisions (65.3%): The balance of 16,569 appeals finalised were dealt with by

average time to process an oral hearing was 52.5 weeks. The average waiting time by scheme and process type are set out in Table 1.

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

- seeking the Department's submission on the grounds for the appeal,
- further medical assessments by the Department in certain illness related cases,
- affording the appellant the opportunity to respond or submit any additional medical evidence where there is an unfavourable outcome following further medical assessments by the Department,
- further investigation by Social Welfare Inspectors where required and
- the logistics involved in arranging oral appeal hearings where deemed appropriate.

Appeals by Gender in 2011

A gender breakdown of appeals received in 2011 revealed that 46.3% were from men and 53.7% from women. The corresponding breakdown for 2010 was 47.9% and 52.1% respectively. In terms of favourable outcomes in 2011, 40.8% of men and 43.7% of women benefited.

Statistical tables:

Table 1:

Appeals processing times by scheme 2011 – Summary and Oral

Table 2.

Appeals received and finalised 2011

Table 3. Appeals received 2004 – 2011

Table 4.

Outcome of appeals by category 2011

Table 5.

Appeals in progress at 31 December 2004 – 2011

Table 6.

Appeals statistics 1991 – 2011

Workflow Chart - 2011

(Corresponding figures for 2010 are in brackets)

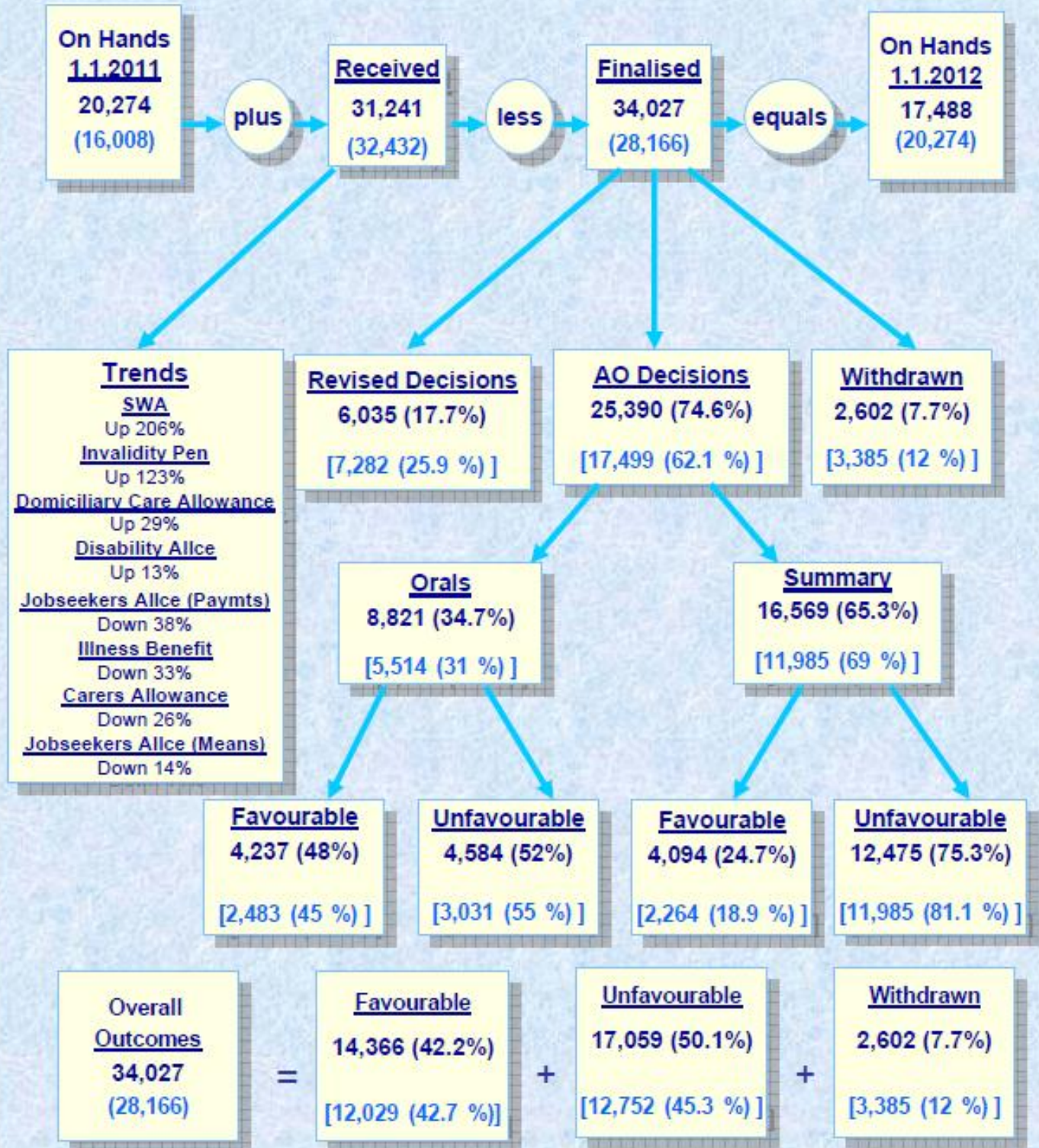


Table 1. Appeals processing times by scheme 2011 – Summary and Oral

	Average processing times (weeks) Summary Decisions	Average processing times (weeks) Oral Hearings
Adoptive Benefit	27.9	-
Blind Pension	20.4	69.8
Carers Allowance	31.3	57.9
Carers Benefit	21.8	59.4
Child Benefit	47.6	66.0
Disability Allowance	27.4	55.6
Illness Benefit	38.2	59.8
Domiciliary Care	25.4	55.8
Deserted Wives Benefit	19.2	46.0
Farm Assist	20.9	57.9
Bereavement Grant	22.1	-
Family Income Supplement	19.9	31.8
Invalidity Pension	36.4	58.9
Liable Relatives	31.6	84.1
One Parent Family Payment	24.3	57.5
Maternity Benefit	25.1	62.1
State Pension (Contributory)	24.9	55.3
State Pension (Non-Cont)	20.6	54.6
State Pension (Transition)	24.4	66.0
Occupational Injury Benefit	30.7	54.8
Occupational Injury Benefit (Medical)	77.8	65.0
Disablement Pension	48.0	59.7
Incapacity Supplement	-	48.3
Guardian's Payment (Con)	36.2	62.7
Guardian's Payment (Non-con)	23.9	59.0
Pre-Retirement Allowance	-	-
Jobseeker's Allowance (Means)	18.0	54.8
Jobseeker's Allowance	23.8	47.9
Jobseeker's Benefit	15.1	34.0
JA/JB Fraud Control	13.7	24.9
Respite Care Grant	23.4	60.8
Insurability of Employment	34.0	72.1
Supplementary Welfare Allowance	6.3	17.6
Treatment Benefits	28.8	-
Survivor's Pension (Con)	27.5	55.3
Survivor's Pension (Non-con)	18.1	53.1
Widows Parent Grant	22.0	-
All Appeals	25.1	52.5

Table 2. Appeals received and finalised 2011

	In Progress 01-Jan-11	Receipts	Decided Appeals Officer	Revised Decision Deciding Officer	Withdrawn	In Progress 1- Jan- 12
State Pension (non-contributory)	237	338	295	64	37	179
State Pension (Transition)	11	29	14	3	1	22
Pre-retirement Allowance	1	1	0	0	0	2
State Pension (contributory)	110	106	83	24	18	91
Illness Benefit	2,660	3,659	1,713	1,569	1,014	2,023
Invalidity Pension	612	2,285	903	345	67	1,582
Disability Allowance	3,046	5,472	4,758	627	175	2,958
Occupational Injuries Benefits	446	356	343	49	47	363
Treatment Benefit	4	3	6	0	0	1
Jobseeker's Benefit	766	1,286	1,122	224	130	583
Jobseeker's Allowance - Payments	3,318	3,404	4,427	526	264	1,498
Jobseeker's Allowance - Means	2,496	3,465	3,232	515	348	1,866
Widow's/Widower's and Guardian's Payments	63	97	72	5	4	79
One-Parent Family Payment	833	1,079	914	230	134	634
Maternity Benefit	21	42	38	5	0	20
Child Benefit	1,187	824	851	440	117	603
Carer's Benefit and Allowances	2,218	2,359	2,590	684	95	1,208
Domiciliary Care Allowance	1,386	2,401	1,944	424	34	1,385
Respite Care	114	303	160	80	11	166
Family Income Supplement	105	258	149	97	13	104
Farm / Fish Assist	163	220	210	38	14	121
Supplementary Welfare Allowances	343	3,129	1,501	78	60	1,833
Liabile relatives (contributions)	22	26	11	2	4	31
Insurability of Employment	112	99	54	6	15	136
Totals	20,274	31,241	25,390	6,035	2,602	17,488

Table 3. Appeals received 2004 – 2011

	2004	2005	2006	2007	2008	2009	2010	2011
State Pension (non-con), Blind Pen	328	339	413	347	287	340	370	338
State Pension (Transition)	39	35	28	30	15	22	7	29
Pre-retirement Allowances	21	23	21	11	10	3	2	1
State Pension (con)	104	126	71	86	87	88	256	106
Illness Benefit	3,071	2,742	2,674	2,564	3,597	4,948	5,473	3,659
Invalidity Pension	519	443	446	535	526	642	1,024	2,285
Disability Allowance	2,252	2,392	2,622	2,938	3,522	4,696	4,840	5,472
Occupational Injuries Benefits	470	434	440	423	409	396	459	356
Treatment Benefit	50	52	41	17	18	10	8	3
Jobseekers Benefit	1,421	1,243	1,028	1,139	1,358	1,354	1,307	1,286
Jobseekers Allowance - Payments	1,956	2,274	2,375	2,296	2,401	3,179	5,506	3,404
Jobseekers Allowance - Means	907	843	848	903	1,901	3,615	4,050	3,465
Widows/Widowers and Orphans Pensions	64	63	62	31	58	69	69	97
One-Parent Family Payment	1,271	1,034	931	701	774	810	1,124	1,079
Maternity Benefit	14	16	20	10	15	11	29	42
Child Benefit	324	357	236	269	689	1,361	1,051	824
Carers Benefit and Allowance	598	586	630	736	1,102	2,098	3,207	2,359
Domiciliary Care Allowance	0	0	0	0	0	836	1,858	2,401
Respite Care	0	206	361	457	319	262	162	303
Family Income Supplement	47	57	65	92	142	170	227	258
Farm / Fish Assist	107	114	71	66	61	137	244	220
Supplementary Welfare Allowances	370	327	329	323	437	789	1,020	3,129
Liable Relatives (contributions)	5	12	3	9	19	25	16	26
Insurability of Employment	145	79	85	87	86	102	123	99
Totals	14,083	13,797	13,800	14,070	17,833	25,963	32,432	31,241

