Social Welfare Appeals Office

Annual Report 2018

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OIFIG ACHOMHAIRC LEASA SHÓISIALAIGH

SOCIAL WELFARE APPEALS OFFICE

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

May 2019

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 2018.

Joan Gordon
Chief Appeals Officer

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Introduction by the Chief Appeals Officer

Chapter 1: Introduction from the Chief Appeals Officer.

I am pleased to submit my Annual Report on the activities of the Social Welfare Appeals Office for the period 1 January to 31 December 2018 pursuant to Section 308(1) of the Social Welfare Consolidation Act 2005.

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

The role of my Office is to determine appeals from people who are not satisfied with a decision of a Deciding Officer or a Designated Person of the Department of Employment Affairs and Social Protection with regard to their entitlement under social welfare legislation. My Office aims to provide that service, which is free, in an independent, accessible and fair manner.

2018 was another challenging year for the Office due to the loss of a number of experienced Appeals Officers and this no doubt has impacted on processing times. I am acutely aware that the time taken to process an appeal is hugely important to the people who submit an appeal and directly impacts on people's personal lives and I continue to monitor processing times and ensure that every effort is made to reduce the time taken to process an appeal. However, this must be balanced with the competing demand to ensure that decisions are consistent and of high quality.

The average processing time for all appeals finalised during 2018 was just over 25 weeks. This compares to 23.6 weeks in 2017. The average time taken to process appeals which required an oral hearing was 30 weeks, (26.4 weeks in 2017) and the corresponding time to process appeals determined on a summary basis was almost 25 weeks (19.8 weeks in 2017).

While I endeavor to reduce processing times, people availing of the service and their advocates can also help. As can be seen from the statistical information in Chapter 2 of the 18,507 appeals finalised in the course of the year, 3,425 were revised in favour of the appellant by a revised decision of a Deciding Officer or Designated Person of the Department – but this does not mean that the original decision of the Deciding Officer or Designated Person was incorrect. In some cases the Deciding Officer or Designated Person was able to revise the decision because the person making an appeal had provided new

information which was not available when the decision was first made. It is also the case that additional evidence is routinely provided by appellants at the appeal stage. There is also some anecdotal evidence that appellants may be withholding important evidence until the appeal stage on the assumption that additional evidence is needed to support an appeal. However, this is a mistaken assumption and only has the effect of adding to the time required to process appeals for all appellants. It is therefore vitally important that all evidence is made available to the decision maker at the earliest opportunity.

In the course of the year, 18,854 appeals were received compared to 19,658 in 2017. The number of appeals finalised in 2018 was 18,507 compared to 18,980 in 2017. In 2018, 14,145 appeals were finalised by Appeals Officers either summarily or by way of oral hearings compared with 13,556 in 2017. The number of appeals on hand at the end of 2018 was 8,963 representing a slight increase when compared to the end of 2017 position of 8,616 on hand.

A more detailed account of the statistical trends relating to 2018 is set out in Chapter 2. The data shows that the reduction in the number of appeals relates primarily to appeals in the working age schemes. The number of appeals in respect of Carer's Benefit increased by over 47% and by over 19% in the case of Domiciliary Care Allowance.

A more detailed account on the business of the Office in the course of 2018, from staffing resources to operational issues, is contained in Chapter 3. As was the case in 2017 we bade farewell to a number of Appeals Officers and administrative staff who availed of retirement in the course of the year. To those who availed of retirement I wish them well in the future. To those who joined the team I am delighted to welcome them on board and look forward to working together in the course of 2019. There were also a number of other staffing changes in 2018 whereby staff left the Office to take up new opportunities and I wish them continued success in their new roles.

Our ability to deal with the volume of appeals we receive and the complex issues that can arise is highly dependent on the staff of the Office and I would like to take this opportunity to pay tribute to their work in the course of 2018. I continue to work closely with the HR Division of the Department to ensure that vacancies arising are filled as quickly as possible

and I very much appreciate the support of the Department in this regard. Given the high turn-over of Appeals Officers the training and development programme continued to be well utilised during 2018. In addition to the formal programme of training all newly appointed Appeals Officers were provided with mentoring support from an experienced colleague. During 2018 a project team was established within the Office to continue the work on modernising the appeals service.

The opportunity to provide feedback to the Department on issues arising on appeal is an important aspect of the appeals process. Meeting with the head of the Decisions Advisory Office of the Department and her staff is one of the main channels for providing such feedback. Some of the issues discussed with that Office at our meetings in 2018 are also set out in Chapter 3.

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

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

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

Joan Gordon

Chief Appeals Officer

May 2019

Chapter 2
Statistical Trends

Our main statistical data for 2018 is set out in commentary form below and in the "Workflow Chart" and tables which follow.

APPEALS RECEIVED IN 2018

In 2018, the Office received 18,854 appeals, which represents a reduction of 804 (4.1%) on the 19,658 appeals received in 2017.

The majority of the reduction relates to appeals in Working Age – Income and Employment Support schemes. Appeals in relation to Supplementary Welfare Allowance reduced by 34.0%; Jobseeker's Allowance (Means) by 8.2%; while Jobseeker's Allowance (Payments) reduced by 6.3%.

There were also reductions in the number of appeals received in respect of Carer's Allowance down 9.3%; State Pension Contributory down 24.3%; and Working Family Payment down 39.2%.

The number of appeals in respect of Carer's Benefit increased by 47.3%, Disability Allowance increased by 2.4%, while Domiciliary Care Allowance appeals increased by 19.4%.

CLARIFICATIONS IN 2018

In addition to the 18,854 appeals registered in 2018, a further 3,553 appeals were received where it appeared to us that the reason for the adverse decision may not have been fully understood by the appellant. In those circumstances, the letter of appeal was referred to the relevant scheme area of the Department requesting that the decision be clarified for the appellant. We informed the appellants accordingly and advised that if he/she were still dissatisfied with the decision following the Department's clarification, they could then appeal the decision to my Office.

During 2018, 659 (18.5%) of the 3,553 cases identified as requiring clarification were subsequently registered as formal appeals. This is considered to be a very practical way of dealing with such appeals so as to avoid unnecessarily invoking the full appeals process.

WORKLOAD FOR 2018

The workload of 27,470 for 2018 was arrived at by adding the 18,854 appeals received to the 8,616 appeals on hand at the beginning of the year.

APPEALS FINALISED IN 2018

We finalised 18,507 appeals in 2018.

The appeals finalised were broken down between:

- Appeals Officers (76.4%): 14,145 were finalised by Appeals Officers either summarily or by way of oral hearings (equivalent figure in 2017 was 13,556 or 71.4%);

- Revised Decisions (18.5%): 3,425 were finalised as a result of revised decisions in favour of the appellant being made by Deciding Officers or Designated Persons before the appeals were referred to an Appeals Officer (4,283 or 22.6% in 2017). This refers to cases where a Deciding Officer or Designated Person in the Department revised the original decision in favour of the customer, making it unnecessary for the Appeals Office to conduct an appeal. Typically this arises where the customer produces evidence at appeal stage that was not available to the original decision maker.

- Withdrawn (5.1%): 937 were withdrawn or otherwise not pursued by the appellant (1,141 or 6.0% in 2017).

APPEALS OUTCOMES IN 2018

The outcome of the 18,507 appeals finalised in 2018 can be broken down as follows:

- Favourable (58.8%): 10,889 of the appeals finalised had a favourable outcome for the appellant in that they were either allowed in full or in part by an Appeals Officer or resolved by way of a revised decision by a Deciding Officer or Designated Person in favour of the appellant (60.1% in 2017);

- Unfavourable (36.1%): 6,681 of the appeals finalised were disallowed by an Appeals Officer (33.9% in 2017);

and

Withdrawn (5.1%): As previously indicated, 937 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (6.0% in 2017).

DETERMINATIONS BY APPEALS OFFICERS IN 2018

14,145 appeals were finalised by Appeals Officers in 2018.

- Overall 7,464 (52.8%) had a favourable outcome for the appellant. 6,681 (47.2%) were disallowed.

- Oral Hearings: (38.2%) 5,397 of the 14,145 appeals finalised by Appeals Officers in 2018 were dealt with by way of oral hearing. 3,450 (63.9%) of these had a favourable outcome. In 2017, 63.6 % of the 5,412 cases dealt with by way of oral hearing had a favourable outcome.

- Summary Decisions: (61.8%): 8,748 of the appeals finalised were dealt with by way of summary decision. 4,014 (45.9%) of these had a favourable outcome. In 2017, 45.2% of appeals finalised by way of summary decision had a favourable outcome.

PROCESSING TIMES IN 2018

During 2018, the average time taken to process all appeals was 25.1 weeks (23.6 weeks in 2017).

Of the 25.1 weeks overall average

- 9.6 weeks was attributable to work in progress in the Department (13.6 weeks in 2017)

- 0.4 weeks was due to responses awaited from appellants (0.3 weeks in 2017)

- 15.1 weeks was attributable to ongoing processes within the Social Welfare Appeals Office (9.7 weeks in 2017).

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

When these figures are broken down by process type, the overall average waiting time for an appeal dealt with by way of a summary decision in 2018 was 24.8 weeks (19.8 weeks in 2017), while the average time to process an oral hearing was 30.0 weeks (26.4 weeks in 2017). The average waiting time by scheme and process type are set out in Table 6.

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

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

APPEALS BY GENDER IN 2018

A breakdown of appeals received in 2018 by gender show that 42.2% were from men and 57.8% from women. The corresponding breakdown for 2017 was 41.8% and 58.2% respectively. In terms of favourable outcomes in 2018, 59.8% of men and 64.9% of women benefited.

STATISTICAL TABLES:

Table 1: Appeals received and finalised 2018

Table 2: Appeals received 2012 – 2018

Table 3: Outcome of appeals by category 2018

Table 4: Appeals in progress at 31 December 2012 - 2018

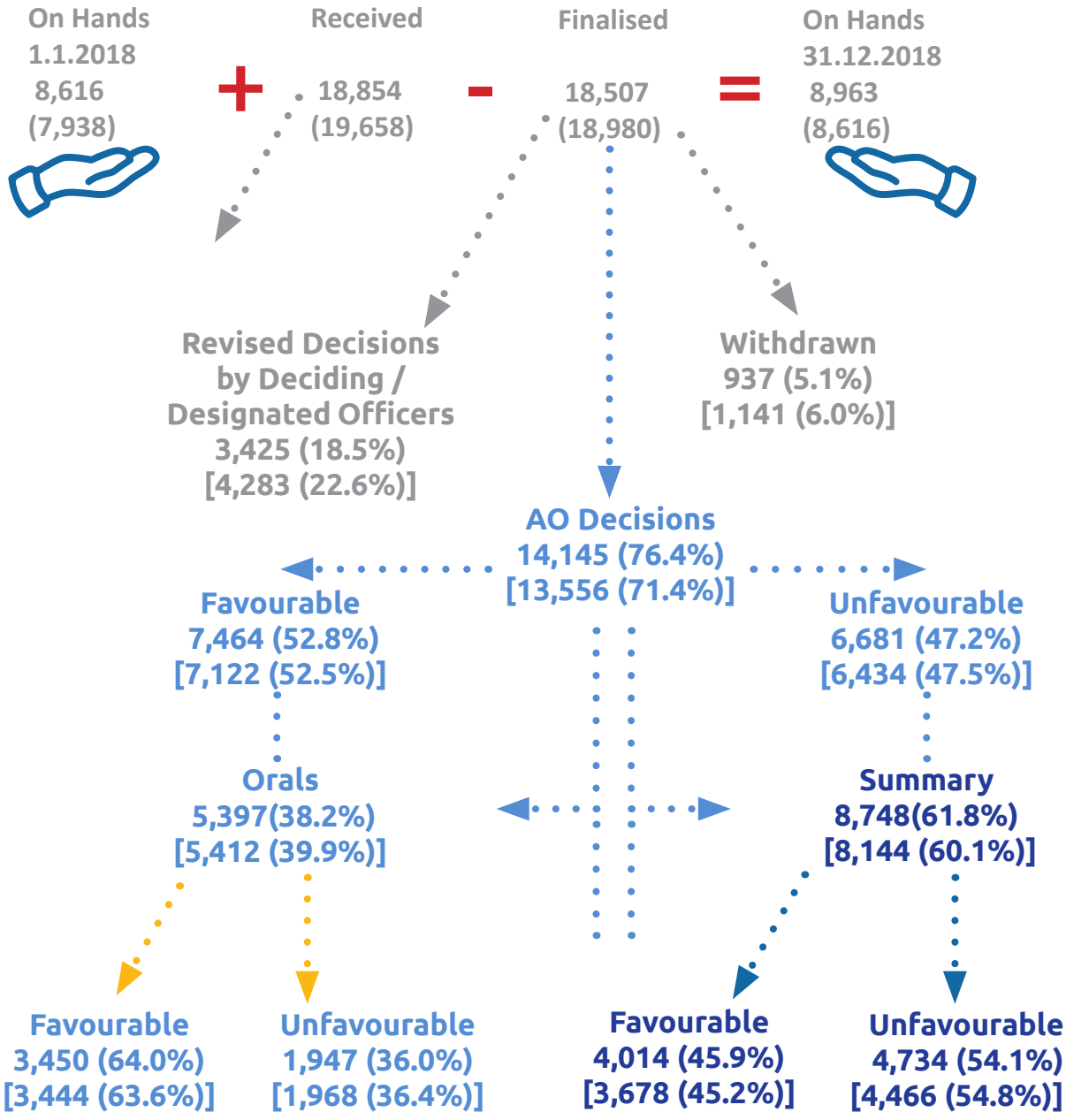
Table 5: Appeals statistics 1997 - 2018

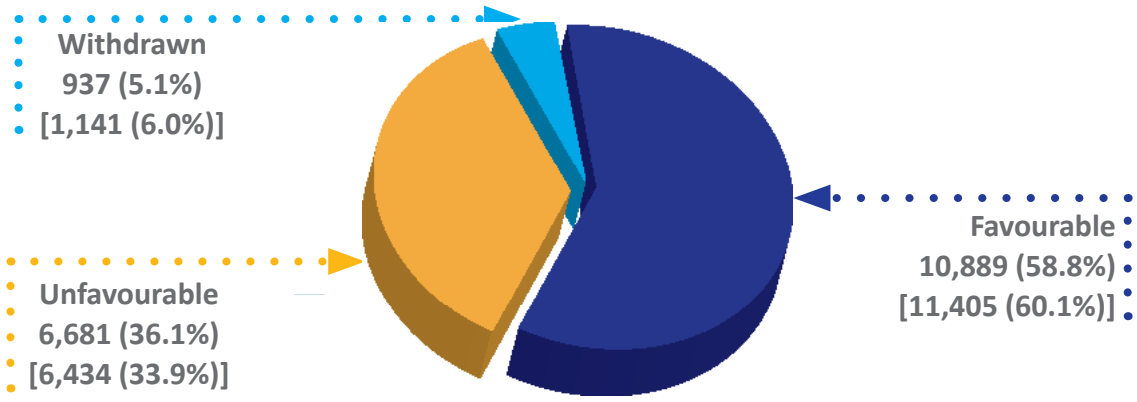
Table 6: Appeals processing times by scheme 2018

Table 7: Appeals outstanding at 31 December 2018

Social Welfare Appeals Workflow Chart 2018

(Corresponding figures for 2017 are in brackets)





Overall Outcomes 18,507

Table 1: Appeals received and finalised 2018

	In progress 01-Jan-18	Receipts	Decided by Appeals Officer	Revised Decision by DO / Designated Person	Withdrawn	In Progress 31 Dec 2018
PENSIONS						
State Pension (Non-Contributory)	206	347	258	70	35	190
State Pension (Contributory)	257	309	288	64	15	199
State Pension (Transition)	1	-	-	-	-	1
Widows', Widowers' Pension (Contributory)	27	38	32	2	6	25
Death Benefit	-	1	1	-	-	-
Bereavement Grant	1	1	1	-	-	1
TOTAL - PENSIONS	492	696	580	136	56	416
WORKING AGE INCOME & EMPLOYMENT SUPPORTS						
Jobseeker's Allowance	912	1,570	1,164	251	141	926
Jobseeker's Transitional	21	70	32	9	6	44
Jobseeker's Allowance (Means)	889	1,380	1,069	194	176	830
One Parent Family Payment	143	273	143	46	41	186
Widow's Widower's Pension (Non- Contributory)	13	18	16	-	1	14
Deserted Wife's Allowance	1	1	1	-	-	1
Supplementary Welfare Allowance	563	859	754	179	114	375
Farm Assist	87	84	87	18	15	51
Pre-Retirement Allowance	2	-	2	-	-	-

Table 1: Appeals received and finalised 2018 (continued)

	In progress 01-Jan-18	Receipts	Decided by Appeals Officer	Revised Decision by DO / Designated Person	Withdrawn	In Progress 31 Dec 2018
Jobseeker's Benefit	289	610	412	129	55	303
Deserted Wife's Benefit	4	8	6	-	-	6
Maternity Benefit	35	40	40	13	1	21
Paternity Benefit	9	14	16	-	-	7
Adoptive Benefit	-	1	-	-	-	1
Treatment Benefits	1	2	-	-	2	1
Partial Capacity Benefit	25	75	29	2	1	68
TOTAL - WORKING AGE INCOME & EMPLOYMENT SUPPORTS	2,994	5,005	3,771	841	553	2,834
ILLNESS, DISABILITY AND CARERS						
Disability Allowance	1,519	5,200	4,467	462	77	1,713
Blind Pension	8	12	10	3	1	6
Carer's Allowance	1,178	2,902	2,180	440	90	1,370
Domiciliary Care Allowance	814	1,432	957	590	25	674
Carer's Support Grant	79	126	101	35	4	65
Illness Benefit	203	581	304	164	27	289
Injury Benefit	35	44	39	6	2	32
Invalidity Pension	415	1,387	739	322	33	708
Disablement Benefit	184	330	292	32	5	185
Incapacity Supplement	3	7	5	-	-	5
Medical Care	2	2	1	-	-	3
Carer's Benefit	45	162	82	52	3	70
TOTAL - ILLNESS, DISABILITY AND CARERS	4,485	12,185	9,177	2,106	267	5,120

Table 1: Appeals received and finalised 2018 (continued)

	In progress 01 Jan 2017	Receipts	Decided by Appeals Officer	Revised Decision by DO / Designated Person	Withdrawn	In Progress 31 Dec 2017
CHILDREN						
Child Benefit	222	485	259	146	21	281
Working Family Payment*	206	290	193	173	20	110
Back To Work Family Dividend	26	43	30	12	5	22
Guardian's Payment (Non-Contributory)	5	8	7	2	-	4
Guardian's Payment (Contributory)	15	22	22	2	-	13
Widowed Parent Grant	5	1	4	1	-	1
TOTAL - CHILDREN	479	849	515	336	46	431
OTHER						
Insurability of Employment	153	86	79	3	13	144
Liable Relatives	4	4	2	1	2	3
Recoverable Benefits & Assistance	9	29	21	2	-	15
TOTAL - ALL APPEALS	8,616	18,854	14,145	3,425	937	8,963

*previously known as Family Income Supplement

Table 2: Appeals received 2012 – 2018

	2012	2013	2014	2015	2016	2017	2018
PENSIONS							
State Pension (Non-Contributory)	231	279	323	348	397	370	347
State Pension (Contributory)	128	136	205	264	366	408	309
State Pension (Transition)	43	38	13	3	2	3	-
Widows', Widowers' Pension (Contributory)	30	40	49	40	49	45	38
Death Benefit	-	-	1	1	1	-	1
Bereavement Grant	71	78	63	6	3	1	1
TOTAL - PENSIONS	503	571	654	662	818	827	696
WORKING AGE INCOME & EMPLOYMENT SUPPORTS							
Jobseeker's Allowance	3,050	2,644	2,610	2,058	2,031	1,676	1,570
Jobseeker's Transitional	-	-	-	34	43	41	70
Jobseeker's Allowance (Means)	3,240	2,923	2,648	2,174	2,050	1,504	1,380
One Parent Family Payment	938	612	573	368	313	244	273
Widow's Widower's Pension (Non- Contributory)	39	30	24	25	26	23	18
Deserted Wife's Allowance	1	2	2	1	-	1	1
Supplementary Welfare Allowance	5,445	4,084	2,889	2,125	1,970	1,302	859
Farm Assist	271	286	214	201	196	130	84
Pre-Retirement Allowance	-	-	3	-	-	2	-

Table 2: Appeals received 2012 – 2018 (continued)

	2012	2013	2014	2015	2016	2017	2018
Jobseeker's Benefit	1,289	882	845	735	637	545	610
Deserted Wife's Benefit	8	11	7	19	7	7	8
Maternity Benefit	29	26	19	71	87	84	40
Paternity Benefit	-	-	-	-	1	16	14
Adoptive Benefit	6	-	1	-	-	2	1
Homemaker's	1	1	-	-	-	-	-
Treatment Benefits	3	5	-	3	5	1	2
Partial Capacity Benefit	67	70	33	42	42	38	75
TOTAL - WORKING AGE INCOME & EMPLOYMENT SUPPORTS	14,387	11,576	9,868	7,856	7,408	5,616	5,005
ILLNESS, DISABILITY & CARERS							
Disability Allowance	6,223	6,836	5,554	6,435	4,912	5,077	5,200
Blind Pension	27	34	19	22	13	19	12
Carer's Allowance	2,676	3,869	2,907	3,188	3,887	3,200	2,902
Domiciliary Care Allowance	2,186	1,688	1,301	1,258	1,198	1,199	1,432
Carer's Support Grant	278	176	133	124	164	164	126
Illness Benefit	2,647	1,761	1,227	1,204	819	443	581
Injury Benefit	13	21	9	65	56	51	44
Invalidity Pension	4,765	4,501	2,571	1,857	1,362	1,381	1,387
Disablement Benefit	409	346	385	347	298	347	330
Incapacity Supplement	21	14	1	12	9	7	7
Medical Care	6	3	28	4	4	2	2
Carer's Benefit	183	115	121	93	95	110	162
TOTAL - ILLNESS, DISABILITY & CARERS	19,434	19,364	14,256	14,609	12,817	12,000	12,185

Table 2: Appeals received 2012 – 2018 (continued)

	2012	2013	2014	2015	2016	2017	2018
CHILDREN							
Child Benefit	675	663	659	552	595	473	485
Working Family Payment*	301	421	434	447	510	477	290
Back To Work Family Dividend	-	-	-	64	52	43	43
Guardian's Payment (Non-Contributory)	14	11	22	18	17	16	8
Guardian's Payment (Contributory)	46	42	42	49	38	34	22
Widowed Parent Grant	6	11	8	10	8	6	1
TOTAL - CHILDREN	1,042	1,148	1,165	1,140	1,220	1,049	849
OTHER							
Insurability Of Employment	79	95	91	156	151	132	86
Liable Relatives	39	23	33	26	23	9	4
Recoverable Benefits & Assistance	-	-	2	26	24	25	29
TOTAL - ALL APPEALS	35,484	32,777	26,069	24,475	22,461	19,658	18,854

*previously known as Family Income Supplement

Table 3: Outcome of Appeals by Category 2018

	Allowed by Appeals Officer	Partially Allowed by Appeals Officer	Revised Decisions by DO / Designated Person	Disallowed by Appeals Officer	Withdrawn	Total
PENSIONS						
State Pension (Non-Contributory)	85 23.4%	29 8.0%	70 19.3%	144 39.7%	35 9.6%	363
State Pension (Contributory)	35 9.5%	9 2.5%	64 17.4%	244 66.5%	15 4.1%	367
Widows', Widowers' Pension (Contributory)	18 45.0%	-	2 5.0%	14 35.0%	6 15.0%	40
Death Benefit	-	-	-	1 100%	-	1
Bereavement Grant	-	-	-	1 100.0%	-	1
TOTAL PENSIONS	138	38	136	404	56	772
WORKING AGE INCOME/ EMPLOYMENT SUPPORTS						
Jobseeker's Allowance - Payments	280 18.0%	99 6.4%	251 16.1%	785 50.4%	141 9.1%	1,556
Jobseeker's Transitional	9 19.1%	5 10.6%	9 19.1%	18 38.3%	6 12.8%	47
Jobseeker's Allowance - Means	150 10.4%	83 5.8%	194 13.5%	836 58.1%	176 12.2%	1,439
One-Parent Family Payment	47 20.4%	13 5.7%	46 20.0%	83 36.1%	41 17.8%	230
Widow's/Widower's Pension (Non-Contributory)	4 23.5%	2 11.8%	-	10 58.8%	1 5.9%	17
Deserted Wife's Allowance	1 100.0%	-	-	-	-	1
Supplementary Welfare Allowance	258 24.6%	29 2.8%	179 17.1%	467 44.6%	114 10.9%	1,047

Table 3: Outcome of Appeals by Category 2018 (continued)

	Allowed by Appeals Officer	Partially Allowed by Appeals Officer	Revised Decisions by DO / Designated Person	Disallowed by Appeals Officer	Withdrawn	Total
Farm Assist	14 11.7%	11 9.2%	18 15.0%	62 51.7%	15 12.5%	120
Pre-Retirement Allowance	1 50.0%	1 50.0%	-	-	-	2
Jobseeker's Benefit	109 18.3%	33 5.5%	129 21.6%	270 45.3%	55 9.2%	596
Deserted Wife's Benefit	3 50.0%	-	-	3 50.0%	-	6
Maternity Benefit	6 11.1%	-	13 24.1%	34 63.0%	1 1.9%	54
Paternity Benefit	1 6.3%	1 6.3%	-	14 87.5%	-	16
Treatment Benefits	-	-	-	-	2 100.0%	2
Partial Capacity Benefit	16 50.0%	-	2 6.3%	13 40.6%	1 3.1%	32
TOTAL - WORKING AGE INCOME/ EMPLOYMENT SUPPORTS	899	277	841	2,595	553	5,165
ILLNESS, DISABILITY AND CARERS						
Disability Allowance	3,112 62.2%	99 2.0%	462 9.2%	1,256 25.1%	77 1.5%	5,006
Blind Pension	2 14.3%	2 14.3%	3 21.4%	6 42.9%	1 7.1%	14
Carer's Allowance	1,047 38.6%	144 5.3%	440 16.2%	989 36.5%	90 3.3%	2,710
Domiciliary Care Allowance	686 43.6%	13 0.8%	590 37.5%	258 16.4%	25 1.6%	1,572

Table 3: Outcome of appeals by category 2018 (continued)

	Allowed by Appeals Officer	Partially Allowed by Appeals Officer	Revised Decisions by DO / Designated Person	Disallowed by Appeals Officer	Withdrawn	Total
Carer's Support Grant	28 20.0%	5 3.6%	35 25.0%	68 48.6%	4 2.9%	140
Illness Benefit	111 22.4%	11 2.2%	164 33.1%	182 36.8%	27 5.5%	495
Injury Benefit	10 21.3%	-	6 12.8%	29 61.7%	2 4.3%	47
Invalidity Pension	458 41.9%	8 0.7%	322 29.4%	273 25.0%	33 3.0%	1,094
Disablement Benefit	116 35.3%	18 5.5%	32 9.7%	158 48.0%	5 1.5%	329
Incapacity Supplement	4 80.0%	-	-	1 20.0%	-	5
Medical Care	-	-	-	1 100.0%	-	1
Carer's Benefit	32 23.4%	4 2.9%	52 38.0%	46 33.6%	3 2.2%	137
TOTAL - ILLNESS, DISABILITY AND CARERS	5,606	304	2,106	3,267	267	11,550
CHILDREN						
Child Benefit	62 14.6%	18 4.2%	146 34.3%	179 42.0%	21 4.9%	426
Working Family Payment	59 15.3%	18 4.7%	173 44.8%	116 30.1%	20 5.2%	386
Back To Work Family Dividend	4 8.5%	-	12 25.5%	26 55.3%	5 10.6%	47
Guardian's Payment (Non-Contributory)	1 11.1%	1 11.1%	2 22.2%	5 55.6%	-	9
Guardian's Payment (Contributory)	7 29.2%	1 4.2%	2 8.3%	14 58.3%	-	24
Widowed Parent Grant	-	-	1 20.0%	4 80.0%	-	5
TOTAL - CHILDREN	133	38	336	344	46	897

Table 3: Outcome of appeals by category 2018 (continued)

	Allowed	Partially Allowed by Appeals Officer	Revised Decisions by DO / Designated Person	Disallowed by Appeals Officer	Withdrawn	Total
OTHER						
Insurability	25 26.3%	3 3.2%	3 3.2%	51 53.7%	13 13.7%	95
Liable Relatives	-	-	1 20.0%	2 40.0%	2 40.0%	5
Recoverable Benefits & Assistance	1 4.3%	2 8.7%	2 8.7%	18 78.3%	-	23
TOTAL - APPEALS	6,802	662	3,425	6,681	937	18,507

Table 4: Appeals in progress at 31 December 2012 - 2018

	2012	2013	2014	2015	2016	2017	2018
PENSIONS							
State Pension (Non-Contributory)	127	143	134	165	179	206	190
State Pension (Contributory)	106	74	97	149	203	257	199
State Pension (Transition)	39	26	9	4	1	1	1
Widows', Widowers' Pension (Contributory)	20	25	15	24	13	27	25
Death Benefit	-	-	1	1	1	-	-
Bereavement Grant	41	40	17	-	1	1	1
TOTAL - PENSIONS	333	308	273	343	398	492	416
WORKING AGE INCOME & EMPLOYMENT SUPPORTS							
Jobseeker's Allowance	1,247	1,180	812	811	809	912	926
Jobseeker's Transitional	-	-	-	13	17	21	44
Jobseeker's Allowance (Means)	1,522	1,453	1,029	947	838	889	830
One Parent Family Payment	575	411	231	190	156	143	186
Widow's Widower's Pension (Non-Contributory)	23	16	9	9	13	13	14
Deserted Wife's Allowance	1	1	1	-	-	1	1
Supplementary Welfare Allowance	1,955	1,221	877	672	610	563	375
Farm Assist	161	176	102	118	99	87	51
Pre-Retirement Allowance	1	1	2	1	1	2	-
Jobseeker's Benefit	519	391	243	290	223	289	303

Table 4: Appeals in progress at 31 December 2012 - 2018 (continued)

