

Social Welfare Appeals Office

Annual Report 2013



**Report by the Chief Appeals Officer on the activities
of the Social Welfare Appeals Office in 2013**



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

June 2014

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 2013.

Yours sincerely,

Geraldine Gleeson
Chief Appeals Officer

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Introduction

The Social Welfare Appeals Office made substantial progress in 2013 in relation to the processing and finalisation of social welfare appeals. In particular, I am pleased to report a reduction of 28%, from 20,414 to 14,770, in the number of appeals on hands at the end of 2013 when compared to the end of 2012.

These improvements were achieved in the context of a continuing high number of appeals received by my Office – close to 32,800 in 2013. While this represents a reduction of 7.6% over 2012, it was the second highest annual number of appeals received since the Office was established in 1990. These high numbers of receipts pose an ongoing challenge.

Appeal processing times also improved during the year with the overall appeal processing time reducing from 33.1 weeks in 2012 to 29 weeks in 2013. Improvements in appeals processing times will remain a priority and I am pleased to report that there was particular improvement in the time taken to process appeals within my office. These improvements reflect the investment made in this office over the last few years, particularly in the appointment of additional Appeals Officers and the implementation of improved operating processes. The appointment of the additional Appeals Officers is much appreciated at a time when the Department itself faces many significant challenges.

The statistical data in this report is presented in a new format broadly consistent with the programme format used by the Department. I hope that the new presentation of data will better inform readers of the incidence of appeals by scheme groups, the progress made to process same and the outcomes. The data clearly shows that the vast majority of appeals relate to the Illness, Disability and Caring and Working Age Income Supports programmes. On the other hand, the numbers of appeals relating to the Pensions and Children programmes is low by comparison.

Successfully meeting the challenges of a busy and demanding year depends on a high level of commitment and dedication from the staff of my office and, as ever, I am most appreciative of their co-operation and wish to record my gratitude here.

Geraldine Gleeson

June 2014

Statistical Trends – 2013

Our main statistical data for 2013 is set out in commentary form below and in the "Workflow Chart" and tables which follow.

Appeals Received in 2013

The number of appeals being made to the Social Welfare Appeals Office remains high. In 2013, the Office received 32,777 appeals. While this represents a reduction of 2,707 on the 35,484 appeals received in 2012, it is significantly higher than the number of appeals being received prior to 2009.

Clarifications in 2013

In addition to the 32,777 appeals registered in 2013, a further 4,910 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 2013, only 723 (14.8%) of the 4,910 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 2013

The number of SWA appeals received reduced by 25% when compared to 2012.

Appeals in relation to Carer's Benefit and Allowances increased by 28%; and Disability Allowance by 9.9%, whereas appeals in relation to Jobseeker's Allowance decreased by 11.5%; Invalidity Pensions by 5.5%; Illness Benefit by 33.5%; and Domiciliary Care Allowance by 22.8%.

Workload for 2013

The workload of 53,191 for 2013 was arrived at by adding the 32,777 appeals received to the 20,414 appeals on hands at the beginning of the year. The total workload was slightly higher than the workload of 52,972 for 2012.

Appeals Finalised in 2013

We finalised 38,421 appeals in 2013.

The appeals finalised were broken down between:

- Appeals Officers (73%): 28,062 were finalised by Appeals Officers either summarily or by way of oral hearings (equivalent figure in 2012 was 22,997 or 70.6%),
- Revised Decisions (21%): 8,062 were finalised as a result of revised decisions being made by Deciding Officers before the appeals were referred to an Appeals Officer (7,307 or 22.4% in 2012), and
- Withdrawn (6%): 2,297 were withdrawn or otherwise not pursued by the appellant (2,254 or 7% in 2012).

Appeals Outcomes in 2013

The outcome of the 38,421 appeals finalised in 2013 was broken down as follows:

- Favourable (55.%): 21,139 of the appeals finalised had a favourable outcome for the appellant in that they

were either allowed in full or in part or resolved by way of a revised decision by a Deciding Officer in favour of the appellant (50.4% in 2012),

- Unfavourable (39%): 14,985 of the appeals finalised were disallowed thereby upholding the decision of the Deciding Officer. (42.6%): in 2012), and
- Withdrawn (6%): As previously indicated, 2,297 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (7% in 2012).

Determinations by Appeals Officers in 2013

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 (27.1%): 7,598 of the 28,062 appeals finalised in 2013 were dealt with by way of oral hearings, of these 4,568 (60.1%) had a favourable outcome. In 2012, 53% of the 9,267 cases dealt with by way of oral hearings had a favourable outcome.
- Summary Decisions (72.9%): 20,464 of the appeals finalised were dealt with by way of summary decisions, of these 8,509 (41.6%) had a favourable outcome. In 2012, 30.6% of appeals finalised by way of summary decision had a favourable outcome.

Processing Times in 2013

During 2013, the average time taken to process all appeals was 29.0 weeks (33.1 weeks in 2012).

Of the 29.0 weeks overall average,

- 18.4 weeks was attributable to work in progress in the Department (17.3 weeks in 2012)
- 0.5 weeks was due to responses awaited from appellants (0.9 weeks in 2012)
- 10.1 weeks was attributable to ongoing processes within the Social Welfare Appeals Office (14.9 weeks in 2012).

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 2013 was 25.8 weeks (27.8 weeks in 2012), while the average time to process an oral hearing was 33.9 weeks (39.5 weeks in 2012). The average waiting time by scheme and process type are set out in Table 6.

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

- seeking the Department's submission on the grounds for the appeal
- further medical assessments by the Department in certain illness related cases
- 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 2013

A gender breakdown of appeals received in 2013 revealed that 45.5% were from men and 54.5% from women. The corresponding breakdown for 2012 was 46.9% and 53.1% respectively. In terms of favourable outcomes in 2013, 54.7% of men and 56.0% of women benefited.

Statistical tables:

Table 1: Appeals received and finalised 2013

Table 2: Appeals received 2007 – 2013

Table 3: Outcome of Appeals by category 2013

Table 4: Appeals in progress at 31 December 2007 - 2013

Table 5: Appeals statistics 1993 - 2013

Table 6: Appeals processing times by scheme 2013

Table 7: Appeals outstanding at 31st December 2013

SW Appeals Workflow Chart 2013
 (Corresponding figures for 2012 are in brackets)

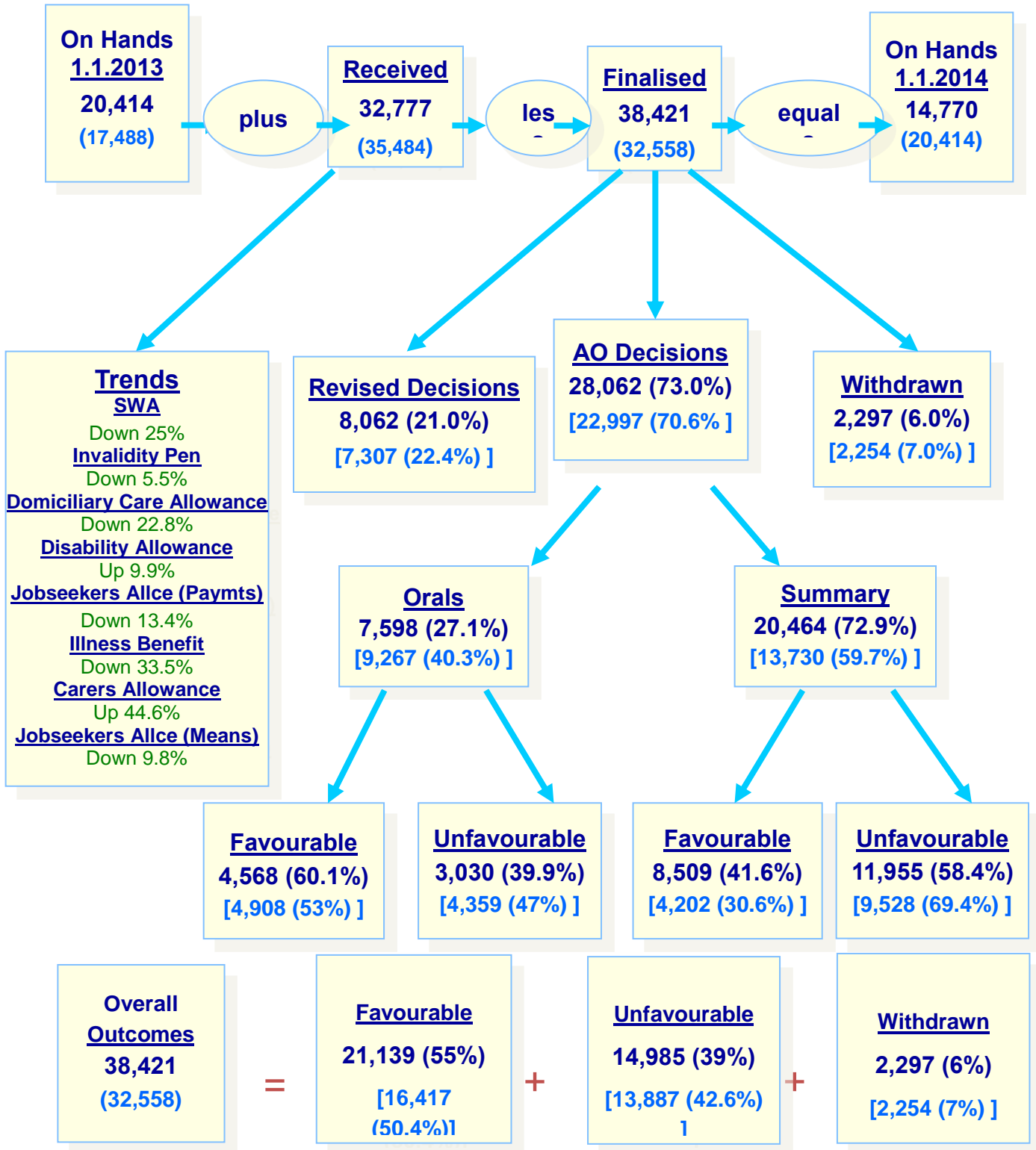


Table 1: Appeals Received and finalised 2013

	In progress 01-Jan-13	Receipts	Decided	Revised Decision	Withdrawn	In progress 01-Jan-14
<u>PENSIONS</u>						
State Pension (Non-Contributory)	127	279	216	33	14	143
State Pension (Contributory)	106	136	142	19	7	74
State Pension (Transition)	39	38	42	7	2	26
Widows', Widowers' Pension (Contributory)	20	40	33	1	1	25
Bereavement Grant	41	78	67	12	0	40
TOTAL PENSIONS	333	571	500	72	24	308
<u>WORKING AGE INCOME & EMPLOYMENT SUPPORTS</u>						
Jobseeker's Allowance	1,247	2,644	2,129	387	195	1,180
Jobseeker's Allowance (Means)	1,522	2,923	2,302	414	276	1,453
One Parent Family Payment	575	612	514	143	119	411
Widow's Widower's Pension (Non-Contributory)	23	30	29	7	1	16
Deserted Wife's Allowance	1	2	1	1	0	1
Supplementary Welfare Allowance	1,955	4,084	3,627	776	415	1,221
Farm Assist	161	286	182	45	44	176
Pre-Retirement Allowance	1	0	0	0	0	1
Jobseeker's Benefit	519	882	717	203	90	391
Deserted Wife's Benefit	10	11	16	1	1	3
Maternity Benefit	21	26	30	2	1	14
Adoptive Benefit	1	0	1	0	0	0
Homemaker's	1	1	1	0	0	1
Treatment Benefits	1	5	4	0	0	2
Partial Capacity Benefit	67	70	28	20	8	81
TOTAL WORKING AGE – INCOME & EMPLOYMENT SUPPORTS	6,105	11,576	9,581	1,999	1,150	4,951
<u>ILLNESS, DISABILITY AND CARERS</u>						
Disability Allowance	4,030	6,836	6,808	792	145	3,121
Blind Pension	8	34	24	4	1	13
Carer's Allowance	1,766	3,869	2,626	1,040	56	1,913
Domiciliary Care Allowance	1,113	1,688	1,502	533	30	736
Respite Care Grant	153	176	180	51	4	94
Illness Benefit	1,460	1,761	870	928	740	683
Injury Benefit	11	21	14	2	1	15
Invalidity Pension	4,356	4,501	4,665	2,243	60	1,889
Disablement Benefit	254	346	349	47	18	186
Incapacity Supplement	23	14	11	10	0	16
Medical Care	25	3	0	5	5	18
Carer's Benefit	75	115	99	43	3	45
TOTAL - ILLNESS, DISABILITY AND CARERS	13,274	19,364	17,148	5,698	1,063	8,729
<u>CHILDREN</u>						
Child Benefit	403	663	534	188	33	311
Family Income Supplement	147	421	183	96	12	277
Guardian's Payment (Non-Contributory)	4	11	6	1	1	7
Guardian's Payment (Contributory)	26	42	39	3	2	24
Widowed Parent Grant	5	11	9	0	0	7
TOTAL - CHILDREN	585	1,148	771	288	48	626
Insurability of Employment	96	95	57	4	6	124
Liable Relatives	21	23	5	1	6	32
TOTAL – ALL APPEALS	20,414	32,777	28,062	8,062	2,297	14,770