Table 4. Outcome of appeals by category 2011

	Allowed	Partly Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
State Pension (non-contributory) and Blind Pensions	67 17%	22 6%	64 16%	206 52%	37 9%	396
Illness Benefit	450 10.5%	18 0.4%	1,569 36.5%	1,245 29.0%	1,014 23.6%	4,296
Invalidity Pension	408 31.0%	6 0.5%	345 26.2%	489 37.2%	67 5.1%	1,315
Disability Allowance	1,699 30.6%	131 2.4%	627 11.3%	2,928 52.7%	175 3.1%	5,560
Occupational Injuries Benefits	106 24.1%	36 8.2%	49 11.2%	201 45.8%	47 10.7%	439
Jobseekers Benefit	180 12.2%	44 3.0%	224 15.2%	898 60.8%	130 8.8%	1,476
Jobseekers Allowance - Payments	1,459 28.0%	231 4.4%	526 10.1%	2,737 52.5%	264 5.1%	5,217
Jobseekers Allowance - Means	361 8.8%	266 6.5%	515 12.6%	2,605 63.6%	348 8.5%	4,095
Widows/Widowers Pensions and Guardians Payment	23 28.4%	3 3.7%	5 6.2%	46 56.8%	4 4.9%	81
One-Parent Family Payments	231 18.1%	66 5.2%	230 18.0%	617 48.3%	134 10.5%	1,278
Carers Benefit and Allowances	760 22.6%	124 3.7%	684 20.3%	1,706 50.6%	95 2.8%	3,369
Domiciliary Care Allowance	798 33.2%	37 1.5%	424 17.7%	1,109 46.2%	34 1.4%	2,402
Respite Care	40 15.9%	1 0.4%	80 31.9%	119 47.4%	11 4.38%	251
Family Income Supplement	27 10.4%	6 2.3%	97 37.5%	116 44.8%	13 5.0%	259
Farm / Fish Assist	28 10.7%	33 12.6%	38 14.5%	149 56.9%	14 5.3%	262
Supplementary Welfare Allowances	307 18.7%	68 4.1%	78 4.8%	1,126 68.7%	60 3.7%	1,639
Insurability of Employment	13 17.3%	1 1.3%	6 8.0%	40 53.3%	15 20.0%	75
Other Appeals - State Pension (Contrib), Child Benefit, Treatment Benefit, etc.,	217 13.4%	64 4.0%	474 29.3%	722 44.7%	140 8.7%	1617
Totals	7,174 21.1%	1,157 3.4%	6,035 17.7%	17,059 50.1%	2,602 7.6%	34,027

Table 5. Appeals in progress at 31 December 2004 – 2011

	2004	2005	2006	2007	2008	2009	2010	2011
State Pension (non-con), Blind Pension	138	149	195	143	147	177	237	179
State Pension (Transition)	15	13	21	19	12	9	11	22
Pre-retirement Allowance	10	13	8	5	4	0	1	2
State Pension (contributory)	128	90	95	55	47	62	110	91
Illness Benefit	1,068	997	1,007	1,015	1,404	2,421	2,660	2,023
Invalidity Pension	276	260	268	297	317	474	612	1,582
Disability Allowance	803	1,040	1,127	1,311	1,550	2,846	3,046	2,958
Occupational Injuries Benefits	306	268	272	239	258	256	446	363
Treatment Benefit	11	23	7	3	8	6	4	1
Jobseeker's Benefit	360	390	277	317	448	692	766	583
Jobseeker's Allowance - Payments	468	668	576	681	755	2,085	3,318	1,498
Jobseeker's Allowance - Means	290	347	322	382	859	2,253	2,496	1,866
Widow's/ers and Guardian's payments	31	41	31	14	32	46	63	79
One-Parent Family Payment	765	642	461	296	388	472	833	634
Maternity Benefit	4	8	9	4	2	6	21	20
Child Benefit	165	136	104	131	573	1,420	1,187	603
Carers Benefit and Allowances	249	311	371	353	618	1,413	2,218	1,208
Domiciliary Care Allowance	0	0	0	0	0	776	1,386	1,385
Respite Care	0	69	166	221	119	185	114	166
Family Income Supplement	25	36	29	40	51	73	105	104
Farm / Fish Assist	39	65	32	31	34	98	163	121
Supplementary Welfare Allowance	65	54	43	79	114	139	343	1,833
Liability relatives (contributions)	6	10	2	2	15	22	22	31
Insurability of Employment	103	73	75	85	77	77	112	136
Totals	5,325	5,703	5,498	5,723	7,832	16,008	20,274	17,488

Table 6. Appeals statistics 1991 – 2011

APPEALS STATISTICS 1991 - 2011					
Year	On hands at start of year	Received	Workload	Finalised	On hands at end of year
1991	5,135	19,314	24,449	16,162	8,287
1992	8,287	17,610	25,897	18,844	7,053
1993	7,053	18,285	25,338	20,021	5,317
1994	5,317	13,504	18,821	14,971	3,850
1995	3,850	12,353	16,203	12,087	4,116
1996	4,116	12,183	16,299	11,613	4,686
1997	4,686	14,004	18,690	12,835	5,855
1998	5,855	14,014	19,869	13,990	5,879
1999	5,879	15,465	21,344	14,397	6,947
2000	6,947	17,650	24,597	17,060	7,537
2001	7,537	15,961	23,498	16,525	6,973
2002	6,973	15,017	21,990	15,834	6,156
2003	6,156	15,224	21,380	16,049	5,331
2004	5,331	14,083	19,414	14,089	5,325
2005	5,325	13,797	19,122	13,419	5,703
2006	5,704	13,800	19,504	14,006	5,498
2007	5,498	14,070	19,568	13,845	5,723
2008	5,723	17,833	23,556	15,724	7,832
2009	7,832	25,963	33,795	17,787	16,008
2010	16,008	32,432	48,440	28,166	20,724
2011	20,274	31,241	51,515	34,027	17,488

Social Welfare Appeals Office 2011

New model of work

Against a background of the significant increase in receipts, the integration of the CWS appeals service into the SWAO, the significant increase in the number and spread of AO locations and the departure of a number of retired staff who had been employed on a temporary basis, it was decided that a root and branch review of our operating model was timely.

Under social welfare legislation, the Chief Appeals Officer is charged with referring appeals to Appeals Officers. Heretofore, files were assigned to AOs for vetting, following which the AO would either decide the appeal based on the information contained in the file (a summary decision), or return the file for the case to be dealt with by way of an oral appeal hearing, most likely by a different AO. This is the model that has operated since the office was established. The downside of this model is that where a case is not decided summarily it goes back into a second queue to await assignment to a different AO who must then carry out a further examination of the file in preparation for the oral hearing. This process carries an inherent delay for our customers and a lack of incentive for Appeals Officers to ensure the process operates effectively.

Under the new model, where an officer is assigned a case load, he or she will either decide the case summarily or, if an oral hearing is warranted, will conduct the hearing him/herself. The benefits of this model are –

- the process will be quicker for the appellant (no second queue for oral hearing),
- the office will be in a position to give an appellant an indicative timeframe for decision once a file has been assigned,

- there is less file movement which also aids the process, and
- ownership of a caseload by an AO carries an incentive to process the caseload in the most efficient and effective way.

Moving to this new model necessitated a significant amount of work and planning and commitment by a lot of staff headed up by a dedicated project group, and I am very pleased to record my appreciation for all that effort, commitment and co-operation.

Integration of Community Welfare Service appeals service

During 2011 certain income support and maintenance schemes, including the Supplementary Welfare Allowance (SWA) scheme, transferred from the Health Service Executive (HSE) to the Department of Social Protection. The SWA scheme is the “*safety net*” within the overall social welfare system in that it provides a basic income support payment to eligible people in the State whose means are insufficient to meet their needs and those of their dependants.

Prior to the transfer, appeals in relation to SWA were made in the first instance to the HSE. If a person was dissatisfied with the outcome of that appeal, they could then appeal to the Social Welfare Appeals Office. From October 2011, this two-step process ceased and SWA appeals are now made directly to the SWAO.

A lot of planning and work was done to prepare for the merger and to ensure the two streams were integrated in a way that delivered the most efficient and effective service for our customers. At an early stage, it was decided that the HSE Appeals Officers would be fully integrated into the SWAO and would be trained to decide all appeals. While this carried an overhead in terms of training, the merger provided for a very beneficial sharing of experience and expertise between AOs from the two streams.

Another aspect of the integration relates to the quality of appeals submitted for decision. As part of the transfer, a lot of emphasis was placed on the requirement

- for formal written decisions,
- to include all relevant evidence and documentation, and
- to adequately address the appeal contentions.

I have no doubt that further work will be needed in this regard in the next year.

Other initiatives

A task force was established to devise initiatives which would speed up any aspect of the processing log-jams. The group identified as a priority those cases in which the appeal files had been vetted and marked for oral hearing. Two particular initiatives were identified and implemented.

The first concerned Jobseeker Allowance (JA) cases. An examination of files on hand indicated that almost 20% of appeals awaiting oral hearing referred to JA appeals, where the question at issue was the habitual residence condition (HRC) – almost 1,000 files. In light of the outcome of meetings during the year relating to HRC, at which many issues were addressed with a view to consistency, it was considered worthwhile to have all of these files re-examined with a view to establishing whether it would be possible to allow some of the appeals on a summary basis to obviate the need for oral hearing. As a result, 395 cases, which had been scheduled for oral hearing, were allowed by summary decision.

The second initiative involved ring-fencing the backlog of those appeals registered prior to 31/12/10 and awaiting oral hearing, with a view to dealing with them by means of a special task force.

There were approximately 3,000 files identified and the ten most senior Appeals Officers were allocated 300 each to take to oral hearing as speedily as possible. This was a heavy project as, by definition, having been listed for oral hearing the cases were contentious and often quite complex. Nonetheless, the project was completed by the end of 2011 with the exception of a small number of protracted cases.

Both these initiatives had a very beneficial effect in terms of breaking log jams and in terms of morale within the office as, while the backlog was addressed, in parallel more up to date cases were also being progressed.

Training

One of the key challenges for the office is to continue to maintain high standards and to ensure through training courses, seminars and meetings the consistent application of the law. In particular in 2011, in light of the sharp increase in the number of Appeals Officers there was a very significant effort put into training in 2011.

9 new officers were assigned in April 2011 and a 6 week training course was devised which included three modules. The first was a 2 week period of in house training in matters such as legislation and the conduct of oral hearings. The second was a two week period of classroom training in case work and the final was a two week training period, at home base, in handling the caseload and observing oral hearings.

In addition to the in house training of Appeals Officers, an expert in social welfare and administration law made presentations on the sources of law, the quasi-judicial role of Appeals Officers, decision making and recent developments and court judgements.

Meetings and Consultations

Meetings of Appeals Officers.

Meetings of all Appeals Officers were convened in March and November 2011 with smaller meetings taking place throughout the year. These meetings were convened to discuss issues arising in relation to the office and the work and to discuss best practice and consistency in decision making.