	2012	2013	2014	2015	2016	2017	2018
Deserted Wife's Benefit	10	3	5	6	2	4	6
Maternity Benefit	21	14	6	26	22	35	21
Paternity Benefit	-	-	-	-	1	9	7
Adoptive Benefit	1	-	-	-	-	-	1
Homemaker's	1	1	1	-	-	-	-
Treatment Benefits	1	2	-	2	1	1	1
Partial Capacity Benefit	67	81	21	25	32	25	68
TOTAL WORKING AGE - INCOME & EMPLOYMENT SUPPORTS	6,105	4,951	3,339	3,110	2,824	2,994	2,834
ILLNESS, DISABILITY AND CARERS							
Disability Allowance	4,030	3,121	1,944	1,639	1,376	1,519	1,713
Blind Pension	8	13	6	10	4	8	6
Carer's Allowance	1,766	1,913	1,434	1,131	1,394	1,178	1,370
Domiciliary Care Allowance	1,113	736	462	562	416	814	674
Carer's Support Grant	153	94	71	57	70	79	65
Illness Benefit	1,460	683	351	335	274	203	289
Injury Benefit	11	15	9	25	22	35	32
Invalidity Pension	4,356	1,889	938	674	382	415	708
Disablement Benefit	254	186	164	160	87	184	185
Incapacity Supplement	23	16	16	11	6	3	5
Medical Care	25	18	14	1	2	2	3

Table 4: Appeals in progress at 31 December 2012 - 2018 (continued)

	2012	2013	2014	2015	2016	2017	2018
Carer's Benefit	75	45	32	15	39	45	70
TOTAL - ILLNESS, DISABILITY AND CARERS	13,274	8,729	5,441	4,620	4,072	4,485	5,120
CHILDREN							
Child Benefit	403	311	273	193	187	222	281
Working Family Payment	147	277	159	192	232	206	110
Back To Work Family Dividend	-	-	-	37	24	26	22
Guardian's Payment (Non - Contributory)	4	7	9	7	4	5	4
Guardian's Payment (Contributory)	26	24	17	18	14	15	13
Widowed Parent Grant	5	7	1	4	1	5	1
TOTAL - CHILDREN	585	626	459	451	462	479	431
OTHER							
Insurability of Employment	96	124	99	148	160	153	144
Liable Relatives	21	32	15	10	12	4	3
Recoverable Benefits and Assistance	-	-	2	15	10	9	15
TOTAL - ALL APPEALS	20,414	14,770	9,628	8,697	7,938	8,616	8,963

Table 5: Appeals statistics 1997 – 2018

Year	On hands at start of year	Received	Workload	Finalised	On hands at end of year
1997	4,686	14,004	18,690	12,835	5,855
1998	5,855	14,014	19,869	13,990	5,879
1999	5,879	15,465	21,344	14,397	6,947
2000	6,947	17,650	24,597	17,060	7,537
2001	7,537	15,961	23,498	16,525	6,973
2002	6,973	15,017	21,990	15,834	6,156
2003	6,156	15,224	21,380	16,049	5,331
2004	5,331	14,083	19,414	14,089	5,325
2005	5,325	13,797	19,122	13,418	5,704
2006	5,704	13,800	19,504	14,006	5,498
2007	5,498	14,070	19,568	13,845	5,723
2008	5,723	17,833	23,556	15,724	7,832
2009	7,832	25,963	33,795	17,787	16,008
2010	16,008	32,432	48,440	28,166	20,274
2011	20,274	31,241	51,515	34,027	17,488
2012	17,488	35,484	52,972	32,558	20,414
2013	20,414	32,777	53,191	38,421	14,770
2014	14,770	26,069	40,839	31,211	9,628
2015	9,628	24,475	34,103	25,406	8,697
2016	8,697	22,461	31,158	23,220	7,938
2017	7,938	19,658	27,596	18,980	8,616
2018	8,616	18,854	27,470	18,507	8,963

Table 6: Appeals processing times by scheme 2018

	SWAO* (weeks)	DEASP** (weeks)[1]	Appellant (weeks)	Total Weeks
PENSIONS				
State Pension (Non-Contributory)	18.6	11.7	0.8	31.1
State Pension (Contributory)	17.9	19.4	0.4	37.7
Widows', Widowers' Pension (Contributory)	18.5	9.4	0.5	28.5
Death Benefit (Pension)	28.3	3.2	-	31.5
Bereavement Grant	34.2	1.9	-	36.1
WORKING AGE INCOME & EMPLOYMENT SUPPORTS				
Jobseeker's Allowance	16.8	9.9	0.3	27.0
Jobseeker's Transitional	17.1	6.6	-	23.7
Jobseeker's Allowance (Means)	19.1	14.0	0.3	33.4
One Parent Family Payment	19.0	11.7	0.2	30.9
Widow's Widower's Pension (Non- Contributory)	16.7	5.7	0.2	22.6
Supplementary Welfare Allowance	11.1	16.7	0.3	28.1
Farm Assist	28.6	18.9	0.3	47.8
Pre-Retirement Allowance	39.8	7.1	-	47.0
Deserted Wife's Allowance	18.9	51.7	-	70.6
Jobseeker's Benefit	15.7	7.4	-	23.2
Deserted Wife's Benefit	31.9	17.0	-	48.9
Maternity Benefit	17.8	4.4	0.3	22.5
Treatment Benefits	0.1	4.5	3.4	7.8
Partial Capacity Benefit	15.6	9.8	1.1	26.5
Paternity Benefit	21.1	6.7	-	27.9

SWAO - Social Welfare Appeals Officer
****DEASP - Department of Employment Affairs and Social Protection***

Table 6: Appeals processing times by scheme 2018 (continued)

	SWAO (weeks)	DEASP (weeks)[1]	Appellant (weeks)	Total Weeks
ILLNESS, DISABILITY AND CARERS				
Disability Allowance	11.4	5.1	0.5	16.9
Blind Pension	13.4	11.0	0.7	25.0
Carer's Allowance	13.2	10.4	0.6	24.2
Domiciliary Care Allowance	11.7	15.3	0.4	27.5
Carer's Support Grant	14.6	10.1	0.2	25.0
Illness Benefit	15.6	9.4	0.6	25.6
Injury Benefit	23.3	7.6	0.4	31.3
Invalidity Pension	11.7	12.1	0.3	24.2
Disablement Pension	19.9	12.1	0.2	32.2
Incapacity Supplement	22.7	11.5	-	34.2
Medical Care	12.8	4.7	-	17.5
Carer's Benefit	12.0	8.9	0.2	21.1
CHILDREN				
Child Benefit	17.8	13.3	0.4	31.5
Working Family Payment*	16.8	12.8	0.1	29.6
Back To Work Family Dividend	12.6	12.1	-	24.7
Guardian's Payment (Non-Contributory)	16.8	6.5	-	23.3
Guardian's Payment (Contributory)	22.8	5.4	0.4	28.6
Widowed Parent Grant	20.1	14.3	-	34.5
OTHER				
Insurability of Employment	41.2	12.5	0.7	54.4
Liable Relatives	21.2	11.9	-	33.1
Recoverable Benefits & Assistance	12.5	6.3	-	18.8
TOTAL - ALL APPEALS	15.1	9.6	0.4	25.1

*previously known as Family Income Supplement

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

Table 7: Appeals outstanding at 31st December 2018

Scheme	In progress in Social Welfare Appeals Office	Awaiting Department response	Awaiting Appellant response	Total
Jobseeker's Allowance/Benefit	738	532	3	1,273
JA Means/Farm Assist	536	343	2	881
Supplementary Welfare Allowance	148	227	-	375
Disability Allowance	1,336	356	21	1,713
Carer's Allowance	509	850	11	1,370
Domiciliary Care Allowance	301	369	4	674
Invalidity Pension	181	523	4	708
Illness Benefit	71	218	-	289
Child Benefit	111	170	-	281
Other schemes	818	569	12	1,399
Totals	4,749	4,157	57	8,963

Chapter 3

Social Welfare Appeals Office 2018

THE BUSINESS OF THE OFFICE

3.1 Organisation

Staffing Resources

The number of staff serving in my Office at the end of 2018 was 83, which equates to 78.9 full-time equivalents (FTE).

The staffing breakdown is as follows:

Posts	Full-time Equivalent
Chief Appeals Officer	1.0
Deputy Chief Appeals Officer	1.0
40 Appeals Officers (5 work-sharing)	38.8
4 Higher Executive Officers (1 work-sharing)	3.8
12 Executive Officers (2 work-sharing)	11.4
25 Clerical Officers (5 work-sharing)	22.9
Total	**78.9**

3.2 Training and Development within the Appeals Office

The role of an Appeals Officer is a complex and challenging one which requires the development and application of a broad range of knowledge, skills and competence. The importance of continuous professional development cannot be overestimated and this has continued to be a priority for my Office during 2018.

A comprehensive formal programme of training for Appeals Officers was developed in recent years by professional trainers working with experienced Appeals Officers and is regularly reviewed and updated. The programme consists of a mix of e-learning, trainer delivered learning modules, mentoring and peer support. Newly appointed and more experienced Appeals Officers engage with the programme in different ways and the opportunity to learn from the experience of others and the provision of formal and informal peer support within the Appeals Officer group is a unique and highly valued aspect of the role.

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

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

During 2018, six Appeals Officers were appointed to my Office and availed of the structured programme of training and support, with each module building on the learning in the previous module. These newly appointed Appeals Officers were also provided with formal mentoring support from a more experienced colleague. In addition to the formal training provided, as outlined in Section 3.6, a number of workshops dedicated to specific topics were held as a more targeted means of building and sharing knowledge.

During the year my Office engaged with the Department's Staff Development Unit and the National College of Ireland on an accreditation programme for Appeals Officers and it is envisaged this programme will be introduced in 2019.

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

3.3 Process Improvements

Our ability to deal with the high volume of appeals we receive is highly dependent on the staff of my Office and I would like to pay tribute to their work in the course of 2018. As was the case in 2017 a number of staff availed of retirement or moved to take up posts in other

areas within the Department or in other organisations and this loss of experience caused us some difficulties during the year. However, as newly appointed staff come on board I expect to see some process improvements in 2019.

It is essential that the systems and processes operated in my Office support staff in carrying out their work in as effective and streamlined a manner as possible. A Business Process Review (BPR) of our processes, organisation structure, use of technology and the overall "end to end" customer experience was completed in 2017. Arising from the BPR recommendations a project was established in 2018 to modernise the processing of appeals by the Office, including its linkages with the Department. In particular, the project is aimed at significantly reducing the use of paper in the appeals process by the introduction of document management and customer case management capabilities. It will take some time to develop and implement the new systems and structure but the end result should provide a more flexible and responsive service for people dealing with my Office.

3.4 Operational Matters Parliamentary Questions

During 2018, 286 Parliamentary Questions were put down (295 in 2017) in relation to the work of my Office. Replies were given in Dáil Éireann to 222 of those questions. 62 questions were transferred to the relevant scheme area of the Department and the remaining 2 were withdrawn when the current status of the appeal which was the subject of the Question was explained to the Deputy.

Correspondence

A total of 6,831 hardcopy enquiries and representations were received from appellants or from public representatives on their behalf during 2018 (6,731 in 2017).

In addition, a total of 14,256 enquiries were received by email in 2018[1].

Freedom of information

A total of 139 formal requests were received in 2018 (179 in 2017) under the provisions of the Freedom of Information Acts. Of these requests 136 were in respect of personal information and 3 requests were in respect of non-personal information.

[1]The figure of 14,256 includes enquiries received by email directly from the Department of Employment Affairs and Social Protection.

3.5 Feedback to the Department

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

More formal opportunities during 2018 to provide feedback to the Department included attendance at meetings of the Department's Illness Programme Board which has oversight of the policy and process issues arising in relation to schemes which have a medical criterion.

In the main, however, feedback to the Department is provided through regular meetings with the Department's Decisions Advisory Office (DAO).

Meetings with Decisions Advisory Office

During 2018, my Office met on a number of occasions with the head of the DAO and her staff. This opportunity to provide feedback and discuss issues arising on appeal is very welcome as it allows my Office the opportunity to highlight issues that may only come to light on appeal and which could improve the overall decision making process.

Given the number of appeal cases that arise where a person's right to reside in the State is at issue both Offices agreed that this matter would be a standing item on our Agendas. In keeping with that agreement a number of discussions took place at our meetings in 2018. Discussions included consideration of the impact of judgments from the Courts (national and ECJ) and the need to ensure that operational Guidelines are updated to reflect any changes arising from case-law or other sources.

Other issues discussed with the DAO during 2018 included:

- The need to set out the legislative provisions underpinning revised decisions of Deciding Officers and in particular the need to utilise Section 302 of the Social Welfare Consolidation Act 2005 which outlines the effect of such decisions. Similar considerations apply in the case of revised determinations made by Designated Persons in relation to Supplementary Welfare Allowance.
- As both my Office and the Decisions Advisory Office have a shared interest in the quality and consistency of our respective decisions a number of discussions took place on this issue during 2018.
- Issues arising in relation to freedom of information requests and data protection obligations.
- Issues relating to specific schemes that are of interest to both Offices.

3.6 Meetings of Appeals Officers

The Regulations governing the appeals process provide that the Chief Appeals Officer may convene meetings of Appeals Officers for the purpose of discussing matters relating to the discharge of the functions of Appeals Officers including in particular achieving consistency in the application of the statutory provisions.

Two formal meetings of the Appeals Officer group were held in April and November 2018 and in addition a number of informal meetings and workshops took place throughout the year. As many of our Appeals Officers are located outside of our headquarters in Dublin and given that a number of Appeals Officers are recently assigned to my Office, these meetings provided a valuable opportunity to share knowledge and experience, discuss issues of common interest and to promote best practice in decision making.

Consistency in decision making continues to be a major focus of my Office particularly in relation to those questions which require a high degree of judgement and legislative interpretation. As in previous years a portion of our time was dedicated at both conferences in 2018 to this topic. At the April conference a number of colleagues from the Department presented on issues related to activation and case management. This was a valuable opportunity for Appeals Officer to gain an understanding of these processes as questions related to these arise on appeal. A separate workshop was dedicated to the consideration of the scope of reviews of Appeals Officers' decisions under Section 317 of the 2005 Act. I was also very pleased to welcome two speakers at the conference dealing respectively with the topics of 'Unconscious Bias' and 'Building Resilience and Well-Being'.

Given that a number of Appeals Officers are new assignees to the Office we discussed the use of workshops as a means of building knowledge and achieving a common understanding of the issues that arise on appeal. As this approach was welcomed by Appeals Officers a further workshop was convened in August for a number of Appeals Officers where the main issues arising on appeal in relation to Domiciliary Care Allowance were considered. At the November conference two parallel workshops were dedicated to issues relating to Occupational Injuries Benefits and Disability Allowance.

We devoted a period of time during the November conference to a consideration of proposed legislation in the area of entitlement to State Pension (Contributory).

I wish to extend my appreciation to colleagues in the Department for attending our conferences and for their very informative presentations on activation and case management and proposed legislation on entitlement to State Pension (Contributory).

3.6.1 Caselaw from the Courts

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

A judgment delivered by the Court of Appeal in June 2018 where the question before the Court was whether payment of Child Benefit could be withheld in respect of Irish citizen children resident in the State and who otherwise met the statutory conditions because of the immigration status of the parent claiming that benefit was discussed at our conference in November.

A judgment of the High Court delivered in June 2018 where the question before the Court was whether a decision by a Deciding Officer pursuant to Section 301(1)(a) of the Social Welfare Consolidation Act 2005 refusing to revise a decision of a Deciding Officer made pursuant to Section 300(2)(b) of the Act is capable of being appealed either as "a revised decision" by virtue of Section 301 of the Act or as "the decision" pursuant to Section 311(1) of the Act was considered at our conference in November.

The High Court concluded that a mere refusal to revise a decision does not give rise to a revision of that decision and is, therefore, not subject to appeal by virtue of Section 301 of the Act as "a revised decision" pursuant to Section 311(1) of the Act. The Court went on to say that it follows from this that as the refusal which was the subject of the judicial review proceedings did not in any way adjust and thereby revise the original decision, it is not "a revised decision" within the meaning of Section 301 of the Act and is therefore not subject to appeal pursuant to Section 311(1) of the Act.

3.7 Litigation

There were four applications for judicial review of decisions in 2018. One application has been heard and judgment is awaited, one case is in the process of being settled and the remaining two cases are on-going.

Chapter 4:
Case Studies
An Introduction

The case studies included in this Chapter represent a sample of appeals determined during 2018. My Office deals with appeals covering a wide and diverse group of people including families, people in employment, unemployed people, people with illnesses and disabilities, carers and older people. Many appeals that come before Appeals Officers must be considered in the broader context of EU legislation, most notably the EU Social Security Coordination rules contained in EU Regulation 883/2004 and the provisions of the EU Residence Directive 2004/38/EC on the right to reside in the State.

All social welfare appeals arise from adverse decisions having been made on issues of entitlement. Given the complexity of the issues that arise, it would not be possible in this Report to cover all issues in the case studies. However, I have attempted to provide a representative sample covering payment types and issues arising across the range of schemes from Child Benefit to State Pension. In the cases featured, questions at issue refer to a broad range of criteria on which entitlement was assessed, including habitual residence in the State, assessment of means, medical evidence, cohabitation, care required and/or care provided and PRSI contribution conditions.

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

The following Index provides a short reference to the case studies featured.

4.1 Children and Family	
2018/01 Child Benefit	Question at issue: Eligibility (habitual residence condition)
2018/02 Child Benefit	Question at issue: Normal residence of qualified child
2018/03 Domiciliary Care Allowance	Question at issue: Whether the child is a qualified child
2018/04 Domiciliary Care Allowance	Question at issue: Eligibility
2018/05 Domiciliary Care Allowance	Question at issue: Eligibility
2018/06 One-Parent Family Payment	Question at issue: Eligibility (means)
4.2 Working Age – Illness, Disability and Carers	
2018/07 Illness Benefit	Question at issue: Eligibility
2018/08 Invalidity Pension	Question at issue: Eligibility (medical)
2018/09 Invalidity Pension	Question at issue: Eligibility (medical)
2018/10 Invalidity Pension	Question at issue: Eligibility
2018/11 Invalidity Pension	Question at issue: Eligibility (contributions)
2018/12 Disability Allowance	Question at issue: Eligibility (medical)
2018/13 Disability Allowance	Question at issue: Eligibility (medical)
2018/14 Disability Allowance	Question at issue: Eligibility (medical)
2018/15 Disability Allowance	Question at issue: Eligibility (medical)
2018/16 Disability Allowance	Question at issue: Eligibility (medical)
2018/17 Disability Allowance	Question at issue: Eligibility (medical and means)
2018/18 Disability Allowance	Question at issue: Eligibility (medical and means)
2018/19 Disability Allowance	Question at issue: Eligibility (medical)
2018/20 Disability Allowance	Question at issue: Eligibility (medical)
2018/21 Disability Allowance	Question at issue: Eligibility (medical)
2018/22 Disability Allowance	Question at issue: Eligibility (medical grounds and HRC)
2018/23 Disability Allowance	Question at issue: Backdating
2018/24 Disability Allowance	Question at issue: Eligibility (means)
2018/25 Carer's Allowance	Question at issue: Eligibility (full time care provided)
2018/26 Carer's Allowance	Question at issue: Eligibility (full time care provided)
2018/27 Carer's Allowance	Question at issue: Eligibility (medical – care required)

2018/28 Carer's Allowance	Question at issue: Eligibility (medical – care required)
2018/29 Carer's Allowance	Question at issue: Eligibility (provision of full time care)
2018/30 Carer's Benefit	Question at issue: Eligibility (medical – care required)
2018/31 OIB Disablement	Question at issue: Eligibility (loss of faculty)
2018/32 Disablement Benefit (OIB)	Question at issue: Did the appellant suffer an occupational injury?
2018/33 Disablement Benefit (OIB)	Question at issue: Whether an accident on the way home from work was an occupational injury?
2018/34 Injury Benefit	Question at issue: Whether or not the appellant had an occupational accident arising out of and in the course of employment
4.3 Working Age – Income Supports	
2018/35 Working Family Payment	Question at issue: Eligibility (hours worked)
2018/36 Deserted Wives Benefit	Question at issue: Eligibility (means)
2018/37 Partial Capacity Benefit	Question at issue: Degree of restriction on capacity for work
2018/38 Partial Capacity Benefit	Question at issue: Eligibility
2018/39 Jobseeker's Allowance	Question at issue: Eligibility (whether a person is unemployed)
2018/40 Jobseeker's Allowance	Question at issue: Eligibility (means)
2018/41 Jobseeker's Allowance	Question at issue: Eligibility
2018/42 Jobseeker's Allowance	Question at issue: Eligibility (habitual residence condition)
2018/43 Jobseeker's Allowance	Question at issue: Eligibility (habitual residence condition)
2018/44 Jobseeker's Allowance	Question at issue: Eligibility (failure to attend activation meetings)
2018/45 Jobseeker's Benefit	Question at issue: Whether the appellant may be held to have made a claim for benefit in the prescribed manner, and satisfied the Minister as to his identity

2018/46 Supplementary Welfare Allowance	Question at issue: Rent Supplement/Other Supplement
2018/47 Supplementary Welfare Allowance (BASI)	Question at issue: Eligibility
2018/48 Supplementary Welfare Allowance (BASI)	Question at issue: Eligibility (means assessment)
2018/49 Supplementary Welfare Allowance	Question at issue: Eligibility (eligibility and overpayment)
4.4 Retired, Older People and Other	
2018/50 State Pension (Contributory)	Question at issue: Entitlement to a contributory pension
2018/51 State Pension (Contributory)	Question at issue: Contribution conditions and rate of pension
2018/52 State Pension (Contributory)	Question at issue: Eligibility (contribution conditions)
2018/53 State Pension (Non-Contributory)	Question at issue: Eligibility (means and overpayment)
2018/54 State Pension (Non-Contributory)	Question at issue: Eligibility (means and overpayment)
2018/55 Widow's (Contributory) Pension	Question at issue: Whether the appellant was the legal widow of the deceased
4.5 Insurability of Employment	
2018/56 Insurability	Question at issue: State Pension Contributory (Eligibility Contributions)
2018/57 Insurability	Question at issue: State Pension Contributory (Eligibility Contributions)

4.6 Reviews under Section 318 of the Social Welfare Consolidation Act 2005	
2018/318/58 Jobseeker's Allowance	Question at issue: Assessment of means derived from seasonal employment
2018/318/59 Supplementary Welfare Allowance	Question at issue: In calculating Mortgage Interest Supplement is it gross interest or interest net of tax that should be taken into account?
2018/318/60 Jobseeker's Allowance	Question at issue: Information to be given when making a claim
2018/318/61 Insurability of Employment	Question at issue: Whether a worker had been employed or self employed
2018/318/62 Supplementary Welfare Allowance	Question at issue: habitual residence condition
2018/318/63 Jobseekers's Benefit	Question at issue: Condition of a person's right to benefit
2018/318/64 Jobseeker's Allowance	Question at issue: Attending a course of study
2018/318/65 Carer's Allowance	Question at issue: Eligibility (care required)
2018/318/66 Carer's Allowance	Question at issue: Eligibility (care provided)
2018/318/67 State Pension (Non-Contributory)	Question at issue: Absence from the State
2018/318/68 State Pension (Contributory)	Question at issue: Contribution Conditions
2018/318/69 Domiciliary Care Allowance	Question at Issue: Whether the eligibility criteria had been met
2018/318/70 Guardian's Payment (Contributory)	Question at Issue: Whether the eligibility criteria had been met

4.1 Case Studies

Children & Family

2018/01 Child Benefit Summary Decision
Question at issue: Eligibility (habitual residence condition)

Background: The appellant, an EU national, made a claim for Child Benefit in December 2017 in respect of her daughter who came to Ireland to live with her in September 2017. Supporting documentation was provided, including a statement from the school secretary, indicating that the child was enrolled in school since September 2017 and was attending school at present. The claim was disallowed in January 2018 on the grounds that the appellant was not habitually resident in the State. The decision was appealed and the appellant submitted details of her employment, which had commenced in March 2018. On foot of this evidence the Department made a revised decision and awarded Child Benefit from March 2018. The appellant was held to have migrant worker status, as she had become employed, and was not required to satisfy the habitual residence condition while she remained in employment.

Consideration: Section 220 (3) of the Social Welfare Consolidation Act 2005 provides that a person must be habitually resident in the State for the purposes of establishing entitlement to Child Benefit. Section 246 of the Act outlines the provisions with respect to habitual residence. The question at issue was whether the appellant could be deemed to be habitually resident in the State for the purposes of her claim to Child Benefit in December 2017, in line with the provisions of the governing legislation. Social welfare legislation provides that in determining whether a person may be regarded as habitually resident, particular attention must be paid to the following: the length and continuity of residence in the State; the length and purpose of any absence from the State; the nature and pattern of employment; main centre of interest, and future intentions as they appear from all the circumstances. The Appeals Officer noted that the appellant came to live in Ireland in August 2016 and had been living in the State since then, apart from a brief absence for a holiday. She made a claim for Child Benefit in December 2017 as her six year old daughter had come to join her and was enrolled in school. The appellant had some limited employment in the period prior to her daughter's arrival and had again commenced employment in March 2018. The Appeals Officer concluded that the appellant could be held to have established a centre of interest in the State and could be regarded as habitually resident for the purposes of her claim for Child Benefit in December 2017.

Outcome: Appeal allowed.

2018/02 Child Benefit Summary Decision
Question at issue: Normal residence of qualified child

Background: The appellant, an EU national, was employed in the State. His child resided in Poland with the child's mother. The Deciding Officer outlined that the appellant's employment made Ireland the competent State to pay a Child Benefit supplement under EU Regulations. She stated, however, that the child's mother was the qualified person to receive the supplement as the child resided with her.

The appellant appealed the decision on the grounds that he lived and worked in Ireland and the child's mother lived and worked in Poland, he paid maintenance of €200 - € 300 per month and additional life insurance and he needed the Child Benefit payment to continue paying maintenance.

Consideration: Section 220 of the Social Welfare Consolidation Act 2005 provides that a person with whom a qualified child normally resides shall be qualified for child benefit in respect of that child and is in this Part of the Act referred to as "a qualified person". The rules for determining with whom a child shall be regarded as normally residing are contained in Article 159 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007). The Appeals Officer agreed that the appellant's employment in the State rendered Ireland the competent State for the payment of a Child Benefit supplement in respect of his child. However, the Appeals Officer also concluded that, having regard to the rules for determining with whom the child was normally residing, the appellant was not the qualified person to receive the Child Benefit as the child did not reside with him.

Outcome: Appeal disallowed.

2018/03 Domiciliary Care Allowance Oral Hearing
Question at issue: Whether the child is a qualified child

Background: The appellant applied for Domiciliary Care Allowance in respect of his son. The application was refused on the grounds that the level of additional support required by his son was not substantially in excess of that required by other children of the same age without the disability. The medical report indicated that the child was diagnosed with language delay. The condition started in 2014 and was expected to last 24-48 months. The medical history showed mild receptive language delay, severe expressive language delay and separation anxiety. A multi-disciplinary assessment report outlined that the child presented with sensory modulation dysfunction, mild receptive language delay and a severe expressive language delay. The report recommended speech and language therapy, occupational therapy, psychology support, a full needs assessment in 18 months including a review of his assessment for autism, pre-school supports under the Access and Inclusion Model (levels 4-7) and the use of visual cues by his parents and teachers.

Oral hearing: At the oral hearing of his appeal the appellant outlined his son's history, his assessments and the recommendations. He stated that his son's daily care was well above a child of his age and above that of his siblings. The appellant outlined that his son's condition had deteriorated and that the child got frustrated trying to speak, he needed help feeding, dressing, washing, toileting, disliked certain textures and activities, had particular items that he must have, was a fussy eater, needed constant re-assurance and disliked when his routine was changed. The child did not cope well with change. Change in routines resulted in the child becoming agitated and could lead to tantrums.

Consideration: The medical evidence showed that the child presented with sensory modulation dysfunction, mild receptive language delay and a severe expressive language delay. The multi-disciplinary report recommended speech and language therapy, occupational therapy, psychology support and a full needs assessment in 18 months including a review of his assessment for autism. His pre-school supports included Access and Inclusion Model level 7 and this had been available to him. The Appeals Officer noted the evidence at the hearing that the child did not recognise danger, had multiple tantrums in a day and had difficulty communicating. The Appeals Officer was satisfied that the child required continual care and attention substantially in excess of the care and attention normally required by a child of the same age without the disability and that he was likely to require full-time care and attention for at least 12 consecutive months.

Outcome: Appeal allowed.

2018/04 Domiciliary Care Allowance Oral Hearing
Question at issue: Eligibility

Background: The appellant's application for Domiciliary Care Allowance in respect of her son was disallowed by the Department on the grounds that the child did not satisfy the medical conditions for receipt of the scheme. The child was 9 years old and had a diagnosis of autism. The medical report completed by the GP stated that the child was availing of speech and language therapy, play therapy and was waiting for an occupational therapist appointment. The ability profile indicated that the child's condition severely affected his behaviour, speech, social skills, sensory issues and continence; moderately affected his mental health, learning, communication, washing, dressing, balance/co-ordination, manual dexterity, fine motor skills and gross motor skills; mildly affected his hearing and remaining abilities were considered normal.

Oral Hearing: At oral hearing, the appellant outlined that her son had access to a Special Needs Assistant on a full-time basis and used the multisensory room on occasions throughout the day. He also attended play therapy twice weekly and was awaiting an appointment with an occupational therapist and further assessment for dyspraxia. The

appellant submitted additional medical evidence confirming the child's recent diagnosis of autism and that the child also had significant sensory issues. The appellant outlined that the child did not communicate well and did not get on with his sibling who was in the same class and also had a diagnosis of autism.

Consideration: In examining this case, the Appeals Officer, relying on Section 186C (1) of the Social Welfare Consolidation Act 2005, noted the medical evidence on file and the additional medical evidence submitted at oral hearing including the appellant's testimony. The Appeals Officer noted that the child's GP indicated in the medical report that the child's condition severely impacted on his behaviour and that he was awaiting appointments and further assessment. The Appeals Officer concluded that the evidence established that the appellant's son was a 'qualified child' as provided for in the legislation governing entitlement to Domiciliary Care Allowance

Outcome: Appeal allowed.