Table 2: Appeals received 2007 – 2013

	2007	2008	2009	2010	2011	2012	2013
<u>PENSIONS</u>							
State Pension (Non-Contributory)	331	278	319	356	317	231	279
State Pension (Contributory)	86	87	88	256	106	128	136
State Pension (Transition)	30	15	22	7	29	43	38
Widow's, Widower's Pension (Contributory)	11	17	15	20	17	30	40
Death Benefit	-	1	1	-	-	-	-
Bereavement Grant	36	39	46	58	66	71	78
TOTAL PENSIONS	494	437	491	697	535	503	571
<u>WORKING AGE INCOME & EMPLOYMENT SUPPORTS</u>							
Jobseeker's Allowance - Payments	2,296	2,401	3,179	5,506	3,404	3,050	2,644
Jobseeker's Allowance - Means	903	1,901	3,615	4,050	3,465	3,240	2,923
One Parent Family Payment	688	758	805	1,109	1,055	938	612
Widow's, Widower's Pension (Non-Contributory)	15	14	19	12	29	39	30
Deserted Wife's Allowance	1	3	-	-	4	1	2
Supplementary Welfare Allowance	322	436	789	1,020	3,129	5,445	4,084
Farm Assist	66	61	137	244	220	271	286
Pre-Retirement Allowance	11	10	3	2	1	-	-
Jobseeker's Benefit	1,139	1,358	1,354	1,307	1,286	1,289	882
Deserted Wife's Benefit	12	13	5	14	20	8	11
Maternity Benefit	10	15	11	29	42	29	26
Adoptive Benefit	2	1	2	2	2	6	-
Homemaker's	-	0	-	1	-	1	1
Treatment Benefits	17	18	10	8	3	3	5
Partial Capacity Benefit	-	-	-	-	-	67	70
TOTAL WORKING AGE - INCOME & EMPLOYMENT SUPPORTS	5,482	6,989	9,929	13,304	12,660	14,387	11,576
<u>ILLNESS, DISABILITY AND CARERS</u>							
Disability Allowance	2,938	3,522	4,696	4,840	5,472	6,223	6,836
Blind Pension	16	9	21	14	21	27	34
Carer's Allowance	700	1,046	1,977	3,025	2,199	2,676	3,869
Domiciliary Care Allowance	-	-	836	1,858	2,401	2,186	1,688
Respite Care Grant	457	319	262	162	303	278	176
Illness Benefit	2,562	3,595	4,945	5,471	3,657	2,647	1,761
Injury Benefit	41	29	37	23	16	13	21
Invalidity Pension	535	526	642	1,024	2,285	4,765	4,501
Disablement Benefit	296	294	263	342	263	409	346
Medical Care	33	40	42	21	5	6	3
Incapacity Supplement	17	7	8	15	6	21	14
Carer's Benefit	36	56	121	182	160	183	115
TOTAL - ILLNESS, DISABILITY AND CARERS	7,631	9,443	13,850	16,977	16,788	19,434	19,364
<u>CHILDREN</u>							
Child Benefit	269	689	1,361	1,051	824	675	663
Family Income Supplement	92	142	170	227	258	301	421
Guardian's Payment (Non-Contributory)	3	25	23	6	13	14	11
Guardian's Payment (Contributory)	2	2	11	28	31	46	42
Widowed Parent Grant	-	-	1	3	7	6	11
TOTAL - CHILDREN	366	858	1,566	1,315	1,133	1,042	1,148
<u>OTHER</u>							
Rent Allowance de-control of rents legislation)	1	1	-	-	-	-	-
Liabile Relative	9	19	25	16	26	39	23
Insurability of Employment	87	86	102	123	99	79	95
TOTAL - ALL APPEALS	14,070	17,833	25,963	32,432	31,241	35,484	32,777

Table 3: Outcome of Appeals by category 2013

	Allowed	Partially Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
<u>PENSIONS</u>						
State Pension (Non-Contributory)	32 12.2%	13 4.9%	33 12.6%	171 65.0%	14 5.3%	263
State Pension (Contributory)	22 13.0%	5 3.0%	19 11.3%	115 68.5%	7 4.2%	168
State Pension (Transition)	5 9.8%	0 0%	7 13.7%	37 72.6%	2 3.9%	51
Widow's/Widower's Pension (Contributory)	9 25.7%	2 5.7%	1 2.9%	22 62.8%	1 2.9%	35
Bereavement Grant	1 1.3%	0 0%	12 15.2%	66 83.5%	0 0%	79
TOTAL PENSIONS	69	20	72	411	24	596
<u>WORKING AGE INCOME/EMPLOYMENT SUPPORTS</u>						
Jobseeker's Allowance - Payments	626 23.1%	118 4.4%	387 14.3%	1,385 51.0%	195 7.2%	2,711
Jobseeker's Allowance - Means	425 14.2%	149 5.0%	414 13.8%	1,728 57.8%	276 9.2%	2,992
One Parent Family Payment	147 18.9%	35 4.5%	143 18.4%	332 42.8%	119 15.4%	776
Widow's/Widower's Pension (Non-Contributory)	6 16.2%	0 0%	7 18.9%	23 62.2%	1 2.7%	37
Deserted Wife's Allowance	0 0%	0 0%	1 50.0%	1 50.0%	0 0%	2
Supplementary Welfare Allowance	983 20.4%	156 3.2%	776 16.1%	2,488 51.6%	415 8.7%	4,818
Farm Assist	37 13.7%	23 8.5%	45 16.6%	122 45.0%	44 16.2%	271
Jobseeker's Benefit	160 15.8%	41 4.1%	203 20.1%	516 51.1%	90 8.9%	1,010
Deserted Wife's Benefit	3 16.6%	1 5.6%	1 5.6%	12 66.6%	1 5.6%	18
Maternity Benefit	7 21.2%	1 3.0%	2 6.1%	22 66.7%	1 3.0%	33
Adoptive Benefit	0 0%	0 0%	0 0%	1 100.0%	0 0%	1
Homemaker's	0 0%	0 0%	0 0%	1 100.0%	0 0%	1
Treatment Benefits	0 0%	0 0%	0 0%	4 100.0%	0 0%	4
Partial Capacity Benefit	7 12.5%	3 5.4%	20 35.7%	18 32.1%	8 14.3%	56
<u>TOTAL WORKING AGE – INCOME/EMPLOYMENT SUPPORTS</u>	2,401	527	1,999	6,653	1,150	12,730

Table 3: Outcome of Appeals by category 2013 (Cont'd)

	Allowed	Partially Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
<u>ILLNESS, DISABILITY AND CARERS</u>						
Disability Allowance	3882 50.1%	84 1.1%	792 10.2%	2,842 36.7%	145 1.9%	7,745
Blind Pension	4 13.8%	0 0%	4 13.8%	20 69.0%	1 3.4%	29
Carer's Allowance	990 26.6%	131 3.5%	1,040 27.9%	1,505 40.4%	56 1.6%	3,722
Domiciliary Care Allowance	783 37.9%	25 1.2%	533 25.8%	694 33.6%	30 1.5%	2,065
Respite Care Allowance	74 31.5%	2 0.8%	51 21.7%	104 44.3%	4 1.7%	235
Illness Benefit	303 11.9%	13 0.5%	928 36.6%	554 21.8%	740 29.2%	2,538
Injury Benefit	5 29.4%	0 0%	2 11.8%	9 52.9%	1 5.9%	17
Invalidity Pension	3,336 47.9%	18 0.3%	2,243 32.2%	1,311 18.8%	60 0.8%	6,968
Disablement Benefit	120 29.0%	21 5.1%	47 11.4%	208 50.2%	18 4.3%	414
Incapacity Supplement	4 19.0%	1 4.8%	10 47.6%	6 28.6%	0 0%	21
Medical Care	0 0%	0 0%	5 50.0%	0 0%	5 50.0%	10
Carer's Benefit	44 30.3%	2 1.4%	43 29.7%	53 36.5%	3 2.1%	145
TOTAL – ILLNESS, DISABILITY AND CARERS	9,545	297	5,698	7,306	1,063	23,909
<u>CHILDREN</u>						
Child Benefit	105 13.9%	18 2.4%	188 24.9%	411 54.4%	33 4.4%	755
Family Income Supplement	55 18.9%	9 3.1%	96 33.0%	119 40.9%	12 4.1%	291
Guardian's Payment (Non-Contributory)	4 50.0%	0 0%	1 12.5%	2 25.0%	1 12.5%	8
Guardian's Payment (Contributory)	13 29.5%	0 0%	3 6.8%	26 59.1%	2 4.6%	44
Widowed Parent Grant	0 0%	0 0%	0 0%	9 100.0%	0 0%	9
TOTAL – CHILDREN	177	27	288	567	48	1,107
<u>OTHER</u>						
Scope	14 20.9%	0 0%	4 6.0%	43 64.2%	6 9.0%	67
Liable Relative's	0 0%	0 0%	1 8.3%	5 41.7%	6 50.0%	12
TOTAL APPEALS	12,206	871	8,062	14,985	2,297	38,421

Table 4: Appeals in progress at 31 December 2007 – 2013

	2007	2008	2009	2010	2011	2012	2013
<u>PENSIONS</u>							
State Pension (Non-Contributory)	137	141	169	230	165	127	143
State Pension (Contributory)	55	47	62	110	91	106	74
State Pension (Transition)	19	12	9	11	22	39	26
Widow's, Widower's Pension (Contributory)	5	8	9	14	14	20	25
Death Benefit	0	1	1	0	0	0	0
Bereavement Grant	6	13	19	30	35	41	40
TOTAL PENSIONS	222	222	269	395	327	333	308
<u>WORKING AGE INCOME/EMPLOYMENT SUPPORTS</u>							
Jobseeker's Allowance - Payments	699	773	2,095	3,318	1,498	1,247	1,180
Jobseeker's Allowance - Means	398	875	2,269	2,496	1,866	1,522	1,453
One Parent Family Payment	292	383	469	819	618	575	411
Widow's' /Widower's Pension (Non-Contributory)	8	7	12	13	18	23	16
Deserted Wife's Allowance	0	1	0	0	4	1	1
Supplementary Welfare Allowance	79	114	140	343	1,833	1,955	1,221
Farm Assist	31	34	98	163	121	161	176
Pre-Retirement Allowance	5	4	0	1	2	1	1
Jobseeker's Benefit	284	415	667	766	583	519	391
Deserted Wife's Benefit	4	4	3	14	12	10	3
Maternity Benefit	4	2	6	21	20	21	14
Adoptive Benefit	1	1	2	2	2	1	0
Homemaker's	1	1	0	0	0	1	1
Treatment Benefits	3	8	6	4	1	1	2
Partial Capacity Benefit	-	-	-	-	-	67	81
TOTAL WORKING AGE - INCOME & EMPLOYMENT SUPPORTS	1,809	2,622	5,767	7,960	6,578	6,105	4,951
<u>ILLNESS, DISABILITY AND CARERS</u>							
Disability Allowance	1,311	1,550	2,846	3,046	2,958	4,030	3,121
Blind Pension	6	6	8	7	14	8	13
Carer's Allowance	336	594	1,339	2,145	1,147	1,766	1,913
Domiciliary Care Allowance	-	-	776	1,386	1,385	1,113	736
Respite Care Grant	221	119	185	114	166	153	94
Illness Benefit	1,016	1,404	2,420	2,658	2,021	1,460	683
Injury Benefit	22	16	21	18	9	11	15
Invalidity Pension	290	310	467	612	1,582	4,356	1,889
Disablement Benefit	187	201	169	334	278	254	186
Medical Care	17	28	43	49	27	25	18
Incapacity Supplement	10	3	7	15	14	23	16
Carer's Benefit	17	24	74	73	61	75	45
TOTAL - ILLNESS, DISABILITY AND CARERS	3,433	4,255	8,355	10,457	9,662	13,274	8,729
<u>CHILDREN</u>							
Child Benefit	131	573	1,420	1,187	603	403	311
Family Income Supplement	40	51	73	105	104	147	277
Guardian's Payment (Non-Contributory)	-	1	16	9	10	4	7
Guardian's Payment (Contributory)	1	16	9	26	32	26	24
Widowed Parent Grant	-	-	-	1	5	5	7
TOTAL - CHILDREN	172	641	1,518	1,328	754	585	626
<u>OTHER</u>							
Rent Allowance(de-control of rents legislation)	-	-	-	-	-	-	-
Liabile Relative's	2	15	22	22	31	21	32
Insurability of Employment	85	77	77	112	136	96	124
TOTAL – ALL APPEALS	5,723	7,832	16,008	20,274	17,488	20,414	14,770

Table 5: Appeals statistics 1993 – 2013

APPEALS STATISTICS 1993 - 2013					
Year	On hands at start of year	Received	Workload	Finalised	On hands at end of year
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
2012	17,488	35,484	52,972	32,558	20,414
2013	20,414	32,777	53,191	38,421	14,770