Some of the issues raised at those meetings are considered below.

The Habitual Residence Condition

Over the last couple of years there have been many changes which have required a greater focus on the habitual residence condition (HRC) both by the Department and by my own office. One such change is the different categories of customer presenting as a result of the economic downturn. In the early years a significant number of cases related to asylum seekers whereas in later years an increasing number of EU nationals presented giving rise to different issues. Another such change was the introduction of the “right to reside” condition which brought additional complexity to the condition.

Arising from these changes, the Department undertook a review of its guidelines which culminated in the current set of published guidelines and this office contributed to that review.

Within my own office we had several meetings to discuss relevant issues, including

- the complexity of the right to reside condition, particularly for EU nationals,

- the potential for over reliance on an employment record in determining the HRC, and
- that a person can, and often does, have a centre of interest in this State, notwithstanding that his or her immediate family are resident in another State.

In addition to these meetings, a presentation was made by an expert in social security matters, which included relevant court judgements, the impact of EU regulations in relation to social advantage and family benefits and the new right to reside condition.

Overpayments

In addition to adjudicating on decisions relating to entitlements, Appeals Officers also adjudicate on revised decisions made where a person’s payment is disallowed or reduced. The role of the Appeals Officer is to first decide the substantive issues as to whether the decision was correct and then to determine the date from which the decision should take effect.

Except in cases where a person was blameworthy, a Deciding Officer has the power to make a decision from a current or some earlier date, based on the circumstances of the case and notwithstanding that the factors causing revision may have been present prior to that date. In many of the cases presenting during 2011, it was not immediately obvious to Appeals Officers that sufficient consideration was given by the Deciding Officer to the circumstances of the case in determining the date from which the decision was to take effect.

Where an overpayment does arise, officers of the Minister (who usually also Deciding Officers) must then address the question of whether and how much recovery should be pursued. It may

be that the power of Deciding Officers to examine the circumstances of the case to determine the date from which the decision should be revised is overlooked on the basis that such circumstances can be taken into account when looking at the question of recovery.

Discussions have been held and are on-going with the Department in relation to this matter.

Reviews of disability schemes

During the year a meeting was held with the Chief Medical Adviser of the Department with regard to the protocol being followed where a person's entitlement was being reviewed. A number of Disability Allowance cases had presented during the year where, following review, entitlement had been disallowed although the person in question had not been seen by a Medical Assessor of the Department. The Chief Medical Adviser confirmed that a person would be seen by a Medical Assessor before their payment would be terminated unless there was a clear improvement indicated by the GP report or by the person's clinical or medical history.

FIS

Family Income Supplement is a payment for families where the weekly earnings from employment are low. One of the criteria for payment of the allowance is that the applicant must be part of a family as defined in section 227 of the Social Welfare Consolidation Act. A question arose during the year, as to whether the normal residence rules have application in deciding whether an applicant is part of a family.

The question arises in cases where parents are separated and the child resides with the parent who is not the applicant. The Department took the view up to 2009 that the question of where

the child normally resides could be decided in accordance with the normal residence rules set out in Article 13 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 which provides inter alia "A qualified child living with one parent who is living apart from the other parent and who is not claiming or in receipt of benefit or assistance shall be regarded as residing with the other parent if that other parent is contributing substantially to the child's maintenance.". The Departments guidelines at that time stated "In the case of parents who are separated, a parent who is paying maintenance of at least €22 per child per week will fulfil the requirement of wholly or mainly maintaining that child and can qualify for FIS. However, only one FIS payment can be made in respect of any family.".

However, following legal advice, the Department revised its guidelines and take the view that the normal residence rules are not appropriate in the case of FIS as the question of normal residence is dealt with in section 227 which defines a family for the purposes of that scheme. It is not clear to Appeals Officers that section 227 addresses the issue of normal residence in cases where parents live apart, and, in two cases that arose during the year, the question was decided in accordance with the normal residence rules set out in Article 13.

Rent Supplement

Another issue which presented a number of times through the year relates to separated parents where one parent is in local authority housing and the other claims a supplement on the basis of accommodation needs which include the children living with him/her for some of the time. Even in cases where the applicant for the supplement has established a housing need (recognised by the relevant local authority) which includes his or her children, the view is taken by

the Department that the State should not have to pay twice to accommodate the children.

In the view of Appeals Officers, the question to be determined is whether it is reasonable in the particular case, having regard to the custody arrangements and the needs of the children involved, to accept that the parent making an application for rent supplement be treated as a household with children rather than a single person.

This is an issue which would benefit from an elaboration of the legislation.

Evidence gathering at claim stage.

In my discussions with the Department with regard to initial decision making, an issue that is often discussed relates to the need for good evidence gathering at the initial claim stage. During 2011, a new form was introduced for schemes which have medical criteria. The form asks questions relating to the persons occupation and employment history, as to how their condition affects their typical day and any other relevant information. Appeals Officers are now starting to see these forms coming through and greatly welcome them as they provide a much better balance of information than heretofore.

Meetings with DAO

The Social Welfare Appeals Office works with the Department on an on-going basis to ensure that initial decision making in the Department is improved. This is achieved through meetings with various areas of the Department, including, in particular the Decisions Advisory Office which exercises a supervisory role in relation to the statutory submission of appeal documentation by

Deciding Officers. These meetings allow for elaboration of appeal decisions and for feedback to the Department in relation to issues, legislative and/or administrative practices that may have been the subject of contention at appeal.

Visits to office

During 2011, the Minister for Social Protection, Joan Burton T.D. visited the office to meet with staff and the Secretary General of the Department, Niamh O'Donoghue attended the opening of our April conference. Both occasions were very useful in providing an opportunity for staff of the office to discuss with the Minister and the Secretary General the current economic environment and its impact on the issues arising at appeal. These visits and discussions were very much appreciated by the Appeals Officers and the administration staff.

We also had a visit from Judge Marco Frauhammer who was on a six week internship with the Courts Service the purpose of which was to analyse the main differences between the Irish and German systems. Judge Frauhammer's remit includes hearing a large number of social security appeals and we had a very useful and interesting discussion and found much common ground in relation to issues arising at appeal.

Organisational and Operational Matters

Staffing Resources

The number of staff serving in my Office at the end of 2011 was 91 which equates to 85.2 full-time equivalents. The corresponding staffing levels for 2010 were 68 and 61.2 respectively.

The staffing breakdown for 2011 is as follows:

1 Chief Appeals Officer	1.0
1 Deputy Chief Appeals Officer	1.0
39 Appeals Officers (2 work-sharing)	38.6
2 Higher Executive Officers	2.0
11 Executive Officers (3 work-sharing)	10.2
7 Staff Officers (3 work-sharing)	5.5
30 Clerical Officers (9 work-sharing)	<u>26.9</u>
	85.2

It was decided to use experienced retired Appeals Officers strictly on a short-term basis to supplement the current resources and eight of these officers were operating on a part-time basis from July 2010 to end of 2011.

The structure of my Office is set out in the Organisation Chart at Appendix 1 to this report.

Parliamentary Questions

During 2011, 1,334 Parliamentary Questions were put down (1,331 in 2010) in relation to the work of my Office. Of that number, replies were given in Dáil Éireann to 735 and the remaining 599 were withdrawn when the current status of the appeal case which was the subject of the Question was explained to the Deputy.

Correspondence

A total of 7,813 enquiries and representations were made by public representatives on behalf of appellants in 2011 (7,235 in 2010).

Freedom of Information

A total of 178 formal requests were received in 2011 (117 in 2010) under the provisions of the Freedom of Information Acts. Of these requests, 177 were in respect of personal information and 1 was in respect of non-personal information.

Case Studies of Appeals Officers' Decisions

website of the Department of Social Protection at www.welfare.ie

Introduction

Appeals may be determined on a summary basis, with reference to the documentary evidence available, or by way of oral hearing. The case studies included in this section of the report refer to both types of appeal decision. A brief outline is provided for each case included. No personal details are disclosed.

Habitual Residence Condition

The following case studies all refer to appeals made against an initial determination that the person concerned had not met the Habitual Residence Condition (HRC). This is the first time in which the annual report has featured one issue only. In making this selection, however, the intention is to illustrate the nature and range of those questions which come before Appeals Officers on the question of HRC.

Legislation

The Social Welfare (Consolidation) Act, 2005, as amended, provides that a person must be regarded as habitually resident in the State for purposes of establishing entitlement to all social assistance schemes and to Child Benefit. In determining whether the condition is met, all the circumstances of the case must be taken into account including, in particular, the following five factors:

- length and continuity of residence in the State
- length and purpose of any absence from the State
- nature and pattern of employment
- main centre of interest, and
- future intentions

The legislation provides also that a person who does not have a right to reside in the State cannot be regarded as being habitually resident in the State.

In relation to Supplementary Welfare Allowance and Family Benefits under European law, a person may not be required to meet the habitual residence condition in circumstances where they have EU migrant worker status.

A comprehensive outline of HRC provisions, including the governing legislation and the relevant EU provisions, is available in the

One Parent Family Payment – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to One Parent Family Payment.

Background: The appellant was living in Ireland for four years at the time she made a claim for One Parent Family Payment. The Deciding Officer determined that she did not meet HRC and her claim was disallowed.

Consideration of the Appeals Officer: The Appeals Officer addressed each of the points cited by the Deciding Officer, as follows.

Length of time in Ireland: The Appeals Officer noted that there was evidence to confirm the date of the appellant's arrival in Ireland but that a question had been raised as to her continued residence during a (specified) period of four months in 2009. He noted also that the Social Welfare Inspector had not queried her means of support during that time. In the absence of any evidence to the contrary, he accepted that she had been in Ireland during the period at issue and, consequently, that she had been continuously resident since her arrival. In that context, he considered that residence in the State since 2007 would point to habitual residence.

Her centre of interest is not Ireland: The Appeals Officer noted that the appellant's daughter resided with her and was registered at school in Ireland. In his opinion, this indicated an intention to remain in Ireland for the foreseeable future and would confer an established centre of interest in the State.

She has no family ties to Ireland; only her daughter lives here with her: The Appeals Officer considered that the appellant's submission had dealt with her relationship with her parents and the fact that there was no longer contact between them. In addition, he noted that she was not married to the father of her child and that the Polish Courts had not given him parental authority over the child, enabling her to reside here without obligations as to access. He considered that the evidence in the case pointed

to the child's father no longer being part of the family.

Property abroad: The Appeals Officer noted that the appellant denied that she had any property abroad and that this had been accepted by the Social Welfare Inspector. In addition, the Inspector had recorded details of an Irish bank account held in the appellant's name and reported that she had no other accounts.

Future intentions to remain in Ireland are short-term: In addition to his views as to her centre of interest, the Appeals Officer noted that the appellant had applied for Family Income Supplement (FIS), which he took to indicate a resumption of employment and an intention to remain here for a further period.