2018/05 Domiciliary Care Allowance Summary Decision
Question at issue: Eligibility

Background: The appellant's application for Domiciliary Care Allowance in respect of her son was disallowed by the Department on the grounds that the child did not satisfy the medical conditions for receipt of Domiciliary Care Allowance. The appellant provided a detailed account of the extra care required by her son. The medical report was completed by a Consultant Child Psychiatrist who had treated the child since 2014 and gave a diagnosis of autism and that the child had a high level of symptoms. Further evidence on file included multiple psychological assessments, speech & language assessments, and occupational therapy assessments. A letter from the Consultant Child Psychiatrist to the Principal of the child's school highlighted his diagnosis of autism and the child's particular difficulties with routine and dealing with change.

The appellant submitted a further detailed letter to the Social Welfare Appeals Office in which she disputed the decision that the level of additional support required by her son was not substantially in excess of that required by children of the same age without the disability. She provided further examples of the additional care required. The appellant outlined that she and the child's father spent 30-60 minutes per day doing additional speech and language therapy and working on social behaviour with him. The appellant also pointed out that she couldn't work, even part time in the morning, as she couldn't be sure how long her son would be able to stay in school each day.

Consideration: The child had a diagnosis of autism/asperger's and the Appeals Officer noted the medical and specialist reports. The Appeals Officer reviewed and considered all the other evidence submitted by the appellant including a substantial number of reports

and assessments from psychology, speech & language and occupational therapy. The detailed information provided by the appellant herself had also been noted. Taking all of this into account, as well as the extensive evidence on file, the Appeals Officer was satisfied that the level of additional care required by the appellant's child was substantially in excess of the care and attention normally required by a child of the same age without the disability. The appellant requested that the payment be backdated to when her son was 2 years old. The legislation allows for Domiciliary Care Allowance to be backdated by a maximum of 6 months prior to the date of application when it has been established that there was 'good cause' for the delay in applying. The appellant stated that she was not aware of the availability of the allowance. The Appeals Officer was not satisfied that good cause for delay in making the application had been established and determined that the allowance should be paid from the first month after the appellant applied.

Outcome: Appeal allowed.

2018/06 One Parent Family Payment Oral Hearing
Question at issue: Eligibility (means)

Background: The appellant was in receipt of Jobseeker's Allowance since August 2010 and had been assessed as having 'nil' means for the purposes of that payment and was in receipt of an increase in respect of one child. She applied for One Parent Family Payment which was disallowed by the Department on the grounds that she failed to show her means were below the limit appropriate to her family circumstances. The source of means was considered by the Department to have derived from her partner's income with whom the Department suspected she was cohabiting.

Oral hearing: The appellant and the Social Welfare Inspector attended the oral hearing of the appeal. The Appeals Officer noted that the Social Welfare Inspector had indicated in his report that he suspected that the appellant was in a cohabitating relationship with the father of her child. The Appeals Officer noted that the Social Welfare Inspector collated some evidence regarding possible cohabitation, including details of the appellant's partner's vehicle being parked outside her house on the date of interview. The Appeals Officer noted that no subsequent observations or follow up visits were conducted. The appellant stated that the child's father called each week to see his child.

Consideration: The Appeals Officer outlined that the conditions to be satisfied for payment of One Parent Family Payment are outlined in social welfare legislation and include an assessment of means. He noted that while observations of a vehicle at a person's house might give an indication of possible cohabitation he was not satisfied that cohabitation had been established in this case. The Appeals Officer was of the view that the Department's own guidelines on establishing cohabitation had not been followed. The Appeals Officer concluded that the observed vehicle could legitimately be at the appellant's house for

the purpose of visiting his child as contended by the appellant. The Appeals Officer also considered it was significant that since One Parent Family Payment was disallowed the appellant had continued to receive Jobseeker's Allowance at full rate for herself and her child. In the Appeals Officer's view this suggested that the Department was satisfied with regard to the appellant's means being assessed as 'nil' and as a single person for the purposes of this payment. The Appeals Officer also noted that the child's father was in receipt of Jobseeker's Allowance at his own address which would indicate that the Department was satisfied with regard to his address.

Having examined the evidence in this case including that presented at oral hearing, the Appeals Officer was of the opinion that there was insufficient evidence to uphold the decision that the appellant had failed to show that her weekly means were below the appropriate limit. The Appeals Officer concluded that the appellant's means should be assessed at 'nil' in accordance with the assessment of means for her Jobseeker's Allowance claim.

Outcome: Appeal allowed.

4.2 Case Studies

Working Age – Illness, Disability and Carers

2018/07 Illness Benefit Oral Hearing
Question at issue: Eligibility

Background: The appellant had been in receipt of Illness Benefit up to a date in 2012 when her claim was disallowed by the Department. Following a medical review she was found incapable of work and the appeal against the Department's decision was withdrawn. She subsequently attended in-person medical assessments in 2017 and 2018 and the medical assessors concluded that the appellant was capable of light/moderate semi-skilled work. The appellant's Illness Benefit payment was disallowed from a date in November 2017 on the grounds that she was not incapable of work.

Oral Hearing: The appellant stated that she lived with her husband who was in full-time employment and her 2 children, aged 10 and 7. She said she suffered from anxiety and depression and submitted medical certificates on a 6 monthly basis. She stated that she was educated to Leaving Certificate level and had worked for 13 years as a quality controller before being made redundant when the factory closed in 2006. She was then in receipt of Jobseeker's Benefit. She started to experience panic attacks and applied for Illness Benefit. She stated that she had experienced childhood trauma and had been in counselling since she was approximately 20 years of age. She had lost a child and had experienced severe post-natal depression following the births of her children. She had attended a psychiatrist and had been discharged from the service. Her last appointment was about 2 years ago. She attended her doctor as required, on average every 2 months. She was taking anti-depressant and anti-anxiety medication. The appellant stated that her medical condition related to her mental health rather than to any physical disability. She experienced ongoing feelings of fear and worry. She experienced a lack of motivation. She stated that her medication had stabilised her condition but had left her feeling numb. She stated that even when she was working she had suffered extreme stress, particularly when at work meetings. She attributed much of this to her desire to please and her fear of displeasing. She had commenced a FÁS course in 2008 but was unable to cope. She stated that she had discussed progression options with her doctor but that her doctor had opined that she was not ready yet. The appellant's husband confirmed the appellant's account. He stated that his wife was unable to deal with any stressful situation.

Consideration: The Appeals Officer having examined all the available evidence including the medical evidence and that adduced at the oral hearing concluded that the appellant would be unable to cope with the ongoing stresses associated with the workplace and remained incapable of work.

Outcome: Appeal Allowed.

2018/08 Invalidity Pension Oral Hearing
Question at issue: Eligibility (medical)

Background: The appellant, in his late 40s, had a diagnosis of Crohn's disease, neuropathic pain in incision abdominal wound, lumbar and upper back pain, arthritis, depression, anxiety, osteopenia and osteoporosis. He applied for Invalidity Pension and his claim was disallowed on the grounds that he was not considered permanently incapable of work.

Oral hearing: The appellant stated that he was diagnosed with Crohn's disease in 1999. He worked until June 2017 when he had to give up as his illnesses had become debilitating. He was in receipt of Illness Benefit from June 2017. He subsequently had surgery for a hernia. While in hospital, he was attacked and seriously injured and required major surgery. At the time of the oral hearing the appellant stated that he had several hernias since his last surgery and was due to have his seventh surgery. Due to recurring hernias, he stated he could not lift anything anymore. The appellant also stated that he was experiencing bowel problems which were causing him serious difficulties and he was waiting for test results to see what the prognosis was. He also stated that he had a diagnosis of fibromyalgia which was causing pain in all his joints. He had scoliosis, osteoarthritis and osteopenia. He also stated that he was nearly incontinent and could not socialise anymore. He had developed serious mental health issues and was committed to a psychiatric hospital. The appellant stated that his illness had taken everything away from him and that he just wanted to take his life.

Consideration: The conditions under which a person shall be regarded for the purposes of Section 118 of the Social Welfare Consolidation Act 2005 as being permanently incapable of work are set out in Chapter 9 of Part 2 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007 – S.I. No 142 of 2007. Article 76 of the Regulations sets out the definition of permanently incapable of work as follows:

Definition of permanently incapable of work
"76. (1) Subject to sub-article (2), for the purposes of section 118, a person shall be regarded as being permanently incapable of work if immediately before the date of claim for the said pension (a) he or she has been continuously incapable of work for a period of one year and it is shown to the satisfaction of a deciding officer or an appeals officer that the person is likely to continue to be incapable of work for at least a further year, or

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

The GP's medical report indicated that the appellant's ability was affected in the following areas; severe in relation to mental health/behaviour and manual dexterity; moderate in relation to lifting/carrying bending/kneeling/squatting, sitting/rising, standing and climbing

stairs and mild in relation to balance/co-ordination and walking. The medical report stated that the appellant was attending Neurology, Gastroenterology, Dermatology, Rheumatology and Psychiatry Departments. The medical report also outlined that the conditions were expected to last indefinitely. From the medical evidence and the evidence adduced at oral hearing, the Appeals Officer was satisfied that it had been established that the appellant was likely to remain incapable of work for life and therefore met the medical criteria for Invalidity Pension.

Outcome: Appeal allowed.

2018/09 Invalidity Pension Summary Decision
Question at issue: Eligibility (medical)

Background: The appellant, in her late 40s had a diagnosis of severe IBS, hypertension, renal impairment, gastritis, chronic lower back pain and mild colitis. Her application for Invalidity Pension was disallowed by the Department on the grounds that she was not considered permanently incapable of work. In her letter of appeal the appellant gave details of the impact her diagnosis had on her daily life. She stated that she suffered from colitis and IBS. She could not work with this condition due to the frequency that she needed to use the toilet. She suffered from back pain and she struggled to either stand or sit for long periods. The appellant stated that she suffered from insomnia and fatigue as a consequence.

Consideration: Social Welfare legislation provides that entitlement to Invalidity Pension is subject to a person being permanently incapable of work. This condition is satisfied where, at the time of making a claim, a person has been continuously incapable of work for twelve months and is likely to remain incapable of work for a further twelve months or less than twelve months and is likely to be incapable of work for life. At the time of making her claim for Invalidity Pension, the appellant had been in receipt of Illness Benefit until her benefit exhausted in June 2018 and she continued to submit medical certificates to the Department. The medical evidence provided by her GP stated that she was severely affected by incontinence and that her condition was expected to last indefinitely. She was attending the Endoscopy Department in St James's Hospital. The Appeals Officer considered all of the evidence including the most recent medical evidence, the application form and the appellant's letter of appeal. The Appeals Officer concluded that the appellant had established that she was permanently incapable of work within the meaning of social welfare legislation and that she satisfied the conditions for receipt of Invalidity Pension from the date of application.

Outcome: Appeal allowed.

2018/10 Invalidity Pension Oral Hearing
Question under appeal: Eligibility

Background: The appellant's application for Invalidity Pension was refused on the grounds that she was not considered to be permanently incapable of work. The appellant was a 56 year old woman who most recently worked as a fitness instructor. She had previously worked as a nurse and in customer services. She had been in receipt of Illness Benefit which had expired. She was not submitting medical certificates to the Department for the purposes of credited contributions. The appellant described on her application form and further notes how her various medical conditions had evolved and how they affected her: chronic fatigue, voice defect affecting communicating with others, memory lapses and sleep disturbances. She was diagnosed with MS in 1993 but generally remained in good health since then, with occasional MS type symptoms. Following a period travelling in 2015, she developed fatigue and then shingles and a persistent cough and breathlessness. She returned to work in January 2016 but had to cease work after 2 days. She was referred to a respiratory consultant and hospitalised for a period. She had been on a high dosage of antibiotics and steroids, and undergone multiple investigations. The cough and fatigue persisted. She aimed to return to work in September 2016 but it wasn't possible due to low white blood cell count. She tried to exercise and lose some weight but damaged her knee and required steroid injections. She developed a persistent itch and irregular bruising. Her sleep was disturbed. The problem with her foot was identified as erythema nodosum [inflammatory condition characterised by inflammation of the fat cells under the skin]. She also had continued low white blood cell count but no reason had so far been identified.

Consideration: For the purposes of her claim for Invalidity Pension, the Appeals Officer noted that the appellant was required to establish that she had been permanently incapable of work. In accordance with Article 76 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007 (S.I. No. 142 of 2007) the appellant had to demonstrate that immediately before the date of claim she had been continuously incapable of work for a period of a year and that she was likely to remain incapable for at least a further year. As the appellant had already shown that she was incapable of work for a year prior to applying for Invalidity Pension (as evidenced by payment of Illness Benefit until it expired), she needed to be considered incapable of work for a further year from the date of claim, which in this case was until at least December 2018. The Appeals Officer took into account the medical evidence on file as well as the detailed written and oral evidence provided by the appellant in relation to her multiple medical conditions. The Appeals Officer noted the wide range of specialists the appellant was attending and that she was awaiting further review by a neurologist. The Appeals Officer was satisfied that the appellant would remain incapable of all work until at least December 2018.

Outcome: Appeal allowed.

2018/11: Invalidity Pension Summary Decision
Question at issue: Eligibility (Contributions)

Background: The appellant applied for Invalidity Pension in 2017. The appellant was living in Poland and the application was made through the Polish authorities. He was disallowed on the grounds that he had not made sufficient qualifying contributions in the relevant year, identified as 2016 by the Department. The Department stated that the appellant required 48 paid or credited contributions in the last contribution year before the date of claim, but he only had a total of 43 contributions based on a combination of his Irish and EU record in 2016. In appealing the decision, the appellant stated that he did not know why 2016 was looked at; he stated that he 'lost his insurance' in Ireland in January 2014. He had an accident at work in October 2012 and went on sick leave and received Illness Benefit. He returned to Poland in December 2013 and continued to receive Illness Benefit until January 2014. He stated that he had not received P45s from all his employers, suggesting that his contribution record was incomplete. The Department reviewed the decision but it remained unchanged.

Consideration: The Department stated in its decision that the PRSI contribution conditions for Invalidity Pension require that a claimant must have at least 48 qualifying contributions paid or credited in the tax year prior to the year in which the claim is made. The appellant made his claim in Poland in November 2017 and the Department therefore stated that 2016 was the relevant complete contribution year. As the appellant only had 43 qualifying contributions that year, the Department concluded that he did not meet the PRSI contribution condition for Invalidity Pension as set out in Section 119 (1)(b) of the Act. The Appeals Officer could not identify any legislative provision that had prescribed a 'lesser period' as mentioned in Section 119(2)(b) and therefore interpreted the "relevant date" as being defined in Section 119(2)(a) i.e. any date after the completion of one year of continuous incapacity for work. From the information available to the Appeals Officer, the appellant had been incapable of work since October 2012. The Appeals Officer concluded that any date after the completion of one year of continuous incapacity for work could therefore be October 2013. If the "relevant date" in this case was October 2013, the last complete contribution year before that date was 2012. In 2012, the appellant had 43 paid contributions and 7 credited contributions, 50 altogether, and therefore, in the absence of any evidence that his incapacity for work had not been continuous, the appellant did meet the PRSI contribution conditions for Invalidity Pension.

Outcome: Appeal allowed.

2018/12 Disability Allowance Summary Decision
Question at issue: Eligibility (medical)

Background: The appellant, a 17 year old student, had a diagnosis of insulin dependent diabetes, asthma and migraine. The ability/disability profile completed by the GP stated that the appellant was mild to moderately affected by her condition in the area of lifting/carrying. She was mildly affected in the areas of consciousness/seizures, vision, reaching, bending/kneeling/squatting, standing, climbing stairs/ladders and walking and considered normal in all other areas. In her letter of appeal, the appellant stated that she required extra care and attention. The appellant stated that she had to count her carbohydrates to match her insulin intake and monitor and record her blood glucose readings.

Consideration: The Appeals Officer examined the question as to whether the appellant was substantially restricted in undertaking work which would otherwise be suitable with reference to her age, experience and qualifications and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year, in accordance with the legislation. The Appeals Officer assessed the evidence including medical history and details of prescribed medication and concluded that the appellant had not shown that the qualifying criteria for receipt of Disability Allowance had been met. While noting that the appellant had to monitor her blood sugars and adjust her insulin intake, the Appeals Officer did not consider that the appellant was substantially restricted in undertaking work having regard to her age, qualification and experience.

Outcome: Appeal disallowed.

2018/13 Disability Allowance Summary Decision
Question at issue: Eligibility (medical)

Background: The appellant, a teenager at the date of appeal, was not considered by the Department as being substantially restricted in undertaking suitable employment by reason of a specified disability which had continued or was expected to continue for at least one year.

Consideration: The Appeals Officer examined the question as to whether the appellant was substantially restricted in undertaking work which would otherwise be suitable with reference to his age, experience and qualifications and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year, in accordance with the legislation.

The Appeals Officer formed the view that the combined professional medical evidence in this case certified that the appellant had a diagnosis of autism. The Appeals Officer noted the appellant's appeal correspondence written by a family advocate, in which it was stated that

the appellant was extremely uncomfortable with anyone other than his own family and also that he engaged in specified self-harm habits to cope with strangers or while in public places. In addition, the demanding daily routine of the appellant's parents and family were outlined in a diary provided with the letter of appeal. This diary indicated that in addition to being diagnosed with autism which is accepted as a life-long condition, the appellant also required significant additional care and support at all times to function and to undertake normal activities of daily living.

Having examined and considered all of the available evidence, the Appeals Officer concluded that it had been established that the appellant had a disability that had continued for a period of at least one year, and was likely to continue for a further year and that by reason of that disability the appellant was substantially restricted in undertaking work having regard to his age, qualification and experience.

Outcome: Appeal allowed.

2018/14 Disability Allowance Summary Decision
Question at issue: Eligibility (medical)

Background: The appellant, in his mid-50s, had a diagnosis of upper abdominal pain with a history of diverticular disease since 2010. The appellant had a colonic polyp removed in 2016. His application for Disability Allowance was disallowed on medical grounds. The appellant's GP indicated he expected the appellant's condition to last indefinitely. He had been prescribed Nexium twice daily. The GP indicated that the appellant's condition did not affect his ability to carry out any of his activities of daily living and all activities were marked as normal. The appellant stated on his application form that on account of his condition he was unable to go for regular walks and he found it difficult to go shopping as he had to be in close proximity to bathroom facilities. He indicated that this answer was the same for all parts of the form. On appeal he stated that he was still attending his GP with stomach problems for which he had a number of tests done.

Consideration: The Appeals Officer concluded that the medical evidence confirmed the appellant's condition of abdominal pain and that he had been prescribed medication in relation to this. The Appeals Officer also noted that the appellant's medical condition was not considered by his GP to affect his ability in relation to any activities of daily living.

While noting that the appellant's condition affected him negatively to some degree, the Appeals Officer was not satisfied that it had been established that the appellant had a disability that had continued or may have reasonably been expected to continue for a period of at least one year nor had it been shown that the appellant was substantially restricted in undertaking work which may be considered suitable having regard to the appellant's age, qualifications and experience.

Outcome: Appeal disallowed.

2018/15 Disability Allowance Summary Decision
Question at issue: Eligibility (Medical)

Background: The appellant, in her late 20s, had a diagnosis of stress and anxiety. Her application for Disability Allowance was refused on the grounds that she was not substantially restricted in seeking suitable employment, by reason of a specified disability, which was expected to last for a period of at least one year. The ability/disability profile completed by the appellant's GP stated that the appellant was moderately affected in the area of mental health/behaviour and indicated that she was suitable for work/training for rehabilitative purposes. She was educated to University degree level and held a number of different employments in the past. On appeal the appellant outlined that she had been suffering from anxiety and depression on and off since 2007 and this was also confirmed by her GP. During this time it had caused her to take a year off University and periods off work. Her GP confirmed she was taking anti-depressant medication and was attending counselling.

Consideration: The Appeals Officer noted that, at the time of application, the appellant's GP specified on their report that her medical condition moderately affected her ability in relation to her mental health/behaviour with all other areas being marked as normal indicating that she functioned normally in every other way. The report indicated that she had no hospital admissions and was not attending a consultant psychiatrist and that she was suitable for work/training for rehabilitative purposes. In the appellant's appeal and supporting letter from the GP, it was noted that she had commenced anti-depressant medication and started attending counselling. Whilst there was evidence to indicate that the appellant was experiencing some challenges in her life, the Appeals Officer found that the medical evidence indicated that the condition was not quite at the level of posing a substantial restriction to accessing the type of work that might be available to her. With the ongoing counselling and treatment, there was also reason to believe the condition would improve.

Outcome: Appeal disallowed.

2018/16 Disability Allowance Summary Decision
Question at issue: Eligibility (medical)

Background: The appellant, in her mid-50s, had a diagnosis of osteoarthritis of her hips and lumbar spine disc degeneration. She was refused Disability Allowance on the grounds that she did not satisfy the medical conditions. The GP also indicated that the appellant had a history of diverticulitis, osteopenia, Achilles tendon repair and left shoulder surgery for impingement. She had been referred to an orthopaedic surgeon and for physiotherapy and was taking a number of prescribed medications. On clinical examination the GP found that the appellant had severe pain in her left hip and lower back with reduced range of movement. In the ability/disability profile of the medical report the GP indicated the degree to which the appellant's condition had affected her ability. Lifting/carrying, bending/kneeling/squatting, climbing stairs/ladders and walking were deemed to be severely affected, sitting/rising and standing were deemed to be moderately affected, reaching was deemed to be mildly affected and all other categories deemed to be normal. The GP indicated that the appellant was not suitable for work/training for rehabilitative purposes. The appellant was educated to primary school level and last worked as a carer.

The appellant stated in her appeal that she had been suffering with her right hip for over two and a half years and had two bulging discs in her back which caused her chronic pain. She stated that she had an operation on her left shoulder a few years ago for impingement and had restricted movement as a result. She stated that she had been referred to physiotherapy for her back and she was unable to work. She enclosed a doctor's letter which confirmed the foregoing and concluded that these conditions were chronic and would continue for a prolonged period and she was not fit to work.

Consideration: The Appeals Officer concluded that the evidence, in particular the GP report and letter, was sufficient to establish that the appellant had a disability that had continued for a period of at least one year, and was likely to continue for a further year, and that by reason of that disability that the appellant was substantially restricted in undertaking suitable employment having regard to her age, qualifications and experience.

Outcome: Appeal allowed.

2018/17 Disability Allowance Oral Hearing
Question at issue: Eligibility (Medical and Means)

Background: The appellant, in his 60s, had a diagnosis of thyrotoxicosis and exophthalmos which were expected to continue indefinitely, applied for Disability Allowance in December 2016. The claim was disallowed on two grounds: (1) failure to show that means did not exceed the statutory limit and (2) that he did not meet the medical qualifying criteria. As the

means aspect of the appeal had been resolved by the time the Appeals Officer was dealing with the appeal she confined her consideration to the medical criteria.

Consideration: The Appeals Officer noted the medical report completed in November 2016 as part of the application for Disability Allowance, in which the GP reported that the appellant was attending an endocrinologist and an ophthalmologist and was being treated with medication. In his appeal notification the appellant stated that he would provide further medical evidence in relation to his conditions. He stated that he was awaiting surgery on his left eye and there was a risk he may lose sight in it. The appellant also stated that he was being reviewed regularly in relation to his eyes, heart and lymph and was scheduled for surgery in July 2017.

The Appeals Officer had the benefit of further medical evidence which indicated that the appellant's condition had deteriorated and he was waiting a total thyroidectomy as medical treatment had not been successful. In addition the appellant was having ongoing treatment for his eyes in the form of injections and he was under review by a cardiologist for atrial fibrillation. The Appeals Officer concluded that, having regard to the totality of the medical evidence, in particular the GP's report, the appellant's evidence on appeal and the additional medical evidence submitted, it had been established that the appellant was substantially restricted in undertaking work which would otherwise be suitable to his age, experience and qualifications.

Outcome: Appeal allowed.

2018/18 Disability Allowance Summary Decision
Question at issue: Eligibility (Medical and Means)

Background: The appellant, aged 30, had a diagnosis of fibromyalgia and multiple trigger points and chronic pain, applied for Disability Allowance in August 2017. She worked up to February 2018 when she resigned as she felt unable to keep working. The claim was disallowed by the Department on two grounds: (1) that her means from employment of €459.28 per week were in excess of the statutory limit of €193 per week applicable in her circumstances and (2) she did not meet the medical qualifying criteria. The Appeals Officer examined each of the questions separately.

Consideration: In relation to means the Appeals Officer concluded that the decision of the Department was correct up to 9th February 2018 which was the appellant's last payment date having resigned from her employment on 2nd February 2018. The Appeals Officer noted that thereafter the appellant may be deemed to have no means from insurable employment.

In relation to the medical criteria the Appeals Officer noted that the appellant's GP specified that the appellant's medical condition severely affected her ability in relation to one area, moderately affected her ability in three areas and mildly affected her ability in one area, all other areas marked as being normal. The appellant was attending a consultant and was being treated with appropriate medications. The Appeals Officer concluded that the medical evidence indicated that the appellant functioned normally in the majority of areas with her condition affecting her at most in five areas. The Appeals Officer noted that whilst the appellant had a chronic condition the GP expected that the condition would improve within 12/24 months. The GP indicated that the appellant was suitable for part-time work of 20 hours per week work/ training of a rehabilitative nature. While noting that the appellant experienced some challenges the Appeals Officer concluded that the medical evidence indicated that her conditions were amenable to being managed with appropriate medication. The Appeals Officer concluded that the appellant could not be deemed to be substantially restricted in undertaking suitable employment having regard to the appellant's age, experience and qualifications.

Outcome: Appeal disallowed.

2018/19 Disability Allowance Oral Hearing
Question at issue: Eligibility (medical)

Background: The appellant, in her late 30s, had a diagnosis of fibromyalgia which started in 2011 and was expected to continue indefinitely. The medical report completed by the appellant's GP also stated that the appellant was attending a rheumatology clinic but had no hospital admissions and had no relevant investigations. Her application for Disability Allowance was disallowed by the Department on the grounds that she did not satisfy the medical conditions for receipt of Disability Allowance.

Oral Hearing: At the oral hearing of her appeal, the appellant outlined that she started getting pains in 2010 and was diagnosed with fibromyalgia in 2011. She also outlined that she attended a rheumatology clinic and her condition was being treated by medication which had been changed a number of times to find what worked best for her. She submitted she also received an appointment with the pain clinic and that she has been waiting to get injections for the pain and had been referred for further x-rays on her lower back and hips. She stated that she had pain all over with some days better than others and that she had numbness in her legs with tingling in lower back and legs, stiffness all over, loss of power in that she could not open tight bottles and had poor grip, did not sleep and was up 6/7 times at night and had chronic fatigue. She also submitted that she could walk on good days but sometimes got muscle spasms and also had bad veins in her legs, she could not stand for long periods and if she did her back locked, could not lift anything but managed with the children as they understood that she could not lift them. She submitted that her condition was getting worse all the time and she saw her rheumatologist for review every year unless she needed

to see him sooner and she was prescribed Vimovo for pain, Duloxetine for muscle relaxant, Stematil for stomach as she felt sick all the time with anxiety and also had IBS. She submitted she was also diagnosed with a slight problem with muscular dystrophy and that she had Reynaud's Syndrome. She also submitted that she attended counselling. She could drive and did whatever household duties she could.

Consideration: The Appeals Officer noted the legislation governing entitlement to Disability Allowance which provides that a person shall be regarded as being substantially restricted in undertaking suitable employment by reason of a specified disability where he or she suffers from an injury, disease, congenital deformity or physical or mental illness which has continued or, in the opinion of a Deciding Officer or an Appeals Officer, may reasonably expect to continue for a period of at least one year. The Appeals Officer outlined that there was no medical evidence available to support the appellant's contentions that she had been diagnosed with muscular dystrophy, Reynaud's Syndrome or IBS. The Appeals Officer noted the appellant's contention that she suffered from anxiety but also noted that this was not referred to in the medical report and that she was not prescribed any medication. From the medical evidence submitted, the Appeals Officer noted that the appellant had not been referred to any specialist for treatment.

The Appeals Officer noted the GPs opinion in the medical report that the appellant's mental health/behaviour was normal and that her condition mildly or moderately affected some of her physical abilities and her opinion that the appellant was suitable for work/training for rehabilitative purposes. The Appeals Officer noted a report from the Rheumatology Unit that the appellant showed "no features to suggest an alternative diagnosis to fibromyalgia". The Appeals Officer advised the appellant at oral hearing that there was no evidence on file to support many of her contentions relating to her medical diagnoses and complaints and offered the appellant the opportunity to provide medical evidence of these contentions within a two week period. No additional evidence was received and the Appeals Officer proceeded to make his decision based on the available evidence. The Appeals Officer concluded that while the appellant did experience some restriction it was not such that she could be considered to be substantially restricted in undertaking suitable employment having regard to her age, qualifications and experience.

Outcome: Appeal disallowed.

2018/20 Disability Allowance Summary Decision
Question at issue: Eligibility (medical)

Background: The appellant, in her 60s, had a diagnosis of inflammatory bowel disease and ulcerative colitis which was expected to continue indefinitely. Her application for Disability Allowance was disallowed on the grounds that she did not satisfy the medical conditions. The medical report completed by the appellant's GP outlined that the appellant was attending a specialist and was awaiting a scan and repeat scope. The GP also stated that the appellant was not suitable for work/training for rehabilitative purposes. The ability profile indicated that the appellant's condition moderately affected her mental health/behaviour and continence while all other abilities were normal. A further letter from her GP confirmed the diagnosis of inflammatory bowel disease and stated that a recent colonoscopy showed severe inflammation and histology consistent with Crohn's disease. In her letter of appeal, the appellant outlined that she suffered from flare-ups which entailed severe abdominal cramps, fatigue and rectal bleeding and that she had to use the toilet 10-15 times each morning which left her very tired and lacking in energy.

Consideration: The decision before the Appeals Officer was to determine if the appellant satisfied the medical conditions for Disability Allowance. The legislation provides that Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must have continued for or be expected to continue for at least one year.

In examining all the evidence in this case including the appellant's submissions and the medical evidence, the Appeals Officer noted that the appellant continued to attend a specialist and was awaiting further treatment. The Appeals Officer also noted the most recent medical evidence which indicated that a histology following a scan was consistent with Crohn's disease and that the appellant was awaiting a further scan in this regard and was not currently considered suitable for work/training for rehabilitative purposes. The Appeals Officer concluded that the appellant had established that she was substantially restricted by her condition in undertaking work which would otherwise be suitable having regard to her age, experience and qualifications and that her condition could reasonably be expected to continue for a period of at least one year.

Outcome: Appeal allowed.