Table 6: Appeals processing times by scheme 2013

	SWAO (weeks)	¹ Dept. of Social Protection (weeks)	Appellant (weeks)	Totals
<u>PENSIONS</u>				
State Pension (Non-Contributory)	17.2	12.5	0.3	29.9
State Pension (Contributory)	15.5	19.6	-	35.1
State Pension (Transition)	14.8	13.1	0.4	28.3
Widow's, Widower's Pension (Contributory)	14.0	8.7	-	22.7
Bereavement Grant	9.7	10.9	0.1	20.7
<u>WORKING AGE INCOME SUPPORTS</u>				
Jobseeker's Allowance	13.1	9.5	0.1	22.8
Jobseeker's Allowance (Means)	13.8	12.5	0.1	26.5
One Parent Family Payment	17.3	15.9	0.3	33.4
Widow's, Widower's Pension (Non-Contributory)	16.5	25.7	0.9	43.1
Deserted Wife's Allowance	3.5	6.1	-	9.6
Supplementary Welfare Allowance	9.5	11.0	0.2	20.7
Farm Assist	13.6	12.6	0.4	26.6
Pre-Retirement Allowance	-	-	-	-
Jobseeker's Benefit	12.8	14.0	0.2	27.0
Deserted Wife's Benefit	14.0	48.2	-	62.2
Maternity Benefit	18.4	10.4	-	28.9
Adoptive Benefit	17.1	17.1	-	34.2
Homemaker's	16.6	2.3	-	19.0
Treatment Benefits	23.8	3.9	-	27.7
Partial Capacity Benefit	9.7	26.2	2.1	38.1
<u>ILLNESS, DISABILITY AND CARERS</u>				
Disability Allowance	9.1	21.7	0.2	31.0
Blind Pension	10.1	4.5	1.2	15.8
Carer's Allowance	8.8	19.4	0.3	28.5
Domiciliary Care Allowance	10.0	15.6	0.2	25.7
Respite Care Grant	11.6	12.8	0.1	24.6
Illness Benefit	9.9	25.9	4.9	40.7
Injury Benefit	19.0	15.6	0.5	35.0
Invalidity Pension	9.2	29.9	0.2	39.3
Disablement Benefit	17.7	21.3	2.1	41.0
Incapacity Supplement	12.4	52.5	-	64.9
Medical Care	0.1	154.7	1.2	155.9
Carer's Benefit	12.3	6.3	0.2	18.7
<u>CHILDREN</u>				
Child Benefit	12.5	20.3	0.2	33.1
Family Income Supplement	12.4	16.2	0.1	28.8
Guardian's Payment (Non-Contributory)	16.2	21.0	-	37.3
Guardian's Payment (Contributory)	16.4	11.1	-	27.5
Widowed Parent Grant	17.6	8.6	-	26.3
<u>OTHER</u>				
Insurability of Employment	32.3	24.2	-	56.5
Liable Relative's	19.4	26.4	-	45.8
TOTAL – ALL APPEALS	10.1	18.4	0.5	29.0

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

Table 7: Appeals outstanding at 31st December 2013

Scheme	In progress in Social Welfare Appeals Office	Awaiting Department response	Awaiting Appellant response	Total
Jobseeker's Allowance/Benefit	866	697	7	1,570
JA Means/Farm Assist	852	770	7	1,629
Supplementary Welfare Allowance	583	633	5	1,221
Disability Allowance	1,669	1,448	4	3,121
Carer's Allowance	650	1,248	15	1,913
Domiciliary Care Allowance	366	368	2	736
Invalidity Pension	920	967	2	1,889
Illness Benefit	104	460	119	683
Child Benefit	168	140	3	311
Other schemes	789	901	7	1,697
Totals	6,967	7,632	171	14,770

Social Welfare Appeals Office 2013

Feedback to the Department

Feedback to the Department on issues arising on appeal and the processing of same is an important feature of the appeals process. The main feedback channels used in 2013 are now outlined.

DAO

The Decisions Advisory Office (DAO) provides the main forum through which the operational relationship between my office and the Department is maintained and developed. Meetings are held with the DAO every 6 – 8 weeks at which issues of concern to my Office are raised.

On the recommendation of my office in 2012, a project was undertaken under the auspices of the DAO to have a certain number of appeals files reviewed by a different Deciding Officer to the one who initially decided the case and to report on quality assurance issues arising from that review. The project has been conducted in two phases and is ongoing.

The first phase of the project concentrated on appeals relating to the Habitual Residence Condition. In 2013, the DAO reported on the findings of this phase of the project. The review highlighted a number of quality assurance issues relating to the level of the investigation carried out to establish the facts of the case; the weight being given to family resident abroad; the weight being given to employment history and the understanding by the Deciding Officers of the right to reside condition, particularly as it affects EU nationals.

Work on disseminating the review findings to Deciding Officers in the Department is under way in the DAO.

The second phase of the project focused on appeals where the issue related to means testing. While this phase of the project has not yet finally reported, there are clear indications that a significant number of the appeals are unsuccessful where the issue relates to the assessment of means from earned income. This suggests that many people are resorting to making an appeal because they do not fully understand the reason their claim was disallowed or do not understand what may or may not be disregarded under social welfare law in assessing their means from that earned income.

SWA

As of now, the DAO does not have responsibility for operational policy for the Supplementary Welfare Allowance (SWA) scheme. During 2013, my Office met with the Assistant Secretary who has responsibility for that area and a member of her team.

The issues discussed on that occasion related mainly to the Rent Supplement scheme and I again raised the issues which I had highlighted in my 2012 Annual Report in relation to the operation of the scheme. These issues related to the timing of rent reviews following a change in the maximum rent limits and inconsistency in decision making where the maximum limit is exceeded. It is important that these issues are examined before the end of this year when the current maximum rent limits expire.

One particular area of feedback from my office in relation to the SWA scheme resulted in legislative change in 2013. This related to clarification of the rules for calculating additional household income for rent supplement purposes.

Processing Times

A reduction in appeals processing times was a particular priority in 2013. Both my Office itself and the Department have critical roles in achieving this objective. As stated earlier, there was particular improvement in the time taken to process appeals within my Office once the relevant papers were received from the Department. However, in relation to some schemes, the improvement in processing time achieved within my office was not fully reflected in the overall processing as it was offset by delays within the Department in preparing the appeal.

During the year there was significant engagement between my office and the Department to address the delays arising particularly in relation to Disability Allowance and Invalidity Pension appeals. New procedures were put in place as a result of which there was a reduction of 3,376 in the number of cases on hands at the end of 2013 for these two schemes notwithstanding that a higher number of appeals was received for these schemes in 2013.

Other feedback

There were various other ways during 2013 in which my office provided feedback to the Department. For example,

- An experienced Appeals Officer took part in a review of the Domiciliary Care Allowance scheme which reported in December 2012 and also continued that involvement in 2013 with regard to implementation,
- The Chief Appeals Officer made a presentation to the Management Board in relation to decision making,
- The Chief Appeals Officer and the Deputy Chief Appeals Officer met with various

groups of decision makers to give direct feedback in relation to their particular areas,

- Feedback was given in the form of comment/ observations in relation to various legislative and other proposals to ensure the appeal experience was considered.

Analysing outcome of appeals

Notwithstanding all the above feedback channels there is scope for improvement in this area. Under current arrangements, appeal files are returned to their respective scheme area and it is not apparent that there is any systematic review within the Department of the outcomes of these appeals. My Office has a role to play in this in ensuring that Appeals Officers give sufficient rationale for their decision to assist this process. I consider that a co-ordinated approach within the Department to analysing the reasons why appeals succeed would be very beneficial. It would identify trends and problem issues which, if addressed, would improve service and reduce appeals. My office will assist in this process through ongoing engagement with the Department.

Submissions from the Department

In 2012, I referred in my report to difficulties being experienced by my office in relation to submissions being received on SWA appeal cases. In particular I referred to the need for the designated person to address the appeal contentions in the submission and to provide fuller analysis of the evidence. I am aware of a dedicated training programme being implemented by the Department and indeed there has been some improvement in this area during 2013.

However there is scope for further improvement. In this regard, an estimated 5-10% of SWA files were returned to the

Department in 2013 as they lacked some or all of the basic documents which would be required to allow an appeal to proceed.

Those documents are:

- The application form.
- The formal decision.
- The submission of the designated person.

I am particularly concerned about this issue as SWA appeals are given priority within my office due to the nature of the scheme.

Court Proceedings

Litigation

There were twenty one applications for judicial review of decisions of Appeals Officers in 2013. Of those:

- six related to delays in deciding appeals and all of these cases were struck out.
- four related to cases which had been decided summarily and in respect of which the applicant sought an oral hearing subsequent to the issue of the decision. Oral hearings were granted in these cases and the cases were struck out.
- four cases are ongoing. The challenges in these cases relate to Carer's Allowance, Supplementary Welfare Allowance, Occupational Injury Benefit and a challenge to an insurability decision.
- Judgements were delivered in three cases relating to seven judicial review proceedings. A summary of these cases is set out below.

CP and the Chief Appeals Officer and the Minister for Social Protection

Judgment was delivered by Mr Justice Hogan on Thursday 14th November 2013. Four similar cases were associated with this judgement.

The issue in the proceedings related to the interpretation of section 317 of the Social Welfare Consolidation Act 2005.

“317.—An appeals officer may, at any time revise any decision of an appeals officer, where it appears to the appeals officer that the decision was erroneous in the light of new evidence or of new facts brought to his or her

notice since the date on which it was given, or where it appears to the appeals officer that there has been any relevant change of circumstances since the decision was given.”

Section 317 was used by my Office in situations where, within a reasonable timeframe after an appeal is decided, an appellant submitted additional evidence which the Appeals Officer considered would have changed his or her decision. It was not used in cases where a long time had elapsed since the decision was given and where the appellant wished to have their case reviewed based on new evidence. It was the view of my Office that the best course of action in such cases was to submit a fresh application.

The applicant's case related to the actual wording of section 317 and in particular the wording: *“may, at any time revise any decision”*. The applicant's contention was that a case is never closed based on these powers. Justice Hogan agreed with this interpretation and found for the applicant (CP).

PM and Minister for Social Protection

Judgement was delivered by Mr Justice Peter Charleton on 2nd February 2014.

The issue related to the interpretation of the legislation governing the treatment of PRSI contributions where a person is concurrently employed and self-employed in a given year. Class A contributions from employment as an employee take precedence over and replace class S contributions from self-employment as employment contributions are more valuable. This is on the basis that the legislation provides that where a person is concurrently an employed contributor and a self-employed contributor in a contribution year, the number of weeks in respect of

which self-employment will be treated as paid will be calculated by subtracting the number of employment contributions paid from 52. The applicant's case was that this interpretation of the legislation is incorrect and that in fact the legislation provides for the aggregation of all such contributions for the purposes of State Pension Contributory.

The applicant also challenged the fact that contributions paid by him after his 66th birthday were not taken into account. In this matter, the Social Welfare Consolidation Act provides that to be an employed or a self-employed contributor; a person must be over the age of 16 and under pensionable age. Pensionable age is defined as "pensionable age" means the age of 66 years".

Justice Charleton agreed with this interpretation and found for the respondent (The Minister).

Justice Baker agreed with this interpretation and found for the respondent (The Chief Appeals Officer).

DM and Chief Appeals Officer

An ex-tempore Judgement was delivered by Ms Justice Baker on 20th January 2014.

The applicant's case was that under EU Regulations and the jurisprudence of the European Court of Justice on overlapping pensions, she had concurrent entitlement to Widow's Contributory Pension and State Pension Transition from the Department of Social Protection as these two pensions are not of the same kind. The Regulation referred to is Regulation (EC) No. 883/2004 as amended. The provisions relied on referred to situations where a pension was payable by more than one Member State and circumstances in which no reduction could take place. In this case, the two pensions were payable by the same Member State and therefore the regulation does not prevent the imposition of the overlapping provisions in section 247 of the Social Welfare Consolidation Act 2005.

Meetings and Consultations

During the year there were many meetings of Appeals Officers the aim of which was to achieve consistency in decisions making within my Office. Issues arising at those meetings are discussed below.

Illness, Disability and Carer's.

Deciding eligibility for schemes such as Disability Allowance, Domiciliary Care Allowance, Carer's Allowance and Invalidity Pension can be complex. Eligibility is not based on the medical condition itself but rather on the effect that condition has on issues such as the person's activities of daily living, the level of care required, or the impact of the condition on the person's capacity for employment.

The experience of Appeals Officers is that in addition to having evidence relating to the medical condition from which a person is suffering, it is extremely important to have relevant information about a person's own circumstances. Often appellants concentrate too much on the medical aspect of their evidence and not enough on the impact of their condition, the requirement for care, or on their capacity for employment. In Domiciliary Care Allowance cases, experience shows that many appellants concentrate on detailing and emphasising the cost to them of accessing services for their child. However, the relevant issue relates to the requirement for continual or continuous care substantially in excess of a peer child.

The Department is responsible for gathering information to enable decision makers to decide eligibility in these cases. Significant efforts have been made by the Department to improve its information gathering and there has been some improvement although these efforts are perhaps hindered by the lack of face to face contact between applicants for

these schemes and the Department. It is considered that information gathering could be further improved by providing guidance for applicants as to the factors that are most relevant in deciding claims for these schemes perhaps with the use of examples.

Reasons for decisions

Another aspect of initial decision making which contributes to the high number of appeals in Disability Allowance, Domiciliary Care Allowance, Carer's Allowance and Invalidity Pension cases is that appellants are often quite unclear as to why their claim was disallowed. Decisions do not make clear what precisely was taken into account in reaching the decision, or which factors were deemed to be more salient in concluding that the medical qualifying criteria were not met in any particular case.

A clear explanation for the refusal would identify any misunderstanding of the evidence which was presented or any shortfall in evidence. This would greatly assist applicants in deciding whether there are grounds for the submission of an appeal and what evidence to submit for further consideration of their claim.