No established record of employment in Ireland: The Appeals Officer noted that the Inspector had reported that the appellant had some 20 to 21 months of employment. Accordingly, he could not accept the Deciding Officer's contention in this regard.

In conclusion, the Appeals Officer was satisfied that the appellant could be considered to be habitually resident in Ireland.

Outcome: Appeal allowed.

Disability Allowance – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Disability Allowance.

Background: The appellant's mother came to live and work in Ireland in 2003 and was granted a Stamp 4 visa. The following year, she was joined by her husband and children, one of whom was the appellant. As she was still a minor, the appellant's name was added to her mother's visa. Both of the appellant's parents were in employment and her mother applied for long-term residency (which was granted) and for Irish citizenship, which was being processed at the time the appeal was determined. Her mother had been in receipt of Domiciliary Care Allowance (DCA) in recognition of the level of disability and the extent of care required by the appellant. On reaching age 16 years, the appellant was required to apply for her own visa; she did so and was granted a Stamp 2A as she

was still at school. She made a claim for Disability Allowance. While she was deemed to have met the medical qualifying criteria, her claim was disallowed on grounds that she did not meet HRC.

Appeal submission: The appellant's mother, supported by a social worker from the disability support group to which her daughter belonged, asserted that her daughter met HRC as she had been living in the State since she was 10 years old. She argued that it was inconceivable that a sixteen year old with an intellectual disability would be deported from Ireland while her mother continued to live and work here. She advised that she was liaising with the INIS as to the most appropriate visa for her daughter in view of her disability.

Consideration of the Appeals Officer: The Appeals Officer addressed each of the points cited by the Deciding Officer, as follows.

16 years old – no employment record in the State: The Appeals Officer noted that the appellant attended a school for children with special needs. In view of her age, quite apart from her disability, she considered that the appellant could not be expected to have an employment record.

Main centre of interest not established in the State: The Appeals Officer took note of the fact that the appellant had been resident in the State since she was 10 years of age, that her mother had been in receipt of DCA in recognition of the care provided for her, that she was living continuously in the State with her parents and siblings, that she had an intellectual disability and received support from the clinical team at the school she attended. She held that it had been established clearly that her only centre of interest was in the State.

Claimant holds Stamp 2A residency permit which permits the holder to remain in Ireland to pursue a course of studies on condition that the holder does not enter employment, does not engage in any business or profession, has no recourse to public funds and does not remain later than a date specified: The Appeals Officer observed that the appellant's residence status was relevant in establishing that she had a right to reside in the State and, therefore, that the question as to habitual residence might be determined. She could see no basis, however, for the Deciding Officer's reference to that status

in outlining his reasons for concluding that she could not be deemed to meet HRC.

Nature and purpose of residence does not support HRC approval: The Appeals Officer considered that the meaning of this phrase in relation to the decision before her was unclear.

Intend to rely on State supports and benefits: The Appeals Officer observed that the basis for this conclusion was not clear and lacked any reference to the provisions of social welfare legislation. Consequently, she considered that it could not be accepted as a reason to support the decision in the case.

Evidence available does not substantiate habitual residence: Again, the Appeals Officer considered that this statement could not be accepted as a reason to support the decision in the case.

In conclusion, and paying particular attention to the duration and continuity of residence and a clearly established centre of interest in the State, the Appeals Officer considered it to be beyond doubt that the appellant met the habitual residence condition.

Outcome: Appeal allowed.

Domiciliary Care Allowance – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Domiciliary Care Allowance.

Background: The appellant was resident in Ireland along with her spouse and family prior to her making a claim for Domiciliary Care Allowance. Her husband had been engaged in insurable employment in the State during 2006 and 2007. She came to Ireland in the following year to join him. Her first child is attending school here and her second child was born here in 2009.

Consideration of the Appeals Officer: The Appeals Officer observed that in the determination of a person's habitual residence in the State for social welfare purposes, account is taken of those factors (as outlined above) in accordance with the governing legislation. He took account of the fact that the appellant's husband had been resident in the State during 2006 and 2007 and that he had registered 60

weeks of insurable employment. He noted that the appellant and their daughter had come to reside with him in Ireland and that, since then, the household unit had resided together in the State. He noted also that the appellant's husband had claimed and received payment of Jobseeker's Benefit from December 2008 to December 2009, at which point he had made a claim for Jobseeker's Allowance. Since that date, he had been in receipt of Basic Supplementary Welfare Allowance and Rent Supplement payments, while the appellant had been in receipt of Child Benefit since a date in 2008.

Having considered the available facts and evidence in the case, the Appeals Officer considered that at the time of her claim for Domiciliary Care Allowance in November 2010, the appellant had already established Ireland as her place of habitual residence along with her husband and family. Accordingly, he concluded that the appeal should succeed and that her entitlement to Domiciliary Care Allowance fell to be re-examined with effect from the date of claim, having regard to the other qualifying conditions under the scheme.

Outcome: Appeal allowed.

Child Benefit – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Child Benefit.

Background: The appellant arrived in Ireland late in 2007 accompanied by one child, her spouse having preceded her earlier in that year. He commenced employment shortly after his arrival. His Pay Related Social Insurance (PRSI) record confirmed that he continued in employment. He was also registered as a full-time student on a FETAC course between 2008 and 2009 and again between 2010 and 2011. He made a claim for Child Benefit on a date in 2008 but the application form was returned to him with advice that the claim must be made by the child's mother. The appellant gave birth to her second child in 2009 and made a claim for Child Benefit in respect of both children from a subsequent date.

Consideration of the Appeals Officer: The Appeals Officer noted that the appellant's spouse was a qualified person in respect of Family Benefits under Regulation (EEC) No.1408/71

with effect from the date of his commencement of employment and up to and including a date in 2009 when he completed the second year of the FETAC course, as he was insurably employed while enrolled for a relevant course of education and for which period HRC did not apply and no work permit was required. Accordingly, he concluded that the appellant was entitled to apply for Child Benefit at that time. The Appeals Officer noted also that, having applied within the prescribed time, i.e. within one year of becoming a qualified person, Child Benefit was payable to him with effect from the month following that in which he became a qualified person.

The Appeals Officer held that from March 2009 to March 2010 (inclusive) the appellant's spouse was no longer a qualified person as he was not a registered student and required a work permit in order to continue to qualify under Regulation (EEC) No. 1408/71. He noted, however, that the appellant herself became the qualified person for Child Benefit purposes at that stage and that she was the one to whom HRC applied. In examining this issue, he referred to the fact that her spouse had been residing in Ireland for more than two years at the time the claim was made, with a substantial record of employment in Ireland (both legal and illegal). The appellant herself had been residing in Ireland for some 16 months at the time. Having examined the overall circumstances, he found that the appellant could be deemed to be habitually resident from March 2009. Accordingly, the appeal was successful and the Appeals Officer indicated that payment should issue with effect from the first date of entitlement (when her spouse became a qualified person) in respect of one child and from the month following the birth of the second child in respect of two children.

Outcome: Appeal allowed

Disability Allowance – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of his claim to Disability Allowance.

Consideration of the Appeals Officer: The Appeals Officer noted that the appellant's wife, with whom he resides, had already (by way of previous appeal decisions) been recognised as being habitually resident in the State for purposes of her claims for both Child Benefit and Domiciliary Care Allowance.

In those circumstances, by association and as a matter of consistency, the Appeals Officer held that the appellant must be deemed to meet HRC requirements with effect from the date of his claim for Disability Allowance. Accordingly, he concluded that he may be entitled to payment from that date, having regard to the other conditions governing entitlement to payment under that scheme.

Outcome: Appeal allowed.

Child Benefit – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) when she made her claim to Child Benefit in 2010.

Background: The appellant, a Thai national, came to live in Ireland in 1995. She went back to live and work in Thailand in 2003 and returned in 2010. She held a Stamp 4 visa, valid for two years until a date in 2012.

Consideration of the Appeals Officer: The Appeals Officer examined the appeal with reference to the five factors outlined in the governing legislation, as follows.

Length and continuity of residence in Ireland or in any other particular country: He noted that the appellant was born in Thailand, came to live Ireland in 1995, and was allocated a Personal Public Services (PPS) number in 2010.

Length and purpose of any absence from Ireland: He noted that she left the State in 2003 to return to Thailand, where she gave birth to her daughter and that she returned to Ireland following an absence of some seven years.

Nature and pattern of employment: He noted that the appellant had no employment history in the State.

Applicant's main centre of interest: He took note of the fact that the appellant lives in Ireland with her seven-year-old child, who attends school here. The child holds an Irish passport as her father is Irish, although he and the appellant are divorced. He noted that the appellant asserted that she had no properties abroad but that she retains a bank account in Thailand.

Future intentions of applicant as they appear from all the circumstances: He observed that the

appellant had stated that she intends to reside permanently so that her daughter may complete education to university level.

The Appeals Officer observed that the appellant was less than two years in the State at the time she made her claim to Child Benefit.

Accordingly, there is a rebuttable presumption that she was not habitually resident. He noted that she had not arranged employment before coming to Ireland and had not worked since her arrival. In addition, he referred to the lack of evidence to indicate a history of employment during her earlier stay.

The Appeals Officer noted that in 2003 she had returned to live in Thailand for a period of seven years, during which time she gave birth to and raised her child, while helping her parents on their farm. He opined that it was clear that throughout that period her centre of interest was Thailand.

The Appeals Officer referred to the lack of evidence to indicate that the appellant had any contact with the father of her child. He noted that in her letter of appeal she had stated that the only reason for her return to Ireland was to educate her daughter.

Taking all of the available evidence into account, the Appeals Officer considered that the appellant had not rebutted the presumption that she was not habitually resident in the State at the date of her Child Benefit claim: she was some six months in the State after an absence of seven years spent at home with her parents in Thailand; she had no history of employment in the State and had made no arrangements to secure employment before she came; her links to Ireland were not particularly strong; she had not established a centre of interest in the State, and there was no evidence to show that her stated intention to remain long-term while her daughter was educated was more than aspirational. Accordingly, he held that her appeal could not succeed.

Outcome: Appeal disallowed.

One Parent Family Payment – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to One Parent Family Payment.

Background: The appellant, a UK national of Irish parentage, was a divorcee with one child dependant. She came to live in Ireland in 2011, with no indication of any subsequent absence from the State. She was registered as self-employed in the UK.

Consideration of the Appeals Officer: The Appeals Officer made reference to the five factors outlined in the legislation. In coming to a decision, she assessed those factors, each of which she considered could contribute to establishing whether or not the appellant had satisfied the conditions for being considered habitually resident.

The Appeals Officer noted details of the appellant's circumstances, including the fact that she had lived all of her life in the Common Travel Area. She took account of the fact that she had been registered as self-employed in the UK. She noted that the appellant had relocated to Ireland to escape an abusive relationship and accepted contentions as to the seriousness of the abuse which had led to her fleeing the UK quickly and setting up home in Ireland. She did this with the assistance of her extended family. The Appeals Officer accepted that, given the circumstances, the appellant was unable to secure employment and indeed that it had not been a priority at that time. She observed that the appellant was now in a position to seek employment.