2018/21 Disability Allowance Oral Hearing
Question at issue: Eligibility (Medical)

Background: The appellant, in his late 40s, had a diagnosis of low back pain, disc prolapse, depression and psoriasis which were expected to continue indefinitely, applied for Disability Allowance in December 2017. The claim was disallowed on the grounds that he did not meet the medical qualifying criteria.

Consideration: The Appeals Officer noted that the appellant's GP specified that the appellant's medical conditions affected him severely in lifting/carrying and bending/kneeling/squatting, moderately affected his mental health/ behaviour, reaching and climbing stairs/ladders and mildly to moderately affected his sitting/rising, standing and walking. The appellant was attending a consultant orthopaedic surgeon and had been referred for an epidural injection which at the oral hearing he informed the Appeals Officer was scheduled for a date in October 2018. The appellant had been prescribed a number of medications and was certified as being not suitable for work/training for rehabilitative purposes. The Appeals Officer had the benefit of additional medical evidence, including letters from the appellant's GP, dated from March 2018 and July 2018. The Appeals Officer noted the most recent medical evidence from the appellant's GP which certified deterioration in the appellant's arthritic condition and spondyloarthritic change in his spine and that his activities of daily living were confined to minimal mobility. The Appeals Officer concluded that the medical evidence and the evidence adduced at oral hearing was sufficient to establish that the appellant had a disability which could reasonably be expected to continue for at least one year as required by the governing legislation and that the appellant was substantially restricted in undertaking suitable employment having regard to his age, qualifications and experience.

Outcome: Appeal allowed.

2018/22 Disability Allowance Summary Decision
Question at issue: Eligibility (Medical Grounds and HRC)

Background: The appellant, a third country national in his 20s, came to Ireland with his mother, and lives with her and his step-father. In connection with a claim for Disability Allowance, he completed Form HRC1. Details provided on the form indicated that he came to Ireland to live with his mother and step-father (a copy of their marriage certificate was enclosed); he was being supported by his step-father, who was in employment since early 2016; he had a social pension deposit account in the country where he had been living, and hoped to make his permanent home with his family in Ireland and to obtain employment suitable for a person with a disability.

The claim was disallowed on grounds that the appellant did not meet the medical qualifying criteria. He was deemed not be habitually resident in the State as he was held not to have demonstrated a right to reside in line with the European Communities (Free Movement of Persons) Regulations, 2015 (S.I. No. 548 of 2015). With reference to the five criteria provided for under Section 246 (4), it was held that the evidence in his case did not substantiate habitual residence.

In his appeal, the appellant submitted that he came to Ireland to join his family; he is disabled from childhood and he cannot live without his mother who is his carer; as a disabled person, he has a right under the Convention for the Rights of Persons with Disabilities (CRPD) to live with his mother who cares for him; he is in receipt of €110 per month from a disability pension, and his centre of interest is in Ireland as he needs to live with his family.

The appellant was granted temporary residency status while his step-father's application for residency on his behalf (and that of his mother) was being processed with reference to the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015); ultimately, he was granted EUFAM Stamp 4 status. His claim was re-examined in light of a notification from the Irish Naturalisation and Immigration Service (INIS) in relation to the latter status. However, the Department concluded that this did not automatically mean entitlement to social welfare payments, and it was contended that the provisions of S.I. No. 548 of 2015 applied, in terms of the requirement to have sufficient resources not to become an unreasonable burden on the State.

Consideration: The Appeals Officer identified the governing legislation as Section 210 of the Social Welfare Consolidation Act 2005 which provides that Disability Allowance may be payable to a person who meets the qualifying criteria as to age, specified disability, and means. In addition, it is a requirement of the legislation that a person is habitually resident in the State. Section 246 of the 2005 Act sets out the provisions as to habitual residence, and the relevant provisions of EU law are outlined in the European Communities (Free Movement of Persons) Regulations, 2015 (S.I. No. 548 of 2015).

In relation to habitual residence, the Appeals Officer noted that Section 246 (4) provides that when determining whether a person is habitually resident in the State for purposes of the Act, all the circumstances of the case must be taken into account including, in particular, the following: the length and continuity of residence in the State or in any other particular country; the length and purpose of any absence from the State; the nature and pattern of the person's employment; the person's main centre of interest, and the future intentions of the person concerned as they appear from all the circumstances. Section 246 (5) provides that a person who does not have a right to reside in the State may not be regarded as being habitually resident in the State.

The Appeals Officer referred to the two stage process which involves establishing, in the first instance, whether a person may be held to have a right to reside in accordance with EU law and, secondly, determining whether that person may be deemed to be habitually resident with reference to the provisions of Section 246 (4). She noted that INIS advised the appellant that the Minister for Justice and Equality had decided to approve his application for a residence card under Regulation 7 of the Regulations (S.I. No. 548 of 2015) on the basis that he is a qualifying family member of a Union citizen who is residing in the State in exercise of their rights under the Directive (220/38/EC). Accordingly, she concluded that he may be held to have a right to reside in accordance with EU law. Moreover, she considered that the evidence served to establish that his main centre of interest is in the State and that he may be deemed to meet the habitual residence requirement for purposes of his claim.

In terms of the medical qualifying criteria, the Appeals Officer noted that the appellant has a diagnosis of Intellectual Disability and Congenital Adrenal Hyperplasia. Having assessed the evidence, including the medical history which referred to severe birth trauma and global developmental delay, details of prescribed medication, clinical findings, his expectation that the condition would continue indefinitely, she concluded that he may be deemed to meet the qualifying condition which applies in terms of a specified disability. Accordingly, she held that the qualifying criteria for receipt of Disability Allowance were met.

Outcome: Appeal allowed.

2018/23 Disability Allowance Summary Decision
Question at issue: Backdating

Background: The appellant's claim for Disability Allowance was awarded following a revised decision by the Department with effect from a date in March 2015. Following that decision a request was made to have the date of the award made effective from May 2014. The appellant submitted that the basis for that date coincided with an application submitted by him for Illness Benefit. The request to backdate the effective date of the award of Disability Allowance was refused by the Department and an appeal was submitted. In its decision the Department stated that lack of knowledge does not constitute good cause for the delay in making a claim.

The appellant submitted that there was a precedent for backdating his claim in that his wife's claim for Carer's Allowance was backdated to the time he acquired his disability in May 2014. In relation to the Department's reason for not backdating the appellant submitted that this assumed that everyone was computer literate and fully conversant with information technology, whereas the appellant stated he was not and was solely dependent on assistance and information provided verbally by the Department. The appellant was adamant that a Department official did not give him the information he required when he sought advice initially.

Consideration: The question at issue was whether the appellant had an entitlement to receive Disability Allowance from a date earlier than March 2015, with reference to the legislative provisions governing late claims. The Appeals Officer noted the appellant's assertion that a Department official did not provide him with the information he required and which would, presumably, have allowed him to submit a claim at an earlier date. It was submitted that his wife's claim for Carer's Allowance was backdated and that this might serve as a precedent for backdating his Disability Allowance claim. However, the evidence suggested that the appellant's wife's claim was made in October 2014 and following a successful appeal was allowed from date of application. The question of backdating the claim was not examined.

On the question as to information, the Appeals Officer noted that the appellant did not indicate when he made the enquiries to which he referred and that, for its part, the Department had advised the appellant in a letter issued in August 2014 that he could apply for Disability Allowance. The Appeals Officer did not find the appellant's contention that he lacked computer skills and was solely dependent on assistance and information provided verbally by the Department to be compelling but proceeded to examine the question of good cause.

The Appeals Officer noted that the medical evidence submitted in support of his claim indicated that the appellant was in severe unremitting pain, using crutches and reliant on others for transport, his diagnosis was uncertain and he was attending a number of consultants and undergoing a range of diagnostic assessments in the period from August 2014. In the circumstances of the appellant's uncertain diagnosis and the severity of the pain he was experiencing, the Appeals Officer considered that there was a case for considering that the appellant might not have been well placed to take note of the information outlined in the Department's letter of August 2014 or to have clarified sufficiently any potential entitlement prior to the date of his claim. In the circumstances, the Appeals Officer concluded that Disability Allowance may be backdated for a period of six months, in line with the provisions of social welfare legislation.

Outcome: Appeal allowed.

2018/24 Disability Allowance Summary Decision
Question at issue: Eligibility (Means)

Background: The appellant's application for Disability Allowance was refused on the grounds that her means assessed at €339.20 per week was in excess of the weekly maximum for her circumstances, which was €321.10. The means derived from the appellant's husband's income. In appealing the decision, the appellant stated that her husband's earnings had nothing to do with her and it was extremely unfair and unjust. She asked why she was not being treated as an individual with her own PPSN, stating that she had no source of income and was not well enough to work or earn money. The appellant also stated that she was struggling to keep up with bills and other expenses, and that she could no longer drive due to her illness which brought with it further costs.

Consideration: The question under appeal was whether means had been correctly assessed for the purposes of Disability Allowance. The medical eligibility for Disability Allowance was not being questioned. Social welfare legislation provides that when assessing a person's means for the purposes of Disability Allowance, their spouse/civil partner/cohabitant's income and savings/capital must be included in the assessment. The appellant stated that the family were struggling financially but expenses like mortgage, electricity etc. are not factored in for the purposes of social welfare means assessment. The Appeals Officer noted that the appellant stated that her means exceeded the statutory limit by just €18.10. The Appeals Officer took into account the following – means from capital, means from the appellant's husband's insurable employment and his private pension. The Appeals Officer was satisfied that the means were calculated correctly by the Department and in accordance with social welfare legislation.

Outcome: Appeal disallowed.

2018/25 Carer's Allowance Summary Decision
Question at issue: Eligibility (full time care provided)

Background: The appellant's claim was disallowed on the grounds that he was not providing full time care and attention to the caree, as set out in the governing legislation. The information provided on the Carer's Allowance application form was that the caree was residing in a property adjacent to the appellant. The appellant stated that he provided care to the caree 4.5 hours per day, 7 days per week. He stated that there was a communications link between the residences. The appellant outlined that the daily duties he performed for the caree included administrating medicine, shopping, taking the caree to hospital and GP appointments, and looking after her house. In his appeal, the appellant stated that although

he did not provide full time care, his application was based on the hours for which he provided care. He requested a part payment of a Carer's Allowance.

Consideration: The Appeals Officer considered all of the information provided by the appellant, with his application and on appeal. The legislation governing Carer's Allowance is specific in that a person acting as a carer must be providing full time care, as set out in Section 179 (1)(b) of the Social Welfare Consolidation Act 2005. There is no provision in the legislation for a payment to be made in respect of part time care, as was set out in the appellant's appeal. Noting the level of care provided by the appellant as stated on the application form, and his statement on appeal the appellant recognised that he was not providing full time care to the caree, the Appeals Officer concluded that the appellant did not meet the definition of "carer" as set out in the governing legislation.

Outcome: Appeal disallowed.

2018/26 Carer's Allowance Oral Hearing
Question at issue: Eligibility (full time care provided)

Background: The appellant applied for Carer's Allowance in respect of the care provided to his father. The appellant's claim was disallowed by the Department on the basis that he was not providing full time care and attention. A review under Section 317 of the Social Welfare Consolidation Act 2005 by way of oral hearing was recommended following further evidence being submitted by the appellant. Section 317 provides that 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 light of new evidence or new facts brought to his or her notice since the date on which it was given.

Oral Hearing: The appellant stated when he made his application he provided care for 4 hours per day for 6 or 7 days per week. His father was admitted to hospital in January 2018 for approximately two weeks and was waiting for two surgical procedures. The appellant outlined that his father's health had deteriorated since his hospital admission and he had lost two stone in weight. All his meals needed to be supervised. The appellant had to provide personal care to his father such as helping him out of bed, dressing, washing and toileting. His father needed help with mobility and medication due to failing sight. The appellant also continued to bring his father to appointments and anywhere he needed to go. The appellant outlined that his hours of caring had increased since his father's hospitalisation and he went over to his house at 8.30 a.m. most days and spent the whole day there. Other family members stayed with his father if the appellant needed to go anywhere. The appellant outlined that his mother had her own health issues and was unable to physically look after his father.

Consideration: Having examined all the evidence, including that adduced at oral hearing, the Appeals Officer concluded that while the appellant was providing care and assistance to his father at the time of his application, the amount of care he was providing at that time could not be considered to be full time care and attention as required under the legislation.

However, taking account of his evidence at oral hearing and the fact that his father's health had deteriorated necessitating more personal care since his discharge from hospital, the Appeals Officer concluded that from the date his father was discharged from hospital, the appellant could be regarded as providing full-time care and attention within the meaning of the social welfare legislation from that date.

Outcome: Appeal partially allowed.

2018/27 Carer's Allowance Oral Hearing
Question at issue: Eligibility (medical – care required)

Background: The appellant's application for Carer's Allowance in respect of the care provided to his wife was disallowed by the Department on the grounds that full time care and attention was not required by the person being cared for. The appellant's wife, in her early 50s, had a diagnosis of arthritis in her hands, shoulders and knees, spondylitis of the spine and gastritis. She was in receipt of Disability Allowance. The medical evidence consisted of the medical report completed by her GP. The appellant stated on the application form that her husband provided full time care 7 days a week. No detail was given in relation to daily duties. In appealing the decision, the appellant expressed his dissatisfaction with the disallowance and stated that his wife needed help.

Consideration: The question under appeal was whether the appellant's wife required full time care and attention as defined in the legislation. The Appeals Officer noted the medical report completed by the caree's GP which indicated diagnoses of arthritis in her hands, shoulders and knees, spondylitis of the spine and gastritis. The caree was awaiting a rheumatology appointment, was on medication and was getting hydrotherapy. The GP indicated that the caree had restricted movement due to pain in wrists, shoulders and knees. On the ability/disability profile, the GP had indicated that the caree was 'moderately' affected. The appellant noted that his wife got dizzy spells and her knees could go from underneath her. Though it had not yet happened, he was concerned about her falling and felt she needed to be supervised at all times.

Having considered the evidence including that adduced at oral hearing, the Appeals Officer concluded that while it was clear that the appellant's wife had a number of medical conditions that had an impact on her daily functioning and that necessitated some assistance with daily activities, the Appeals Officer did not consider that the level required constituted

either continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or continual supervision in order to avoid danger to herself, as required in the governing legislation.

Outcome: Appeal disallowed.

2018/28 Carer's Allowance Oral Hearing
Question at issue: Eligibility (medical - care required)

Background: The appellant's application for Carer's Allowance in respect of the care provided to her mother was disallowed by the Department on the grounds that full time care and attention was not required by the person being cared for. The medical evidence showed that the caree had severe asthma, COPD and a history of hypertension and diverticulitis. On the disability/ability profile the GP indicated that the caree was severely affected in 5 areas: lifting/carrying, bending/kneeling/squatting, sitting/rising, climbing stairs, walking and the remaining 11 areas were normal. The GP indicated that the condition was likely to continue indefinitely. Subsequent to the Department's decision, additional medical evidence was submitted from a consultant respiratory physician to the effect that the caree had end stage lung disease.

Oral Hearing: At the oral hearing the appellant outlined that her mother's condition had deteriorated dramatically, that her medication was no longer effective and that surgery was not an option as she was too frail. The appellant outlined the daily care she provided including assistance with dressing, toileting, showering, cooking, cleaning/housework, administration of medication, transport to appointments. She said that she was the youngest of a large family and other family members were not in a position to care for their mother. She said that she would have liked to work part-time for the permitted 15 hours per week but could not countenance that as she was caring for both her son and her mother. The appellant stated that she would care for her mother even if her appeal were not successful.

Consideration: To qualify for Carer's Allowance the caree must be so disabled that they require from another person continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or continual supervision in order to avoid danger to themselves. The caree must be likely to require full-time care and attention for at least 12 consecutive months. The Appeals Officer noted the medical evidence submitted and the appellant's oral evidence, in particular, the evidence that the caree needed ongoing assistance with the activities of daily living. The Appeals Officer concluded that it was shown that the caree met the medical criteria for the award of Carer's Allowance.

Outcome: Appeal allowed.

2018/29 Carer's Allowance Summary Decision
Question at issue: Eligibility (provision of full-time care)

Background: The appellant applied for Carer's Allowance in respect of the care provided to his grandson. The application was refused by the Department on two grounds: (1) that there was no system of communication between the appellant's household and the caree's household and (2) that the appellant was not providing full-time care and attention to his grandson as the child was already receiving full-time care and attention within his own home from his mother.

Consideration: In relation to there being no system of communication between the appellant's household and the caree's household, the Appeals Officer found that this did not stand up in relation to the unchallenged evidence that the appellant spent most of his time, including most overnights, in his grandson's home. The question in relation to the existence of a mobile phone was unanswered by the appellant on the application form and the 'no' box was ticked by the Social Welfare Inspector in relation to whether there was a panic button or other form of direct communication between the two households. The Appeals Officer found that this ground for refusal was weak in the overall context of an appellant who was mostly physically present with the child.

In relation to the appellant not providing full-time care and attention, the medical evidence before the Appeals Officer was clear that the caree had very complex care needs requiring round-the-clock interventions. Special training in how to care for the child was given to the appellant and his daughter (as the two principal carers) as attested to by Crumlin Children's Hospital. The evidence on file provided by the appellant and his daughter and the medics who were personally known to them was that the child required and received from his grandfather, an extraordinary amount of care and attention, well in excess of the Department's 35 hours per week guidelines as to what constituted 'full-time care'. The Appeals Officer was of the view that if it was considered that a full week consisted of 168 hours and the child needed care for all of them, the caree's mother could not possibly do that, or even half of that, alone, in the context of having two other young children and, at the time of application, expecting another child. The Appeals Officer concluded that the uncontested evidence was that the appellant provided care to the caree for well in excess of 60 hours per week. The Appeals Officer was of the view that to describe the appellant as being in a 'secondary' caring role was an unfair representation of the care arrangements. The Appeals Officer outlined that the term 'full-time care and attention' could mean radically different things in different contexts and in the context of this child it meant multiples of the Department's 35 hours per week guideline. The Appeals Officer, based on the evidence presented, formed the view that it would not be humanly possible for the child's mother to provide full-time care and attention in the context of the child's complex care needs and the evidence supported a conclusion that the appellant was certainly providing 'full-time care and attention' in the context of the legislation and the guidelines.

Outcome: Appeal allowed.

2018/30 Carer's Benefit Summary Decision
Question at issue: Eligibility (medical-care required)

Background: The appellant applied for Carer's Benefit in respect of the care provided to his mother who was 80 years of age and had a diagnosis of back pain. His claim was disallowed on the grounds that the care recipient was not so invalided or disabled as to require full time care and attention as laid down in Section 99 of the Social Welfare Consolidation Act 2005. The ability/disability profile indicated that the care recipient's ability was affected in the following areas: severe in relation to lifting/carrying; moderate in relation to bending/kneeling/squatting and climbing stairs and mild in relation to reaching, manual dexterity, sitting/rising, standing and walking. The letter of appeal outlined that the care recipient required care in all areas of daily living including getting up, showering, getting dressed and being helped to the bathroom. The care recipient had a bell beside her bed to call the appellant during the night if she needed assistance. The appellant stated that on several occasions he had found his mother on the floor where she had fallen and could not get up.

Consideration: The Appeals Officer noting the care recipient's age, diagnosis, the medical report and the appellant's evidence concluded that the care recipient required full-time care and attention as laid down in the governing legislation.

Outcome: Appeal allowed.

2018/31 OIB Disablement Oral Hearing
Question at issue: Eligibility – (loss of faculty)

Background: The appellant applied for Disablement Benefit under the Occupational Injuries Benefits scheme. The appellant suffered a soft tissue injury to his ankle and foot in a work related accident. X-rays established he had not broken any bones in his ankle or his foot. His pain and discomfort did not ease in the months after this accident, as expected. He had been referred for an out-patient hospital appointment to further explore the cause of his continued discomfort and to establish further treatment options. He returned to work two months after the accident and continued to work. He attended physiotherapy and his physiotherapist offered the opinion that he appeared to have developed signs and symptoms consistent with complex regional pain syndrome (CRPS). The appellant reported low mood as a consequence of his accident and its impact on his ability to participate in activities he had enjoyed before his accident. He said he must sleep alone as his ankle hurt if touched. A Medical Assessor in the Department recommended a loss of faculty assessment at 15% for life and the Deciding Officer accepted this recommendation.

Consideration: An oral hearing was scheduled to allow the appellant the opportunity to provide additional evidence in support of his appeal but the appellant did not attend. The Appeals Officer concluded, based on the available evidence, that 15% loss of faculty for life was a reasonable assessment of the impact of the appellant's injuries on his ability to enjoy a normal lifestyle. The Appeals Officer outlined that the only objective benchmarks provided in legislation against which the appellant's loss could be measured in terms of level of impact, are in relation to loss of limbs. In this regard, 15% is higher than the legislative degree of disablement prescribed for the loss of any whole finger or any whole toe. The loss of all toes of one foot through the metatarso-phalangeal joint is prescribed at 20%. The Appeals Officer determined that it was reasonable to conclude that the appellant's loss of faculty fell in a range between the loss of a whole finger or toe and was less than the loss of all toes. For these reasons, he decided that a loss of faculty for life assessed at 15% was reasonable and appropriate, based on the available evidence.

Outcome: Appeal disallowed.

2018/32 Disablement Benefit (OIB) Oral Hearing
Question at issue: Did the appellant suffer an occupational injury?

Background: The appellant applied for Disablement Benefit under the Occupational Injuries Benefits scheme in March 2017 in respect of an occupational injury which he contended he suffered in the workplace in August 2013. The application was refused by the Department on the grounds that the appellant did not suffer an occupational injury. The appellant contended that while filling a machine with diesel, while climbing the steps, the handrail broke off the left hand side and he fell back. The appellant asserted that he suffered an injury to his big toe on his right foot, lower back left hand side and left shoulder. He claimed that three men witnessed the accident but he did not know their names. He claimed that his employer refused to sign the form.

He presented evidence from the Orthopaedics Department of the hospital he was attending dated September 2016, stating "patient presented today complaining of lower back pain and upper back pain ongoing for three years. He had a near fall 3 years ago". There was no reference to this being reported as an occupational accident. The physiotherapy report did refer to an occupational accident three years earlier. The employer completed a form dated June 2017 stating that no accident was reported and that the appellant continued working that day and did so for 17 months afterwards. In a detailed report the Social Welfare Inspector reported that there was no documentary evidence that the appellant reported an accident to his employer in August 2013. Both the Director and the safety representative of the company denied any suggestion that the appellant reported an accident in their presence. Another employee denied being told of the accident by the appellant. The Department decided he did not suffer an occupational injury.

Consideration: The question before the Appeals Officer was whether the appellant suffered an occupational accident in August 2013. Any question relating to the loss of faculty was not part of the appeal. The appellant submitted that he did suffer an occupational accident in August 2013. It was a fact that he did not declare when he applied for Illness Benefit in November 2013 that his injury was as a result of an occupational accident. It was also a fact that he completed an accident report form in November 2013 and when he applied for Illness Benefit from January 2015 he declared that his incapacity was as a result of an accident in August 2013. The appellant submitted that he was given time off work to attend medical appointments arising from the alleged accident. With regard to the evidence from the employer, the employer representative did not dispute that he signed the Illness Benefit form in February 2015 confirming that an accident took place on August 2013. The employer accepted that accidents involving slips and falls happen all the time in their industry. The employer informed that the procedure was to record the incident and decide if follow up was required. The alleged accident was subsequently recorded as an accident by the company but was not recorded as a "lost time" incident, which would have required follow up by the company with their insurers. The employer accepted that it was fair and reasonable for the Appeals Officer to record that it was possible that the accident took place. The employer's issue was the extent of the appellant's injuries. The Appeals Officer noted that these matters had been dealt with in the High Court and were not before him in this appeal. Two oral hearings of the appeal were held where the appellant, his employer and the Social Welfare Inspector gave evidence. Having examined the information available, including that adduced at the oral hearings, and with particular reference to the evidence at the second hearing, the Appeals Officer concluded that the appellant had established that in August 2013, he did suffer an occupational injury, within the meaning of the Social Welfare Consolidation Act 2005.

Outcome: Appeal allowed.

2018/33 Disablement Benefit (OIB) Summary Decision
Question at issue: whether an accident on the way home from work was an occupational injury?

Background: The appellant applied for Disablement Benefit under the Occupational Injuries Benefits scheme in respect of a commuter accident on his way home from work. His application was refused on the grounds that the appellant stated on the application form that the place of the accident was not part of a direct route from his place of employment to his home address. The appellant contended that he misread the form and that his journey was an unbroken journey home from work and that it was the route that he always took to bring him directly to and from work. He mistakenly believed the question was whether the accident was caused travelling to work only and he said 'no' because the accident occurred coming home from work. It was a simple matter of reading the form too quickly and he felt to dismiss the application based on his error in reading was very unfair and unreasonable.

Consideration: In arriving at a decision in this case, the Appeals Officer considered the governing legislation. Section 72(4) of the Social Welfare Consolidation Act 2005 provides that an accident happening to an insured person while travelling to or from his place of work, subject to conditions that may be prescribed, is deemed to arise out of and in the course of employment. The Appeals Officer noted that the conditions prescribed are set out in Article 16(b) of the Social Welfare (Consolidated Occupational Injuries) Regulations 2007 (S.I. No. 102 of 2007) which provides that "*in the case of an accident while travelling from work, shall be engaged in travelling directly, after he or she had completed the duties of employment, from his or her place of employment in an unbroken journey to his or her normal place of residence*". The Appeals Officer accepted the appellant's contentions that the journey from a workplace to his home does not have to be a direct route. The Appeals Officer also accepted the Department's contentions that the appellant misread the application form.

The Appeals Officer concluded that the evidence supported a conclusion that the appellant suffered personal injury caused by an accident/incident in August 2015 arising out of and in the course of his employment. It was a matter for the Department to determine the extent of the appellant's loss of physical/mental faculty arising from his injury.

Outcome: Appeal allowed.

2018/34 Injury Benefit Summary Decision
Question at issue: Whether or not the appellant had an occupational accident arising out of and in the course of employment

Background: The appellant applied for Injury Benefit under the Occupational Injuries Benefits scheme and declared that she had suffered an accident at work in July 2014. The appellant stated that the injury was "sustained as a result of systematic bullying on a continuum" and that her injury comprised "work related stress leading to anxiety/ depression." The appellant declared that the work-related stress was a consequence of managing a difficult employee without support. The appellant was out of work on sick leave for over 10 months followed by a phased return. The medical evidence indicated that the challenging workplace relationship began around the summer of 2013. The appellant's claim for Injury Benefit was rejected by the Department on the grounds that anxiety/depression is not included on the list of prescribed occupational diseases and there was no evidence of a clear incident or incidents which could be regarded as an occupational accident. The appellant argued that she had undergone a traumatic series of events in the workplace which had rendered her sick and under psychiatric care for treatment for anxiety/depression.

Consideration: The Appeals Officer outlined that in accordance with Section 74 of the Social Welfare Consolidation Act 2005, Injury Benefit may be payable in circumstances where a person suffers personal injury caused by an accident arising out of and in the course of employment.

The appellant had submitted details of a medical report and a psychiatric report which confirmed that the appellant suffered major depression and anxiety as a result of incidents at work. The Appeals Officer agreed with the Deciding Officer's decision that workplace related anxiety/depression is not included in the list of prescribed occupational diseases and there must be evidence of a clear incident or incidents which could be regarded as an occupational accident before a claim for Injury Benefit could be considered.

Having examined the evidence, the Appeals Officer found that it was not possible to conclude that the appellant's diagnosis had arisen from a personal injury caused by an accident arising out of and in the course of her employment. The Appeals Officer concluded that the account of the onset of the incapacity, and the evidence submitted, pointed to symptoms having developed over a period of time rather than as a consequence of a specific incident or incidents. In the circumstances, the Appeals Officer concluded that the qualifying criteria for Injury Benefit had not been met and the appeal could not succeed.

Outcome: Appeal disallowed.

4.3 Case Studies

Working Age – Income Supports

2018/35 Working Family Payment Oral Hearing
Question at issue: Eligibility (Hours worked)

Background: The appellant was working as a retail assistant and had been in receipt of Working Family Payment since 2013. Her claim was due to be renewed in June 2016 and the Department requested, in addition to the completion of the renewal form, that her employer submit tax deduction cards for the years 2015 and 2016. A re-calculation of hours based on gross pay and her hourly rate was carried out and the Department deemed that as she did not meet the required hours on an average basis she did not have an entitlement to Working Family Payment from January 2015 to June 2016. The effect of the revised decision of the Department was the raising of an overpayment of €17,846.

Oral Hearing: At the oral hearing, the appellant stated that at the time of the application, she was working 26 hours per week. Her hours varied according to the requirements of the job, however she asked her employer on a regular basis for more hours as she was finding it difficult to manage on what she was being paid. The appellant stated that she was not fully aware of the ongoing requirement that she must work minimum hours or that she should inform the Department of any change. The appellant outlined that she had been in receipt of Working Family Payment since 2013 and this issue had never been highlighted at the renewals of her entitlement. The appellant also stated that she had ceased work in October 2017 but then secured a 6 month contract.

Consideration: The Appeals Officer noted that the legislation governing entitlement to Working Family Payment (previously known as Family Income Supplement) refers to a period of payment. The Appeals Officer outlined that the legislation provides that Working Family Payment shall be payable for a period of 52 weeks (or such other period as may be prescribed) beginning on the date on which it is receivable in accordance with regulations and, except where regulations otherwise provide, the weekly rate of Working Family Payment shall not be affected by any change of circumstances during that period. The Appeals Officer noted that the prescribed 'change of circumstances' are an increase in the number of children in the family or the cessation of One Parent Family Payment on or after 4 July 2013.

The Appeals Officer concluded that neither of these conditions applied to the appellant at the time of the renewal in June 2016, or for the earlier periods of the claim contained in the period at issue, between January 2015 and June 2016. In June 2016, while determining the appellant's on-going entitlement to Working Family Payment, the Department requested that the appellant's employer submit tax deduction cards for 2015 and 2016. It was not explained in the appeal file why the Department chose to review the previous claim which was renewed in June 2015, nor the period of claim from January 2015 to June 2016, this period relating to an earlier period of entitlement, namely June 2014 to June 2015. The Appeals Officer outlined that the conditions for awarding Working Family Payment are that

the claimant must work at least 38 hours per fortnight and that this must be expected to continue for at least 3 months.