Overpayments

An overpayment arises where a person has received a social welfare payment and it is subsequently decided by a Deciding Officer of the Department that they were not entitled to that payment. This would typically arise where a person's circumstances had changed and they did not notify the change to the Department. In these cases the Deciding Officer makes a revised decision and it is this decision that gives rise to the overpayment. Where the Deciding Officer is satisfied that there was no fraudulent intent on the person's part, they have discretion under the law as to

the date from which the revised decision takes effect having regard to the circumstances of the case.

This has implications for the amount of the overpayment that is assessed against the person. In my 2011 annual report I reported that it was not immediately obvious to Appeals Officers that sufficient consideration was given by Deciding Officers to the circumstances of individuals cases in determining the date from which a revised decision should take effect. This issue continues to present as a problem.

It is clear from the experience of Appeals Officers at appeal that an overpayment resulting in a debt to the Department is a very significant issue for the people affected and appeals of such decisions are almost always given an oral hearing by my office. It is not unusual for people to be quite distressed by discovering they have a significant debt to the Department in a situation where, in many cases, they have little capacity to repay it. In many of these cases the overpayment arose based on the customer's lack of knowledge or understanding of the issues involved.

In cases where the overpayment arose in relation to a scheme which is centralised, there has usually been no direct face to face interaction between the customer and the Deciding Officer or the Department. Often appellants are confused and still do not fully understand what has happened by the time they are appealing. It would seem to Appeals Officers that people in this situation need to be able to talk face to face with someone from the Department so that the matter can be fully explained and they can explain their situation. The lack of such interaction hinders assessment of whether the discretion allowed by the legislation should be exercised.

Child Benefit

There are many non-Irish nationals who are in receipt of Child Benefit (CB) in this State. It is often the case that they or the child in respect of whom CB is payable return to their country of origin on a temporary basis to see family members or to deal with family emergencies. Where they are absent from the State for a number of weeks, Appeals Officers have seen many cases where the CB has been disallowed as the children were not deemed to be "ordinarily resident" in the State during the period of their stay abroad.

The term "*ordinarily resident*" is not defined in the Social Welfare Acts but is a common law concept. In the UK it is taken to mean someone who is living lawfully, voluntarily and for settled purposes as part of the regular order of their life for the time being, with an identifiable purpose for their residence which has a sufficient degree of continuity to be properly described as settled. Thus a child can continue to be "ordinarily resident" in Ireland when absent from Ireland for a period. Determining whether a child is "ordinarily resident" in Ireland requires that all the circumstances of the particular case, including those of his/her parents or guardians be considered in order to build up an overall picture of the child's position.

Some of the cases which came before Appeals Officers demonstrated confusion between a child being considered not "ordinarily resident" and a child being absent from the State. There is no legislative prohibition in relation to a child being absent from the State for the purposes of Child Benefit.

Guardian's payment

For the purposes of Guardian's payment, orphan means

"a qualified child—

(a) both of whose parents are dead, or

(b) one of whose parents is dead or unknown or has abandoned and failed to provide for the child, as the case may be, and whose other parent—

(i) is unknown, or

(ii) has abandoned and failed to provide for the child,

where that child is not residing with a parent, adoptive parent or step-parent; “.

Deciding whether one or both parents have abandoned and failed to provide for their child presents difficulty for Appeals Officers. Many cases present where either or both parents have serious addiction problems or one parent may have such problems and the other is involved in a new family from which the child is effectively excluded. In many such cases the child in question is being cared for by a grandparent or family member who would point out that, but for their getting involved, the child would be taken into State care. It is often the case that contact with the parent or parents amounts only to occasional visits and/or presents.

Appeals Officers refer to the Supreme Court case which held that failure of duty towards a child does not necessarily or invariably amount to abandonment but that the requirement of abandonment is not to be considered in isolation, separate from the failure of duty. ‘It is ‘such failure’ of duty that may amount to abandonment’. [2002] IESC 75 McGuinness. J

Disability Allowance

Article 147 of the Social Welfare (Consolidated Claims, Payment and Control) Regulations, 2007 (S.I. No. 142 of 2007) provides for a disregard of the claimant’s earnings (up to a specified amount) from employment or self-employment of a rehabilitative nature in the assessment of means for Disability Allowance. However, there is no legislative definition or guidance at all as to the circumstances in which employment or self-employment might, or might not, be regarded as rehabilitative. This creates a difficulty for appellants in knowing what information to provide in their grounds of appeal.

Legislative guidance on the circumstances in which employment or self-employment would be regarded as rehabilitative would be of assistance to appellants and decision makers in relation to this question.

Organisational and Operational Matters

Staffing Resources

The number of staff serving in my Office at the end of 2013 was 96 which equates to 90.3 full-time equivalents. The corresponding staffing levels for 2012 were 95 and 88.5 respectively.

The staffing breakdown for 2013 is as follows:

1 Chief Appeals Officer	1.0
1 Deputy Chief Appeals Officer	1.0
41 Appeals Officers (2 work-sharing)	40.6
3 Higher Executive Officers	3.0
12 Executive Officers (3 work-sharing)	11.2
7 Staff Officers (2 work-sharing)	6.0
31 Clerical Officers (9 work-sharing)	<u>27.5</u>
	90.3

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

Parliamentary Questions

During 2013, 1,087 Parliamentary Questions were put down (1,261 in 2012) in relation to the work of my Office. Of that number, replies were given in Dáil Éireann to 1,041 questions and the remaining 26 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 8,051 enquiries and representations were made by public representatives on behalf of appellants in 2013 (8,443 in 2012).

Freedom of information

A total of 110 formal requests were received in 2012 (173 in 2012) under the provisions of the Freedom of Information Acts. All of these requests were in respect of personal information.

Case Studies of Appeals Officers' Decisions

Introduction

These case studies refer to appeals made in relation to Domiciliary Care Allowance (DCA). While they have been edited so as to anonymise personal information, the original text of the Appeals Officer's decision is outlined. In some cases, no decision reason is given where the appeal was allowed. It should be noted, however, that a decision reason is now provided in all cases, following the recommendation of the DCA Review Group.

A selection of cases, across a range of ages and diagnoses is included. The question at issue refers to the qualifying criteria outlined in social welfare legislation, as follows:

A person who has not attained the age of 16 years (in this section referred to as the 'child') is a qualified child for the purposes of the payment of domiciliary care allowance where—

(a) the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age,

(b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and

attention for at least 12 consecutive months.

Social Welfare (Consolidation) Act, 2005, Section 186 (C) (1)

These case studies have been chosen for inclusion in the report as I consider that they provide clear examples of the level of additional care and attention which is required in order to meet the qualifying criteria for DCA. While the appeal was allowed in 21 of the 24 cases cited, it should be noted that this does not reflect the actual outcome ratio of DCA appeals during 2013.

Some 64.9% of DCA appeals determined during 2013 had a successful outcome for the appellant - 37.9% were allowed and 1.2% were partially-allowed by an Appeals Officer; and 25.8% were allowed as a result of a revised decision by a Deciding Officer.

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- **2013/23 – Age: 15 years**
Diagnosis: Learning Difficulty
- **2013/24 – Age: 15 years**
Diagnosis: Asperger's Syndrome, Dyspraxia

2013/01 – Child’s age: 4 months – Summary decision

Diagnosis: Lactose Intolerance, Reflux

Background: The application for Domiciliary Care Allowance (DCA) was made when the appellant’s son, [A], was four months old. The family GP had referred to a diagnosis of Lactose Intolerance and Reflux, which he indicated was expected to last less than 12 months. In completing the ability/disability profile on the DCA claim form, the GP assessed Consciousness/Seizures as normal. No assessment was made in relation to any of the other categories as they were deemed not to apply in view of the child’s age. The appellant submitted a report from the paediatric hospital where her son had attended at age one month. It outlined those procedures which had been carried out and reported that the Neonatal Clinic was happy to discharge [A]. In her letter of appeal, the appellant described the reflux condition which her son experiences.

Comments/Conclusions: In examining the appeal, the Appeals Officer noted that [A] continues to have a degree of difficulty with his lactose intolerance and reflux. He concluded, however, that this condition did not give rise to a level of disability and consequent substantial additional care requirement as set out in social welfare legislation.

Decision of the Appeals Officer: The appeal is disallowed.

Note on reason(s) for decision: Social welfare legislation provides that Domiciliary Care Allowance may be paid where a child has a severe disability and requires continuous care and attention, at a level which is substantially in excess of that normally required by a child of the same age.

Having examined the evidence carefully, including that outlined in the letter of appeal, I have concluded that while additional supports may be required in the context of [A]’s diagnosis of Lactose Intolerance Reflux, it has not been shown that he requires the very substantial additional care, as provided for in social welfare legislation. In the circumstances, I regret that the appeal cannot succeed.

2013/02 – Child’s age: 18 months

Diagnosis: Developmental Delay

Report of hearing: The appellant was accompanied by an assistant to her local political representative. She submitted a portfolio which contained an account of her daughter’s daily routine, an outline of developmental milestones for a child of 18 months, a letter from the Consultant Neurologist, a letter from the relevant HSE Speech and Language Therapy Department, a letter from the Paediatric Department at the hospital where [B] attends, a letter from the Consultant Neurologist at that hospital, a report from the HSE Community Paediatric Physiotherapy Service, and a letter from the family GP.

The appellant said her daughter was now aged 18 months but was functioning at the level of an 8 month old. She said that [B] had

to have a very strict regime of physiotherapy every day to develop her muscles. As a result of this regime, her upper body strength had shown some improvement but she still had no power in her legs. She said that [B] had also had psychological assessments done and that she may also have an intellectual disability. She went on to say that she is unable to talk except for the word 'nana' and, while she babbles a lot, this only commenced following an ear operation when she had grommets inserted.

The appellant said that [B] has to be monitored day and night, far more than a child of a similar age, and that she has to be monitored during nap time as she suffers from Apnoea and regularly stops breathing. She advised that [B] is unable to eat solid foods and that all of her food has to be puréed. It can take up to 40 minutes to spoon feed her. She described how she has to be lying on her tummy during mealtimes, on a wedge, and that feeding her involves a great deal of care as she does not have gag reflexes and chokes very easily. She provided a photograph. She said that [B] has to have some sensory distraction to enable her to be fed. This could include showing her a favourite toy or having the family dog sit in front of her.

The appellant advised that [B] is overweight as she is unable to run around and, as a result, she is prone to sores on her neck and groin. She also gets sores on her elbows as these joints get to bear most of her weight

during the day. She said that the child is unable to crawl and drags herself forward using her elbows. She is unable to sit properly, and is unable to use a walker or activity centre that children of a similar age enjoy.

Comments/Conclusions: Having considered all of the evidence in this case, including that adduced at oral hearing, the Appeals Officer concluded that [B] requires substantially more care and attention than a child of a similar age who does not have a disability. She noted, in particular, that the child is developmentally at the level of an 8 month old, is unable to walk, is unable to sit unaided, is unable to speak, is subject to sores due to her condition, and must follow a strict physiotherapy regime to try and develop her muscles. She noted also that her prognosis was unsure.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation.

Having examined the evidence available in this case, including that presented at oral hearing, I have concluded that with regard to [B] who has a diagnosis of Developmental Delay, it has been established that she needs substantial additional care on a continuous basis, as provided for in the legislation.

2013/03 – Child's age: 2 years and 7 months

Diagnosis: Autism Spectrum Disorder

Report of hearing: The appellant attended with her husband and advised that they have five children, ranging in ages from 12 to 5 years. Their daughter, [C], in respect of whom the claim was made, is their youngest child. She said that, until she was about 18 months old, they felt that [C] was a normal baby and was reaching age appropriate milestones and she had started to use some words. However, at about 18 months, she seemed to start to regress and they became worried about her. After various assessments and tests, they received a formal diagnosis of Autism when she was 2 years old.

The appellant said that [C] had been seen by the Consultant Community Paediatrician on a number of occasions. A range of tests, including an MRI scan, bloods and EEG, had been done to rule out other medical conditions such as brain tumour. She went on to say that the EEG report was due the following week and that the test was intended to rule out conditions such as Epilepsy.

The appellant reported that while [C] had some words at 18 months, she had regressed and lost the words she did have. She has only a few single words now. She has had a

Speech and Language Therapy (SLT) assessment and is attending SLT therapy weekly on a private basis. She is given follow-up exercises to do at home.

The appellant advised that [C] has been assessed and is deemed to meet the criteria for access to the Early Intervention Team. She submitted a copy of the report completed by the multi-disciplinary team. She advised that [C] currently receives 10 hours home tuition per week, provided through the Department of Education and Skills, where the teacher does Montessori type work with her, using peg boards and 'Playdoh'. Home tuition will continue until she starts in pre-school. The appellant said that [C] was enrolled in the local autism pre-school for September 2013 and that, if she does not get a place, she will go there in September 2014. Following pre-school, the plan is for her to go to the autism unit in her local national school. She is not due to go to the mainstream part of school.

Her parents reported that [C] is making little progress in a number of areas. They have to hold a bottle for her, and they have to feed her as she does not want to hold a spoon. She hates water and bath time is a two-person job. She is fixated on the television and has habits and mannerisms. She pulls and stares at things. Things have to be done in a certain order for her. Her fine motor skills are not well developed and have to be investigated further. She is not toilet trained

but, in view of her age, this is not a problem as yet.

In conclusion, the appellant said that she has to do a lot of play therapy with [C] every day and she referred to the weekly timetable which she had submitted, outlining the extent of the floor and play-time activities and the extra work involved with [C].