The Appeals Officer noted that the appellant did not own any property in the UK and that there was no indication that she had given up housing there. Indeed, the evidence indicated that prior to her moving to Ireland she had moved locations within the UK on a number of occasions, in line with her assertion that she had been trying to escape her ex-partner and that she had no fixed abode there. She noted also that the appellant had been assessed as having a housing need by the local authority in Ireland and that her name was on their housing list. In the meantime, she has a rental agreement on a property here and has been in receipt of Rent Supplement with effect from a date in 2011. She is also in receipt of Basic Supplementary Welfare Allowance, a fact which the Appeals Officer opined that contributed significantly to her being considered habitually resident.

In conclusion, the Appeals Officer observed that the appellant and her daughter have settled in Ireland and feel safe here, that she is attending counselling and has family support here. She concluded that the appellant has cut ties with the

UK and that it was clear that she intends to make Ireland her home. In light of the foregoing, and on balance, she held that the appellant satisfied HRC and that her appeal should succeed.

Outcome: Appeal allowed.

One Parent Family Payment & Supplementary Welfare Allowance – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of claims to One Parent Family Payment and Supplementary Welfare Allowance (Basic Income).

Background: The appellant, a Traveller, had been living in the UK. In 2010, she and her three young children returned to live with her extended family in Ireland. She made a claim to Supplementary Welfare Allowance (Basic Income) which was rejected on HRC grounds. The reasons cited for that decision were that she had not supplied sufficient information as to why she left the UK, that her only status in Ireland was that of an EU Citizen and that she had declared herself to be welfare dependent by stating that she was not available for work as she was caring for her children. A claim made subsequently to One Parent Family Payment was rejected on the same grounds.

Parties attending oral hearing: The appellant and a Community Development Officer.

Report of oral hearing: The appellant confirmed that she was a Traveller, and a member of a community which has a long history of a connection to the particular area in Ireland where they live. She described her family connections with the area going back generations. She said she was born there but moved to England with her parents as a child. She reported that they were frequent visitors to the area for family occasions over the years and that they lived in a caravan and moved from place to place both here in Ireland and in the UK. She said she had received little formal education as the family was always on the move.

The appellant recalled living with her partner for a number of years; they have three children under the age of 10 years. She reported that they moved from place to place in a mobile home, and said that her children did not remain in any one school for long. She indicated that her partner was prone to violence and that there had been some problems over the years, at

which times she had relied on her parents and family for support. However, she said that her parents and wider family had moved back to Ireland in the last few years, and she was left with no immediate family in England. She drew attention to a report which she had submitted, written by a police unit in the UK, which made reference to an assault which she had sustained. She stated that this had been carried out by her partner and his family and that, as a result, she had fled the UK and joined her family in Ireland. She submitted evidence that her children were enrolled in the local school, and that she was staying in a local authority halting site but was not paying the rent. She said that she had no income and was dependent on her family and the local St Vincent de Paul charity. She confirmed that she had been in receipt of welfare payments in the UK but that her Income Support and Child Benefit had ceased.

The Community Development Officer spoke of his concern for the appellant's welfare and that of her children. He advised that the HSE social worker assigned to the case was anxious to support the appeal but had been unable to attend the hearing. He asked that the Appeals Officer might contact him. He reported that the appellant was in a dire situation and said that if she could get a better life in the UK, she would have returned there months ago. In conclusion, he submitted that her continued residence here in very poor circumstances was evidence of her commitment to remain and create a stable home.

Further evidence: In response to the request made at oral hearing, the Appeals Officer spoke on the phone with the social worker in the case. He confirmed being involved with the family and described the difficulties they encountered, including having insufficient food due to lack of money.

Consideration of the Appeals Officer: The Appeals Officer noted that in the case of both claims, the reasons for concluding that the appellant did not meet HRC relied strongly on the short duration of her residence in the State and her lack of employment. He made reference to the five criteria outlined in the legislation, as follows.

Length and continuity of residence in the State or another State: The Appeals Officer observed that where a person is resident for only a short time in a particular country, then the nature of that residence must be examined to determine if the facts indicate that they have changed their

habitual residence to the new country. He noted that a short period in a new country does not automatically mean a person cannot be habitually resident there; the rebuttable presumption provided for in legislation envisages that a person may make a case to say they are habitually resident from the time of first taking up residence. Having examined the facts of this case, he noted that the appellant's children were in the State and were enrolled in school, that the appellant had extensive extended family and strong familial connections to the area where she was living, and that she had a proven reason for moving from the UK and settling there. He observed that her traditional lifestyle did not tie her to a particular area: a person in her situation can move from one country and quickly establish residency in another as she has no property or material ties anywhere. In this case, he considered that the presence here of her children and extended family was extremely important and indicated that she was habitually resident notwithstanding the relatively short duration of her time here.

The length and purpose of any absence from the State: The Appeals Officer noted that the evidence provided at the hearing indicated that the appellant has resided here continuously since her arrival. He noted also that the evidence indicated frequent visits to Ireland, over the years, due to family connections. However, he considered that the evidence presented at the hearing indicated that the appellant was not here for a short visit as may have been case in the past.

The nature and pattern of a person's employment: The Appeals Officer noted that the appellant was not in a position to take up employment and that references had been made to this fact in both decisions before him. However, he took the view that there have always been people who come to the State on account of life events but are not in a position to work for a variety of reasons, and that due regard must be given to their overall circumstances when determining if their residence is habitual. He took the view that if a person had never worked in the country in which they lived formerly, it was an overly harsh interpretation of the HRC legislation to conclude that they were not habitually resident in this State by virtue of not having worked here. In such cases, he considered that less weight should be given to a person's employment status, where it is evident that there are valid reasons for their absence from the labour market; the person's

main centre of interest, as evidenced by the other considerations governing their lives, takes on more significance.

The person's main centre of interest: Having heard the appellant's evidence at the hearing, the Appeals Officer concluded that her centre of interest was in Ireland, and that her strong family ties with the area were indicative of a stable and durable residence here.

Future Intentions from all the available evidence: The Appeals Officer was satisfied on the basis of the evidence available that the appellant's future intentions were in Ireland.

In all the circumstances, the Appeals Officer held that the appeal should succeed.

Outcome: Appeal allowed.

Jobseeker's Allowance – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of his claim to Jobseeker's Allowance.

There were two claims for Jobseeker's Allowance disallowed on grounds of habitual residence not being satisfied. The initial claim was made in 2009 and the subsequent claim had a date some fourteen months later in 2010.

Background: The appellant, a Polish national, came to this country in 2007. He returned to Poland some three months later, and came back to Ireland early in 2008. He took up employment with a construction company, and worked there to the end of that year. In his letter of appeal, he stated that he had resided continuously in the State since that time. He asserted that his centre of interest was in Ireland and stated that his closest family lived here.

For his part, the Deciding Officer considered that the appellant's length and continuity of residence in Ireland did not support habitual residence; he had resided outside Ireland for most of his life; his centre of interest was not in Ireland; he had no established employment record in Ireland; his future intentions of remaining were considered short-term and, from the evidence provided, there was nothing to substantiate that he was habitually resident in the State.

The appellant was in receipt of Supplementary Welfare Allowance (Basic Income and Rent Supplement) for four months in 2010 when payment stopped as he became a student.

Parties attending oral hearing: The appellant attended the hearing alone.

Report of oral hearing: At the outset, the issue was explained and an outline provided of all relevant documentation available to the Appeals Officer. The appellant confirmed the details as to his residence in the State. He reported that he had returned to Poland in 2007 to pursue a training course and to improve his educational achievements with the purpose of enhancing his employment prospects. He stated that he had returned to Ireland subsequently as his father had sourced employment for him with the construction company where he worked. He reported that on his return to Ireland he worked with that company for eight months until he was let go, through a downfall in business

The appellant advised that since returning to Ireland in 2008, he had not left the country. He stated that he had received Supplementary Welfare Allowance, as a former EU worker, for dates specified in 2009. He stated that, thereafter, he lived off some accrued savings and was supported by his parents, with whom he resides. He reported that he found work again in 2010 which lasted for some four months. He advised that he commenced a training course (FETAC Level 5) later that year and was hopeful of finding related employment once he completed his studies.

The appellant referred to his family and advised that his father came to Ireland in 2004 to take up employment and his mother and brother followed some time afterwards. He reported that both his father and mother were employed and that their intentions were to remain in Ireland indefinitely. He advised that the family had always rented accommodation whilst residing in Poland and that they did not own any property there. He stated that he had two other siblings residing with a relative in Poland whilst they complete their education and said that both were intent on coming to Ireland to join the rest of the family once their studies were complete. In conclusion, he submitted that his centre of interest was in Ireland and that his future intentions were to remain here indefinitely.

Consideration of the Appeals Officer: The Appeals Officer took into account the details of

the appellant's residence in the State, and was satisfied that he had been continuously resident since 2008. He considered that the appellant's return to Poland was for a temporary period, to pursue a course in education as he was unable, at that time, to find work here. He noted that his father and mother had established some permanence in Ireland and that the appellant had made meaningful efforts himself to integrate into the local community and establish a centre of interest in this country. He noted also his current participation on an educational course and his involvement with the local sports club. Having considered all the available evidence, he concluded that the appellant's centre of interest, at that time, had been established as being in Ireland and that his future intentions were to remain here indefinitely. He concluded that the appellant was habitually resident in the State for social welfare purposes and held that this decision should take effect from the date of the oral hearing, at which time the appellant might be deemed to have established habitual residence.

Outcome: Appeal partially allowed.

Child Benefit – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Child Benefit.

Background: The appellant, a Mauritian national, arrived in Ireland in 2007 with her two children to join her husband who had been in the country since 2006. Both the appellant and her husband were initially granted student (Stamp 2) visas and subsequently applied for and were refused refugee status. A statement from the Irish Naturalisation and Immigration Service (INIS) indicated that consideration was being given under Section 3 of the Immigration Act, 1999 as to whether they should be given Leave to Remain in the State or returned to their country of origin. The appellant had no employment record in Ireland but her spouse had a total of 249 paid PRSI contributions. There was no record of either of them having applied for any social welfare payment prior to her application for Child Benefit in 2010. The Deciding Officer had applied the five factors outlined in legislation to determine habitual residence and concluded that the appellant did not satisfy these criteria.

Parties attending oral hearing: The appellant and her husband.

Report of the oral hearing: The Appeals Officer outlined the criteria used in determining habitual residence for social welfare purposes. He referred also to the legislative provision which deemed that certain categories of persons could not be regarded as habitually resident for social welfare purposes, and he undertook to examine the legislation in this regard.