He concluded that in June 2014 the appellant satisfied this condition and the claim was awarded. There was no evidence on the file to suggest otherwise. The Appeals Officer concluded that as there had been no change in the appellant's circumstances as set out in the governing legislation, the appellant continued to be entitled to Working Family Payment for 52 weeks from the commencement of that claim. The Appeals Officer considered the retrospective examination of the hours worked from January 2015 to June 2015 as erroneous and unfair. With regard to the continuing entitlement from June 2015 to June 2016, the Appeals Officer concluded that the same principle applied. In the absence of any evidence to the contrary on the file, the Appeals Officer had to assume that at the time of renewal of Working Family Payment in June 2015, the appellant was found to be in compliance with the conditions for award, that this was likely to continue for 3 months and was payable for 52 weeks to June 2016.

Outcome: Appeal allowed.

2018/36 Deserted Wives Benefit Summary Decision
Question at issue: Eligibility (means)

Background: The appellant was awarded Deserted Wives Benefit in April 1996. In 2017, her income exceeded the maximum prescribed amount of €20,000 and her claim was disallowed by the Department.

Consideration: The Appeals Officer outlined that social welfare legislation prescribes that in order to be entitled to Deserted Wife's Benefit the annual amount of reckonable earnings must not exceed €20,000. Social Welfare legislation provides that the calculation of that amount is based on the last complete income tax year "or in such subsequent period as a Deciding Officer or an Appeals Officer may consider appropriate". The Appeals Officer noted that the appellant was working part-time in two jobs. The appellant stated in her letter to the Deciding Officer that she worked 15.5 hours per week in one job earning €163.80 gross and 15 hours per week on a Community Employment scheme earning €208.78. This would indicate annual earnings of €19,374.16. The Appeals Officer noted the appellant's earnings record for the years 2003 – 2016 and that in each of these years her earnings did not exceed the statutory maximum of €20,000. In 2017, her earnings exceeded the maximum by €643 (3.2%).

The Department wrote to the appellant in July 2018 informing the appellant that her earnings for 2017 were €20,643 and that before a decision was reached she should submit any evidence that she wished to be considered and that in the interim her payment would be

suspended from August 2018. The appellant submitted a letter from her employer stating that her gross earnings in 2018 would be €8,990.80. The appellant submitted 4 pay-slips for 2018 and these pay-slips indicated that her earnings decreased at the end of March, prior to the issue of the Department's letter in July. The appellant submitted a pay-slip from her Community Employment job dated July 2018. The year-to-date figures indicated that she earned €208.78 per week. The appellant stated that she had reached the top of the scale and that her earnings from that job would not increase.

The Appeals Officer noted the medical evidence. The appellant stated that she may not be able to continue her cleaning job due to ill health and also that the contract may not be renewed. The loss of this job would have a significant negative effect on her overall earnings. The evidence of earnings from payslips from both jobs indicated that the appellant would earn less than €20,000 in 2018. The Appeals Officer noted that the appellant would not reach pensionable age until December 2027. The Appeals Officer concluded that the withdrawal of Deserted Wives Benefit for the remainder of the appellant's working life on the grounds that her earnings exceeded the limit by 3% in one year in the last 15 was a disproportionate response. The legislation allows for the calculation of earnings "in such subsequent period" after the last tax year which is considered appropriate. The Appeals Officer concluded that 2018 would be a more appropriate period, and that the evidence indicated that the appellant's earnings would not exceed the statutory maximum.

Outcome: Appeal allowed.

2018/37 Partial Capacity Benefit Summary Decision
Question at issue: Degree of restriction on capacity for work

Background: The appellant, in her early 60s, applied for Partial Capacity Benefit having been in receipt of Illness Benefit. She was returning to work for 16 hours per week. The claim was allowed and the restriction on capacity was assessed as "moderate". The appellant appealed this decision.

Consideration: The Appeals Officer outlined that Partial Capacity Benefit is payable where an eligible person applies to join or re-join the workforce and has a restriction in capacity for work in comparison to the norm. A person shall be regarded as having a severe restriction in capacity for work where the residual capacity is between 25% and 50% of the norm and a moderate restriction in capacity for work where the residual capacity is between 50% and 80% of the norm. The issue under appeal was the decision to reduce the extent of restriction from severe to moderate. The nature, extent and the effects of the appellant's medical condition was set out in a report completed by her doctor. It stated a diagnosis of breast cancer expected to continue indefinitely. Her abilities were assessed under 16 functional and physical categories. With regard to the functional abilities, her mental health was assessed

as affecting her to a moderate extent and her physical abilities reaching and lifting/carrying were assessed as affecting her to a severe extent. The report noted that the patient got tired easily. The Appeals Officer noted that the nature of the appellant's work involved a high degree of manual handling, that she was right handed and that her cancer surgery was on the right side. The Appeals Officer also noted that the appellant stated that her condition is such that she can only work 2 days per week. The Appeals Officer concluded that the appellant's medical condition was such that she continued to have a severe restriction on her capacity for work.

Outcome: Appeal allowed.

2018/38 Partial Capacity Benefit Summary Decision
Question at issue: Eligibility

Background: The appellant, aged 40 years, had been in receipt of Illness Benefit and subsequently Invalidity Pension from May 2012. She returned to work part-time on medical advice in March 2017 for a trial period. The trial period was extended and she then applied for Partial Capacity Benefit. Due to her return to work, her Invalidity Pension was stopped and she was disallowed Partial Capacity Benefit on the grounds that the appellant was not in receipt of Illness Benefit or Invalidity Pension for at least 26 weeks on the day before she applied for Partial Capacity Benefit.

Consideration: Partial Capacity Benefit is payable in cases where an eligible person has a restriction in capacity for work due to a medical condition in comparison to the norm, and the person applies to join or re-join the workforce. Social Welfare legislation provides that a person may qualify for Partial Capacity Benefit if their restriction on capacity to work is assessed as moderate, severe or profound. Participation on the scheme is voluntary. In order to qualify, a person must on the day immediately before the day for which benefit is claimed, be in receipt of Illness Benefit (for 26 weeks) or Invalidity Pension. The Department decided that the appellant was not in receipt of Invalidity Pension on the day before she made the claim for Partial Capacity Benefit. The Appeals Officer noted that the appellant contacted the Department in the first instance and the Department's decision was in response to the appellant's wish to apply for Partial Capacity Benefit. The Appeals Officer noted that social welfare legislation provides that the decision of a Deciding Officer shall be in writing and signed by him or her. Where the decision of the Deciding Officer is not in favour of the person, the Deciding Officer shall set out in writing the reasons for the decision and issue a memorandum of the decision to the person. The Appeals Officer did not find a valid decision from the Department to the appellant disallowing Invalidity Pension, giving the reasons for the decision and informing the appellant that she had the right of appeal.

The Appeals Officer noted that the appellant returned to work on medical advice for limited hours for a trial period, that the trial period was extended and the appellant contacted the Department to enquire about Partial Capacity Benefit. The Appeals Officer concluded that in the absence of a valid decision disallowing Invalidity Pension, the application for Partial Capacity Benefit can be regarded as a valid claim from the date she returned to work. The appellant's GP in the medical report stated a diagnosis of hyperinsulinemic hypoglycaemia and seizures which began in 2012 and were expected to continue indefinitely. The report stated multiple hospital admissions with no cause found. The report also contained a letter from a Consultant Endocrinologist. The Appeals Officer examined the evidence available in this case, including the medical evidence and decided that the appellant's medical condition was such that she had a profound restriction on her capacity for work. Accordingly, he concluded that Partial Capacity Benefit should be paid at the rate of 100% of the appellant's Invalidity Pension entitlement.

Outcome: Appeal allowed.

2018/39 Jobseeker's Allowance Summary Decision
Question at issue: Eligibility (whether a person is unemployed)

Background: The appellant had been in receipt of Jobseeker's Allowance but secured full-time employment during the period 2 May 2017 to 23 May 2017 and was therefore deemed to be not unemployed for that period resulting in an overpayment of €901.55.
The appellant contacted the Department in May 2017 to state that she had commenced employment and had received a Commencement of Employment form in the post. She stated that the Local Employment Service (LES) Mediator advised her that she could collect payment until she had received the first payment from her employer. The Department told the appellant that she would be assessed with an overpayment. In June 2017, the Department wrote to the appellant advising that she appeared to have been overpaid for the period 2 May 2017 to 23 May 2017. The appellant stated that she had been in regular contact with the LES "who advised me I could continue to claim my allowance up until my first wage". In her appeal, the appellant did not dispute the dates of employment or the fact that she had commenced work, did not inform the Department that she was working and continued to claim and collect her Jobseeker's Allowance. The appellant stated that she received incorrect information from the LES. In the appeal submission, the Deciding Officer did not address the fact that the appellant may have been given incorrect information by the LES. The appeal submission stated "it was explained to the appellant that the LES was not the DSP and that an overpayment would be assessed". No evidence was provided to show that the appellant was not so informed by the LES.

Consideration: The Appeals Officer outlined that Section 302(b) of the Social Welfare Consolidation Act 2005 allows the decision maker, having regard to all the circumstances of

the case to determine the effective date of the decision. Having considered all the evidence in this case, the Appeals Officer found that the appellant was not entitled to Jobseeker's Allowance from 2 May 2017 to 23 May 2017 and relying on the provisions of Section 302(b) of the 2005 Act decided that the decision should take effect from the date of the Department's decision. The effect of the Appeals Officer decision was that no overpayment arose.

Outcome: Appeal allowed.

2018/40 Jobseeker's Allowance Summary Decision
Question at issue: Eligibility (means)

Background: The appellant applied for Jobseeker's Allowance which was disallowed on the basis of 'means in excess'. The appellant's means were found to be in excess, primarily due to his ownership of a property in the country in which the appellant was not living and which he had bought with the proceeds of an inheritance. The means were assessed primarily on the basis of his capital, which consisted of savings and a property not personally used at the time of application. The appellant had been living rent-free with a friend in Dublin while he looked for work. The property in the country was in need of renovation. The appellant appealed the decision on the basis that the local social welfare office did not give him any indication that his application was likely to be rejected as 'means in excess', which would have prompted him to live in the property in the country so it would not be assessable.

Consideration: The appellant's main contention, in effect, was that he was denied a social welfare payment because he was not given crucial information at the outset. He also contended that the delays in processing his claim (both at first instance and on appeal) caused him to dwindle his savings and take on debt. The Appeals Officer identified the applicable legislation as Section 142(2)(b) of the Social Welfare Consolidation Act 2005. The appellant's evidence at appeal suggested that the property in the country could not have been rented out but was capable of being sold. The Appeals Officer noted that had the appellant not bought the property in the country and had instead placed the inheritance money in a savings account, this would also be assessable for means testing purposes. The appellant asked the question what would happen if a person's home was flooded and they could not live there for a time. The Appeals Officer stated that in such a scenario Article 141 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations (S.I. No. 142 of 2007) provides for an exemption of a person's primary residence being treated as an investment property, but the provision also requires that the property had ordinarily been the person's main residence before they vacated it. The Appeals Officer concluded that this exemption did not apply in the appellant's case and was satisfied that the legislation was applied correctly by the Department to the facts of the appellant's case.

Outcome: Appeal disallowed.

2018/41 Jobseeker's Allowance Oral Hearing
Question at issue: Eligibility

Background: The appellant declared that she was residing with a friend, who was in receipt of a disability payment. An investigation of the appellant's means by a Social Welfare Inspector (SWI) took place and the Inspector applied the criteria for establishing if the couple were in a cohabiting relationship. The SWI's report outlined that the appellant shared her home with her teenage son and a friend who had resided with her since the death of his mother three years before. The house had two bedrooms and the appellant said that she and her friend shared a bedroom. The SWI's report outlined that household chores were shared and they had meals together. The SWI reported that the friend involved himself in the upbringing of appellant's son and would discipline him if necessary and was named as a contact for the school. According to the SWI, the appellant accepted that they were a family unit.

Oral Hearing: The appellant conceded that she and her friend had in the past had a committed and intimate relationship. The financial interdependence was evident by the admission that he was a named driver on the appellant's car insurance. The appellant agreed that utilities were in her name but that her friend contributed towards those costs. She specified that he contributed towards rent and food, household chores were shared, the couple took meals together and he assisted with the upbringing of her teenage son. The appellant had admitted that they socialised together occasionally.

The appellant denied that she and her friend existed as a family unit and suggested that a housemate would also assist in the rearing of her child. The appellant accepted that her friend had accompanied her to a parent/teacher meeting at her son's school. The appellant contended that this was no more than what a flatmate would do but the Appeals Officer disagreed and regarded it as significant that the appellant's friend participated in the upbringing of the appellant's teenage son even to the point of disciplining him. The appellant confirmed that he was a contact for her son's school. The appellant described her friend to the Social Welfare Inspector as a friend who had nowhere to go after the death of his mother and his moving out of her house. He now had resources which would enable him to move elsewhere but he remained in what would be a confined space for adults leading separate lives. The appellant and her friend lived in a two bedroom dwelling and the appellant had told the SWI that while they used the same bedroom, he slept by day whereas she slept by night. The Appeals Officer considered that the appellant's evidence that her friend stayed up gambling by night so that she could have the bedroom by night while he slept during the day was simply not credible.

Consideration: Jobseeker's Allowance is a means tested scheme and means are calculated under the provisions of Rule 1(2), Part 2 of Schedule 3 of the Social Welfare Consolidation Act 2005. The appellant was advised that she had not shown that her means did not exceed

the statutory limit. The question of the appellant's means arose from her relationship with the person who lived in the house with her and whether, as a cohabiting couple, his means should be considered in the assessment of the appellant's means. Where an entitlement might be disallowed, limited or withdrawn, the onus was on the Department to establish that cohabitation exists. The findings of the SWI report stated that the appellant and her friend had lived together since October 2013. The appellant had initially agreed that she was within a family unit and that she had looked after her friend during his illness. The appellant had initially agreed to provide details of his means. Subsequently the appellant told the SWI that she was unable to provide the information. The Appeals Officer found that there was sufficient evidence to conclude, on the balance of probabilities, that the appellant and her friend were a cohabitating couple and as such his means were relevant in a review of the appellant's entitlement to Jobseeker's Allowance. Due to lack of co-operation with the investigation it was not possible to complete the assessment of the appellant's means to confirm entitlement in accordance with the provisions of Section 141 (1)(c) of the Social Welfare Consolidation Act 2005.

Outcome: Appeal disallowed.

2018/42 Jobseeker's Allowance Summary Decision
Question at issue: Eligibility (habitual residence condition)

Background: The appellant applied for Jobseeker's Allowance. The decision of the Department was that the appellant did not fulfil the 'habitual residence condition' attached to the payment of Jobseeker's Allowance. She was a Spanish national with some work experience in Dublin and a high level of formal education and good English language skills.

Consideration: The Appeals Officer at the outset outlined that the question for this appeal was in relation to the right to reside and the habitual residence condition only. Other qualifying criteria for the payment of Jobseeker's Allowance were not under consideration as they were not part of the Department's decision to refuse the application. Regulation 6 of S.I. No. 548 of 2015, the 'European Communities (Free Movement of Persons) Regulations 2015', which gives further effect to Directive 2004/38/EC, provides that EU/EEA nationals have an automatic and unqualified right of residence in Ireland for 3 months only. Thereafter, certain conditions apply, depending on the profile of the person. The appellant's evidence in her application form and letter of appeal indicated that she came to Ireland in February 2015. She came looking for work and for opportunities to develop her career as the Irish economy was more favourable than the Spanish economy. She had a Master's Degree in Psychology and very good English language skills. She was not married and did not have children, but had a partner in Dublin (who was employed and had resided here since 2014) and several close friends. She was in her 30s. Her parents lived in Spain. She described Dublin as 'home'. Although she indicated on her application form that she might only stay in Ireland

for 1-2 more years, she stated in her letter of appeal that her intention was to stay in Dublin long-term with her partner. She described efforts she made to make this possible, including registering this intention with the Spanish Embassy and applying for chartered membership to the PSI (Psychological Society of Ireland; the professional body for psychologists) and discussing a potential job with an established psychology clinic. An economically inactive person from the EU/EEA maintains a right to reside only for as long as they have both comprehensive sickness insurance cover and sufficient financial resources to maintain themselves so as not to become an unreasonable burden on the social assistance system of the State and persons who were previously an EU/EEA national worker or self-employed person for a period of less than one year retain the status of worker and the right to reside for a further six months. The appellant contended that since she came to Ireland in 2015 she worked as a childminder, was partly supported by her parents and partner, and then worked for 3 months in 2017 for a recruitment firm. This suggested that she had a legal right to reside at the time of her application for Jobseeker's Allowance. The Appeals Officer outlined that it was important to note that having a right of residence is distinct from being 'habitually resident'. Section 141(9) of the Social Welfare Consolidation Act 2005 provides that a person shall not be entitled to Jobseeker's Allowance unless he or she is habitually resident in the State. In order to be habitually resident in Ireland, a person must be both legally residing in Ireland and have their 'centre of interest' in Ireland.

The question for this appeal, therefore, was whether the appellant had moved her 'centre of interest' to Ireland.

Section 246(4) of the 2005 Act provides that when determining whether a person is habitually resident in the State, a decision maker shall take into consideration all the circumstances of the case including, in particular, the following –

(a) the length and continuity of residence in the State or in any other particular country,
(b) the length and purpose of any absence from the State,
(c) the nature and pattern of the person's employment,
(d) the person's main centre of interest, and
(e) the future intentions of the person concerned as they appear from all the circumstances.

In that context, the information on file indicated that the appellant had lived in Ireland for over three years, was in a long-term relationship with an employed person, had good employment prospects here, but would have lesser prospects in Spain due to its level of unemployment, and had made efforts to establish a steadier career path here. The Appeals Officer assumed that the Department would conduct a financial means assessment and would look into any co-habiting arrangements. However, subject to those other conditions of the Jobseeker's Allowance scheme being met, the appeal succeeded.

Outcome: Appeal allowed.

2018/43 Jobseeker's Allowance Oral Hearing (not heard)
Question at issue: Eligibility (habitual residence condition)

Background: The appellant applied for Jobseeker's Allowance in January 2018. The decision of the Department was that the appellant did not fulfil the 'habitual residence condition' attached to the payment of Jobseeker's Allowance. He was a UK national with no previous connection to Ireland.

Consideration: The file evidence indicated that the appellant was a 28 year old UK national. He came to Ireland in December 2016. He had no previous connection to Ireland. He secured work for a few months in 2017. All his close family members, including a young daughter, lived in England, but he stated on his letter of appeal that he had no contact with any of them. UK nationals enjoy an unqualified right of residence in Ireland. The Appeals Officer outlined that it was important to note that having a right of residence is distinct from being habitually resident. In order to be habitually resident in Ireland, a person must be both legally residing in Ireland and have their 'centre of interest' in Ireland. The question for this appeal, therefore, was whether the appellant had moved his 'centre of interest' to Ireland. The legislation requires, in accordance with Section 246(4) of the Social Welfare Consolidation Act 2005, that when determining whether a person is habitually resident in the State, a decision maker shall take into consideration all the circumstances of the case including, in particular, the following:

(a) the length and continuity of residence in the State or in any other particular country,
(b) the length and purpose of any absence from the State,
(c) the nature and pattern of the person's employment,
(d) the person's main centre of interest, and
(e) the future intentions of the person concerned as they appear from all the circumstances.

The appellant had never lived or worked in Ireland before and had no Irish family connections. He only worked for a few months in 2017, having first arrived in late 2016. While he stated he had no contact with family in England, he had no strong links in Ireland either. He had been residing with a friend in Ireland, but, as stated in his letter of appeal, the friend wanted him to move out if he could not pay the rent. His stated intention was to stay in Ireland into the future and to secure employment. The appellant was called to an oral hearing, but did not attend and did not provide any reason for same. The Appeals Officer considered that this was a missed opportunity to make a more convincing case that his centre of interest had indeed moved to Ireland for the purposes of meeting the habitual residence condition. Having considered the evidence, the Appeals Officer concluded that it appeared more likely than not that the appellant's centre of interest remained in the UK and not Ireland, particularly in the context of his family ties, lack of previous connections to Ireland and the fact that a young man of his profile was likely to want to seek employment opportunities wherever in the world they may be.

Outcome: Appeal disallowed.

2018/44 Jobseekers Allowance Summary Decision
Question at issue: Eligibility (failure to attend activation meetings)

Background: The appellant was in receipt of Jobseeker's Allowance and, as a person selected for activation, was invited to attend a number of activation meetings, which he failed to do. The Department applied a penalty rate and the appellant was notified of the decision. There is a note on file stating that the Deciding Officer contacted the appellant by phone to check why he had not been attending his meetings. The appellant stated that he had not received any post. The evidence on file indicated that two notifications had issued to the appellant. Following the decision of the Department to apply a penalty rate the appellant contacted the Intreo Centre to say that he was getting no post. Another meeting was arranged but the appellant did not attend. The appellant stated that he had received no post. In his letter of appeal the appellant stated he did not attend because he had not received any information regarding the meetings. He stated that the first notice he received was a letter informing him that he had been "fined" for not attending. He stated he was not satisfied with the manner in which he was treated in the Intreo Centre.

Consideration: The Appeals Officer outlined that Section 141A of the Social Welfare Consolidation Act 2005 provides for the circumstances where a jobseeker refuses or fails to attend 'activation meetings' as follows:

"(1) *Notice may be given by or on behalf of the Minister to any person receiving jobseeker's allowance requesting the person, at the time specified in the notice, to comply with the requirement specified in paragraph (a) or (b) of subsection (3).*

(2) Where a person refuses or fails, without good cause, to comply with the requirement specified in the notice under subsection (1) at the time specified in that notice, or at any time thereafter as may be determined by or on behalf of the Minister and notified to the person, the weekly rate of jobseeker's allowance payable to that person in respect of any such period of refusal or failure shall, subject to this section, be as set out in section 142(1A), 142A(1A) or, as the case may be, section 142B(1A).

(3) A notice under this section may require the person to whom it is given to do one of the following, at the time specified in the notice, or at any time thereafter as may be determined by or on behalf of the Minister and notified to the person—

(a) attend at a meeting arranged by or on behalf of the Minister for the purpose of providing information to that person which is intended to improve his or her knowledge of the employment, work experience, education, training and development opportunities available to that person, or

(b) attend for or submit to an assessment of that person's education, training or development needs."

Section 142(1A) and 142A(1A) of the Act provides for specified penalty rates of payment where a person refuses or fails, without good cause, to comply with the requirements to attend activation meetings or take up suitable employment.

The Appeals Officer outlined that it is not permitted under social welfare legislation for a person to not attend what are commonly referred to as 'employment activation meetings'. Section 141A, Section 142(1A) and Section 142A(1A) of the Social Welfare Consolidation Act 2005 set out a number of consequences and penalties when this occurs. These penalties will only apply where the person concerned failed to attend meetings or to engage with the activation process without good cause. In this particular case, the appellant stated he did not attend several scheduled meetings because he alleged he had not received notification of these appointments. The Department stated it was satisfied that letters advising the appellant of the meetings had issued to the appellant's address. The Appeals Officer outlined that the delivery or service by post of any document, which is authorised to be delivered or served by post, shall be deemed to have been served at the time at which it would be delivered in the ordinary course of post. The Appeals Officer was satisfied that the appellant had not demonstrated good cause for non-attendance at the meetings.

Outcome: Appeal disallowed.

2018/45 Jobseekers Benefit Summary Decision
Question at issue: Whether the appellant may be held to have made a claim for benefit in the prescribed manner, and satisfied the Minister as to his identity

Background: The appellant applied for Jobseeker's Benefit. The Deciding Officer stated that the appellant was asked to attend at the local Intreo Centre of the Department, with a view to being interviewed regarding his claim and for purposes of authenticating his identity with reference to the Department's Standard Authentication Framework Environment (SAFE) registration process. The Deciding Officer also stated that the registration process was not completed in view of reservations expressed by the appellant concerning the levels of protection which would be given to his personal data. His claim was disallowed on grounds that he had not established his identity in line with the provisions of the governing legislation and for reasons that he had not allowed an electronic format of his photograph and had not provided an electronic signature. The legislative provisions cited were those outlined in Section 241 of the Social Welfare Consolidation Act 2005, subsections (1) and (1C). The appellant appealed this submitting that he had not as yet been given an opportunity to prove his identity, provide an electronic format of his photograph, or provide his electronic signature. He asserted that the appointment was cut short in the absence of information which he sought regarding safeguards for his personal data and assurances that it would be protected and shared only in well-defined circumstances, as required under Irish data protection law. He stated that he was referred to an email address which does not exist,

pressoffice@welfare.ie, in relation to his query. He requested that his claim be re-opened as he had not been able to engage with the Department, and he submitted that no failure occurred because there had been no opportunity to verify his identity successfully. The evidence indicated that an exchange of emails occurred between the appellant and the Deciding Officer, where the appellant was referred to a pdf document and advised that this was the most comprehensive guide available in relation to the Public Services Card. The Deciding Officer advised also that if this information was insufficient to address his queries, an appointment could be arranged for the appellant in the local Intreo Centre of the Department. In reply, the appellant indicated that the document at issue did not answer his questions or satisfy his request regarding the Department's privacy policy.

The appellant's solicitors wrote to the Social Welfare Appeals Office and advised that they had been instructed by the appellant to make submissions on his behalf and sought copies of the relevant papers. His solicitors wrote again to this office, outlining additional submissions, as follows:

- Section 241 (1) requires that an applicant satisfy the Minister as to his or her identity; it does not include an obligation on the part of his client to provide or allow to be obtained an electronic photograph or signature.
- Section 241 (1C), cited by the DO, which provides that the Minister 'may without prejudice to any other method of authenticating the identity' of the applicant, request that an electronic photograph or signature be taken for purposes of satisfying her/himself as to the identity of a person who makes a claim for benefit.
- It is quite clear, therefore, that the taking of an electronic photograph and/or signature is not a mandatory requirement of the Act; the obligation is to satisfy the Minister as to identity and his client has done that.
- His client is entitled to a specific consideration of his application and he is entitled to reasons for its refusal which should include the reason why an electronic photograph and signature were sought.
- It is clear that the true purpose for an electronic photograph and signature is not to establish or confirm his client's identity due to any specific issue that has arisen in his application but rather to obtain this personal data, including biometric data, for inclusion on the Public Service Set/Single Customer View and to issue him with a Public Services Card. The Act does not permit the Minister to refuse an application for a benefit on this basis.

Consideration: The question before the Appeals Officer was whether the appellant may be held to have made a claim for benefit in the prescribed manner, and satisfied the Minister as to his identity for purposes of his Jobseeker's Benefit claim. In submissions made on the appellant's behalf, it was contended that the governing legislation does not include an obligation to provide or allow to be obtained an electronic photograph or signature, rather that the obligation is to satisfy the Minister as to identity, and that the appellant had done

so. However, the governing legislation, outlined at Section 241, provides the Minister with power to make a demand of a person who makes a claim, as a condition of that person's right to benefit. For the purpose of satisfying herself as to the identity of a person, the Minister has the power to request that a person authenticate her/his identity with reference to the measures outlined at subsection (1C), and to do so even if other methods of authenticating identity are available. In the appellant's case, the process of authenticating his identity with reference to the Department's (SAFE) registration process was not completed. While the Appeals Officer considered it reasonable that the appellant would seek to have assurances as to the protocols which applied and the safeguards that were put in place with reference to the provisions of the Data Protection Acts, the Appeals Officer considered that the evidence indicated that the requirement to make a claim for benefit in the prescribed manner had not been fulfilled.

Outcome: Appeal disallowed.

The Appeals Officer's decision was upheld by way of a Section 318 review carried out by the Chief Appeals Officer and is included in Section 4.5 of this Report.

2018/46 Supplementary Welfare Allowance Oral Hearing
Question at issue: Rent Supplement/Other Supplement.

Background: The appellant was a single person living in shared accommodation. She had been in receipt of a supplement towards the cost of her rent based on a rent liability at €550 per calendar month. She lived in the Fingal County Council Region and the rent limit for single persons in shared accommodation in Fingal County Council Region was set at €400. The appellant commenced part-time employment in April 2017. This was a change in her income circumstances and it triggered a review of her continued entitlement to a supplement towards her rent. The supplement was significantly reduced as an outcome of this review. The amount of the supplement was calculated based on a monthly rent liability at €400. The reason for this change was not explained to the appellant. The appellant was not informed that the legislative maximum rent limit appropriate to her circumstances was €400 per calendar month. Her actual rent liability remained at €550 per calendar month.

Consideration: The Appeals Officer concluded that entitlement to Rent Supplement was legislatively subject to rent limits which were set and amended by Social Welfare Regulations. The relevant Regulations prescribed that the maximum rent limit for a person in shared accommodation in the Fingal County Council Region was €400 per calendar month. Where a rent supplement was paid, in accordance with this legislation, the rent supplement calculated cannot be based on a rent liability above €400 per calendar month. The evidence in this case was that the appellant's monthly rent liability, at €550 per calendar month, was above the rent limit appropriate to the appellant's circumstances. She was, therefore, not

entitled to a rent supplement in accordance with governing legislation. The supplement she received up to the time her claim was reviewed, as it was based on this monthly rent liability at €550, was not a rent supplement. It was a supplement paid in accordance with Article 38 of the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S.I. No. 412 of 2007). The Appeals Officer opined that Article 38 of the 2007 Regulations were being widely used throughout the country to assist claimants with the cost of private rented accommodation, given the acceptance that private rented properties were not available within the legislative rent limits.

The manner in which Article 38 supplements were being calculated, given that they were being authorised in recognition that the rent limits were not appropriate to the current market, were taking account of the legislative disregards applicable to rent supplements. The appellant's Article 38 entitlement was calculated in this manner up the time it was reviewed. The Appeals Officer decided it would be unfair now to change the goalposts, in circumstances where the appellant had stepped into part-time employment. The Appeals Officer calculated the appellant's entitlement to supplement from the time of review based on the full rent liability of €550 per calendar month and allowed the appellant the legislative disregards appropriate to a rent supplement entitlement. The Appeals Officer made it clear, however, that this was not a Rent Supplement but rather a supplement, in accordance with Article 38 of the 2007 Regulations which allowed discretion to award a supplement where it appeared that the circumstances of the case so warranted.

Outcome: Appeal allowed.

2018/47 Supplementary Welfare Allowance (BASI) Summary Decision
Question at issue: Eligibility

Background: The appellant applied for Supplementary Welfare Allowance as she was ill and had no entitlement to a disability/illness payment. The claim was awarded at full rate. The claim was reviewed and revised by the Department with means applied from "benefit in kind". The means assessed were €155.26 per week from mortgage payments being made by the appellant's former spouse and paid directly to the lending agency. The appellant stated in her letter of appeal that she has bills to pay and that she has no support from her former spouse for household necessities and she was very stressed.