Comments/Conclusions: The Appeals Officer noted the medical evidence submitted in connection with her claim, and the additional evidence submitted at oral hearing. Having carefully considered all of the facts of the case, including those adduced at oral hearing, she was satisfied that the appellant's child required continual or continuous care and attention which is substantially in excess of that required by a child of the same age, as required under the legislation governing Domiciliary Care Allowance.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): In line with the provisions of social welfare legislation, Domiciliary Care Allowance may be paid in circumstances where a child has a severe disability and needs continuous care, at a level which is substantially greater than that required by another child of the same age.

Having carefully considered all of the facts of this case, including those adduced at the oral hearing, I am satisfied that appellant's child requires the continual or continuous care and attention which is substantially in excess of that required by a child of the same age as required under the legislation governing Domiciliary Care Allowance.

2013/04 – Child's age: 3 years – Summary decision

Diagnosis: Speech and Language Delay, Developmental Delay, Hearing Impairment, Myopia, Behavioural Issues, Eczema

Comments/Conclusions: The Appeals Officer noted the range of issues which had been diagnosed and the fact that, as a result, [D] does not have any discernable speech – he is only attempting to make sounds, cannot understand simple tasks, has poor co-ordination, has no sense of danger, is not toilet-trained, and has to be fed. She noted that he requires one-to-one support and supervision with everything he does. In addition, the medical evidence indicates that [D] is prone to chest infections, and that he had been admitted to hospital twice in the previous year with pneumonia. He also has eczema.

The Appeals Officer noted that the appellant's son was receiving input and treatment from a number of services on an ongoing basis (as follows) and, as a result, that he required a lot of continuous assistance at home:

- Speech and Language therapy
- Occupational therapy
- Physiotherapy for left hand neglect
- Early childhood educator
- Psychology
- Ophthalmology

- Audiology
- Consultant Paediatrician

[D] is also under the care of the local Early Intervention Team (EIT) and is monitored and reviewed by them on a regular basis. The EIT report indicated that he had commenced the process of Autism Spectrum Disorder assessment, and strongly supported the DCA application in this case.

The Appeals Officer concluded that in light of the myriad and severity of the complaints [D] presents with, and the necessary ongoing continuous care and attention he requires daily, the eligibility criteria for DCA were met.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): In line with the provisions of social welfare legislation, Domiciliary Care Allowance may be paid in circumstances where a child has a severe disability and needs continual or continuous care and attention substantially in excess of that normally required by another child of the same age.

Having examined the evidence carefully in this case including that presented on appeal, I have concluded that it has been established that [D] needs substantial additional care on a continuous basis, as provided for in the qualifying conditions of the legislation. On that basis, the appeal succeeds.

2013/05 – Child’s age: 4 years

Diagnosis: Autism Spectrum Disorder, Pervasive Developmental Disorder

Report of oral hearing: The appellant attended, accompanied by his wife, and a local representative acting as advocate on their behalf. He said that he and his wife were not familiar with the diagnosis of Autism although they had recognised that [E]’s development had been quite different to that of his older brother. The appellant said that they were helping their son to develop as any other parents would do with their children. They had arranged to have him referred to the Early Intervention Team for multi-disciplinary assessment which included psychological assessment and speech and language therapy. It was accepted that he was in need of support but considered that he fell short of a diagnosis of Autism as the appellant and his wife had reported that he appeared to be improving. The appellant reported that further assessments were carried out and the results confirmed a diagnosis of Autism. At that stage, he applied for Domiciliary Care Allowance.

The appellant said that he and his wife were recommended to attend various programmes in order to assist them in the on-going care of [E]. They were advised that he would need to be placed in a pre-school catering for children with Autism. They were told that communication with [E] would have to be close-up and not from a distance and out of sight. He would require much support in developing his skills and would need the assistance of an Occupational Therapist.

The appellant's wife stated that since her husband had become unemployed, she had re-assessed her own situation and did not know how she had managed on her own. She said that she fears that he may get employment and she would be at a total loss if he were not around. They have received speech and language therapy for [E] and more is required but she said that, having availed of the service for a specified time, they were required to re-join the queue to obtain further support. She said that [E] has to be washed, dressed and fed and while he is toilet trained, he needs help to take his trousers down and up and also requires help in cleaning himself. He still wears a nappy at bedtime and will not go to bed unless his father stays with him until he falls asleep. He does not like his routine to be disturbed. He likes to play with his iPad or watch television and he has a disco-type light to relax him. The appellant said that if his routine is interrupted, he has to go back to the beginning.

His parents said that [E] cannot be left with anyone to look after him. He is not a very social character and is not socially interactive. He has a friend and he can become obsessed with that individual. As a result, other children do not want to be continually in his company. They said that, generally, he is a lone player. He is particular about his food and it has to be cut up in sections and spoon fed to him. The appellant said that his

communication is poor and he cannot tell what is wrong with him.

On behalf of the appellant, their local representative confirmed that the situation was very stressful for the family. He said that while they are hopeful of the success of the various interventions, there is quite a long way to go and their main concern was to provide as best they can and to give their son every opportunity to lead an independent life.

Comments/Conclusions: The Appeals Officer noted that additional evidence had been submitted by the appellant and, in particular, that it was the opinion of the Senior Psychologist that [E] requires full-time care and attention in excess of a child of the same age without the condition. Having carefully considered all the evidence on file and that adduced at oral hearing, he was of the opinion that the appellant had provided evidence that [E] is in need of full-time care and attention as provided for within the legislation.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation.

Having examined the evidence available in this case including that presented at oral hearing, I have concluded that [E] has a diagnosis of Autism, it has been established he needs substantial additional care on a

continuous basis, as provided for in the legislation. In the circumstances, I decide that the appeal can succeed.

2013/06 – Child’s age: 5 years – Summary decision

Diagnosis: Autism Spectrum Disorder, Heart Tumour, Asthma

Background: The appellant’s son, [F], was diagnosed with Autistic Spectrum Disorder and she made a claim for Domiciliary Care Allowance when he was 4 years old. The claim was refused on grounds that the medical qualifying criteria were not met.

In her appeal submission, the appellant stated that [F] is constantly falling and bumps into things; he is still in nappies and needs help with the activities of daily living; food must be prepared in a particular way for him and he eats with his hands. She referred to the Heart Tumour and Asthma and said that it is a struggle to give him his medication and to get a mask inhaler on his face. The medical evidence submitted confirmed that [F] has tantrums and that his behaviour is difficult to manage. It states that he demonstrates hand flapping, vocalises loudly and goes around in circles repeatedly. The appellant advised that there is a family history of children with special needs and [F]’s sibling attends an autism school.

Comments/Conclusions: The Appeals Officer noted that, in completing the

ability/disability profile on the medical report, the family GP assessed [F] as follows:

- Hearing, Sitting, Standing: Profound
- Mental Health/Behaviour, Learning/Intelligence, Continence: Severe

Having considered all the evidence in the case, including the details of the appellant’s written submission and supporting medical evidence, the Appeals Officer concluded that the qualifying criteria for Domiciliary Care Allowance were met.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation.

Having examined the evidence available in this case, I have concluded that it has been established that [F] needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, the appeal succeeds.

2013/07 – Child’s age: 5 years

Diagnosis: Behavioural Problems

Report of oral hearing: The appellant was accompanied by a Social Worker from the HSE Children and Family Services. She confirmed that her son was attending the childcare services. The Social Worker said it

was suspected that he has Autism Spectrum Disorder but his assessment had been delayed as the service was without a Psychologist in 2013. She advised that an appointment was due to be made early in 2014 and that, because of the extremes of [G]'s behaviour, he is placed very high on the list to be seen.

The appellant advised there was a history of Autism in her family, and that she has a brother who is severely disabled, to the extent that he is in residential care from Monday to Friday. She said her mother was the first to notice that [G] was demonstrating similar traits to her brother at a comparable age.

The appellant said [G] has no sense of danger and has to be monitored continuously. He is constantly climbing onto high walls and he even likes to climb onto the top of the fridge or the kitchen units. She said windows have to be tied shut as he is constantly trying to jump out, regardless of the height. He cannot cope with any change in routine or with loud noise and is obsessive with his toys, having a favourite toy in each hand at all times. The Social Worker said that his obsessive nature really stood out when he was observed by their service.

The appellant went on to say that [G] can be quite aggressive towards his siblings, and he pinches them and pulls their hair. He has taken to biting himself, just to see the teeth

marks. He is not fully toilet trained. He will use the toilet to urinate but he will not defecate unless he is wearing a nappy. He is attending pre-school, where he has a Special Needs Assistant. He was assessed for Primary School but it was considered that he was not ready. She said that while he will be assessed again for September 2014, it is looking likely that he will need to attend a special school.

The appellant advised that [G] does not mix or play with friends and has to follow a rigid routine. He has a very short attention span and he also repeats what is said to him instead of engaging in a conversation. He babbles a lot and he will screech and hand flap if interrupted. He still drinks from a bottle. He has to be assisted with all activities of daily living and he is very sensitive about certain fabrics touching him and he will refuse to wear clothes made from such fabric. In conclusion, the appellant said that he requires constant supervision to prevent him being a danger to himself or others.

Comments/Conclusions: The Appeals Officer noted that his GP had assessed [G] as follows on the ability/disability profile:

Severely Affected - Learning/Intelligence,
Speech

Moderately Affected – Mental
Health/Behaviour

Mildly Affected – Balance/Co-ordination

Having considered all of the evidence in this case, including that adduced at oral hearing, she concluded that the appellant's son, [G], meets the criteria for Domiciliary Care Allowance as laid down in the relevant legislation. In reaching this conclusion, the Appeals Officer noted: he insists in rigidity of routine and if this is broken he will become distraught and can get aggressive; he can be aggressive towards his siblings and he bites himself as if oblivious to the hurt he is causing; he has to be constantly monitored to prevent him being a danger to himself and others; he is still attending pre-school as he is not considered capable of attending primary school; he has a very short attention span, and he is obsessive.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation.

Having examined the evidence available in this case, including that presented at oral hearing, I have concluded that with regard to [G] who has a diagnosis of Behavioural Problems, it has been established he currently needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, the appeal is allowed.

2013/08 – Child's age: 5 years

Diagnosis: Asperger's Syndrome

Report of oral hearing: The appellant stated that her daughter, [H], is normally woken in the mornings between 6.30 a.m. and 7.00 a.m. She needs regular enzyme supplements as she suffers from severe acid reflux, and has to be spoon fed her breakfast and reminded to swallow her food. It is difficult to dress her and that she is unable to manage buttons, zips or laces. She likes only certain types of clothing because of her sensory issues.

The appellant confirmed that [H] is in Junior Infants at school. She said that she has resource hours and access to a Special Needs Assistant (SNA), and that these are helping her a lot. She does not know the names of her class mates and the resource teacher is working on this, using a class picture. The appellant said that she collects her daughter from school at 1.00 p.m. and they return home. She said that [H] is difficult to feed and also that she has to have oral supplements, is on a gluten and casein-free diet and that she is very uncooperative. Eating lunch can take about an hour. She has to take a probiotic supplement at 5.30 p.m. which she also resists.

The appellant said that she tries to plan an activity for the afternoon, that they have dinner at 6.30 p.m., when [H] has more enzyme medication. She has to spoon feed

her and prompt her to swallow. The bedtime routine starts at about 7.30 p.m., when [H] again needs to take probiotics and folic acid. She is very anxious and is a poor sleeper. She takes Melatonin to help her sleep, and the appellant stays with her until she falls asleep. [H] wakes in the night and also wets the bed. She will not wear nappies and has recently started to soil herself.

The appellant stated that [H] is unable to follow simple instructions as she has no sequencing ability. She has sensory issues and hates having her hair washed, and screams. She reacts to the noise of the vacuum cleaner and the hair dryer, and is also sensitive to light. She suffers from very bad constipation and takes *Movicol* every day. She has a lot of pain as a result and is given pain killers most days, and attends the local paediatric unit. The wrong diet can aggravate the problem.

The appellant stated that [H] cannot regulate her emotions and regularly becomes inconsolable, and that it can take up to an hour to get her to stop crying. She cannot read social cues and while she has a good vocabulary, she has no understanding. She is obsessed with 'Thomas the Tank Engine' and 'My Little Pony'. In conclusion, the appellant said that [H] has no road sense and no sense of self-preservation. She will wander off if her hand is not being held.

Comments/Conclusions: Having considered all of the evidence in this case including that adduced at oral hearing, the

Appeals Officer was satisfied that the appellant's daughter, [H], satisfies the criteria for Domiciliary Care Allowance. She concluded that it had been demonstrated that [H] requires substantially more care than a child of the same age who does not have a disability.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation.

Having examined the evidence available in this case including that presented at oral hearing, I have concluded that it has been established that [H] who has a diagnosis of Asperger's Syndrome needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, the appeal succeeds.