The appellant confirmed the details as outlined above, although her husband stated that he had lost his job some time ago and that the family had been surviving on any casual / cash in hand work he could obtain such as gardening, or cleaning. They emphasised that their concern was for the wellbeing and rights of their children as they found it very difficult to provide for them. They also pointed out that they had never before applied for any social welfare payment for themselves despite the fact that the appellant's husband had lost his job. The appellant confirmed that there had been no change in their status from that outlined in the letter from the INIS.

The appellant's written appeal submission was noted and, as it was agreed that all relevant issues had been discussed, the hearing concluded.

Consideration of the Appeals Officer: In examining this case, the Appeals Officer noted the conclusions of the Deciding Officer and the appellant's appeal contentions, both written and oral, including those made in her written appeal submission. However, he concluded that the appeal fell to be decided under the applicable social welfare legislation.

The Appeals Officer commended the fact that the appellant and her family had resided in Ireland independently for a number of years without any recourse to social welfare or other State aid. In this context, he noted that the Deciding Officer based his conclusions on the five factors outlined in legislation. Overall, given the appellant's duration of residence in Ireland, her husband's employment record ((albeit apparently partially illegal) and consequently their ability to maintain themselves in the years since their arrival, their ties to the community (including the children's attendance at local school) and their stated intentions, he indicated that he would disagree with the Deciding Officer and considered that, on

balance, the appellant would satisfy the five factors.

The Appeals Officer concluded, however, that the Deciding Officer had erred in considering the five factors without first determining if the provisions contained in subsections (5) to (10) of Section 246 of the Social Welfare Consolidation Act, 2005 [inserted by Section 15 of the Social Welfare and Pensions (No. 2) Act 2009] applied which, in his view, was the determining factor in the case.

The appellant's application for asylum in the State had been refused and consideration was being given in relation to Leave to Remain under Section 3 of the Immigration Act, 1999. In this context, he noted that the Social Welfare Consolidation Act, 2005 states:

- *“The following persons shall not be regarded as being habitually resident in the State for the purpose of this Act (d) a person who has made an application under section 8 of the Act of 1996 which has been refused by the Minister for Justice, Equality and Law Reform;”* [Section 246(7)];

and

- *“‘Act of 1996’ means the Refugee Act 1996”* [Section 246(10)].

He noted that Section 8 of the Refugee Act, 1996 refers to an application for a declaration under the Act. As the appellant had been refused under this provision, he held that Section 246 (7) (d) as above applies and, accordingly, that the appeal must fail.

Outcome: Appeal disallowed.

Disability Allowance – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of his claim to Disability Allowance.

Background: The appellant came from South Africa to live in Ireland in 2006. He was in his teens at the time and travelled with his mother to join his father and brother, who had arrived here a year earlier. The appellant was in college and held a Stamp 2 visa when he sustained a traumatic injury, following an accident. He made a claim to Disability Allowance, which was

disallowed on grounds that he did not meet the habitual residence condition.

Parties attending oral hearing: The appellant attended accompanied by his father.

Report of oral hearing: The Appeals Officer outlined the decision under appeal and those issues to which the Deciding Officer had regard in coming to his decision, as follows:

- nature and purpose of his residence in Ireland at the time of application does not provide for approval of habitual residence
- he has been granted permission to remain in Ireland as the dependant of an employed person
- he holds a Stamp 3 permitting him to reside in Ireland as the dependant of his father who is working in Ireland
- he is not permitted to enter employment while resident here on a Stamp 3 visa
- he cannot be considered to be habitually resident on the grounds under which he is permitted to reside in Ireland
- his main centre of interest is not established in Ireland
- the available evidence does not substantiate habitual residence

A discussion then ensued where the appellant confirmed the details of his arrival in the State, as outlined above. His father reported that they were in the process of applying for citizenship; that he and his other son had been recruited in South Africa to come and work for a company in Ireland; that he had been given a work permit for this purpose, and that his wife was working full time. He reported that the appellant had been in college in 2010, until he was involved in an accident and suffered neurological damage. He advised that the appellant had undergone surgery but had sustained visual impairment and major short-term memory problems. He has now reverted to a Stamp 3 visa. His father advised that he himself had been given a Stamp 4 and no longer needed a work permit.

Consideration of the Appeals Officer: The Appeals Officer noted that the appellant and his father came across as genuine and gave evidence in a credible manner. He noted also that the entire family had been in Ireland for over

five years; following recruitment by a company [named] they had moved here 'lock, stock and barrel'; both parents and the appellant's brother were working here full time, and the appellant himself was in college before his accident. The Appeals Officer considered that the appellant's centre of interest could only be considered to be in Ireland at that stage.

He accepted that this case was somewhat unusual insofar as the appellant did not have permission to work here as he holds a Stamp 3 visa. He took the view, however, that the appellant would not have applied for any social welfare payment in normal circumstances but that his accident had changed that. Based on the evidence before him, he was quite satisfied that the appellant was habitually resident in the State and that it was appropriate to allow the appeal.

Outcome: Appeal allowed.

Jobseeker's Allowance – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Jobseeker's Allowance.

Background: The appellant, a Polish National, came to live in Ireland in 2008. She was issued with a Public Social Services (PPS) number in March 2009. Her social insurance record showed a total of 22 weeks of insurable employment in the State.

Parties attending oral hearing: The appellant and her partner.

Report of the oral hearing: The Appeals Officer read the formal decision and advised the appellant of the information which had been relied on in making that decision. A discussion followed during which it was established that the appellant had lived in Ireland since 2008, despite not obtaining a PPS number until March 2009; that she worked in a number of jobs but only one employer would appear to have been PRSI compliant; that she was currently in a relationship with an Irish national, and that he was in receipt of a social welfare payment with payment being made for her as a qualified adult on his claim.

The appellant reported that she holds a Polish bank account (but the Appeals Officer observed that in the age of modern technology, this was not unusual). She advised that she has gone back to Poland for holidays, usually at Christmas, but had always returned to Ireland. She indicated that she had spent a slightly longer break in Poland in 2008 when she had undergone surgery. She reported that she was registered with FAS and that she had made numerous efforts to find work. She stated that she had supported herself from savings as most of her jobs had been live in, or she had relied on friends.

Consideration of the Appeals Officer: In reaching a conclusion in this case, the Appeals Officer indicated that she was mindful of the five factors to be considered in deciding on habitual residence, and she examined them separately, as follows:

Length and continuity of residence in the State: She noted that the appellant came to Ireland as an au-pair in 2008 and had lived in the State since then.

Length and frequency of absences from the State: She noted that the appellant had spent 'a few weeks' in Poland in 2008 for surgery and had returned to Ireland after this, only returning to Poland for holidays since.

Nature and pattern of employment: She took account of the fact that the appellant had only 22 weeks of insurable employment. She also noted, however, that the evidence presented indicated that the appellant had worked for a number of different employers, some of whom did not comply with PRSI legislation and make returns on her behalf.

Main centre of interest: She noted that the appellant was in a relationship with an Irish national, and had been for some time, and that he was in receipt of a Qualified Adult Increase on his Jobseeker's Allowance in respect of the appellant.

Future Intentions: She took account of the statement made by the appellant in completing the HRC1 form, indicating that she intended to remain in Ireland for longer than five years and work in the State. She noted also that the appellant was in a relationship and was hopeful that this would continue.

Having considered all of the evidence in this case, including that adduced at oral hearing, the Appeals Officer was satisfied that the appellant could be considered to be habitually resident in the State with effect from the date of her claim.

Outcome: Appeal allowed.

Child Benefit – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Child Benefit.

Background: The appellant, a Romanian national, came to Ireland in 2007 with her partner. They resided with her partner's brother and his family, and engaged in employment over the years. The appellant applied for Child Benefit in July 2010 following the birth of their daughter.

Parties attending oral hearing: The appellant was accompanied at the hearing by her partner.

Report of the oral hearing: The Appeals Officer outlined the decision before him, and the details of the submission made by the Deciding Officer. He reviewed the appellant's letter of appeal, where she outlined the background to her time in Ireland, including her employment details.

Having outlined the evidence in support of her appeal, the appellant stated that she and her partner had now secured employment, and were in the process of moving house to be nearer to their place of work. Her partner advised that they had received notification from the Immigrant Council of Ireland that with effect from 28 February 2012, the Romanian parents of Irish citizen children do not require an employment permit in order to access the labour market and work in Ireland. He supplied a copy of the letter he received to that effect, with enclosures taken from the Department of Jobs, Enterprise and Innovation website dated March 2012.

In relation to their employment, the appellant's partner reported that they had both secured employment over the years and that the issue of the need for a work permit had not been raised by employers. He made the point that they did not use any illegal documents and worked as 'themselves'. He advised that, when the recession came, they both lost their jobs. He had received Supplementary Welfare Allowance

(Basic Income) from a date in 2010 until he started work in 2012.

The couple reported that they had returned about three times to Romania since they came here; they go to see their parents and take a break for about two weeks. They advised that they have no property in Romania and came to Ireland for a better life. They stated that it had always been their intention to remain here.

Consideration of the Appeals Officer:

In considering his decision in this case, the Appeals Officer looked at the five factors governing HRC and, in particular, how the appellant met or did not meet them at the time of her application. In relation to those factors, he considered that it was clear from both the documentary evidence and that adduced at oral hearing that the appellant met four of the five conditions without much debate. He noted that she was here for five years, over three and a half years when she made her Child Benefit claim, and he considered Ireland to be her centre of interest. He noted also her future intention to remain here, given her statement to that effect.

The one area where the Appeals Officer considered that there was some debate was that of employment, though he made the point that this of itself should not mean that she was not habitually resident. He noted that both the appellant and her partner worked for a number of years after they arrived in the State, albeit without a work permit. He made reference to the fact that the rules governing access of Romanian (and Bulgarian) nationals to the labour market had changed with effect from the end of February 2012, allowing the parents of Irish citizen children to take up employment without the need for a work permit. He noted that, almost immediately, the appellant and her partner had both secured employment and had moved to a rented house with their daughter.

Having carefully examined the evidence in this case, the Appeals Officer concluded that the appellant may be deemed to meet the habitual residence condition for the purposes of her Child Benefit claim of July 2010 and that her appeal must succeed.

Outcome: Appeal allowed.

State Pension (Non-Contributory) – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to State Pension.

Background: The appellant, who is single, was born in Ireland and went to work in the UK in 1959. She visited her family on a number of occasions and came home to nurse her father when he became ill. Her claim to State Pension was disallowed on the basis that she was not habitually resident in the State. (In addition, she had been assessed with weekly means derived from a UK pension plus capital).

Parties attending oral hearing: The appellant and the Deciding Officer.

Report of oral hearing: The question at issue was explained and the Deciding Officer outlined the factors to which he had regard in making his decision, as follows.