Consideration: The Appeals Officer outlined that the conditions to be satisfied for payment of Supplementary Welfare Allowance were outlined in social welfare legislation and included an assessment of means. All family income was assessable in determining entitlement to the allowance. The Department considered that the mortgage payment made by the appellant's former spouse to the lending agency was a non-cash benefit/benefit in kind but did not provide a legislative reference. The Appeals Officer outlined that the concept of 'benefit in

kind' was not provided for in the governing legislation. He noted that provision is made in the governing legislation to take account of non-cash benefits that may be prescribed. The Appeals Officer outlined that the non-cash benefits prescribed for the purposes of Rule 1(2) of Part 4 of Schedule 3 are contained in Article 35 of the Social Welfare (Consolidated Supplementary Allowance) Regulations 2007 (S.I. No. 412 of 2007). The Appeals Officer was satisfied that the non-cash benefits prescribed for the purposes of Supplementary Welfare Allowance did not include the payment of a mortgage by the appellant's former spouse directly to the lending institution. In those circumstances the Appeals Officer determined that the payment was not assessable under the governing legislation.

Outcome: Appeal allowed.

2018/48 Supplementary Welfare Allowance (BASI) Oral Hearing
Question at issue: Eligibility (Means Assessment)

Background: The appellant made a claim for Supplementary Welfare Allowance. He was a single man in his late eighties. He was assessed with means of €247.06 per week. The means derived from a UK Pension of €91.06 per week and a house and land valued at €55,000 (the land was valued at €25,000 and the house was valued at €30,000).

Oral Hearing: The appellant and two of his relatives attended the hearing. They stated that the appellant lived in Saint Vincent De Paul accommodation and paid rent of €65 per week. The appellant's farm of land was now let to a local farmer for a rent of €500 per annum. The land was of poor quality. The farm house was not habitable, it suffered water damage during a cold snap and it did not have a kitchen due to water damage.

The appellant's representatives stated that the house needed €30,000 to €40,000 of repairs to make it habitable. It was in an isolated rural area, 5 km from the main road. It would be difficult to rent even when repaired. The appellant was of the view that the value of the house had diminished because of water damage and the repairs required. The appellant's UK Post Office account had been closed and an AIB account opened locally. The balance in the AIB account was €4,746.71 and the balance in the Credit Union was €7,809.57.

Consideration: The appellant had savings of €12,556.28. The land was let at €500 per annum. The house was not capable of being put to profitable use. The Appeals Officer assessed the appellant's means as follows; UK Pension €91.60 per week; Capital €12,556.28; Letting of Land €500 per annum, and House Nil.

Outcome: Appeal Allowed.

2018/49 Supplementary Welfare Allowance Summary Decision
Question at issue: Eligibility (eligibility and overpayment)

Background: The customer was in receipt of Supplementary Welfare Allowance on the grounds that she was unfit for work or to register for Jobseeker's Allowance due to illness. Some 11 months after the award of Supplementary Welfare Allowance the appellant commenced an educational course but failed to inform the Department. The Department reviewed her entitlement and disallowed her claim retrospectively for a period of six months, resulting in an overpayment of €5,000. The legal basis for this decision was Section 190 of the Social Welfare Consolidation Act 2005 which provides that, as a general rule, full-time students are disqualified from receipt of Supplementary Welfare Allowance. In her appeal the appellant asked that consideration be given to a number of mitigating circumstances: that she was a lone parent and had encountered medical and psychological issues throughout the life of her claim and had submitted medical certificates to the Department to this effect. Her decision to participate on the educational course resulted from on-going consultation with her GP who recommended activities/courses that would assist her recuperation free of medication. In addition the course would be an initiative that may potentially assist her employment prospects.

Consideration: The Appeals Officer in the first instance emphasised that as a recipient of Supplementary Welfare Allowance the appellant had a clear statutory obligation to notify the Department on commencement of the course. However, the Appeals Officer noted that under Section 190 (3) of the 2005 Act the Department has discretion to grant Supplementary Welfare Allowance to persons attending a course of study "in a case where there are exceptional circumstances." This concession did not appear to have been considered by the Department in this instance. The Appeals Officer considered that the evidence submitted by the appellant in support of her appeal could be regarded as constituting "exceptional circumstances" and the appeal was allowed.

Outcome: Appeal allowed.

4.4 Case Studies

Retired, Older People & Other

2018/50 State Pension (Contributory) Summary Decision
Question at issue: Entitlement to a contributory pension (contributions)

Background: The appellant appealed the Department's decision to refuse his application for State Pension (Contributory), which was disallowed as he did not have the minimum of 520 paid full rate social insurance contributions before his 66th birthday. The records showed that the appellant had 357 paid full rate contributions. The appellant was awarded a mixed insurance pro-rata State Pension (Contributory) at the rate of €71.70 per week based on a total of 453 full rate paid and credited contributions and 829 modified rate paid and credited contributions from 1971 to 2017. The appellant contended that contributions paid by him while he worked in Australia for 16 years had not been taken into consideration in calculating his pension entitlements.

Consideration: The Department had calculated the appellant's entitlement to State Pension (Contributory) on the basis of his record of insurable contributions paid and credited in the relevant years in the State. The Department in its submission pointed out that the appellant did not satisfy the condition of having at least 520 full rate paid contributions since his entry into insurable employment. The Appeals Officer examined the evidence and also concluded that the appellant did not have at least 520 full rate paid contributions since his entry into insurable employment.

The appellant was awarded a mixed insurance pro-rata State Pension (Contributory) based on his record of modified contributions, both paid and credited. The Appeals Officer concluded that the rate of pension from the appellant's modified record was correct. With regard to his contributions from his employment in Australia, the appellant was not entitled to include these contributions with his Irish contributions for the purposes of eligibility to State Pension (Contributory). However, it was noted that he may be entitled to a pension based on his contributions in Australia. The Department was awaiting a reply from the Australian authorities and his entitlement to a bi-lateral pension would be examined on receipt of this reply. If the appellant qualified for a bi-lateral pension from the Department, he would be awarded the higher rate of pension, whichever was the more favourable between his current mixed insurance pro-rata State Pension and the bi-lateral pension but not both simultaneously. The Appeals Officer concluded that the Department's decision, as at the time of the appeal, was correct.

Outcome: Appeal Disallowed.

2018/51 State Pension (Contributory) Summary Decision
Question at issue: Contribution conditions and rate of pension.

Background: The appellant applied for State Pension (Contributory) in July 2017 when he was 66 years old. The appellant had a total of 1770 paid and reckonable contributions since entering into insurance in 1969. The appellant's application was granted but paid at a lower rate than expected as the appellant did not have the required 48 paid or credited contributions from 1979, or from the appellant's date of entry into insurable employment in 1969, to the end of the last complete tax year preceding his 66th birthday. The pension was awarded on the basis that the appellant had an average of 44 reckonable contributions per year entitling him to a pension of €233.60 per week. The appellant asserted that he qualified for full pension given the number of contributions he had paid throughout his working life and in his opinion should have been entitled to the full rate of State Pension (Contributory) rather than the lesser amount paid.

Consideration: The appellant had worked both as an employee and in self-employment during his working career. He had paid contributions at a modified rate for a period of 4 years as a Company Director. These contributions were paid at PRSI Class K and were not reckonable for pension purposes. The appellant had not paid or had any reckonable contributions for a further 3 year period and had reduced contributions for another 2 years which affected the average contributions made over his working life. The Appeals Officer reviewed the methodologies used to calculate the appellant's average contributions and examined the two methods provided for (a) the appellant's average reckonable contributions since entering employment in 1969 which yielded an average of 43 contributions and (b) the appellant's average reckonable contributions since entering self-employment in 1988 which yielded an average of 44 contributions. The Appeals Officer concluded that the appellant's average reckonable contributions had been correctly calculated at 44 per year based on the most advantageous calculation method appropriate to his circumstances. The Appeals Officer outlined that the shortfall in contributions was attributable to the modified contributions paid and the gaps in the appellant's insurance record which were not disputed. The weekly rate of State Pension (Contributory) is determined using bands based on the yearly average PRSI contributions. The appellant's average contributions were within the 40 - 47 band and the rate of weekly pension calculated at €233.60 as determined by the Department was correct.

Outcome: Appeal disallowed.

2018/52 State Pension (Contributory) Summary Decision
Question at issue: Eligibility (Contribution Conditions)

Background: The appellant made a claim for a standard State Pension (Contributory) in June 2016 and was held not to have an entitlement as he did not fulfil the condition of having paid 520 full-rate social insurance contributions. He was awarded a mixed insurance State Pension with effect from September 2016, based on a combination of his full-rate contributions and the modified contributions which applied when he was a public servant in the years 1969 to 2008. In February 2017, he was advised by the Department that, following an amendment to his record, he was held to have 593 reckonable paid and credited contributions, giving him a yearly average of 12; the mixed-insurance State Pension (at €54.60 per week) was withdrawn in favour of the higher rate State Pension which was awarded at 40% of the maximum rate (€93.20 per week). The appellant requested a review of his pension, and stated that he had 520 reckonable paid contributions and 125 reckonable credited contributions, as advised by the Department.

Having examined his appeal, the Appeals Officer requested that the Department clarify the position. The Appeals Officer was advised (and the appellant was notified formally) that an error had been made in relation to the amendment of the appellant's record; full-rate contributions recorded on his Form P60 for 2016 included 13 contributions which had been paid after the appellant's 66th birthday, and these are not reckonable for pension purposes. However, these contributions had been assessed in error in determining his entitlement to pension. Having corrected his record to reflect this fact, the Department stated that the appellant had 507 full-rate paid contributions up to his 66th birthday. As a consequence, the original decision to award a mixed-insurance State Pension (at €54.60 per week) was held to have been correct.

Consideration: The Appeals Officer noted that social welfare legislation outlines the qualifying criteria for receipt of State Pension (Contributory), including a requirement to meet the contribution conditions specified. The relevant provisions are set out in Sections 108 and 109 of the Social Welfare Consolidation Act 2005. Having met the qualifying conditions as to date of entry into social insurance (prior to attaining the age of 56 years), a person is required to have at least 520 full-rate paid contributions and a yearly average of 48 contributions. The Appeals Officer noted that the corrected version of the appellant's social insurance record indicated a total of 507 full-rate paid social insurance contributions. While noting that it was regrettable that the appellant was given details of his social insurance contributions that proved to have been incorrect, so that the higher rate of pension awarded was withdrawn subsequently the Appeals Officer was bound to consider the appellant's entitlement in line with the provisions of the governing legislation. Having examined the evidence available, including the contribution details outlined on his social insurance record, the Appeals Officer concluded that the appellant had not met the requirement of having paid

a minimum of 520 full-rate social insurance contributions and that his pension entitlement fell to be assessed with reference to a combination of full-rate and modified contributions.

Outcome: Appeal disallowed.

2018/53 State Pension (Non-Contributory) Summary Decision
Question at issue: Eligibility (Means and Overpayment)

Background: The appellant had been in receipt of State Pension (Non-Contributory) with effect from a date in 2010. A review of his continued entitlement was carried out by the Department in 2013. The review was initiated when the appellant advised the Department that he was moving to Northern Ireland, and the Deciding Officer had indicated that the appellant would have had an entitlement to State Pension (Non-Contributory) for a period of five years. In the context of this review, it emerged that the appellant had been in receipt of an Attendance Allowance from the Department of Work and Pensions in the UK for specified dates between 2014 and 2016. A revised decision was made by the Department taking account of the UK allowance in the period at issue and an overpayment in excess of €9,000 was raised. Submissions were made by an advocate representing the appellant. The grounds of appeal were that the appellant has no education and couldn't read or write; he relied on family, friends and services such as the Department, Citizens Information (ROI) and Citizens Advice (NI) when dealing with his affairs; he was in his 70s and in poor health; he understood that the Department were aware of the UK allowance and assumed his rate of pension was correct, and he was shocked to learn that this was not the case. The appellant's advocate submitted that given his literacy issues, continued ill health and the distress and hardship which notice of this overpayment has caused him, the debt should be written off.

Consideration: The Appeals Officer noted that social welfare legislation provides that means must be assessed in order to determine entitlement to State Pension (Non-Contributory) and rules for the calculation of means are set out in Schedule 3, Part 3, of the Social Welfare Consolidation Act 2005. Section 302 of the Act outlines the circumstances in which a revised decision may be deemed to take effect. The question at issue concerned the revised assessment of the appellant's means in the period between 2014 and 2016. The Appeals Officer noted the grounds of appeal advanced on behalf of the appellant and the Department's statement that it was satisfied that the appellant's failure to inform the Department of his full means was unintentional. The Appeals Officer having had due regard to the grounds of appeal, the specific circumstances presenting in the case and to the Deciding Officer's evaluation concluded that it was appropriate that the revised assessment of means take effect from a current date.

Outcome: Appeal allowed.

2018/54 State Pension Non-Contributory Oral Hearing
Question at issue: Eligibility (Means and Overpayment)

Background: The appellant made an application for State Pension (Non-Contributory) in February 2008. She was interviewed by a Social Welfare Inspector (SWI) in relation to her means, and reported that she held one bank account with a balance of €5,159.71 and a British Retirement Pension, payable at a weekly rate of £39.37 (exchange rate applied: 1.43648). On this basis, she was assessed with weekly means of €56.55 and pension was awarded at the rate corresponding to her means. In December 2013, the Department received information from the Revenue Commissioners under a Protocol for Consultation, Information and Data Exchange which forms part of a Memorandum of Understanding on co-operation and mutual assistance between the two bodies. The data provided referred to Section 125 Deposit Interest, and outlined interest earned on accounts held by the appellant. This prompted a review of the appellant's entitlement and she was interviewed by a Social Welfare Inspector in March 2015.

The Inspector reported that the appellant stated that she had been left money when her husband died and, as this would eventually go to her children, she thought that she did not have to disclose it in connection with her pension claim. The Inspector noted the account transactions over the years, and details of investments to the value of €100,000 as at April 2005. The Social Welfare Inspector reported current balances as: some €90,000 in Irish bank accounts, £858.79 Stg in a UK bank account and investments to the value of €24,280. The Department requested further details and the appellant submitted financial statements as requested. Her pension was suspended with effect from August 2016 as it appeared that her means were such as to have been in excess of the qualifying threshold for pension in 2008, and to allow for further examination of the position. Following various correspondence the appellant sought to explain some of the transactions which had been queried.

The Department, relying on the provisions of Section 302 (b) of the Social Welfare Consolidation Act 2005, held that the appellant was not entitled to pension with effect from the date of application in 2008 as her means had exceeded the qualifying statutory limit. Arising from this decision, an overpayment in excess of €87,000 was assessed.

Submissions were made on behalf of the appellant to the effect that the appellant honestly believed that what had occurred was attributable to her own misunderstanding of 'assessment of means'. It was the appellant's strong contention that the money held in the bank accounts which were not mentioned was for the benefit of her children. It was submitted that the appellant could not remember very clearly how she came to acquire

the pension but was adamant that no effort was ever made on her part to defraud and any failure on her part was due to ignorance. In view of the concerns outlined, the Social Welfare Appeals Office issued a letter to the appellant advising that as the decision at issue was made with reference to Section 302 (b) of the Social Welfare Consolidation Act 2005, there was no question regarding fraud.

Consideration: The Appeals Officer outlined that Social Welfare legislation provides that means must be assessed in order to determine entitlement to State Pension (Non-Contributory) and the rate of payment is set with reference to the level of means assessed. Section 153 of the Social Welfare Consolidation Act 2005 outlines the qualifying criteria and provides as follows in relation to entitlement to pension:

153.—Subject to this Act, a person shall be entitled to State Pension (Non-Contributory) where—
(a) the person has attained pensionable age,
(b) the means of the person as calculated in accordance with the Rules contained in Part 3 of Schedule 3 do not exceed the appropriate highest amount of means at which pension may be paid to that person in accordance with section 156.
The rules referred to above (set out in Schedule 3) specify the manner in which means are to be assessed and the rates of pension, corresponding to the means assessment, are outlined in Section 156. Section 302 of the same Act makes provision for the effect of revised decisions.

The Appeals Officer noted that, following a review in 2015, it was determined that the appellant's means were in excess of the statutory qualifying limit from the date pension had been awarded and that the decision was applied retrospectively with reference to the provisions of Section 302 (b) of the 2005 Act.

The Appeals Officer noted the submission made on the appellant's behalf, which served to clarify the appellant's finances at the time she made a claim for pension in 2008. The Appeals Officer also noted that it was conceded that the appellant's means were such as would have precluded her qualifying for State Pension had full details been clear at the time of the appellant's claim. The Appeals Officer having had due regard to the submissions made on behalf of the appellant, concluded that the appellant must be held to have had means which were in excess of the qualifying limit for receipt of State Pension (Non-Contributory) and that this was the case with effect from the date of her claim in 2008.

Outcome: Appeal disallowed.

2018/55 Widow's (Contributory) Pension Summary Decision
Question at issue: Whether the appellant was the legal widow of the deceased.

Background: The appellant made an application for a Widow's Contributory Pension following the death of her partner. Her application was disallowed on the grounds that she was not considered to be the legal widow of the deceased. The appellant provided a church marriage certificate with her application. However, this marriage certificate referred to her first marriage and not to a marriage with her deceased partner. The Department established that she had married her first husband in March 1974. The Department decided that as she had not provided evidence of a State annulment or a recognised legal divorce from her first marriage, her marriage to her deceased partner was not valid under Irish law. The appellant provided church annulment papers relating to her first marriage which she contended rendered that marriage null and void.

The Department recognised that her annulment papers clearly stated that she was free to marry in a church. However, the Department concluded that the papal dispensation did not affect the legal status of her marriage to her first husband. As the appellant did not get a State annulment or a divorce prior to her marriage to her deceased partner her second marriage was not considered legal.

Consideration: The Appeals Officer outlined that Section 123 of the Social Welfare Consolidation Act 2005 provides that "spouse", in relation to a widow or widower who has been married more than once, refers only to the widow's or widower's last spouse and for this purpose that last spouse shall be read as including a party to a marriage that has been dissolved, being a dissolution that is recognised as valid in the State. The Appeals Officer concluded that the appellant had not established that she was the legal widow of her deceased partner.

Outcome: Appeal disallowed.

4.5 Case Studies

Insurability of Employment

2018/56 Insurability of Employment Oral Hearing
Question at issue: State Pension Contributory (Eligibility Contributions)

Background: The appellant made a formal complaint that a hair salon failed to pay social insurance in respect of her employment for 5 years from 1968 to 1973. The issue was investigated by a Social Welfare Inspector. The appellant provided a signed statement confirming her employment. The Social Welfare Inspector was unable to trace the business and concluded that there was no evidence supporting the existence of the alleged employment and consequently the relevant section in the Department decided that there were no grounds for amending the appellant's PRSI record. The appellant appealed this decision. The appellant stated that she never had any knowledge of the non-payment of social insurance until she requested her record in October 2016. She alleged that her employer in 1968-1973 "did not stamp her cards".

Consideration: The Appeals Officer noted that Article 70 (3)(a) of the Social Welfare (Consolidated Contributions and Insurability) Regulation 1996 (S.I. No. 312 of 1996), makes provision for unpaid contributions to be treated as paid in certain circumstances. Article 70 (3)(a) provides that where an employment contribution which is payable is not paid or is paid after the due date and the failure to make or the delay in making payment thereof is shown to the satisfaction of the Minister not to have been with the consent or connivance of, or attributable to any negligence on the part of the insured person in respect of whom the contribution is payable or is paid, such contribution may, for the purpose of any right to benefit, be treated as having been paid on the due date.

The Appeals Officer noted that a non-compliance action taken in 1978 by the Department did not credit the appellant's record and this was unexplained. The Appeals Officer outlined that had the appellant been interviewed at the time, the alleged earlier non-compliance may have been detected. The Appeals Officer found it noteworthy that the appellant began work in a position secured by her mother when the appellant was just 15 years. The Appeals Officer concluded that given her age the appellant could not be faulted for not seeking to protect her social insurance status when she attained the insurable age of 16 years. The Appeals Officer also found it to be significant that the appellant was subsequently able to secure employment in another hair salon and this tended to corroborate her version of events. The Appeals Officer was of the view that the appellant was unlikely to have gained this work without previous experience. The appellant provided a diploma issued to her as supporting evidence of her work in this sector.

The Appeals Officer found that the appellant's version of events did stand up to scrutiny. She had provided evidence that she had gained experience and had a qualification in hairdressing and this corroborated her credible assertion that she had worked in the hair salon specified from age 15 years until her marriage in 1973. The Appeals Officer concluded that the appellant's social insurance record could be updated in line with the provisions of Article 70(3)(a) of 1996 Regulations from aged 16 years.

Outcome: Appeal allowed.

2018/57 Insurability of Employment Oral Hearing
Question at issue: State Pension Contributory (Eligibility Contributions)

Background: The appellant did not qualify for State Pension (Contributory) as she failed to satisfy the contribution conditions. The appellant sought the inclusion of alleged unpaid contributions arising from employment for a two year period with a specified company in the mid-90s to make the minimum 520 paid contributions required to qualify for the State Pension (Contributory). The appellant stated that she began working for the particular company in 1995. She had not worked previously since 1975 and took up the work for financial reasons.

The matter was investigated by a Social Welfare Inspector who reported that the company that the appellant worked for was dissolved in 1993. The Social Welfare Inspector said she obtained confirmation from a former director of the company that the appellant worked for that company in 1995 and 1996. The Social Welfare Inspector noted that the former director was a relative of the appellant and neither he nor the appellant could provide any supporting evidence of the alleged employment. In those circumstances the relevant section in the Department decided that there were no grounds for amending the appellant's PRSI record.

Consideration: At the oral hearing, a Social Welfare Inspector was named who worked in the area in the 1990s and it was suggested that this official might be able to shed light on the events described. With the appellant's consent, the Appeals Officer reluctantly contacted that official in an effort to further the issue. The official told the Appeals Officer that she had no recollection of ever dealing with the company concerned. The appellant had provided a signed statement to the Social Welfare Inspector which stated that it was not known whether she provided the employer with a P45 on commencement of employment. The appellant also confirmed that she did not follow up on the failure of the company to furnish her with a P60 or P45 either of which would have indicated that PRSI had been paid.

The Appeals Officer noted that Article 70 (3)(a) of the Social Welfare (Consolidated Contributions and Insurability) Regulation 1996 (S.I. No. 312 of 1996), makes provision for unpaid contributions to be treated as paid in the certain circumstances. Article 70 (3)

(a) provides that where an employment contribution which is payable is not paid or is paid after the due date and the failure to make or the delay in making payment thereof is shown to the satisfaction of the Minister not to have been with the consent or connivance of, or attributable to any negligence on the part of the insured person in respect of whom the contribution is payable or is paid, such contribution may, for the purpose of any right to benefit, be treated as having been paid on the due date.

The Appeals Officer was satisfied that there was no connivance on the appellant's part but concluded that apart from the appellant's statement, there was no other evidence that the employment occurred or as to the duration of the employment. The Appeals Officer was of the view that whatever the circumstances of the commencement of the employment, the fact that the employment continued for almost 2 years without the appellant raising a query as to the payment of PRSI either at the time or in the intervening 20 years must be regarded as negligence on the part of the appellant.

Outcome: Appeal disallowed.

4.6 Case Studies

Section 318 Reviews

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

Introduction

This section of my Report includes a summarised account of a sample of the reviews carried out by me in 2018. In each case, and in accordance with Section 318 of the 2005 Act, I emphasise that my role is a revising role and is not another avenue of appeal.

In selecting cases to be included in this section I endeavour to select a sample of cases which I consider will be of relevance to others considering making an appeal or a request for a review under Section 318. My role under this Section of the Act is confined to establishing if an error of fact and/or of law has occurred such that a decision of an Appeals Officer should be revised and therefore in selecting cases I endeavour to provide a sample of cases which include cases where the interpretation of a governing statutory provision or a particular point of law is central to the matter under review.

It is clear from the requests that I receive that there is a lack of clarity on both the scope and process related to a request for a review pursuant to this provision. As a consequence many requestors 'hedge their bets' and ask for a review under Section 317 and/or Section 318. In light of this I am taking the opportunity to place both of these provisions in the broader context of the appeal process, with some added commentary arising from the case law of the Courts.

The role of the Social Welfare Appeals Office is to determine appeals against decisions of Deciding Officers and/or Designated Persons of the Department of Employment Affairs and Social Protection. The legislation governing the appeals process is contained in Chapters 2, 3 and 4 of Part 10 of the Social Welfare Consolidation Act 2005 and the Social Welfare (Appeals) Regulations, 1998 (S.I. No. 108 of 1998).

In general, an Appeals Officer's decision is final and conclusive (Section 320 of the 2005 Act) and can only be revised in circumstances which are defined in the Act of 2005. Section 317 of the Act is one such circumstance and it provides *inter alia* that 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 light of new evidence or 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.

The full text of Section 317 is as follows:

317. (1) An appeals officer may at any time revise any decision of an appeals officer—

> *a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given, or*

(b) where—

(i) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and

(ii) it appears to the appeals officer that there has been any relevant change of circumstances which has come to notice since that decision was given.

(2) In subsection (1)(b)(ii), the reference to any relevant change of circumstances means any relevant change of circumstances that occurred before, or occurs on or after, the coming into operation of the Social Welfare and Pensions (No. 2) Act 2013.

Section 317 empowers an Appeals Officer to revise their own decision or that of another Appeals Officer 'at any time'. In analysing the scope of Section 317 the Courts have commented that new facts or evidence referred to under Section 317 are not confined to matters that may have happened or been generated after the decision of an Appeals Officer, but may consist of material or evidence which, though it existed before the appeal decision was made, was not before the Appeals Officer at the time the decision was made. The Courts have also noted that it is implicit in the Act that an Appeals Officer may hold an oral hearing even if it is just for the purpose of determining whether there are any new facts or new evidence such that a revision of an Appeals Officer's decision might be justified.

Section 318 on the other hand permits the Chief Appeals Officer to revise, 'at any time' any decision of an Appeals Officer deemed erroneous by reason of some mistake having been made in relation to the law or the facts. In practice where a review is being sought under this Section, the appellant or other interested party to an appeal is asked to give specific reasons why they believe a mistake has been made regarding the law and/or the facts.

The full text of Section 318 is as follows:

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

In addition to the avenues of revision provided for under Sections 317 and 318 of the Act of 2005, Section 327 provides for appeals to the High Court on any question of law.

327.—Any person who is dissatisfied with—

(a) the decision of an appeals officer, or

(b) the revised decision of the Chief Appeals Officer,

may appeal that decision or revised decision, as the case may be, to the High Court on any question of law.

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

2018/318/58 Jobseeker's Allowance
Question at issue: Assessment of means derived from seasonal employment

Grounds for review: The Department in its request for a review of the Appeals Officer's decision contended that the Appeals Officer erred in law in relying on Rule 1(2) of Part 2 of Schedule 3 of the 2005 Act in that, although reference is made in that Rule to 'employment of a seasonal nature', it specifically refers to insurable employment and there is no mention of self-employment.

Background: The person concerned applied for Jobseeker's Allowance which was disallowed by a Deciding Officer of the Department, relying on Section 142(2)(b) of the Social Welfare Consolidation Act 2005, on the basis that the person was not entitled to Jobseeker's Allowance as his weekly means were in excess of the weekly amount of Jobseeker's Allowance that would be payable based on his family circumstances.

The Appeals Officer allowed the appeal and gave the following reasons for the decision:

"Where an income varies throughout the year the legislation allows the Department to assess income based on previous earnings to give an estimate of what the person may reasonably be expected to earn in the following year. In this case the appellant engages in seasonal employment which is not undertaken during the winter months. Where the self-employment continues throughout the year it is reasonable to assess income over the 52 weeks. However where there is a definite end to the seasonal work which the appellant engages in I am satisfied that in these periods he has nil means."

Review: Part 2 of the Act contains the applicable rules for the purposes of calculating means for various means tested payments including Jobseeker's Allowance. Rule 1 provides that:

"1. In the calculation of the means of a person for the purposes of Chapters 2 .....of Part 3, account shall be taken of the following—
.....

(2) all income in cash and any non-cash benefits that may be prescribed which the person or his or her spouse, civil partner or cohabitant may reasonably expect to receive during the succeeding year, whether as contributions to the expenses of the household or otherwise, but—

(a) excluding the amounts at references 1 to 19 in Table 2 to this Schedule, and

(b) excluding—

.....

(v) in the case of jobseeker's allowance, pre-retirement allowance and farm assist and subject to paragraphs (6), (7) and (8), any moneys earned by the person or his or her spouse, civil partner or cohabitant from insurable employment of a seasonal nature,..."

From my review of the Appeals Officer's decision it was clear that the Appeals Officer relied on Rule 1(2)(b) (v) as the basis for the decision. However, as outlined above, that Rule relates to insurable employment, and does not apply to self-employment.

In this respect the Appeals Officer had erred in law and in the circumstances the decision of the Appeals Officer was revised as requested by the Department.

Outcome: Decision revised and appeal disallowed.

2018/318/59 Supplementary Welfare Allowance
Question at issue: In calculating Mortgage Interest Supplement is it gross interest or interest net of tax that should be taken into account?

Grounds for review: In its request for a review of the Appeals Officer's decision the Department contended that the Appeals Officer erred in law in taking the gross interest into account in calculating Mortgage Interest Supplement under the Supplementary Welfare Allowance scheme.

Background: The person concerned appealed the decision of a Designated Person of the Department to reduce his Mortgage Interest Supplement on foot of a review undertaken by the Department.

In calculating the new rate of supplement the Designated Person calculated the rate of supplement having regard to the information supplied by the person concerned on the Mortgage Interest Supplement review form (SWA4a). The Department contended that this document clearly set out the rate of mortgage interest and the rate of mortgage interest net of relief.

The gross and net figures on the form were:
Gross interest: €419.06 per month (equivalent to €96.70 per week)
Interest net of tax: €344.06 per month (equivalent to €79.40 per week)

It was the Department's assertion that the Appeals Officer erred in law, by using the figure of €96.70 per week, i.e. calculated the supplement without regard to mortgage interest relief and this resulted in an incorrect figure being awarded.

The Department referred me to the governing legislation and asserted that as the Appeals Officer did not calculate the rate of supplement in accordance with the above legislation she had erred in law.