2013/9 – Child's age: 6 years

Diagnosis: Emotional and behavioural problems

Report of oral hearing: The appellant, who was accompanied by her daughter, submitted further reports, as follows:

- Occupational Therapist's report
- School reports
- HSE assessment report

The appellant stated that she had an older son with Oppositional Defiant Disorder

(ODD), Attention Deficit Disorder (ADD) and Dyspraxia and that she had noticed that [J] displayed many of the same characteristics as his older brother, and was interested in the same activities. She said that she had applied to have him assessed, as he is giving them a hard time at home although he appears to be a placid and loving child at school, with no identified problems, apart from slight learning issues. The appellant said that [J] is the youngest of four children, and that he gets on well with his siblings. He is hyperactive, and is constantly fidgeting. He is headstrong and has a temper, if he doesn't get his own way. He is constantly annoying the family at home, though he does not behave in the same way at school. He has speech and language delays and finds it hard to pronounce some words and as a result, he gets frustrated if he is not understood. [J] is in first class and doing well at school, despite some areas where he is behind. The appellant said that he has a new teacher this year and she feels he may not be fully aware of his needs. She hoped to meet with him and discuss [J]'s progress. The appellant's daughter advised that they had applied for a Special Needs Assistant (SNA) for him but had been refused and were allocated some additional resource hours. The appellant described homework as a nightmare, and said it can take up to four hours. [J] refuses to do his homework and he sometimes writes down the wrong homework or finds it hard to concentrate on precise instructions as to what day he should do a particular subject. He is

constantly topping his pencil rather than concentrating on homework and always has to be fiddling with something.

The appellant said that [J] mixes well, has one or two friends and tends to mix with younger children. At home, he plays with other children on the estate and is very keen to go out and play after school. He gets fearful of certain sounds, worries slightly about things and keeps coming back into the house to check in. He likes cars, colouring pencils and books.

The appellant said that [J] struggles to communicate sometimes and then overreacts by shouting - and this can happen at any time but always at home. He finds it hard to express himself to the teacher, in group sessions and cannot cope well when some incident happens. She said that he does not know the difference between right and wrong and will not take correction. She states that he is also aggressive and gets frustrated at not being physically able to make himself understood and becomes fretful, has tantrums, becomes out of control, has copious crying sessions and has to be managed out of them. The appellant said that she must be on guard constantly to manage stressful situations so that they do not give rise to incidents. She said that [J] can perform most activities of daily living but is very uncooperative at home. He has difficulty with washing his hair, going into the shower, and with cleaning himself after using the toilet. He is a fussy eater but will eat a

proper meal if someone sits with him at the table.

Comments/Conclusions: The Appeals Officer noted that [J] has difficulties in maintaining attention and normal behaviour at home but appeared to have no such difficulties at school, confirmed by reports from his school and the appellant's oral evidence. She noted that the letter submitted at oral hearing stated that he was a pleasant and kind child at school, with some mild learning issues but no behavioural issues. She noted also that he has some communication difficulties and some learning issues, but nothing which appears significant at this time, though the appellant stated that he seems to be getting worse. She noted that the Occupational Therapist's report indicated that while he had some issues, he had age- appropriate motor skills.

The Appeals Officer observed that, at age 6 years, he is able to partake in normal activities for a child his age, without significant assistance from his mother on a continuous basis. The Appeals Officer had regard to all the relevant documentary evidence and was satisfied that the oral evidence which the appellant provided was reflective of her circumstances. She accepted that there is a level of care and attention required by the appellant's son but not such as may be deemed to be substantially in excess of that required by another child of the same age. Accordingly, she concluded that the medical qualifying

condition for Domiciliary Care Allowance was not met.

Decision of the Appeals Officer: The appeal is disallowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation.

Having examined the evidence available in this case including that presented at oral hearing, I have concluded that while [J] has some behavioural issues it has not been established he needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, I regret that the appeal cannot succeed.

2013/10 – Child's age: 6 years

Diagnosis: Developmental Delay (subsequently, Autistic Spectrum Disorder)

Report of oral hearing: The appellant was accompanied by her partner. She advised that she does not work outside the home and that her partner is in full-time employment. She said that [K], who is the youngest of three children, had been diagnosed initially with Developmental Delay but more recently had been given a diagnosis of Autistic Spectrum Disorder. A discussion ensued where the following points were discussed/established:

- The Public Health Nurse first noticed a delay in his speech and language when [K] was approximately 2 years of age.

- He was referred to speech and language therapy and diagnosed with developmental delay in 2012.
- He has been referred to the Autism team in the area but the appellant has no idea how long it may be before he is seen.
- There is a Special Needs Assistant (SNA) in his class (who is not there for [K] but tries to keep an eye on him).
- They have applied for an SNA and the doctors have indicated that he needs one.
- He is very often oblivious to things going on around him and this can be dangerous where traffic is concerned, for example, or he will leave the front door open and walk out onto road without looking or realising there may be danger.
- Everything connected with [K] takes longer than it should.
- He cannot dress himself properly, takes much longer to eat than his siblings and will only eat certain foods (mainly chicken and fish).
- He is in the lowest percentile in terms of school assessments and his homework has to be done in small tranches and takes a long time – he has no concentration and has to be reminded about everything.
- He has obsessions, particularly about the moon.
- He talks at people and does not converse.
- His disability is becoming more obvious and difficult as he gets older.
- He gets very anxious about everything and has to be reassured constantly.
- Routine is paramount and some routines cannot be changed under any circumstances.
- He has no friends and seems to opt out of everything, both at home and at school.

Comments/Conclusions: The Appeals Officer noted that the appellant and her partner came across as genuine and gave their evidence in a credible manner. He considered that it had been clearly established that all aspects of their lives are affected by their son's condition and that the level of care accumulates in that regard. This combined with the evidence that [K]'s sense of danger is non-existent, led him to conclude that the criteria for qualification for Domiciliary Care Allowance were met.

Decision of the Appeals Officer: The appeal is allowed.

2013/11 – Child's age: 7 years - Summary decision

Diagnosis: Asperger's Syndrome

Documentary evidence:

- DCA claim form
- Occupational Therapist's (OT) report
- OT home programme outline
- Appellant's daily routine diary
- Psychologist's report

Background: The appellant applied for Domiciliary Care Allowance in respect of her daughter [L]. The medical report completed by her GP indicated an assessment as follows:

Mental Health/Behaviour: Severe

Balance/Co-ordination, Continenence, Manual Dexterity: Moderate

In assessing the medical evidence and the appellant's submission, the Appeals Officer noted that [L] was stated to have no sense of danger and described as a flight risk. He noted that she has problems with mobility and is prone to falling a lot. He noted also that she needs a deep pressure massage every hour at home as part of an occupational therapy programme, and is required to engage in other home programmes, including speech and language exercises.

The Appeals Officer noted that [L] attends the psychology services in her area in relation to her difficulties with social skills, motor skills and behavioural outbursts. In addition, he

noted that she has continence and sleeping problems, has problems eating, and sometimes has to be fed.

Having considered all the evidence available in this case, the Appeals Officer concluded that, on balance, it had been established that the appellant's child, [L], satisfies the medical criteria for the Domiciliary Care Allowance scheme.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Social welfare legislation provides that Domiciliary Care Allowance may be paid where

- (a) the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, and
- (b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months.

Having considered all the available evidence in this case, I have concluded that it has been established that the appellant's child (L) satisfies the medical criteria for the Domiciliary Care Allowance scheme. In the circumstances, the appeal is allowed.

2013/12 – Child's age: 7 years

Diagnosis: Autistic Spectrum Disorder (ASD), Developmental Co-ordination Disorder (DCD)

Report of oral hearing: The appellant advised that she has three children, and that [M] is the middle child in the family. She said she first noticed problems as [M] appeared to be slow with everything. A discussion ensued where the following points were made:

- [M] comes out of school with no expression whatsoever on his face
- He has no real friends
- The school recommended that he be assessed
- They took him for assessment privately as it would have taken years on the public waiting list
- He was given a diagnosis of ASD and DCD
- He has 4 ½ resource hours at school and they are looking for a SNA
- When he does swimming in school, she has to go as he cannot dress himself
- She has to accompany him on school tours
- Routine is a major factor for him and change causes significant difficulties

- Where change occurs, he can have a meltdown – kicking, biting and screaming
- Homework takes ages
- He wakes about 4 or 5 times every night
- He eats constantly and he is obsessed by the colour orange
- If anyone touches his toys he goes 'ballistic'
- If the baby cries he rolls the buggy outside the door as the noise annoys him
- He has a fascination with fire and, despite a fire guard, will poke at it and cannot be left on his own
- He is waiting for sensory therapy but unless he goes privately, it will take years

Comments/Conclusions: From the evidence available, the Appeals Officer considered it clear that the appellant's son has major difficulties with any deviation from routine. He noted her account of the child's social difficulties, his obsession with fire and the fact that he is a danger to himself and to his family in this regard. In addition, he noted that [M] does not sleep well. Overall, he was satisfied that the criteria for receipt of DCA were met.

Decision of the Appeals Officer: The appeal is allowed.

2013/13 – Child's age: 8 years

Diagnosis: Deafness

Background: The appellant applied for Domiciliary Care Allowance on behalf of her daughter, aged 8 years, who has been diagnosed with profound deafness. Recent medical evidence confirmed that she also suffers from Tinnitus in her left ear and Hyperacusis. The appeal was originally disallowed summarily but an Appeals Officer set that decision aside subsequently, in light of additional medical evidence and a request for an oral hearing.

Report of oral hearing: The appellant was accompanied by a Social Worker. She said that as well as Deafness, Tinnitus and Hyperacusis, she was awaiting a Psychologist's report on whether [N] is dyslexic. She then gave an account of her daughter's care needs. She said she has to wash her because of her sensitivity – she doesn't like anything near her ears. She has to give her some help dressing and while she can use the toilet, the appellant helps with wiping and has to put cream on her regularly. She can eat her meals but with difficulty as she cannot use cutlery. She has problems with her balance and falls a lot. She is waiting for an appointment with an Occupational Therapist. She attends mainstream school and, while she does not

have a Special Needs Assistant (SNA), she has a resource teacher for 3¼ hours per week. The appellant said she has to spend an hour and a half with [N] on homework every day, and that this should normally take about forty minutes. She said that [N] sleep walks most nights and that she has to be up for a considerable time every night to watch her as she never sleeps a full night. She explained that because of the Hyperacusis, she cannot tolerate loud noises and screams continually with pain in her ears. She said she had to give up full-time work to care for her daughter and now works part-time at home. The Appeals Officer put it to her that the medical profile completed by her GP did not appear to support the account she had given. Thus, for example, while she said that [N] had a problem with balance, the ability/disability profile indicated her balance was normal. The appellant said the profile was not correct and that she would get up-to-date evidence from her GP.

Further evidence: Following the oral hearing, the appellant provided evidence from her GP, stating that [N] has a problem with her balance, as well as letters from two consultant ENT surgeons, expressing the opinion that she needs extra care and attention. She also provided a letter from the school principal, stating that [N] cries and complains of sore ears. In addition, the appellant provided a psycho-educational assessment report that strongly recommends the retention of resource teaching as well as

an Occupational Therapist's report stating that [N] is presenting with Sensory Processing Disorder and setting out her requirements arising from that diagnosis.

Comments/Conclusions: The Appeals Officer noted that the appellant was a credible witness. He noted that she had to help [N] dressing and also help her after using the toilet, and that this should not be necessary for an eight year old child. He noted that [N] has balance problems, is sensitive to noise and wakes during the night. He considered that these factors, when taken together with her poor hearing, mean that she has to be watched constantly – including night time. He noted also that the appellant has to spend extra time with [N] on home work and that she will have to spend time with her in future on occupational therapy. In addition, he noted that she had given up full-time work to care for her daughter. In conclusion, he was satisfied from the evidence available that [N] needs substantially more care and attention than a child of the same age who does not have a disability.

Decision of the Appeals Officer: The appeal is allowed.

2013/14 – Child's age: 9 years – Summary decision

Diagnosis: Asperger's Syndrome

Background: The appellant's son, [O], was diagnosed with Asperger's Syndrome. In her

appeal, she described how he gets very frustrated, slamming doors, kicking furniture and becoming verbally aggressive. She outlined the assistance he needs with bathing and dressing at all times and advised as to how he gets upset if there is any change to his daily routine. The evidence submitted also indicated that [O] attends occupational therapy on a weekly basis, and has to do a home programme of 40 minutes per day. In addition, he attends a Clinical Psychologist on a weekly basis to help him with social skills/behaviour management and emotional support.

Comments/Conclusions: The Appeals Officer noted that evidence from the Clinical Psychologist stated that [O] presents with extremely challenging and sometimes aggressive behaviours. This evidence indicated that he also poses a threat to others due to his aggressive and unpredictable outbursts.

The Appeals Officer noted evidence from the Occupational Therapist which indicated that, in addition to therapeutic input, his parents are working extremely hard to provide [O] with support at home in terms of carrying out recommended activities to implement his occupational therapy programme and to provide additional sensory input.

The Appeals Officer noted evidence from the Carer's Association which indicated that [O] has poor co-ordination and has difficulty running without tripping. It indicated also that

he is not properly toilet trained and needs help every time he has to go the bathroom. In addition, reference was made to the fact that he has a Special Needs Assistant (SNA) to assist him in school, and it was suggested that he has no concept of danger and is a flight risk.

Having examined all the evidence available, the Appeals Officer dealt with this case by way of summary decision. He concluded that that the appellant's statement of appeal was self-explanatory and that it had been established that [O] requires substantial additional care, as provided for in social welfare legislation.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Social welfare legislation provides that Domiciliary Care Allowance may be paid where a child has a severe disability and requires continuous care and attention, at a level which is substantially in excess of that normally required by a child of the same age.

Having examined all the available evidence in this case, including that outlined in the letter of appeal, I have concluded that it has been shown that [O], who has been diagnosed with Asperger's Syndrome, requires substantial additional care, as provided for in social welfare legislation. In the circumstances, the appeal succeeds.