- Length and continuity of residence in Ireland does not support habitual residence
- Main centre of interest is not established in Ireland
- Has no established pattern of employment in Ireland
- Intends to rely on State supports and benefits whilst in Ireland
- Has lived most of her life outside the State
- The available evidence does not substantiate habitual residence

In addition, he outlined the basis of the means assessment of some €140.00 derived from a UK pension plus net weekly means from capital of €50.00. A discussion ensued where the appellant confirmed the details of her background, as outlined above. She advised that while she had worked in the UK, it had always been her intention to return to Ireland.

She had visited on a number of occasions and she came home to nurse her father when he became ill. She reported that eventually her financial circumstances (she received a sum of money for vacating the house she lived in the UK) allowed her to return to Ireland. She said that she had family living in Ireland but no family or relations in the UK. With reference to her

means, she stated that her capital had reduced and she submitted bank statements that confirmed this.

Consideration of the Appeals Officer:

The Appeals Officer noted that the appellant was from Ireland and, while she had lived abroad for approximately 50 years, that it was always her intention to return to Ireland eventually. He noted also that her only surviving family lived in Ireland and that she had no relatives abroad. He considered that a person returning to Ireland after being abroad for a very long period would require a period of time to be spent here before being deemed to be habitually resident. In this case, he was satisfied that the appellant's centre of interest was in the State and that the period should be relatively short.

Having considered all of the evidence, he concluded that it was appropriate to deem the appellant to be habitually resident from a specified date, which was six months after her coming back to Ireland. He also made a determination as to means (at a rate which allowed the appellant to qualify for State Pension at a reduced rate).

Outcome: Appeal allowed.

Child Benefit – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Child Benefit.

Background: The appellant, a Nigerian national, arrived in Ireland as an asylum seeker in 2002. Her son was born here in that year. She returned to Nigeria in the following year as her husband had become seriously ill. Following his death, she returned to Ireland in 2007. She applied for Child Benefit in March 2011 (the claim form was date stamped). She was issued with a Stamp 4 visa in May 2011, and Child Benefit was awarded with effect from May 2011, with reference to the date from which she had been granted leave to remain.

In her appeal submission the appellant contended that, as the parent of an Irish citizen child, she should be awarded Child Benefit from the date of her return to Ireland in 2007. In support of her appeal, she attached a copy of a statement which issued on 21/03/2011 from the Minister for Justice, Equality and Defence, in

which he stated that the government had agreed to his proposal that early decisions be made in appropriate cases to which the Zambrano judgment applies, without waiting for further rulings from the Courts.

The Zambrano reference is to the Court of Justice of the EU ruling in March 2011 in the case of Ruiz Zambrano which concerned parents who were non-EEA nationals but whose children were Belgian citizens.

The ruling stated that "*Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.*" In paragraph 40 of the judgment the Court further states that "*Article 20 TFEU confers the status of citizen of the Union on every person holding the nationality of a Member State Since Mr Ruiz Zambrano's second and third children possess Belgian nationality, the conditions for the acquisition of which it is for the Member State in question to lay down they undeniably enjoy that status ...*"

The Deciding Officer disallowed Child Benefit in respect of the period prior to May 2011 for the reason that she concluded that the appellant did not satisfy the habitual residence condition with reference to the five factors as provided for in legislation.

Parties attending oral hearing: The appellant was unaccompanied.

Report of oral hearing: Following the introductions, the Appeals Officer outlined the decision under appeal and explained the purpose of the hearing. The appellant stated that she believed that she was entitled to Child Benefit in respect of her son from May 2007 when she and her children returned to Ireland, as he is an Irish citizen and has been attending school since then. She confirmed that she had been in receipt of Child Benefit in respect of her three children since May 2011 when she was granted a Stamp 4 Visa, and agreed that she was not entitled to benefit prior to that date in respect of the two other children. The appellant

contended also that she had applied for Child Benefit on her return in 2007 but that she had been told to await a decision on her status.

The Appeals Officer reviewed the appellant's appeal submission and it was agreed that the issue was one of the law and its interpretation in relation to entitlement from May 2007 to April 2011. The Appeals Officer pointed out that, prior to December 2009, her entitlement would have been based only on the relevant legislative provisions which had to be considered in relation to habitual residence. From December 2009, the legislation was amended and certain categories of people (including asylum seekers) were excluded from being deemed to be habitually resident; more recently the Zambrano judgment held that third country parents of EU citizen children should be granted certain rights. As all relevant issues had been discussed, the hearing concluded.

Consideration of the Appeals Officer:

The Appeals Officer examined the conclusions of the Deciding Officer. He noted the appellant's contentions, both written and oral. He noted, in particular, that there was no trace of an application for Child Benefit being received in the period between the appellant's return to Ireland in 2007 and her application in March 2011 following the Zambrano judgment.

In addition, he noted that this judgment had the effect of clarifying the legal situation and, rather than limiting the implications for her in respect of her Irish citizen child only, it established the appellant's status and therefore had implications for her entitlement to Child Benefit in respect of her three children.

Having considered all of the facts of this case, including those adduced at the oral hearing, the Appeals Officer concluded as follows.

- The appellant is deemed to be habitually resident for social welfare purposes and, accordingly, Child Benefit is payable to her in respect of her three children with effect from April 2011, the month following that in which the application was submitted in respect of her Irish citizen child.
- Although the appellant stated at the oral hearing that she had applied for Child Benefit earlier, he found no grounds to support this contention. He concluded also that, while it was likely that an

application would have been refused in the period prior to March 2011, good cause had not been established for the delay in making an application during the period from May 2007 to March 2011.

Outcome: Appeal partially allowed.

Supplementary Welfare Allowance (Basic Income) – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Supplementary Welfare Allowance.

Background: The appellant and her husband were born in Africa, and went to Germany in 2003. Her husband applied for and was granted asylum there. They left Germany subsequently and moved to the UK with their two children. The family lived in the UK for three years, where the appellant worked full time until June 2010. The appellant and her family lived in a council flat which she surrendered, along with her DSS payments, to move to Ireland in 2010. The appellant made an application for Supplementary Welfare Allowance in September 2010 and this was refused. She did not appeal this decision until August 2011, at which time she was advised by the Health Service Executive (HSE) Appeals Office to re-apply as it was not possible to appeal that decision at that stage. She re-applied in August 2011 and her claim was refused on grounds that she was deemed not to meet the habitual residence condition. It is this decision that is the subject of her appeal.

Parties attending oral hearing: The appellant attended with a friend.

Report of the oral hearing: The Appeals Officer outlined the decision, the details of the Deciding Officer's submission and the appellant's own letter of appeal. The appellant confirmed the background to her arrival in Ireland, as outlined above. She reported that she came to Ireland to enrol her children in school for September 2010, and then returned to the UK to receive her last DSS payment before it was stopped, as she had advised the authorities there of her intention to leave.

The appellant outlined that one of the main reasons she came to reside in Ireland was because of the gangs in the school which her children attended in the UK. She said she was

concerned about the safety of her children. She stated that she did not want to return to the UK as Ireland is now their home and they have settled here and are getting a better education.

The appellant reported that she and her family were living in a flat where the rent was €130 per week. She advised that the rent was in arrears as she had been unable to pay for it since she moved in, and she provided a statement from her landlord confirming this and requesting her to move. The appellant stated that she had been living off the kindness of friends. She produced copies of money grams which were sent to her from friends in Germany for various amounts throughout the year. She also provided documentation from charitable societies that had provided her with assistance towards the cost of food and clothing. She had been awarded Child Benefit in July 2011, payable with effect from December 2010. She stated that this monthly payment, and the arrears paid in July 2011, was the money that she and her family had been living on.

The appellant confirmed that her husband was not in employment but stated that he was registered with FAS and on a panel to complete a course which would allow him to obtain a licence to pursue a career in which he had some experience abroad. The appellant advised that she was also registered with FAS and has attended a training course for three months.

Consideration of the Appeals Officer: The Appeals Officer noted that the appellant had been resident in the State since August 2010, and that the evidence made clear that she had not left the country since then. She noted also that the appellant had confirmed at oral hearing that she had surrendered the family's council flat in the UK as she regarded Ireland as their home.

She considered that it had been established that the appellant had no ties or links to the UK as her husband and children were here with her since their arrival, and they were all living in the same rented accommodation since that date. She noted that the children were attending school, that the appellant and her husband were registered with FAS and that they had completed training courses. The Appeals Officer concluded that the appellant had established that main centre of interest was Ireland and that her future intentions were to remain. In addition, Child Benefit had been awarded with effect from December 2010. Accordingly, she held that the appellant could be deemed to be habitually

resident in the State for purposes of her claim to Supplementary Welfare Allowance.

Outcome: Appeal allowed.

Child Benefit – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) before August 2008 for purposes of her claim to Child Benefit.

Background: The appellant, a Somali national, came to Ireland in April 2006 and sought asylum. She was assigned direct provision accommodation while her application was being processed. When she fled Somalia, she left her daughter in the care of a family member. Her son was born in Ireland in August 2006, and she made a claim for Child Benefit. That claim was refused on grounds that she was deemed not to meet the habitual residence condition. Ultimately, the appellant was granted refugee status in August 2008, on appeal to Refugee Appeals Tribunal. She applied again for Child Benefit in respect of her son, which was awarded with effect from August 2008.

Parties attending oral hearing: The appellant, a friend who acted as interpreter and a solicitor representing the appellant.

Report of oral hearing: The appellant's solicitor presented a written submission on her behalf. He confirmed that the appellant's status had been decided by the Refugee Appeals Tribunal. He reported that the appellant's daughter remained in the care of a family member but that she was now living in Kenya, as were the other members of the appellant's family. He advised that the appellant had applied for family reunification in respect of her daughter. He confirmed that the appellant had lived in direct provision accommodation since coming to the State in 2006 until granted refugee status, and said that she had not left the State since coming here. He reported that the appellant's son had a chronic medical condition and submitted that, in view of the child's consequent needs and the political situation in Somalia, Ireland had to be her centre of interest as she could not be sent back to Somalia.

The appellant's solicitor made reference to the earlier claim, made in 2006, and stated that it would have been futile for the appellant to appeal the decision at the time as it would have been refused again because she was not at that stage

present in the State or the Common Travel Area for a continuous period of two years ending on the date of application. He submitted, however, that as the appellant had since been recognised as a refugee, the award of Child Benefit should be backdated to the original application, with arrears paid to the appellant.

Consideration of the Appeals Officer: The Appeals Officer considered the contention advanced by the appellant's solicitor, that the letter from the Minister for Justice, Equality and Law Reform did not actually confer refugee status on the appellant but recognised that she was a refugee. He noted that her solicitor had quoted from the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees published by the Office of the UNHCR, as follows:

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognised because he is a refugee.

The Appeals Officer noted also that the letter of notification of its decision sent by the Refugee Appeals Tribunal did not specify an effective date for the recognition of the appellant's status as a refugee. In the absence of that date, he considered it reasonable to conclude that the Refugee Appeals tribunal was, in fact, recognising the appellant's refugee status from the date of her application for that status.