Review: The legislation governing entitlement to Supplementary Welfare Allowance is set out in Chapter 9 of Part 3 of the Social Welfare Consolidation Act 2005. 'Mortgage interest' is defined in Section 187 of the Act as follows:

'mortgage interest' means the proportion of any amount payable by a person to a mortgage lender which is for the time being attributable to interest payable under an agreement entered into by that person with the mortgage lender for the purpose of defraying money employed in the purchase, repair or essential improvement of the sole or main residence of that person or to pay off another loan used for that purpose but does not include –

> (a) interest payable in relation to such agreement by virtue of a delay or default in making a repayment under that agreement, or
> (b) the aggregate of –
> (i) any relief for interest due to the person under section 244 (as amended by section 3 of the Finance Act 2009) of the Act of 1997, and
> (ii) any mortgage allowance or mortgage subsidy attributable to interest which may be payable by a local authority on behalf of the person under the Housing Acts 1966 to 2009;

Section 198 of the Act provides for the payment of weekly or monthly supplements.

From my review of the file it was clear that there was no dispute as to the method of calculation of the amount of supplement to be paid with the exception of whether it was gross interest (€96.70 per week) as per the Appeals Officer's method of calculation or the interest net of tax (€79.40 per week) as contended by the Department that was to be taken into account.

The Department drew my attention to paragraph (b)(i) of Section 187 which provides that mortgage interest does not include any relief for interest due to the person under Section 244 (as amended by Section 3 of the Finance Act 2009) of the Act of 1997 – the Act of 1997 being the Taxes Consolidation Act 1997.

Section 244 of the Taxes Consolidation Act 1997 provides that an individual may (subject to the statutory 4 year time limit for claiming repayment of tax) claim tax relief in respect of the interest paid on a loan used in the purchase, repair, development or improvement of a residence which is used as his or her sole or main residence (or used as the sole or main residence of a former spouse or dependant relative).

Having regard to the definition of 'mortgage interest' as set out in Section 187 of the Social Welfare Consolidation Act 2005 mortgage interest excludes tax relief and as the Appeals Officer misdirected herself in not taking account of the correct legislative provision, I was satisfied an error in law had been made.

Outcome: Decision revised and appeal disallowed. The revised decision was made effective from a current date.

2018/318/60 Jobseeker's Allowance
Question at issue: Information to be given when making a claim

Grounds for Review: The person concerned sought a review of the Appeals Officer's decision on the basis of error of fact and/or law and contended that all necessary information was provided to the Department and that attendance at an office of the Department was unnecessary.

Background: The person concerned made a claim for Jobseeker's Allowance and was asked by the investigating officer in the Department to provide certain information and attend at an office of the Department for the purposes of establishing means. The person concerned failed to provide all of the information requested and declined to attend at an office of the Department as requested. In those circumstances his claim for Jobseeker's Allowance was declined as his means could not be assessed. The Appeals Officer disallowed the appeal on the same grounds as the Deciding Officer of the Department.

Review: Having reviewed the Appeals Officer's decision I noted that the Appeals Officer identified that the question before her was whether the person concerned met the means test for the purposes of a Jobseeker's Allowance claim. The Appeals Officer correctly identified that pursuant to Section 141 (1) of the Social Welfare Consolidation Act 2005 a person shall be entitled to Jobseeker's Allowance in respect of any week of unemployment

where – including other conditions:

> *"(c) the person's weekly means, subject to subsection (2)(d), do not exceed the amount of jobseeker's allowance (including any increases of jobseeker's allowance) that would be payable to the person under this Chapter if that person had no means."*

The Appeals Officer also outlined that in accordance with Article 181 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, (S.I. No. 142 of 2007),

> *(1) "Every claimant shall furnish such certificates, documents, information and evidence as may be required by an officer of the Minister, for the purposes of deciding the claim and in any particular class of case, shall, for the purposes of making any such claim, attend at such office or place as an officer of the Minister may direct".*

The Appeals Officer concluded that as the person concerned had not provided all of the evidence and/or attended for a meeting with an officer of the Minister as required, the Department were unable to complete a means assessment to establish if the person's means came within the statutory limits provided for in the governing legislation.

On review of that decision I was satisfied that the Appeals Officer had not erred in fact or law as it is clear that the legislation places an onus on the claimant to furnish such information and evidence as may be required for purposes of the deciding a claim. In the absence of the claimant providing what was required or requested it was not possible for the decision maker to make a decision in accordance with the legislative provisions.

Outcome: Decision not revised.

2018/318/61 Insurability of Employment
Question at issue: Whether a worker had been employed or self-employed

Background: The worker sought a determination from the Department in relation to her employment status with a company whose business was in real estate. The arrangement between the parties from the beginning was that the worker would be engaged on a contractual basis and payment would be on the basis of sales and lettings completed by the worker and in accordance with percentages agreed between the parties. In keeping with that arrangement the worker registered with the Revenue Commissioners and made arrangements for the payment of tax and PRSI as a self-employed person.

The Deciding Officer of the Department, following an investigation by a Social Welfare Inspector which included the completion of INS 1 Forms by both parties, decided that the worker was self-employed and consequently was insurable under the Social Welfare Acts at PRSI Class S.

The worker appealed that decision and relying on the Code of Practice submitted that she was under the control of the company, supplied labour only, did not receive a fixed wage, could not subcontract the work, and with the exception of a small measuring device did not supply materials. She submitted she was listed on the company insurance as an employee and was registered for her PRSA licence as an employee of the company. The worker further submitted that she did not have responsibility for the investment and management of the business and it was not possible to make profit from the way she organised and managed the business. She submitted that she did not work set hours but was expected to work each day, she worked exclusively for the company and with the exception of being provided with a company phone did not receive expenses. She was only entitled to pre-arranged time off.

The Appeals Officer allowed the appeal and found that during the period in question the worker was employed under a contract of service and accordingly was insurable under the Social Welfare Acts at PRSI Class A.

The company sought a review of the Appeals Officer's decision pursuant to Section 318 and submitted 34 conclusions of the Appeals Officer which the company considered to be erroneous.

Review: While it was asserted by the company that the Appeals Officer erred in fact and/or law, the basis on which the company considered that the conclusions of the Appeals Officer to be erroneous was not specified.

Nonetheless, in the absence of such rationale, I reviewed the Appeals Officer's decision in its entirety to establish if an error in fact and/or law had occurred such that the decision should be revised.

In my review I outlined that it is the case that the terms 'employed' and 'self-employed' are not defined in law. I noted that in the absence of definitions of these terms and having regard to the case law of the Courts, the determination as to the appropriate category must be arrived at by looking at what a person actually does, the way in which it is done and the terms and conditions under which the person is engaged, be they written, verbal, or implied. It is clear from relevant case law of the Courts that there is no one factor which may be taken as determinative of either contract of service (employee) or contract for services (self-employed). However, a range of indicators has evolved over time reflecting precedent established in the relevant case law. In addition I noted that the Code of Practice for determining Employment and Self-Employment status of Individuals places an emphasis on the need to look at the job as a whole, including working conditions and the reality of the relationship, when considering the nature of an employment relationship. The Code states that the overriding test will always be whether the person performing the work does so 'as a person in business on their own account' i.e. the economic test. It frames the question to be

addressed in the following terms: is the person a free agent with an economic independence of the person engaging the service?

I outlined that the guidance by way of legal precedent for establishing the difference between a contract of service and a contract for services which identifies four main tests and may be stated as follows:

- the control test – is the person under the control of another person who directs as to how, when and where the work is to be carried out?
- the integration test - has the worker become 'part and parcel' of the organisation?
- the test of mutuality of obligation - is there a mutual obligation between the parties to provide or accept the work offered? and
- the test of economic reality - this test incorporates all of the above to establish whether the worker is in 'business on his own account'.

Recalling the case-law of the Courts, I noted that the fundamental legal test for determining whether a contract is one of service or one for services was set down in the *English decision of Market Investigations v Minister of Social Security [1969] 2 Q.B. 173.* Here it was held that the Court should consider if the person was performing the service as a person in business on his own account. If the answer to that question is yes, then the contract is one for services; if the answer is no, then the contract is one of service. In Ireland, that approach was adopted by the Supreme Court in *Henry Denny & Sons v Minister for Social Welfare [1998] IR 34*, where Keane J. quoted with approval the following passage:

> *… the fundamental test to be applied is this: 'Is the person who has engaged himself to perform these services performing them as a person in business on his own account'. If the answer to that question is 'yes' then the contract is a contract for services. If the answer is 'no' then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors which may be of importance are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task.*

Keane J concluded as follows:

> *It is, accordingly, clear that, while each case must be determined in the light of its particular facts and circumstances, in general a person will be regarded as providing his or her services*

> *under a contract of service and not as an independent contractor where he or she is performing those services for another person and not for himself or herself. The degree of control exercised over how the work is to be performed, although a factor to be taken into account is not decisive. The inference that the person is engaged in business on his or her own account can be more readily drawn where he or she provides the necessary premises or equipment or some form of investment, where he or she employs others to assist in the business and where the profit which he or she derives from the business is dependent on the efficiency with which it is conducted by him or her.*

In Re Sunday Tribune [1984] IR 505, Carroll J. stated

> *The court must look at the realities of the situation in order to determine whether the relationship of employer and employee in fact exists regardless of how the parties describe themselves.*

In relation to the contention that the Appeals Officer erred in finding that the worker was estopped from seeking to be regarded as an employee I outlined that I was not aware of any legislative provision which supports this contention and I was of the view that the case law from the Courts does not support this contention. From my review of the Appeals Officer's report I considered that the Appeals Officer was correct to consider that it was the actual workings of the contract that were determinative regardless of how the arrangements were described by either party.

While issues arose that were specific to the working relationship between the parties it was clear from the Appeals Officer's decision and his report of the oral hearing that the Appeals Officer gave full consideration to those indicators that have evolved over time as outlined in the case law, including the tests of control, integration, mutuality of obligation and the economic reality.

I was satisfied that the Appeals Officer, examined, as he must do, the realities of the situation in order to determine whether the relationship of employer and employee in fact existed regardless of how the parties described themselves.

I considered that the Appeals Officer had not erred in his consideration of the nature of the contract between the company and the worker. I found that the Appeals Officer having considered the case-law applied the tests outlined in that case-law to the facts of the case in order to ascertain if the worker could be considered to be a person in business on her own account. I was satisfied that the Appeals Officer was entirely correct to examine the actual working arrangement between the parties and to have regard to the reality of the arrangement between the parties. In doing so the Appeals Officer examined those aspects of the contractual arrangement between the parties and he, not unreasonably to my mind based on the guidance from the case law, concluded that the worker could not be considered

to be in business on her own account. It is clear from the case law that the question of whether a person carries on business on her/his own account cannot be approached in any formulaic sense as it is the overall picture which will determine the issue. The overall picture in this case led the Appeals Officer to conclude that the worker was not in business on her own account and that the company exercised a degree of control more often found in an employee/employer relationship. The Appeals Officer was also satisfied that mutuality of obligation existed and that the worker was integrated into the business in a manner not normally associated with a self-employed contractor.

Outcome: I did not consider that the assertions submitted by the company pointed to error of fact and/or law such that the decision of the Appeals Officer should be revised.

2018/318/62 Supplementary Welfare Allowance
Question at issue: Habitual Residence Condition

Background: The appellant, an EU national, first came to Ireland in the mid-1990s and was employed in Ireland for a number of years. On becoming unemployed he initially received Jobseeker's Benefit and in January 2010 was awarded Jobseeker's Allowance which ceased in May 2013 when the appellant returned to his country of origin. The appellant returned to Ireland in January 2017 and submitted an application for Supplementary Welfare Allowance. This application was initially disallowed on two grounds – failure to satisfy the habitual residence test and that his means were not fully disclosed. Following an appeal it was decided that means had been disclosed and therefore the remaining issue, and the subject of the request for a review under Section 318 of the 2005 Act, related to the habitual residence condition.

The Appeals Officer concluded that although at the time of claiming Supplementary Welfare Allowance the appellant had an established right of residence as a job-seeker that status did not confer any entitlement to access the social assistance system of which Supplementary Welfare Allowance is part.

Grounds for Review: It was contended as part of the submission underpinning the request for review that the Appeals Officer erred in law in considering in the first instance if the appellant had a right to reside in the State. In this respect it was submitted that the Appeals Officer should have considered the 5 factors first and in not doing so had erred in law.

It was also contended that the Department of Employment Affairs and Social Protection's Guidelines relating to returning migrants or resuming previous residence should have been considered by the Appeals Officer. It was asserted that the approach taken by the Appeals Officer could be construed as discriminatory against EU citizens and that the Appeals Officer

failed to apply the law set out in Section 311(3) of the 2005 Act.

Review: Habitual residence is a question of fact depending on the circumstances of each case, decided in accordance with the statutory provisions set out in Section 246 of the Social Welfare Consolidation Act 2005.

Sub-sections (1) to (5) of Section 246, which were at the centre of this request for a review, provide as follows:

Provisions with respect to habitual residence.

246. (1) A requirement, in any of the provisions specified in subsection (3), for a person to be habitually resident in the State means that—

(a) the person must be habitually resident in the State at the date of the making of the application, and the person must remain habitually resident in the State after the making of that application in order for any entitlement to subsist

(b) the person is a worker or a self-employed person, residing in the State pursuant to article 7 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 from—
(i) a Member State, or
(ii) a member state of the European Economic Area,

(c) the person is a family member of a person referred to in paragraph (b),

(d) where a person referred to in paragraph (b) ceases to be such a worker or such a self-employed person, the person must be habitually resident in the State immediately after the date of such cessation, and must remain habitually resident in the State in order for any entitlement to subsist,

or

(e) where a person referred to in paragraph (b) ceases to be such a worker or such a self-employed person, a family member of such a person must be habitually resident in the State immediately after the date of such cessation, and the family member must remain habitually resident in the State in order for any entitlement to subsist.

(3) The provisions of this Act referred to in subsection (1) are sections 141(9), 153C, 161A(d), 163(3), 168(5), 173(6), 180(2), 186A(2), 186D(1), 192, 210(9), 220(3) and 238B(5).

(4) A deciding officer or a designated person, when determining whether a person is habitually resident in the State for the purposes of this Act, shall take into consideration all

the circumstances of the case including, in particular, the following –

(a) the length and continuity of residence in the State or in any other particular country,
(b) the length and purpose of any absence from the State,
(c) the nature and pattern of the person's employment,
(d) the person's main centre of interest, and
(e) the future intentions of the person concerned as they appear from all the circumstances.

(5) Notwithstanding subsections (1) to (4) and subject to subsection (9), a person who does not have a right to reside in the State shall not, for the purposes of this Act, be regarded as being habitually resident in the State...."

From my review of the Appeals Officer's decision I did not consider that the Appeals Officer erred in law by considering in the first instance if the appellant had a right to reside. I formed the view that the legislation is unequivocal on this point in that Section 246(5) provides that *notwithstanding the preceding subsections, a person who does not have a right to reside in the State shall not for the purposes of the Act, be regarded as being habitually resident in the State.*

In any event it was not at all clear to me that the outcome would have been any different if the Appeals Officer considered the 5 factors first and then conclude, as she did, that the appellant did not have a right to reside. I therefore did not consider that the Appeals Officer has erred in law or in relation to the facts in this respect.

Right of residence
Right of residence for EU nationals and their families is governed by EU Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. That Directive was transposed into Irish law by the European Communities (Free Movement of Persons) (No. 2) Regulations, 2006 (S.I. No. 656 of 2006), which were replaced with effect from 1st February 2016 by the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015).

All Union citizens have an unqualified right of residence for up three months. The right of permanent residence is acquired after 5 years legal residence. After the initial three months right of residence is conditional in accordance with Article 6(3) of S.I. 548/2015 as follows:

That the person…..

(i) is in employment or in self-employment in the State,
(ii) has sufficient resources for himself or herself and his or her family members not to become an unreasonable burden on the social assistance system of the State, and has comprehensive

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

In considering if the appellant had a right to reside in Ireland I concluded that the Appeals Officer correctly identified Article 6 of S.I. 548/2015 as the applicable legislation and concluded that as the appellant did not meet any of the conditions outlined in Article 6(3) he could not be considered to have a right to reside in Ireland. I therefore did not consider that the Appeals Officer had erred in her consideration of the appellant's right to reside.

With regard to the contention that the appellant's habitual residence should have been considered in accordance with the Department of Employment Affairs and Social Protection's Guidelines on returning migrants or resuming previous residence, I concluded that those Guidelines relate specifically to the consideration of habitual residence and the 5 factors outlined in Section 246 (4) of the Social Welfare Consolidation Act 2005 but do not override the provision in Section 246 (5) of the 2005 Act that a person who does not have the right to reside shall not be regarded as being habitually resident in the State.

I did not find any basis for the assertion that the approach taken by the Appeals Officer could be construed as discriminatory against EU citizens. I outlined that the Courts have accepted that the rules are not discriminatory in that the determination of entitlement is based on provisions set out in national and EU Regulations made pursuant to EU Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and these rules are applied to all applicants on the same basis.

I did not find any evidence that the Appeals Officer had failed to apply the law pursuant to Section 311 (3) of the 2005 Act which provides that an Appeals Officer when deciding a question referred to him/her, shall not be confined to the grounds on which the decision of the Deciding Officer or the determination of the Designated Person was based, but may 'decide the question as if it were being decided for the first time'.

In subsequent correspondence I outlined that Article 6 (1) of the European Communities (Free Movement of Persons) Regulations 2015 [S.I. 548 of 2015] provides that a Union citizen and family members may reside in the State for up to 3 months provided they have a national identity/valid passport and do not become an unreasonable burden on the State.

Article 6 (2) of S.I. 548 of 2015 provides that where a person has entered the State to seek employment he/she may continue to reside for longer than 3 months where he/she continues to seek employment and has a realistic prospect of being engaged in employment.

I also outlined that Article 17 (2)(a) of S.I. 548 of 2015 provides that a person to whom Regulation 6 (1) or 6 (2) applies shall not be entitled to receive assistance under the Social Welfare Acts. Based on her consideration of these provisions the Appeals Officer concluded that the appellant's status as a jobseeker in accordance with Article 6(1) or 6(2) of S.I. 548 of 2015 did not confer any entitlement to access to the social assistance system of which Supplementary Welfare Allowance is part. Article 17 (2) is a mandatory provision and the only exception made to this exclusion is set out in Article 17 (2) (b) which provides that this exclusion to receive assistance under the Social Welfare Acts does not apply to a payment under Section 201 (payment for exceptional need) and Section 202 (grant of Supplementary Welfare Allowance in cases of urgency) of the 2005 Act.

Outcome: Decision not revised.

2018/318/63 Jobseeker's Benefit
Question at issue: Condition of a person's right to benefit

Background: The appellant made an application for Jobseeker's Benefit. In connection with that claim he was asked to attend at the local Intreo Centre of the Department with a view to being interviewed regarding his claim and for purposes of authenticating his identity with reference to the Department's Standard Authentication Framework Environment (SAFE) registration process. The registration process was not completed in view of reservations expressed by the appellant concerning the levels of protection which would be given to his personal data. Relying on the provisions of Section 241 of the 2005 Act the appellant's claim was disallowed on grounds that he had not established his identity in line with the provisions of the governing legislation, and for reasons that he had not allowed an electronic format of his photograph and had not provided an electronic signature. The appeal against that decision was disallowed by an Appeals Officer.

Grounds for Review: It was submitted by the appellant in his request for a review of the Appeals Officer's decision that Section 241(1) of 2005 Act does not include an obligation on the part of the appellant to provide or allow to be obtained an electronic photograph or signature. It was further submitted that Section 241(1C) provides that the Minister may "*without prejudice to any other method of authenticating the identity of*" the applicant, request that an electronic photograph or signature be taken for the purposes of satisfying himself or herself as to the identity of a person who makes a claim for benefit.

It was asserted that taking an electronic photograph and/or signature is not a mandatory requirement of the Act and the Minister had unreasonably fettered her decision making in applying a general policy of requiring and insisting that electronic photographs and signatures be taken. It was contended that the only obligation is to satisfy the Minister as to the identity of the applicant and that the appellant adequately established his identity to the Department and the Department failed or refused to outline in what way the appellant failed to satisfy his identity.

The submission went on to assert that the true purpose of the request for an electronic photograph and signature was to obtain personal data, including biometric data, for inclusion on the Public Service Identity Set/Single Customer View and to issue the appellant with a Public Service Card.

It was asserted that Section 241 of the 2005 Act had not been applied reasonably or proportionally by the Department and that neither the appellant's identity nor his entitlement to Jobseeker's Benefit was in doubt and he was refused payment because the appellant had refused to be enrolled in a Public Services Card scheme and underlying database which the law does not oblige him to enrol in.

Review: Given the contentions submitted by the appellant in the request for a review of the Appeals Officer's decision I outlined that in line with the legislation governing the appeals process the role of the Social Welfare Appeals Office is to determine appeals against decisions of Deciding Officers and/or Designated Persons of the Department. In line with those provisions I outlined that the only question to be determined by the Appeals Officer was whether the appellant had made a claim for Jobseeker's Benefit in the prescribed manner. I outlined that assertions made that went beyond those provisions do not come within the remit of the appeal process.

The decision given by the Deciding Officer in the appellant's case was that the claim for Jobseeker's Benefit was disallowed on grounds that he had not established his identity in line with the provisions of the governing legislation, and for reasons that he had not allowed an electronic format of his photograph and had not provided an electronic signature.

The provisions governing entitlement to Jobseeker's Benefit are contained in Chapter 12 of Part 2 of the 2005 Act. The provisions governing claims and payments are contained in Chapter 1 of Part 9 of the Act.

Section 241 provides:

"241.—(1) It shall be a condition of any person's right to any benefit that he or she—

(a) makes a claim for that benefit in the prescribed manner, and
(b) satisfies the Minister as to his or her identity.

Section 241(1C) and 241 (1D) provide:

(1C) For the purposes of satisfying himself or herself as to the identity of a person who makes a claim for benefit, the Minister may, without prejudice to any other method of authenticating the identity of that person, request that person—

(a) to attend at an office of the Minister or such other place as the Minister may designate as appropriate,

(b) to provide to the Minister, at that office or other designated place, such information and to produce any document to the Minister as the Minister may reasonably require for the purposes of authenticating the identity of that person,

(c) to allow a photograph or other record of an image of that person to be taken, at that office or other designated place, in electronic form, for the purposes of the authentication, by the Minister, at any time, of the identity of that person, and

(d) to provide, at that office or other designated place, a sample of his or her signature in electronic form for the purposes of the authentication, by the Minister, at any time, of the identity of that person.

(1D) The Minister shall retain in electronic form—

(a) any photograph or other record of an image of a person taken pursuant to subsection (1C)(c), and

(b) any signature provided pursuant to subsection (1C)(d),

in such manner that allows such photograph, other record or signature to be reproduced by electronic means."

It is clear and this was not disputed that the appellant was requested to satisfy the Minister as to his identity and in order to do so the provisions of Section 241(1C) were invoked. I formed the view that once invoked and in circumstances where the appellant refused/ failed to comply with this requirement he could not be regarded as being compliant with the provision of Section 241(1)(b) which states that it is a condition of a right to benefit that a person satisfies the Minister as to his or her identity. I concluded that as the Appeals Officer

relied on these provisions, and in my view was required to do so, no error of fact or law had occurred.

Outcome: Decision not revised.

2018/318/64 Jobseeker's Allowance
Question at issue: Attending a course of study

Grounds for review: It was contended that the Appeals Officer erred in law and fact and did not adequately consider the exemption for mature students contained in Article 121 (1) (b) of S.I. 327 of 2016 – the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No.1) (Exemption from Disqualification for Course of Study) Regulations 2016. It was also contended that there is no requirement under Article 121 to notify the Department of a change in circumstances and the Appeals Officer erred in stating that '*A condition for receipt of Jobseeker's Allowance is that the claimant is obliged to inform the Department of a change of circumstances*'.

Background: The appellant submitted an application for Jobseeker's Allowance in March 2017 on claim form UP 1. It came to the attention of the Department that the appellant commenced a full time course of study in September 2017 and was registered and attending as a full time student with a named educational institute for the 2017/2018 academic year.

A Deciding Officer of the Department of Employment Affairs and Social Protection, relying on Section 148(1) of the Social Welfare Consolidation Act 2005, advised the appellant that he was disqualified from receiving Jobseeker's Allowance on the grounds that he was attending a full-time course of study. The Deciding Officer revised the decision with effect from 18th September 2017 in accordance with Section 302 (a) of the Social Welfare Consolidation Act 2005.

An Appeals Officer disallowed the appeal and outlined that it is a condition for receipt of Jobseeker's Allowance that a claimant is obliged to inform the Department of a change in circumstances and that the appellant in this case had failed to do so.

Review: The provisions governing entitlement to Jobseeker's Allowance are contained in Chapter 2 of Part 3 of the Social Welfare Consolidation Act 2005 and Chapter 1 of Part 3 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 S.I. No 142 of 2007 (as amended). In accordance with these provisions a person must satisfy the conditions of being available for and genuinely seeking work in order to be entitled to payment of Jobseeker's Allowance.

Section 148(1) of the 2005 Act makes provision for disqualifications where a person

is attending a course of study and provides that '*a person shall not be entitled to receive jobseeker's allowance while attending a course of study, other than in the circumstances and subject to the conditions and for the periods that may be prescribed.*'

Article 121 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) makes provision for certain exemptions from the disqualification while attending a course of study and provides as follows:

'Exemption from disqualification for course of study

121. (1) A person shall not be disqualified for receiving jobseeker's allowance—

(a) in accordance with section 148(3)(a) while participating in a course provided or approved by an education and training board specified in Schedule 2 to the Education and Training Boards Act 2013 (No. 11 of 2013) and known as Youthreach,

(b) in accordance with section 148(3)(c) while attending a course of study, where that person is a mature student,

or

(c) in accordance with section 148, where that person is participating in an activity within the meaning of article 120 and article 120(4) applies to that person.

(2) *In this article—*

"approved course", "approved higher education course" and "approved post-leaving certificate course" shall be construed in accordance with section 8 of the Student Support Act 2011 (No. 4 of 2011) and Regulation 4 of the Student Support Regulations 2015 (S.I. No. 154 of 2015); "course of study" has the meaning given to it in section 148;

"mature student" means a student who on 1 January—

(a) in the year of entry for the first time to an approved post leaving certificate course,

(b) in the year of entry for the first time to an approved higher education course (other than a course known for the time being as a post-leaving certificate course), or

(c) in the year of re-entry to an approved course, is at least 23 years old.'

I concluded that the exemption from disqualification that applied to the appellant is that contained in Article 121 (1)(b) which provides that a person shall not be disqualified for receiving Jobseeker's Allowance in accordance with Section 148(3)(c) while attending a course of study, where that person is a mature student.

It was not disputed that the appellant met the age threshold in order to be considered to be a mature student. However, Section 148 (3) (c) of the 2005 Act provides that a person shall be regarded as attending a course of study…….

> *'(c) for the period immediately following the completion of one academic year, other than the final academic year of a course of study, up to the beginning of the following academic year.'*

In summary, I found that a combination of the provisions provided for in Article 121(1)(b) of the 2007 Regulations and Section 148 (3)(c) of the 2005 Act meant that the appellant was not eligible to receive Jobseeker's Allowance while attending a full-time course of study but he may be eligible to apply for/receive Jobseeker's Allowance for periods between academic years.

In those circumstances, I did not consider that the Appeals Officer had erred in fact or in law.

I also noted that it is a general requirement that recipients of social welfare payments notify the Department of any change in their circumstances which may impact on their entitlement or continued entitlement to a payment. When the appellant applied for Jobseeker's Allowance he signed a declaration which included an undertaking to advise the Department of any change in his circumstances which may affect his continued entitlement to Jobseeker's Allowance. Having failed to comply with that undertaking, I did not consider that the Appeals Officer had erred in this respect.

Outcome: Decision not revised.

2018/318/65 Carer's Allowance
Question at issue: Eligibility (Care Required)

Background: The appellant submitted a claim for Carer's Allowance in respect of the care provided to her husband. The application was refused on the basis that the Deciding Officer and an Appeals Officer on appeal considered that the person being cared for did not meet the care requirements as set out in Section 179(4) of the 2005 Act.

Grounds for review: The primary contention submitted by the appellant was that the Appeals Officer either overlooked, or awarded insufficient weight to a number of significant facts outlined by the appellant in the course of her appeal and that the Appeals Officer failed to give proper consideration to the level of supervision required by the appellant's husband in order to avoid danger to himself.

Review: The conditions for receipt of Carer's Allowance are contained in Chapter 8 of Part 3 of the Social Welfare Consolidation Act 2005 and Regulations made thereunder.

Section 179 (1) provides that a "carer" means:

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

"relevant person" means a person (other than a person in receipt of an increase of disablement pension under section 78 in respect of constant attendance) who has such a disability that he or she requires full-time care and attention, and who—

> *(a) has attained the age of 16 years, or*
>
> *(b) is under the age of 16 years and is a person in respect of whom an allowance is paid for domiciliary care of children under section 61 of the Health Act 1970;*

(2) The Minister may make regulations specifying the circumstances and conditions under which a person is to be regarded as providing full-time care and attention to a relevant person."

The circumstances and conditions under which a person is to be regarded as providing full-time care and attention to a relevant person are set out in Chapter 4 of Part 3 of the Social Welfare (Consolidated Claims Payments and Control) Regulations, 2007 (S.I. No. 142 of 2007).

The circumstances in which a person shall be regarded as requiring full-time care and attention are set out in Section 179 (4) of the Social Welfare Consolidation Act 2005 (as amended) which provides that "*a relevant person shall be regarded as requiring full-time care and attention where -*

"(a) the person has such a disability that he or she requires from another person—

> *(i) continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or*
>
> *(ii) continual supervision in order to avoid danger to himself or herself,*
>
> *(b) the person has such a disability that he or she is likely to require full-time care and attention for at least 12 consecutive months, and*
>
> *(c) the nature and extent of the person's disability has been certified in the prescribed manner by a registered medical practitioner."*

There are therefore, two requirements to be met in order to be entitled to Carer's Allowance: the carer must be providing full-time care and the caree must require care. With regard to these legislative requirements, I noted that the Appeals Officer has correctly set out the applicable legislation.

It was clear from the Deciding Officer's decision that the appellant's claim was disallowed on the basis that it was considered that the care required by the caree did not meet the statutory requirements. The question of care being provided was not at issue. While the question of care provided is an important element to be considered, the focus of this appeal was on the care required and not on the care provided by the appellant. In this respect, I noted that many of the points submitted by the appellant related to the care being provided.