2013/15 – Child's age: 10 years

Diagnosis: Dyspraxia, Language Disorder/Delay and Learning Difficulty

Report of oral hearing: Having made reference to the documentary evidence submitted, a general discussion took place

around [P] and in particular his daily routine and extra needs and care. The appellant outlined instances where he has particular difficulty as follows:

School: He has just completed fourth class. Following assessment by an Educational Psychological, he was given an Independent Educational Plan (IEP) to follow and his work load/curriculum was reduced compared to his peers. The appellant stated that he struggles with handwriting and homework. He did an occupational therapy course in handwriting during the summer but he is very slow at writing, and struggles to copy from the board and tires of it easily. He receives 3 hours per week resource teaching in maths. He does not have a Special Needs Assistant (SNA). He can take between one and three hours to complete his homework and needs assistance and encouragement. He is to be introduced to keyboard skills at school and the appellant reported that he is below average at school.

Hobbies/Socialisation/Friends: The appellant stated that [P] has no issues in making friends and gets on reasonably well in the school yard. He goes out to play with friends on the green after school but complains a lot as he is not able to keep up with them when they are playing games. He likes playing on the computer and reading but his concentration and focus are poor.

Physical issues: He cannot do up zips, buttons, laces and he has trouble lifting things

as his hands are weak due to poor muscle tone as a result of his Dyspraxia. He can manage toileting for the most part but does on occasion soil himself due to poor cleaning. He cannot wash or dry himself and can only manage to put on his underwear. All his clothes must be loose fitting without zips or buttons. He can only feed himself for short periods as he tires easily and cannot use a knife and fork properly. The appellant must cut his food up for him. He can manage foods he can pick up, like toast.

In conclusion, the appellant said that she feels as [P] is getting older, his Dyspraxia is getting worse. He gets easily frustrated as a result and is very easily upset. She stated that he likes to get attention and has pretended to be sick at school occasionally. She reported that he is not attending any specialists at present but is on a waiting list for speech and language therapy. She referred also to an appointment he had attended with the Child and Adolescent Mental Health Services (CAMHS) but stated that she had not received a report.

Comments/Conclusions: Having examined all of the information/evidence on file and taking cognisance of evidence given at the oral hearing, the Appeals Officer considered it was apparent that [P] requires a certain level of extra care and attention on a daily basis. She concluded, however, that it related mainly to his educational deficits which were being addressed. Having carefully considered all of the available evidence,

including the appellant's letter of appeal, that adduced at the oral hearing and the additional supporting evidence, she was of the opinion that the child in this case did not meet the criteria for DCA in accordance with the legislation.

Decision of the Appeals Officer: The appeal is disallowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continual or continuous care and attention which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation.

Having examined the evidence available in this case including that presented at oral hearing, I have concluded that while [P] has a diagnosis of Dyspraxia and expressive language difficulty, it has not been established he needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, I regret that the appeal cannot succeed.

2013/16 – Child's age: 11 years

Diagnosis: Tourette's, Asperger's Syndrome and ADHD

Report of oral hearing: The appellant said that her daughter, [Q], has poor communication skills, and she finds it difficult to understand and follow instructions. She is in fifth class in her local national school, and has access to three resource teachers. The appellant advised that she had recently attended a case conference to discuss the

possibility of [Q] going to a special needs school but that it had been decided to defer a decision on this for another few months.

The appellant said that [Q] is able feed herself but has to be supervised constantly. If left unsupervised, she will grab food from the table and run away from the kitchen to eat it. She then has to follow her and bring her back to the table. She also has to ensure that [Q] eats her meals as she has a poor appetite due to the side effects of her medication, which suppresses her appetite. The appellant has to check that she takes her medication, and to ensure that she takes it and does not hide it or spit it out. She said that she also has to supervise [Q] in the bathroom as she tends to mess with the taps and toilet bowl.

The appellant spoke about how she has to follow [Q] around the house in order to wash and dress her, as she will not stand still for any length of time. She said that she has to be continuously supervised during the day as she is has poor balance/co-ordination and is prone to falling. In addition, she is constantly trying to climb kitchen furniture, getting out through the windows or trying to scale the garden fence. The appellant recalled an incident where she climbed to the top of a kitchen press and started a fire in the house.

The appellant reported that [Q] is a very poor sleeper. She said that there have been occasions where she got out of the house at night and she gave examples of finding her in

the family car on one occasion and in the dog's kennel on another. She said that her daughter now sleeps in her bed so that she can keep an eye on her during the night.

In conclusion, the appellant spoke about the outbursts which her daughter has on a daily basis, consisting of screaming, throwing and breaking household items.

Comments/Conclusions: The Appeals Officer noted the range of problems that the appellant's daughter experiences and her outline of the consequences of some of them, particularly the fact that the child appears to need very little sleep. He noted that the difficulties she is experiencing are constant, almost 24 hours per day. Coupled with this, he noted the evidence that [Q] has no concept of danger and has to be supervised closely at all times both indoors and out, leading him to conclude that the qualifying criteria for DCA were met.

Decision of the Appeals Officer: The appeal is allowed.

2013/17 – Child's age: 11 years

Diagnosis: Autism Spectrum Disorder / Asperger's Syndrome

Assessment / reports submitted:

- GP assessment re DCA claim
- Consultant C&A Psychiatrist's report
- Consultant C&A Psychiatrist's letter
- OT Manager (HSE) letter

Background: The appellant made a claim for Domiciliary Care Allowance in respect of her son, [R], who is 11 years of age and has a diagnosis of Autism Spectrum Disorder, Asperger's Syndrome. He is the eldest of three children. In the ability/disability profile, the family GP assessed the categories of Mental Health/Behaviour as Moderate, and Learning/Intelligence as Mild. He advised that [R] was attending the local Child and Adolescent Mental Health Service (CAMHS). Documentary evidence as outlined above was submitted. The claim was disallowed, and the appellant made an appeal. The appeal was disallowed initially by way of summary decision. Subsequently, solicitors acting for the appellant sought to have that decision reviewed. The Appeals Officer set aside his decision in favour of oral hearing.

Report of oral hearing: The appellant was accompanied by her husband. The Appeals Officer asked if they would outline those points which they would like to make in support of the appeal. They made reference to the following:

- [R]'s behaviour is unpredictable and it is difficult to know how he will behave from one day to the next
- He is big for his age and very strong physically and he can be hard to manage
- He has had to be physically restrained on occasion, having lashed out and become violent – examples were cited

- He gets 'massive headaches' after a stressful day
- All their attention is focussed on [R] and their other two children are losing out
- He cannot cope with change of any kind and 'loses the head' in strange environments so they cannot go on outings as a family
- He is still on a waiting list for NEPS assessment and they have been advised by CAMHS that he may not be best served by attending mainstream secondary school
- He cannot make decisions, cannot grasp the environment that he is in, has no sense of danger and cannot pay attention to anything
- He is getting worse as he gets older as he does not understand why he cannot do things that his peers are allowed to do
- He needs constant supervision and cannot play outside or in the homes of other children; on the odd occasion where this has happened, they have been phoned to collect him because of behavioural difficulties
- He does not feel pain, and can bang his head, pull his hair or pinch himself if he becomes agitated and appears to feel nothing
- He has been allocated 4.5 resource hours in school and has access to the class SNA
- In line with the details outlined in the appeal submission, they said that [R]'s mood is always low (even on his birthday or special occasions) and that he has made suicidal statements

- They cannot eat dinner until c. 11 p.m. when he is asleep in bed
- They have both been prescribed anti-depressants and they both attend counselling, in an effort to cope

In conclusion, they spoke about the need to be constantly alert to cope with [R]’s behaviour and to protect their other two children from his outbursts.

Comments/Conclusions: The Appeals Officer noted that the appellant and her husband presented an account of a family trying to cope in a situation which they find extremely stressful. They referred to the need to be watchful constantly, during the day and at night. She noted that they had both suffered in terms of depression and that it was clear that [R]’s low moods and suicidal statements were a source of some considerable concern to them – in terms of the distress which it suggests he is experiencing and also the extent to which it heightens the need for their vigilance. She noted also their concern at the disproportionate amount of time and attention he commands, to the detriment of his younger siblings. In her view, they provided a compelling account of a situation where the child at issue requires continuous care and attention which may be held to be substantially in excess of that required by his peers, and in line with the qualifying criteria provided for in social welfare legislation.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Having carefully examined all the evidence available, including that presented at the oral hearing, I have concluded that it has been established that the appellant’s son, [R], requires continuous care and attention which may be deemed to be substantially in excess of that normally required by his peers and accordingly that the qualifying criteria are met in this case. In the circumstances, the appeal succeeds.

2013/18 – Child’s age: 11 years

Diagnosis: Asperger’s Syndrome, Dyslexia, Dyspraxia, ADD, secondary ADHD, Dyscalculia

Report of oral hearing: The appellant advised that her son, [S] is the middle child in the family. She said that he has an older brother who also has a diagnosis of Asperger’s Syndrome but that he is calmer and she has not made a claim for DCA for him. She went on to say that problems first arose at school, when he was about 7 years old. His teacher suggested an assessment as she felt he was not doing as well as he should be. The appellant took him to an Educational Psychologist who suggested that he might have Asperger’s Syndrome. He was assessed subsequently by a Consultant Child and Adolescent Psychiatrist who made the diagnosis.

A discussion ensued where the following points were made:

- [S] is a very anxious child who suffers ‘night terrors’ and still wets the bed

- He is afraid of going upstairs on his own and is anxious all the time
- He was being bullied at school but that appears to have abated
- While he has one or two boys who play with him in the school yard, neither he nor his brother are ever invited to other houses
- He has 5 resource hours and there is a SNA in the class but not exclusively for him
- He is obsessed with World War 2 history
- He does not take part in sports, except for swimming
- He gets regular meltdowns – generally at least one a week and he can throw things (he has broken the TV screen with a remote)
- He attends an Occupational Therapist and the appellant is trying to get him to see a Psychiatrist/Psychologist

Comments/Conclusions: The Appeals Officer noted that the appellant has another son who also has Asperger’s Syndrome. He noted that [S] has multiple difficulties with Dyslexia, Dyspraxia and secondary ADHD, to add to the diagnosis of Asperger’s Syndrome and that he appears to have particular difficulties with anxiety as well as social difficulties and violent outbursts during fairly

regular ‘meltdowns’. He noted also that he continued to have bedwetting issues. He was persuaded by the range of difficulties that continual or continuous care substantially in excess of that relating to a child without a disability was required.

Decision of the Appeals Officer: The appeal is allowed.

2013/19 – Child’s age: 12 years

Diagnosis: Asperger’s Syndrome, ADD

Background: The appellant’s son, [T], was stated to be affected as follows with regard to the ability/disability profile completed by his GP:

- Mental Health/Behaviour: Severe
- Learning/Intelligence: Severe
- Balance/Co-ordination: Mild

Report of oral hearing: The appellant was accompanied by a Social Worker from the local Children’s Services Centre. In the course of discussion, the following points were made:

- [T] has no concept of time. Most mornings he wakes at 5 a.m. and will wake the household thinking it is time to get up. When he is told that it is too early, he will return to sleep but he is then very groggy when it is 8 a.m. and is reluctant to get up.
- He has to be monitored in the bathroom. He will spend ages at the

toilet. He has dermatitis in his scalp and ears and has to have creams applied. He has to be helped to dress. He also likes his clothes to be buttoned tight to his neck.

- He is a messy eater and he will spill cereal and milk if left to put them into a bowl unaided. At dinner time his food has to be cut up for him. He does not appear to know when he is full and is constantly snacking.
- He has no awareness of traffic and has to be brought to and collected from school.
- In school he has difficulty relation to his peers. He does not play in the boys' yard and spends playtime on his own or playing with the girls. He has a fear of balls and this makes him the butt of bad teasing.
- He is struggling academically and has difficulty with both his schoolwork and homework. There is a strong possibility that he will not be ready to transition to secondary school and may have to be kept back.
- He prefers watching TV programmes which are designed for pre-school children.
- He cries easily but music calms him. He has a hearing problem but unless he is wearing earphones he plays his music at a level which is too loud for others.

The Social Worker said that [T] is causing their service some concern, in terms of his behaviour, his own safety and the safety of others. He identified serious concerns around socialisation and said that, while he can be very quiet and introverted, he is subject to aggressive outbursts. He is also inclined to wander and has gone missing, to the extent he is not trusted to be let out alone. He pointed out that [T] has been violent with other children and, on one occasion, knocked a younger sibling unconscious. He said that there are huge issues around his phobic behaviour in relation to ball play. He has been prescribed medication for his ADD condition which brightens him up for a while but once this begins to wear off, he gets distracted easily and becomes sad and down and cries a lot.

Comments/Conclusions: Having considered all of the evidence in this case, including that adduced at the oral hearing, the Appeals Officer concluded that the qualifying criteria for Domiciliary Care Allowance were met. In reaching this conclusion, she noted in particular that [T] has difficulty with activities of daily living such as toileting, dressing and feeding, that he has issues around relating to his peers, that he can be violent to others, and that he exhibits both obsessive and phobic behaviours.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has

a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation.

Having examined the evidence available in this case including that presented at oral hearing, I have concluded that with regard to [T] has a diagnosis of Asperger's Syndrome and ADD, it has been established he currently needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, the appeal is allowed.