In this regard, he took account also of the recent judgment of Cooke J in the High Court, IEHC 33, delivered on 9 February 2001, stating that '*the determination of an asylum application does not have as its purpose or outcome the discretionary grant or refusal of refugee status by the Minister. It is not, for example, analogous to the exercise of his discretion on an application for a certificate of naturalisation under the Irish Nationality and Citizenship Act, 1956. An asylum seeker is a refugee as and when the circumstances defined in the Geneva Convention arise and apply. The determination of the asylum application is purely declaratory of a pre-existing status.*'

Accordingly, the Appeals Officer accepted that recognition of a person's status as a refugee is declaratory of a pre-existing status, although he considered that this did not necessarily mean that the person must also be regarded as being habitually resident in the State from the date of his or her arrival or application for refugee status. In the appellant's case, however, and having regard to all five factors to be considered when determining habitual residence insofar as they may be applicable, he was satisfied that she was habitually resident in the State when her son was born in 2006

The Appeals Officer noted the Deciding Officer's contention that the appellant did not appeal the HRC decision made on her earlier claim of 2006, as well as her solicitor's assertion that it would have been futile for her to have done so. He noted also that the appellant did not delay in making another application as soon as she had new facts to present, in terms of the determination of her refugee status. He concluded that it would be unreasonable not to review the decision on the appellant's earlier claim in the light of those new facts. As he was satisfied that the appellant was habitually resident in the State at the date of her son's birth, he considered also that entitlement to Child Benefit should apply from that date.

Outcome: Appeal allowed

Child Benefit – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Child Benefit.

Background: The appellant, a Romanian national, arrived in the State in March 2007. She applied for Child Benefit in 2009 and 2010, both of which were disallowed on grounds that she did not meet the habitual residence condition. She made another claim in April 2011, which was also disallowed on the same grounds. It is this decision which was the subject of the appeal.

Parties attending oral hearing: The appellant, her father, and a solicitor acting on her behalf.

Report of oral hearing: The appellant, with her father acting as interpreter, stated that she arrived in the State in March 2007 with her partner and their two children. Her partner had been employed here until some twelve months

earlier. She reported, however, that they had since separated and that he was unable to offer regular financial support but helped out when he could. The appellant provided details of various addresses at which she had lived since her arrival in the State, and advised that she had been resident at her current address for over twelve months. She said that she and her children were sharing the house with another couple, and that the situation was very difficult. She advised that she was surviving mainly on support from her father and brothers who were resident here since 2002, and who have access to welfare support payments. She said that she also received financial support from the St Vincent de Paul charity and she submitted a written statement to that effect.

The appellant reported that she had worked as a childminder/cleaner for a short period of time in 2009 and that she was continuing to seek work here despite the current work permit restrictions. She was adamant that she had no ties with her home country and that she had not left the State since her arrival. She advised that she had no family in Romania, nor had she any financial or property interests there.

The appellant stated that she wanted to remain in the State for her own sake but most particularly for that of her children, two of whom are in full-time education and doing well. She stated that her youngest child was born in the State and, on that basis, submitted that she and her family should have access to Child Benefit and other welfare supports. She stated that she hoped eventually to be in a position to work here without the need for a permit¹.

Her solicitor stated that he was very aware of the appellant's situation and her plight. He reported that her situation was dire and that without the financial support of her family and St Vincent de Paul, she and her children would not survive. He stated that he believed that the appellant intended to remain in the State as her parents, brothers and their families now reside here too. He contended that her centre of interest must be Ireland, and he produced copies of the following statements:

- A statement from the Romanian Embassy, indicating that the appellant's passport expired in 2009 and had not been renewed.

¹ Oral hearing held prior to 28 February 2012 when work permit arrangements for Romanian and Bulgarian parent of Irish citizen children changed

- A statement from St Vincent de Paul, outlining the financial support given to the appellant in 2011.
- A statement from the school principal, confirming that the appellant's two elder children were pupils of the school.
- A statement from a second school principal, stating that her youngest had a place reserved for her at that school.

Consideration of the Appeals Officer: The Appeals Officer noted that, in the determination of a person's habitual residence in the State for social welfare purposes, account must be taken of the five factors outlined in legislation. Having regard to those factors, he noted that: the appellant was here five years at that stage and had been supported to that point by her family and a local charitable organisation; she had remained in the State since her arrival in 2007 and did not have a current passport; she stated she had engaged in some employment, albeit for short periods of time but in the absence of a work permit, she could not be expected to have had a substantial employment record; her parents and siblings were resident here since 2002, and one of her children was born here. He noted also that the appellant had asserted that her centre of interest was most definitely here and that, in terms of her future intentions, she had made provision for her children's education well into the future.

In all the circumstances outlined, the Appeals Officer concluded that the nature of the appellant's residence in the State must be regarded as habitual, having particular regard to the duration of that residence, the residence here of her family of origin and the evidence of her having established a centre of interest here.

Outcome: Appeal allowed.

State Pension (Non-Contributory)

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of his claim to State Pension.

Background: The appellant, a 66 year old divorced man, had lived and worked in the UK since he was 18 years of age. He had alcohol addiction problems and was in hospital in

England prior to coming back to Ireland in 2010. He was living with his brother in Ireland but had retained his council flat in England. He made an application for a State Pension in May 2011, and was refused on grounds that he was deemed not to be habitually resident in the State.

Parties attending oral hearing: The appellant and his brother.

Report of oral hearing: The Appeals Officer read the decision before him, and outlined those details to which the Deciding Officer had regard in making his determination on the question of habitual residence. He explained what was at issue in relation to habitual residence. He asked the appellant about the fact that he appeared to have no permanent address in Ireland, and was staying with his brother or his sister for weeks at a time. He asked also if he still had the council house in England. The appellant advised that the council property was still held in his name and said that his son, who was born and reared in England, was living there. The appellant's brother stated that he was trying to get him a place of his own in the same town he lived in, and that he was currently talking to the St Vincent de Paul who had a number of properties in the area.

The Appeals Officer asked the appellant if he was going to move to Ireland permanently. He said that he would, if he had a place of his own and could get the Old Age (State) Pension. He advised that he would consider giving up the property in England if he got a place of his own in the same town as his brother. He reported that he was going back to England the following day for a family occasion, and said that he would talk to his sons and the council regarding moving home permanently.

Consideration of the Appeals Officer: Having carefully examined the evidence in the case, and taking particular account of the appellant's circumstances as outlined at oral hearing, the Appeals Officer concluded that he could not be deemed to meet the habitual residence condition for purposes of his State Pension claim.

Outcome: Appeal disallowed.

Jobseeker's Allowance – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence

Condition (HRC) for purposes of her claim to Jobseeker's Allowance.

Background: The appellant, a Romanian national, came to Ireland in 2006. He lived here with his partner and their child who was born here in 2010. They have another child, born in 2000, who remains in Romania. The appellant was engaged in part-time employment but did not have a work permit. His claim to Jobseeker's Allowance was disallowed on grounds that he had not established that he was habitually resident in the State for social welfare purposes. The Deciding Officer had concluded that details as to his residence and means of support for the period between his arrival and the date of his claim were unknown, and referred also to the fact that he did not hold a valid work permit. The appellant's partner was awarded Supplementary Welfare Allowance in 2011, with means assessed at €70 per week.

Parties attending oral hearing: The appellant attended alone.

Report of oral hearing: The appellant opened by saying that he had been working in his home country of Romania until 2006 when his sister was killed tragically in a road traffic accident in Ireland. He reported that he came to Ireland initially to represent his family in legal and other proceedings arising from her death. He said that his sister was buried in Ireland and that her child lives here with her father. In addition, he indicated that all the legal issues of compensation arising from his sister's death had not been settled and said that he intended to remain until they were.

The appellant referred to his employment here since 2006 and submitted tax certificates as proof. He acknowledged that he did not hold a valid work permit. He said he was unclear as to why his employer had not applied for a work permit on his behalf. He confirmed that his partner and child lived with him. He stated that his partner had been in the State for more than five years, and was currently engaged in some small self-employment, working at home. He submitted evidence of her registration with the Revenue Commissioners, and said that business was slow to pick up; she might earn €70 per week on average. He confirmed that she was in receipt of Supplementary Welfare Allowance but not Child Benefit, and he advised that she was pregnant. He said he could not understand that her work history appeared not to have been considered in relation to Child Benefit. In

conclusion, the appellant stated that he was looking for work and had registered with FAS.

Consideration of the Appeals Officer: The Appeals Officer noted that the appellant was a Romanian national who did not hold a valid work permit. He considered, therefore, that any employment he had undertaken was illegal and could not be taken as a valid employment record for determining the question as to habitual residence. However, he took account of the fact that the appellant had formed a relationship with an EU national who did not require a work permit, and that the couple had one child and were expecting another. He noted that she had been in the State for more than five years and that she had been in employment, with 84 social insurance contributions paid. In addition, she had commenced self-employment and proof of her registration with Revenue had been submitted. He concluded, therefore, that the appellant's partner was legally permitted to reside in the State in accordance with the provisions of S.I. 656 of 2006, European Communities (Free Movement of Persons) (No. 2) Regulations, 2006.

The Appeals Officer noted that the appellant's partner was in receipt of Supplementary Welfare Allowance which included an increase in respect of the appellant and their child. He observed that the appellant was, therefore, the dependant of a person who was legally resident in the State and as such was himself legally resident. Accordingly, he considered that the question as to habitual residence fell to be considered under the five factors set out in the legislation. He noted that the length and continuity of his residence was substantial. He noted also that his work record indicated that he had paid 101 PRSI contributions and, although the employment was undertaken without a valid work permit it could not be considered to constitute a valid work record, it did indicate his actual presence in the State. He noted also that there was no evidence to suggest that the appellant had been coming and going from Ireland since his arrival and considered that he could not, therefore, be said to have continued to maintain a centre of interest outside Ireland.

The Appeals Officer considered that the appellant had a significant centre of interest in the State as he had a partner and a child. He noted the appellant's original reason for coming to Ireland, the tragic death of his sister, but considered that his connection with the State had moved beyond that. He noted also that the

appellant's niece continued to reside in the State and that the appellant had indicated that he remained here in the child's interest. When considered with his own family commitments, the Appeals Officer considered that this added to the assertion that his centre of interest is now here.

The Appeals Officer considered that there was a case to be made for regarding the appellant as habitually resident in relation to four of the five factors outlined in legislation. He concluded that the fact that his employment had been undertaken without a work permit, and that he continued without a work permit, should not determine the issue alone. He observed that he had recourse to obtaining a work permit² which would remedy his situation into the future and held that, in all the circumstances, the appeal must succeed.

Outcome: Appeal allowed.

² The requirement to hold a work permit was amended in respect of Romanian and Bulgarian parents of Irish citizen children, and applies with effect from 28 February 2012.

Appendix 1

Social Welfare Appeals Office Organisation Chart