The appellant's submission was to the effect that the Appeals Officer erred in overlooking significant details relating to the care needs of the caree, and, in particular that the Appeals Officer failed to properly consider the caree's mental health issues and the level of supervision he required as a result of those issues in order to avoid danger to himself.

In the course of my review, I considered the evidence which was before the Appeals Officer which included medical evidence with a particular focus on the appellant's contention that her husband required full time care and attention within the meaning of the governing social welfare legislation.

In considering this matter, I examined each aspect of the 'care test' set out in Section 179(4) of the 2005 Act:

Whether the caree required continual supervision and frequent assistance throughout the day in connection with normal bodily functions

In light of the appellant's testimony and the medical evidence, it was clear that the appellant assisted her husband to a considerable extent with some of the activities of daily living e.g. preparation of meals, taking his medication, accompanying him to medical appointments etc. However, in my view, the evidence did not show that the caree required *continual supervision and frequent assistance throughout the day in connection with normal bodily functions (such as dressing, going to the toilet, bathing etc.*) as required in the governing legislation.

Whether the caree required continual supervision in order to avoid danger to himself

The evidence which was before the Appeals Officer regarding this aspect of the legislative care test included the documentary and oral evidence adduced by the appellant. The medical

evidence made no specific references to the question of danger, so I did not consider the medical evidence relevant in considering this aspect of the care test. I noted however, that the medical evidence outlined that the caree was taking anti-depressants. The evidence also showed that the caree had regular falls and on occasion in the past this had resulted in significant injury.

Notwithstanding that my review of the Appeals Officer's decision, his subsequent review of that decision and having regard to the medical evidence and the direct evidence of the appellant at the oral hearing, I was satisfied that the Appeals Officer gave full consideration to all of the evidence and has not overlooked any of the evidence presented. While it was clear that the appellant was understandably concerned about her husband's general health issues and their effects on him, on balance, I did not consider that the totality of the evidence presented pointed to a need for continual supervision to be provided to the caree in order to avoid danger to himself.

Outcome: Decision not revised.

2018/318/66 Carer's Allowance
Question at issue: Eligibility (Care Provided)

Grounds for Review: The appellant's solicitors requested a review, under Section 318 of the Social Welfare Consolidation Act 2005, of the Appeals Officer decision on the grounds that the Appeals Officer erred in fact and law in concluding that the care which the appellant provided to her uncle could not be regarded as full-time care and attention within the meaning of the social welfare legislation.

It was contended that the Appeals Officer failed to take account of the fact that the appellant was effectively on-call 24 hours a day and it was submitted that the on-call periods must be considered as part of the overall provision of care. It was further contended that there is no legislative basis for the requirement that a carer must be providing 35 hours per week in care. In this respect it was submitted by the appellant's solicitors that arguably such a requirement would be contrary to law, or at least morally indefensible, as it would create an effective pay rate of €5.97 per hour, which is substantially below the minimum pay rate.

Background: The appellant was awarded Carer's Allowance in respect of the care she provided to her uncle. Following an investigation by the Department, a Deciding Officer relying on Section 302(b) of the Social Welfare Consolidation Act 2005 determined that the appellant was not entitled to Carer's Allowance for a two month period as she was not providing full-time care and attention in line with the eligibility criteria for Carer's Allowance. The effect of this decision was the raising of an overpayment. An Appeals Officer disallowed the appeal on the same grounds as the Deciding Officer.

Review: The conditions for receipt of Carer's Allowance are contained in Chapter 8 of Part 3 of the Social Welfare Consolidation Act 2005 and Regulations made thereunder.

Section 179 (1) provides that a "carer" means:

"(a) a person who resides with and provides full-time care and attention to a relevant person,

or

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

"relevant person" means a person (other than a person in receipt of an increase of disablement pension under section 78 in respect of constant attendance) who has such a disability that he or she requires full-time care and attention, and who—

(a) has attained the age of 16 years, or

(b) is under the age of 16 years and is a person in respect of whom an allowance is paid for domiciliary care of children under section 61 of the Health Act 1970;

(2) The Minister may make regulations specifying the circumstances and conditions under which a person is to be regarded as providing full-time care and attention to a relevant person."

The circumstances and conditions under which a person is to be regarded as providing full-time care and attention to a relevant person are set out in Chapter 4 of Part 3 of the Social Welfare (Consolidated Claims Payments and Control) Regulations, 2007 (S.I. No. 142 of 2007).

Article 136 provides:

"136. A carer may, for the purposes of Chapter 8 of Part 3 and this Chapter, continue to be regarded as providing full time care and attention to a relevant person where –

(a) he or she would qualify for payment of an allowance but for the fact that either the carer or the relevant person is undergoing medical or other treatment of a temporary nature in an institution for a period of not longer than 13 weeks,

or

(b) the relevant person is attending –

(i) a non residential course of rehabilitation training provided by an organisation (being an organisation recognised by the Minister for Health and Children for the purposes of the

provision of such training), or
(ii) a non residential place of day care approved by the Minister for Health and Children, or

(c) subject to paragraph (d), where it is shown to the satisfaction of a deciding officer or an appeals officer that adequate provision has been made for the care of the relevant person, a carer may –
(i) engage in employment, or

(ii) engage in self-employment, or

(iii) undertake such training or courses of education as the Minister may from time to time determine.

(d) the aggregate duration of the activities outside the home referred to in sub-paragraphs (i), (ii) and (iii) shall not exceed 15 hours per week."

My conclusion, on review, was that the legislation as outlined above envisages the actual provision of care and attention and does not make any reference to the taking account of on-call periods. In this respect, I did not consider that the Appeals Officer had erred in law or in fact.

In relation to the contention that there is no legislative basis for the requirement that a carer must be providing 35 hours per week in care, I agreed that it is the case that the legislation does not set out the number of hours of care that constitutes full time care and attention. In the absence of a legal definition, full time care is considered to be 35 hours per week by the Department. I formed the view that it is open to the Department to provide such guidance in order to ensure a consistent approach by all decision makers in their consideration of whether full time care and attention is being provided. The report of the Social Welfare Inspector outlined that the appellant spends approximately 17 hours per week caring for her uncle. The Appeals Officer noted in his report of the oral hearing of the appellant's appeal, that the evidence adduced was very much in line with what the appellant told the Social Welfare Inspector albeit that at the oral hearing the appellant outlined some additional hours in the afternoons. Notwithstanding that, the number of hours of care provided by the appellant per week fell significantly short of the 35 hours per week considered by the Department to be the required number of hours of care in order to be considered to be providing full time care and attention. I did not consider that the decision of the Appeals Officer was rendered erroneous by his adherence to this guidance.

In relation to the contention that the requirement to be providing care for 35 hours per week is contrary to law or as contended morally indefensible, I outlined that the rates of payment of all social welfare payments are set out in social welfare legislation as passed by the Oireachtas. Social welfare payments provide income support to people meeting certain contingencies such as unemployment, illness or, as in this case, the provision of care and are

also subject to scheme specific eligibility conditions. I outlined that social welfare payments are not 'pay' in the sense of being subject to employment law legislation and/or national minimum wage legislation and as such I found that this contention was misplaced.

Outcome: Decision not revised.

2018/318/67 State Pension (Non-Contributory)
Question at issue: Absence from the State

Grounds for Review: The appellant, supported by an advocacy organisation, contended that the Appeals Officer incorrectly disallowed the appeal and took an overly narrow legislative interpretation of the Department's guidelines in relation to absence from the State. It was also submitted that an Appeals Officer must consider whether or not the Department's actions were reasonable when trying to recoup an overpayment. It was submitted that the Department's guidelines clearly stated that 13 weeks payment while absent from the State was permitted. It was contended that the Department's argument that this is a lifetime entitlement, did not stand up to scrutiny as, if so, then this would be the only social welfare payment that has a lifetime limit on periods of absence from the State. It was contended that it is nonsensical in that, by the Department's logic, once a claimant has used up their lifetime entitlement then they are never entitled to payment while absent from the State, regardless of the brevity of the absence or the reason for it. In relation, to the requirement for prior notification of any absence from the State, it was submitted that it is a long-standing practice across a range of social welfare schemes to accept notifications of absences at any point (even after return to the State) and apply the rules for payment while absent from the State regardless. It was also contended that in initial dealings with the Department following the appellant's return to the State in late August 2016 the appellant was advised that arrears would issue for the period of absence from the State once payment of the pension was reinstated. As this did not happen, it was contended that the Department shifted the goalposts while the review of the appellant's claim was ongoing and for those reasons it was contended that it was unreasonable to raise an overpayment for the periods concerned and that the pension should be backdated to the date of suspension in July 2016.

Background: The appellant was awarded maximum rate State Pension (Non-Contributory) for himself and his family from January 2013. On review in July 2016, the Department found that the appellant and his family were abroad during certain periods. Following interview upon his return, the appellant provided various dates from 2013 to 2016 when he was abroad with his family. He advised that he thought he could go abroad for up to 13 weeks per year and retain his pension, which was submitted on his behalf by his advocate, who stated this was in the original Departmental Guidelines, which were amended in February 2017 and that the appellant did not know he was required to notify the Department in advance. In November 2016, a letter issued to the appellant from the Department outlining the dates of absence and querying reasons for the absences and requesting information in relation

to bank transactions. The appellant supplied a list of dates to the Department, stating that he went to visit his wife's mother and to meet with other family. The Department issued a revised decision under Section 302(b) of the 2005 Act, retrospectively disallowing the appellant's entitlement to pension for a number of weeks in August 2015, January 2016, April 2016 and July 2016 on the grounds that the appellant was absent from the State. The effect of the revised decision was the raising of an overpayment.

On appeal, the appellant contended that there is nothing in social welfare guidelines that states that 13 weeks is a lifetime limit for allowable absences from the State. He contended that the only reasonable position is that the rule should operate on the same administrative principles as other permitted absences from the State, such as two weeks for Jobseekers Allowance and that he was accordingly allowed 13 weeks absence per annum. A further supporting letter contended that the appellant's pension was disallowed for all periods of absence from the State since awarded, apart from 13 weeks. On behalf of the appellant, it was contended that the Departmental Guidelines were updated for State Pension in February 2017 and now stated "*You can go abroad in exceptional circumstances for a limited period and the Department will review your entitlement when you return. You must notify the Department in advance of leaving the State.*" It was submitted that the previous Departmental Guidelines stated that a person could go abroad for 13 weeks, and that a reasonable interpretation would be that the same administrative procedure should apply to those in similar schemes with similar provisions, for example Widows Non-Contributory pension which allows 13 weeks per calendar year. It was argued that while the Departmental Guidelines may have been changed during the relevant period at issue the Guidelines stated 13 weeks and did not specifically state that the 13 weeks was per lifetime of the claim and thus the appellant did not incur an overpayment and his claim should be backdated to the date of suspension in July 2016. The appeal was disallowed.

Review: The primary legislative provisions governing entitlement to State Pension Non-Contributory are contained in Chapter 4 of Part 3 of the Social Welfare Consolidation Act 2005. Part 9 of the Social Welfare Consolidation Act 2005 contains general provisions relating to social insurance, social assistance and insurability. For the purposes of this review, I outlined that Chapter 2 of Part 9 sets out certain provisions relating to entitlement, including at Section 249 absence from the State provisions. I noted, as was identified by the Appeals Officer, in so far as State Pension Non-Contributory is concerned, Section 249 (7) provides that '*Subject to subsection (8), a sum shall not be paid on account of State pension (non-contributory) or blind pension to any person while absent from the State.*' Unlike other provisions in Section 249 where power is given to the Minister to vary the provisions of the primary legislation by way of regulations, subsection (7) of Section 249 makes no provision for any concession to this prohibition to payment of State Pension Non-Contributory while absent from the State. That the Department makes some provision for the relaxation of the rule to the advantage of recipients of the pension as set out in its' Guidelines, is a matter that comes within the remit of the Department's discretion, but, it is outside the remit of the Social

Welfare Appeals Office to adjudicate on the reasonableness or otherwise of the content or operation of the Guidelines vis a vis other social welfare payments. From my review of the Appeals Officer's decision, I noted that the Appeals Officer was satisfied that the Department had acted fairly and reasonably in deciding on the period of disallowance in the appellant's case and I did not consider that the Appeals Officer had erred in fact and/or law.

Outcome: Decision not revised.

2018/318/68 State Pension (Contributory)
Question at issue: Contribution Conditions

Grounds for review: The review in this case was sought on the basis of error in law in that it was contended that under EU law, periods of insurance in another Member State must be counted irrespective of whether or not these periods of insurance are paid or credited, premised on the principle of aggregation provided for in Regulation (EC) 883/2004 and that the failure to do so interferes with free movement and as such was contrary to the Treaty of the EU.

Background: The appellant applied for State Pension (Contributory) but did not qualify on the grounds that the condition of having at least 520 paid full rate social insurance contributions before reaching age 66 was not met. The appellant had a total of 272 paid social insurance contributions in Ireland and over 900 credited contributions based on the record provided by the UK authorities. A Deciding Officer in the Department having examined the appellant's application for State Pension (Contributory), by reference to EU Regulations, decided that the appellant did not qualify as the condition of having at least 520 paid full rate social insurance contributions before reaching age 66 was not met. The Appeals Officer disallowed the appeal and outlined that the appellant did not meet the contribution condition of having 520 paid contributions based on the Irish record of social insurance alone or a combination of the Irish and UK insurance records and also found that the credited contributions could not be taken into account to meet the paid contribution condition.

Review: The legislation governing entitlement to State Pension (Contributory) is contained in Chapter 15 of Part 2 of the Social Welfare Consolidation Act 2005. Section 109 sets out the contribution conditions for receipt of State Pension (Contributory) and one of those conditions is that a claimant must have qualifying contributions in respect of at least 520 contributions weeks since entry into insurance. A qualifying contribution is defined in the 2005 Act as the appropriate employment contribution or self-employment contribution which was paid in respect of any insured person or the appropriate optional contribution which was paid in respect of any optional contributor.

The central question before the Appeals Officer was whether credited contributions recorded under the person's UK social insurance record could be taken into account to meet the paid contribution condition set out in the 2005 Act.

Social security arrangements for migrant workers and their families are coordinated across the EU in accordance with Regulation (EC) 883/2004 and its implementing Regulation 987/2009. Both Regulations became applicable on 1st May 2010. The legal basis for making coordination rules in the area of social security is primarily Article 48 (old Article 42) of the Treaty (TFEU).

For the purposes of the EU Coordination Regulations State Pension (Contributory) in Ireland is coordinated as an 'old age and survivors' pension'. The rules for coordination of old age and survivors' pensions are provided for in Title III, Chapter 5, Articles 50 - 60 of Regulation 883/2004 and Title III, Chapter III, Articles 43 - 53 of the Implementing Regulation 987/2009. The main provisions relating to this case were Articles 5 and 6 of Regulation 883/2004.

Article 5 provides for what is known as the assimilation of facts. The purpose of Article 5 is to ensure that persons who have exercised their right of free movement within the EU should be treated equally with persons who have been subject to the legislation of just one Member State. The principle of assimilation of facts obliges Member States when applying their own legislation to take into account *like* facts that have occurred in other Member States or under the legislation of other Member States. In reviewing the Appeals Officer's decision, I concluded that the credited contribution recorded under the appellant's UK record were not *like* paid contributions for the purposes of meeting the paid contribution test under Irish legislation. I also noted that it is the case that credited contributions, if any, under the appellant's Irish record could not be taken into account to meet this paid contribution condition set out in Section 109 of the 2005 Act.

Article 6 contains the general aggregation rules and requires that account shall, to the extent necessary, be taken of periods of insurance, employment, self-employment or residence completed in another Member State (in this case UK) as though they were periods completed under Irish legislation. I concluded that as the contributions under the appellant's UK record are credited contributions, Article 6 did not impose a requirement on the competent authority in Ireland to aggregate these periods with the appellant's Irish record in circumstances where the condition under Irish legislation sets out a paid contribution condition.

Outcome: Decision not revised.

2018/318/69 Domiciliary Care Allowance
Question at issue: Whether the eligibility criteria had been met

Grounds for Review: The Department in its request for a review of the Appeals Officer's decision alleged that the Appeals Officer erred in law in concluding that because a child met the qualifying condition for Domiciliary Care Allowance at age 13 then the child must also have satisfied the conditions 7 years earlier. In its submission, the Department asserted that the available evidence did not support the decision that the child was qualified for Domiciliary Care Allowance in 2011.

Background: The appellant's son had a diagnosis of delayed speech. In 2011 the appellant submitted a claim for Domiciliary Care Allowance at which point the child was 6.5 years old. The appellant's claim was disallowed as the Deciding Officer considered that, although accepting that the child had a disability, the qualifying criteria as regards substantial care and attention had not been met in line with the provisions of the relevant legislation.

This decision was upheld by an Appeals Officer who at that time also stated that the child would benefit from further assessments by the HSE team.

A further application was submitted in 2017 and the claim was approved by a Deciding Officer who was satisfied that the child was a qualified child from July 2017. Arising from that positive decision by the Department, the appellant sought to have Domiciliary Care Allowance awarded from 2011. This request was not allowed and an appeal was lodged. The question at issue on appeal was whether, at the time of the claim in 2011, the child had a disability resulting in him requiring substantially more care and attention than would normally be required by a child of the same age without a disability.

The Appeals Officer allowed the appeal, the effect of which was to award Domiciliary Care Allowance from the date of application in 2011.

Review: A qualified child for the purposes of the payment of Domiciliary Care Allowance is defined in Section 186C of the Act of 2005 as:

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

where—

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

(b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months,

(c) the child—

(i) is ordinarily resident in the State, or

(ii) satisfies the requirements of section 219(2),

and

(d) the child is not detained in a children detention school."

In its request for a review of the Appeals Officer's decision, the Department made specific reference to 5 medical reports submitted in support of the application for Domiciliary Care Allowance. For the purposes of this review of the Appeals Officer's decision, I reviewed these medical reports and all of the evidence that was submitted in the context of the application and throughout the period up to and including the date of the award of Domiciliary Care Allowance by a Deciding Officer of the Department from July 2017.

From my review of the medical reports, I noted that in completing the medical report as part of the application process in December 2010, the child's GP noted that his condition affected him: to a severe degree in relation to his mental health/behaviour, learning/intelligence and speech and to a normal degree in all other areas.

In the context of the application process in June 2017, the medical report completed by the child's GP noted that his condition affected him to a moderate degree in relation to intelligence, learning, speech, communication, social skills, sleeping, washing, dressing; to a mild degree in relation to mental health, behaviour, sensory issues, feeding/diet, mobility, balance/co-ordination, manual dexterity, sitting/standing, and fine motor skills and normal in all other categories.

From my review of the medical reports, on file which were completed on various dates between 2010 and 2017, I was satisfied that the evidence indicated that the child required additional supports/resources in the school environment and at home and, in my view, the evidence as deduced from the various reports supported a conclusion that the child required continual or continuous care and attention both at home and at school which was not insubstantial and that this requirement subsisted at the date of application in 2011. I noted in particular that an Occupational Therapy Assessment carried out in 2010/2011 and which included a school visit in January 2011, outlined that the child was at risk of bumping/crashing with moving objects (cars, swings, peers running, balls, etc.) or tripping when carrying objects.

A Speech and Language Therapy Report completed in March 2011 confirmed '*severe language impairment.*' I noted that the 2011 Report also recalled that the child first presented to the speech and language services in 2007 where he was identified as a 3 year old child with significant delayed language, communication and play skills. In summarising the impact on the child's educational progress & social and emotional development it was outlined that the child presented as a 6 year old boy with a severe language impairment impacting significantly on his participation at school, home and community. Socially the child had difficulty interacting with peers. Emotionally it was reported that he became anxious and had difficulty solving arguments, educationally he had difficulty participating in class room activities.

A *Multidisciplinary Assessment* Report dated October 2012, at which point the child was just over 8 years of age, noted that the child had some difficulties in everyday functions and sleep patterns. It was reported that the child at the time of the assessment was experiencing more mood difficulties and somatic symptoms than would be expected for a boy of his age and that he was highly anxious. The outcome of the assessment highlighted that the child had a severe expressive and receptive language delay, significant learning difficulties and related attention difficulties, presented with emotional difficulties with evidence of anxiety and depressive symptoms and that the child's emotional and behavioural presentation was highly variable requiring support and management.

Recommendations in respect of the child included:

- A differential curriculum and extra support to follow classroom routine
- Access to clinical supports including parental involvement
- Joint psychology and speech and language therapy.

In addition, I noted that the child's parents were offered access to a specific programme which I understood was a parenting-based approach to managing anxiety in young children, which includes helping parents learn a new approach to managing their children's fears and worries through cognitive-behavioural techniques.

While noting there was no evidence on file as to whether the parents participated in the programme or not, I formed the view that the fact that the programme was recommended could be regarded as being indicative of the additional care and attention required by the child.

A Psycho-Educational Report, dated November 2014, was completed in the context of assessing the child's level of adaptive functioning to inform decisions regarding educational provision. The general recommendations arising from this assessment included additional adult support in the form of an SNA, assessments in the area of speech and language, motor skills and support from a multi-disciplinary team to promote development of his

skills in language and communication, independence skills and motor skills. In the home environment, it was recommended that the child should be encouraged to count, handle money, get involved in household activities such as setting the table, dividing up food, sharing equally, measuring and weighing food. It was further recommended that the child be afforded opportunities to develop his communication and social skills, supported by parental guidance and reassurance. The opportunity for increased social activities outside of school was also recommended.

A Psychology Report in May 2017, at which point the child was almost 13 years of age, was completed in the context of a referral for a review of the child's cognitive functioning as a part of multidisciplinary assessment review recommend by the School Age Team.

In summary, the medical reports on file showed that the school day needed to be very structured to suit the child's needs. It was reported that that the child mostly worked in a special class as he couldn't cope in a mainstream room. It was reported that the child needed one to one help for most tasks and presented with low self-esteem.

The evidence on file indicated that the child required additional supports/resources in the school environment and at home and, in my view, the evidence as deduced from the various reports supported a conclusion that the child required continual or continuous care and attention both at home and at school, which was not insubstantial and that this requirement subsisted at the date of application in 2011.

It was one of the Department's contentions that when the application was made in 2017, the child's condition had deteriorated in recent years and that he now had care needs substantially greater than other children of the same age. However, I noted that the Clinical Psychologist who completed the Psychology Report in December 2016 recalled that the child was [now] a 12 year old boy who had attended the Assessment and Intervention Team since July 2011.

The Clinical Psychologist recalled that in the past the child has attended speech and language therapy, occupational therapy and psychological assessments. During this period of time [since 2011 to 2016], some of the child's skills have improved more than others and others appear to be stationary. At present [December 2016], the child's needs appear to be impacting emotional health and the child presents with low self-esteem and seeks reassurance. I concluded that the improvement in some of the child's skills referred to by the Clinical Psychologist could be attributed to the recommendations for interventions and supports at school and at home aimed at helping the child achieve his potential.

I was in no doubt that the additional care and attention provided both in school and in the home environment as recommended in the various reports could be held to be substantially in excess of that required by a child of the same age without the disability.

The Department also contended that the AO erred in law in concluding that because the child meets the qualifying condition for the scheme at age 13 then they must have satisfied the conditions 7 years earlier and that the available evidence does not support the decision that the child was qualified for Domiciliary Care Allowance in 2011.

From my review of the medical evidence that was before the Appeals Officer, I was satisfied that the evidence supported a conclusion that the child, having a severe disability, required continual and continuous care and attention substantially in excess of the care and attention normally required by a child of the same age. While it is the case that the care required by a child of 6 is different to the care required by a child at age 13, the important aspect in order to meet the legislative condition of the scheme is whether the care and attention is substantially more than a child of the same age without the condition. I was satisfied that the medical evidence in this case and which I have summarised above supported the conclusion reached by the Appeals Officer.

I noted above that when the Appeals Officer made his decision in 2012, he stated that the child would benefit from further assessments by the HSE team. The specialist reports from further assessments, including the HSE Multi-disciplinary Team Assessment report of October 2012, were available to the Appeals Officer when reviewing the decision in November 2018 but were not available to the Appeals Officer who made a decision in 2012. Based on the additional medical evidence, outlining the extent of the child's difficulties and the interventions required, the Appeals Officer in November 2018 found that the additional medical evidence reinforced the extent of the child's difficulties which had subsisted in 2011 and she was therefore satisfied that the child met the qualifying conditions of the scheme from January 2011.

In my review, I also noted that the DOM Care1 application completed in 2017 and which is referenced by the Department in its submission, allowed the applicant to provide a much more expansive outline of the extra care required by the child (Part 4 comprising 9 pages) than the Dom Care 1 application completed in 2011 (Part 4 comprising 2 pages).

From my review of the file, in particular the medical reports outlined above and the information provided by the child's parents, I was satisfied that the evidence supported the Appeals Officer's conclusion that the care and attention the child required at the time of the Domiciliary Care Allowance application in 2011 and in the intervening period up to

and including the date of award of Domiciliary Care Allowance in 2017 could be held to be substantially in excess of that normally required by a child of the same age and, as such, met the qualifying criteria for Domiciliary Care Allowance as outlined in the governing legislation.

Outcome: Decision not revised.

2018/318/70 Guardian's Payment (Contributory)
Question at issue: Whether the eligibility criteria had been met

Grounds for Review: The appellant, the child's grandmother, sought a review of the Appeals Officer's decision on the basis of mixed error of fact and law. In relation to the test of abandonment, the child's grandmother asserted that the test of abandonment under the Act of 2005 cannot be more onerous than under the Adoption Acts. The appellant asserted that the child's parents had given up care and control of him and had allowed the child to be raised by his grandmother and failed in their duties as parents. In summary, it was asserted that the Appeals Officer had erred in law and had applied too stringent a test in respect of "abandonment".

Background: The claim for Guardian's Payment was disallowed by a Deciding Officer as it was considered that the arrangement in respect of the child was as a result of a mutual agreement between the child's grandmother and his mother. The Deciding Officer also outlined that the child's mother had regular contact with him and was also caring and providing for her other children. The Appeals Officer also considered that the child could not be deemed to be an "orphan" within the meaning of the Act of 2005 and in those circumstances the appeal was disallowed. The Appeals Officer also formed the view that the arrangement whereby the child would stay with his grandmother was a private arrangement between the child's mother and grandmother entered into at the time of the child's birth.

Review: To be a qualified child for the purpose of Guardian's Payment the child must be regarded as an orphan, defined in Section 2 (1) of the Act of 2005 as:

"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;

There is no legal definition of "abandonment" or "failure to provide" for the purposes of the definition of "orphan" as defined in Section 2(1). In those circumstances the decision maker must make a judgment based on the individual circumstances of the case before him/her. For the purposes of this review, I considered the legislative provisions of the Adoption Acts to which I had been referred and to the consideration of the test of abandonment under those Acts by the Supreme Court in *Northern Area Health Board v An Bord Uchtála*. [Supreme Court judgement delivered on 17th December 2002]. I noted that while the payment of Guardian's Payment is governed by the Social Welfare Consolidation Act 2005 the considerations of the Court on the test of "abandonment" were nonetheless helpful.

I also consulted the Department's Guidelines for the purposes of the review and set out the points below which I considered were of relevance in this case.

- *It is not necessary to be a legally appointed guardian in order to qualify for a Guardian's Payment;*

- *A payment may be approved for the person with whom the orphan lives and who has responsibility for the child's care and the payment must benefit the child;*

- *In cases where one or more parents are still living the decision maker must be satisfied that the child has been abandoned and that the parent(s) have failed to provide for him/her;*

- *In cases where the child has one or more parent still living the decision maker examines the circumstances which led to the child being looked after by someone other than their parent, assess the relationship between the child and the parents and arrive at a decision as to whether the child is an "orphan" for the purposes of the payment;*

- *When determining whether a child has been abandoned, the following will be considered:*
  - *Likely duration of the existing circumstances*
  - *Level of contact between the parent and the child*
  - *Level of parent's involvement in the welfare of the child*
  - *Willingness of the parent to have the child live with them*
  - *Evidence of conflict between the parent and the child*
  - *Parent's view of their relationship with the child*
  - *Whether the parent has the care of other children*

- *This list is not exhaustive and other evidence may be requested or considered.*

- *A parent is considered to have failed to provide for their child where they do not provide financial support for or towards the care of the child.*

- *Abandonment and failure to provide includes the failure of a parent's duty to provide for the emotional and physical necessities of life required by the orphan.*

The question to be determined in this case was whether the child's mother may be deemed to have abandoned and failed to provide for him. There was no question at issue in relation to the child's father.

From my review, it seemed to me that both the Deciding Officer's and the Appeals Officer's decisions were based on the premise that the care arrangement with the child's grandmother was a private mutual agreement. However, on review of the Appeals Officer's decision, it was not clear to me what weight was afforded to that evidence or to what extent that evidence was persuasive. It was the grandmother's contention that there was no mutual agreement and that certain correspondence on file to this effect was erroneous with regard to this point. The child's grandmother asserted that the agreement with the child's parents was on foot of an Order by a District Court appointing her guardian of the child. This evidence was supported by documentary evidence on file from the Court.

The evidence adduced at the oral hearing recounted the circumstances which occasioned the child coming into the care of his grandmother when he was a very young baby. I was satisfied that there was clear evidence of unwillingness on the part of the child's mother to have him live with her.

The evidence also indicated that the level of contact between the child and his mother was sporadic and appeared to be always at the initiation of the child's grandmother. There was no evidence that the mother was involved in the child's welfare or that she provided any financial support for or towards the care of the child. There was no evidence that the child's mother provided for his emotional and physical needs. The Social Welfare Inspector noted in his report that the child's mother has very little contact with him and expressed the opinion that it would be in the best interest of the child to remain with his grandmother.

While noting that the 'best interests of the child' does not form part of the consideration of 'abandonment', I considered that this comment was supportive of the application for Guardian's Payment.

I considered that the evidence in this case was clear and that notwithstanding the circumstances that gave rise to the child being in the care of his grandmother and the occasional visits and contact with the child's mother and other children, the mother in this case had abandoned and failed to provide for the child within the meaning of the definition of "orphan" as set out in Section 2 (1) of the Social Welfare Consolidation Act, 2005. I considered that the Appeals Officer erred in law in the weight afforded to the circumstances that gave rise to the child being in the care of his grandmother and did not have sufficient regard to the totality of the evidence.

Outcome: Decision revised and appeal allowed.

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