2013/20 – Child's age: 13 years

Diagnosis: ADHD, Intellectual Disability, Night Terrors, Receptive/Expressive Disorder and Hyperkinetic Disorder

Report of oral hearing: In line with his appeal statement, the appellant referred to the fact that his son [U] was adopted as an infant. He said that he had been easily frightened as a baby and had not walked until he was 19-20 months. He advised that he was currently attending the local Child and Adolescent Mental Health Service (CAMHS) in relation to mental health and behavioural issues.

The appellant reported that [U] had commenced secondary school in September, and that he has 5 resource hours per week and the support of a Special Needs Assistant (SNA). He said that he has had major problems since starting secondary school – the Psychologist has expressed concern regarding his grades in the school exams, as

they are in line with a child who has a moderate to severe level of disability. He referred to issues in school with bullying, where other children call him names and he takes out his frustration at home. He said that his wife feels that he should be in a special needs school but that they are trying to keep him in mainstream education.

The appellant reported difficulties in relation to [U]'s personal hygiene and said that he is socially unaware of its importance. He said that he has to insist on him taking a shower, resulting in major rows. He also has to help him to wash properly. In addition, after using the toilet, [U] cannot clean himself and has often destroyed his tracksuit, underwear and trousers. When using the toilet, he has often used a full toilet roll and blocked the toilet. The appellant said he uses wet wipes to clean him before he goes to school or before he goes out. He has no problems wearing dirty clothes and getting him to change leads to conflict. He said that he has gone through three sets of uniforms in school this year. He has also lost lunch boxes, school equipment and books.

The appellant said that [U] is messy at mealtimes and leaves food residue around his mouth. He needs his food to be chopped or else he will throw everything off the plate or eat the food with his hands. He is clumsy when walking and is prone to falling and he has to be supervised in group games as he may hurt someone. He said that [U] likes to

play with younger children but can say inappropriate things to them.

The appellant reported that his son has regular nightmares, and urinates when he is in this state of anxiety and fear. He and his wife are restricted socially as they cannot get anyone to mind him. When they had babysitters, they were afraid of [U]. He can be physically aggressive and lashes out at others including his parents and sibling. During tantrums, he has broken items of furniture. The appellant said that he spends a lot of time at week-ends repairing items that have been broken.

A home therapy exercise programme was devised but the appellant said that [U] often refuses to do it. When he is agreeable to doing the exercises, it takes him about 40 minutes to complete, although it should only take about 10 minutes.

Comment/Conclusion: In arriving at a decision in this case, the Appeals Officer noted the details that the appellant had outlined at the hearing. He considered him to have provided a credible account. Having carefully considered all of the available evidence on file and that adduced at oral hearing, he concluded that the child in this case meets the criteria for DCA in accordance with the legislation.

Decision of the Appeals Officer: The appeal is allowed.

2013/21 – Child's age: 14 years

Diagnosis: Nervous Debility, Learning Difficulties

Background: The appellant applied for DCA for her son [V], who is 14 years of age. She advised that she had been unaware of the allowance until recently. His GP assessed the extent to which he was affected by his diagnosis as follows:

Mental Health/Behaviour: Moderate

Learning/Intelligence: Moderate

The appeal was disallowed initially on a summary basis. However, in light of further evidence indicating that [V] was no longer attending mainstream education but had transferred to a special school, and additional medical evidence stating that he was due to commence medication and had been diagnosed with ADHD and ODD and was attending his local CAHMS, the appeal was re-opened by way of oral hearing.

Report of oral hearing: The Appeals Officer outlined the relevant information on the appeal file, and made reference to the additional evidence which had been submitted.

The appellant advised that her son has been diagnosed with ADHD, ODD, General Learning Difficulty and Speech and Language Delay. He attends a school specifically aimed at the needs of children at risk. He is in a class with 4 others, due to the high

dependency needs and the level of attention that the children require. He was transferred to the school to help support his multiple needs. The appellant reported that he has difficulty coping with his emotional and behavioural issues, and that he can be violent. This was confirmed in a letter from the school principal. The appellant takes him to and from school, and said that [V] is young for his age, and he normally plays with younger children. She reported that his daily medication includes *Ritalin* and *Concerta*.

The appellant reported that [V] has disturbed sleep most nights; he would wake at 3.00 or 4.00 a.m. with panic attacks and then spend the rest of the night in her bed. She said that he has a fixation with showering and is constantly washing. He strives for perfection in all that he does and can become aggressive if his needs are not met with precision.

Comments/Conclusions: Taking account of all of the facts and evidence in the case, the Appeals Officer was satisfied that [V] has substantial needs. She noted that he suffers from multiple medical conditions which impact on his ability to attend to his own daily needs. She noted also that he is dependent on the appellant to support him in many areas of his life and that he has been provided with specialised supports at school.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Having examined the evidence available in this case,

including that presented at oral hearing, I am satisfied that [V] requires continual care and attention which is substantially in excess of that required by a child of the same age as provided for in the legislation.

2013/22 – Child’s age: 15 years

Diagnosis: Developmental Co-ordination Disorder (DCD)/Dyspraxia, Epilepsy

Background: The appellant’s son, [W], is 15 years old. He has been prescribed *Epilim* for his Epilepsy as well as *Risperdal* and *Melatonin*. In completing the ability/disability profile, his GP assessed the extent to which his condition affects him as follows:

- Mental Health/Behaviour: Severe
- Learning/Intelligence: Moderate
- Consciousness/Seizures: Moderate
- Balance/Co-ordination: Moderate
- Manual Dexterity: Moderate
- Lifting/Carrying: Moderate

Report of oral hearing: The appellant referred to her son’s diagnosis, stating that in addition to Dyspraxia, Epilepsy (Complex Partial Seizures), DCD, ADHD, and a Social Communication Disorder, he had been recently diagnosed as having Autism Spectrum Disorder. She spoke about her son’s height and weight, and said as he gets older he is proving more difficult to cope with. She made particular reference to the following points:

- [W] is in mainstream school but his hours have been cut to 9.30 a.m. to lunchtime as he was unable to cope with a full school day. Despite this, she is regularly called to collect him and take him home as he is not coping.
 - He managed better in primary school as he had one teacher and one classroom, where as now he has to be brought to different rooms and has different teachers, and he is finding it difficult to cope.
 - He has 16 hours resource teaching per week and there is a possibility of referring him to a special school in September and arranging for him sit for the Applied Leaving Certificate as he is just not coping.
 - He gets a lot of one to one supervision in school.
 - The appellant accompanies him to school and hands him into the care of a Special Needs Assistant. If she leaves him to his own devices, he will get lost and he has done so.
 - He has a younger sibling who is far more advanced than he is. He has no idea of personal hygiene and is still unable to dress himself properly without assistance. He is unable to do buttons and cannot tie laces.
 - He is very inflexible and has to follow a routine. He has no concept of delay or deferring anything until tomorrow, everything has to happen now.
 - The appellant still has to read him a bedtime story to try and calm him and settle him for sleep.
 - He is prone to seizures, which he cannot recall, and at times these can be explosive and destructive.
 - He cannot be left out on his own. He has no concept of danger and no awareness of appropriate behaviour towards others. He is inclined to say and do the wrong thing especially when it comes to dealing with girls and women. He has no concept of innuendo and he does not understand facial gestures.
 - He has attended a Psychologist and the local CAMHS but despite this, he only received a diagnosis in the past couple of years.
 - He lives in a fantasy world, pretending he has lots of friends, when in fact he has none.
- The appellant said she is very worried for her son in school as he is the butt of teasing and goading by other children which he doesn't understand and this regularly causes him to lash out. She said he had also threatened self-harm and that she had been called to the school more than once because of this. In conclusion she said he is emotionally dependent on her which is not good for a 15 year old boy.

2013/23 – Child's age: 15 years

– Summary Decision

Diagnosis: Learning Difficulty

Background: Domiciliary Care Allowance had been in payment to the mother of the child in this case. Subsequently, the child was placed in the care of her aunt and the payment of DCA to her mother ceased. Her aunt made a claim for DCA and submitted evidence to confirm that the child [X] had been assessed as having a moderate level of intellectual disability and was attending a special school. In connection with the claim, her GP assessed her as having a moderate to severe degree of difficulty in the areas of Mental Health/Behaviour and Learning/Intelligence, and a mild degree of difficulty in the areas of Balance/Co-ordination and Speech. However, the claim was refused. In her appeal against that decision, the appellant argued that the child's care needs had not changed and she stated that she was finding it difficult to continue to pay for the special needs social and sports clubs that her niece was attending. She referred also to the extent of the supervision her niece required and the level of support and assistance she needed in carrying out everyday activities. She advised that her niece was attending the local CAMHS and that she suffers night terrors. She submitted a report from the Social Worker involved in the case, describing her niece as a very vulnerable child who was known to the local social work department. The report made

Comments/Conclusions: Having considered the evidence in this case, including that adduced at the oral hearing, the Appeals Officer concluded that the appellant's son met the criteria for Domiciliary Care Allowance. In reaching this conclusion she noted that his school hours had been reduced and that the appellant has to be on stand-by to collect him in case he cannot cope; that, at age 15, is unable to dress himself fully or look after his personal hygiene without supervision; that he is on medication as detailed; that he leads an isolated existence as he is unable to relate to people; that he is not safe to be left out alone as he can engage in inappropriate behaviour or get violent, and that he is subject to regular seizures and may become violent.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): In line with the provisions of social welfare legislation, Domiciliary Care Allowance may be paid in circumstances where a child has a severe disability and needs continuous care, at a level which is substantially greater than that required by another child of the same age. Having examined the evidence carefully in this case, including that presented at oral hearing, I have concluded that, in respect of [W], who has been certified as having Dyspraxia/Epilepsy/DCD/ ADHD/Social Communication Disorder and Autism Spectrum Disorder, it has been established he needs substantial additional care on a continuous basis, as provided for in the qualifying conditions of the legislation. On that basis, the appeal is allowed in this case.

reference to the child's behavioural problems and emotional needs, and indicated support for the award of DCA to the appellant. The family GP also provided a statement as to the child's additional care requirements.

Comments/Conclusions: The Appeals Officer noted that the child's mother had been in receipt of DCA immediately prior to the appellant's claim. He concluded that no evidence had been put forward to indicate that the child's condition had improved from the time that payment had been awarded initially to her mother and determined that the appellant was entitled to receive DCA in respect of her niece.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): The appellant's mother was in receipt of Domiciliary Care Allowance immediately prior to the application that was made by the appellant for that payment. The child moved homes as her initial carer was not in a position to continue to give care. There is no evidence put forward that the child's condition has improved from the time that the payment was first awarded to her mother. Having examined the evidence available in this case I have concluded that the appellant is entitled to receive the Domiciliary Care Allowance for [X]. In the circumstances the appeal succeeds.

2013/24 – Child's age: 15 years

– Summary Decision

Diagnosis: Asperger's Syndrome, Dyspraxia

Background: In this case, a Domiciliary Care Allowance had been in payment prior to the scheme being transferred from the HSE to

the Department of Social Protection in 2009. As part of a review by the Department, the appellant was asked to complete a review form and given an opportunity to provide further medical evidence in support of the claim. The child, who has a diagnosis of Asperger's Syndrome, is living with the appellant as part of a permanent foster care placement.

The appellant outlined the background to [Y] having been placed in foster care, and the fact that she was now happy in a secure family environment. She outlined the range of difficulties and challenges being encountered. She submitted a copy of the assessment report completed by the Consultant Child and Adolescent Psychiatrist at the local CAMHS. That report outlined the child's family background and turbulent early history. It referred to a range of issues, including social isolation, anxiety, restrictive stereotyped interests, clumsy ill-coordinated movements and odd postures, as well as difficulties with communication. Details of the treatment plan recommended for [Y] were also outlined and it was noted that her diagnosis, and the needs identified, occurred against a background of a very disruptive early environment with a number of foster care placements.

Comments/Conclusions: The Appeals Officer dealt with the appeal on a summary basis. He noted that the child's foster parents had been in receipt of DCA as approved by the HSE. He considered that the combined

historical nature and circumstances of the child's upbringing, coupled with the diagnosis, made a more compelling case for particular care and attention by her foster parents. He regarded the appellant's correspondence as convincing and observed that there was no reason to doubt what she said in relation to the care and attention being provided. In conclusion, he determined that the circumstances of the child's history and the obvious care and attention that she requires were such as to indicate that the payment of DCA should continue in this case.

in excess of that normally required by a child of the same age. Having examined the evidence carefully, I have concluded that it has been shown that [Y] requires substantial additional care, as provided for in social welfare legislation. In the circumstances, the appeal succeeds.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Social welfare legislation provides that Domiciliary Care Allowance may be paid where a child has a severe disability and requires continuous care and attention, at a level which is substantially

Abbreviations

ASD	Autism Spectrum Disorder
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
CAMHS	Child and Adolescent Mental Health Services
C&A	Child and Adolescent
DCA	Domiciliary Care Allowance
DCD	Developmental Co-ordination Disorder
DSP	Department of Social Protection
EIT	Early Intervention Team
ENT	Ear Nose and Throat
GP	General Practitioner
HSE	Health Service Executive
IEP	Independent Educational Plan
NEPS	National Educational Psychological Service
ODD	Oppositional Defiant Disorder
OPD	Outpatients' Department
OT	Occupational Therapy
PDD	Pervasive Developmental Disorder
PVL	Periventricular Leukomalacia
SLT	Speech and Language Therapy
SNA	Special Needs Assistant

Appendix 1

Social Welfare Appeals Office Organisation Chart

