Social Welfare Appeals Office

Annual Report 2019

Social Welfare Appeals Office
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OIFIG ACHOMHAIRC LEASA SHÓISIALAIGH

SOCIAL WELFARE APPEALS OFFICE

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

June 2020

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 2019.

Yours sincerely,

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 2019 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.

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 2019. In keeping with the trend of recent years a number of Appeals Officers and administrative staff availed of retirement in 2019 and a number of new Appeals Officers and administrative staff joined the Office. To those who availed of retirement I wish them well in the future. To those who joined the team I am delighted to welcome them and look forward to working with them in the year ahead. There were also a number of other staffing changes in 2019 whereby staff left the Office to take up new opportunities and I wish them continued success in their new roles. I continue to work closely with the HR Division of the Department to ensure that vacancies arising are filled as quickly as possible and I very much appreciate the support of the Department in this regard.

Despite the challenges posed by the loss of experienced staff, the Office made good progress in the course of 2019 in the processing and finalisation of appeals. In the course of the year, 22,397 appeals were received compared to 18,854 in 2018, representing an increase of almost 19% in the number of appeals received. The number of appeals finalised in 2019 was 22,572 representing an increase of 22% in output when compared to 18,507 finalised in 2018. The increase can in part be attributed to an increase in the number of Appeals Officers assigned to the Office. There was an increase of over 17% in the number of appeals finalised by Appeals Officers.

The number of appeals on hand at the end of 2019 was 8,788 representing a slight decrease when compared to the end of 2018 position of 8,963 on hand.

The average processing time for all appeals finalised during 2019 was 24.7 weeks. This compares to 25.1 weeks in 2018. The average time taken to process appeals which required an oral hearing was 26.9 weeks, (30 weeks in 2018) and the corresponding time to process appeals determined on a summary basis was just over 22 weeks (25 weeks in 2018).

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.

While I endeavor to reduce processing times, people availing of the service and their advocates can also help. As I outlined in my Annual Report last year it is vitally important that all evidence relevant to the claim is made available to the decision maker at the earliest opportunity. It can be seen from some of the case studies that additional evidence was provided in the course of the appeal process. While this is, of course, part of the appeal process it is apparent that if that evidence was made available earlier the need to submit an appeal may not arise. It is also evident from some of the case studies that people may not submit a claim on time. While social welfare legislation contains provisions permitting backdating the possibility of backdating is limited and the provisions must be applied strictly.

A more detailed account of the statistical trends relating to 2019 is set out in Chapter 2. The data shows that the reduction in the number of appeals relates primarily to appeals on the Jobseeker's Allowance scheme. The number of appeals in respect of Disability Allowance increased by 20% and by over 15% in the case of Domiciliary Care Allowance. A more detailed account of the business of the Office in the course of 2019, from staffing resources to operational issues, is contained in Chapter 3.

Given the high turn-over of Appeals Officers the training and development programme continued to be utilised during 2019. During the year the Office continued to engage 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 the latter part of 2020.

In addition to the formal programme of training all newly appointed Appeals Officers were provided with mentoring support from an experienced colleague.

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 2019 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, illness and disability, retired and older people and employers and which I consider will be of relevance to others considering making an appeal.

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

June 2020

Chapter 2
Statistical Trends

Our main statistical data for 2019 is set out in commentary form below and in the "Workflow Chart" and tables which follow.

APPEALS RECEIVED IN 2019

In 2019, the Office received 22,397 appeals, which represents an increase of 3,543 (18.8%) on the 18,854 appeals received in 2018.

The majority of the increase relates to appeals in Illness, Disability and Carer schemes. Appeals in relation to Invalidity Pension increased by 35.1% while appeals in relation to Disability Allowance increased by 20.0%. There were reductions in the numbers of Jobseeker's Allowance appeals received down nearly 11%.

CLARIFICATIONS IN 2019

In addition to the 22,397 appeals registered in 2019, a further 1,585 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 2019, 510 (32.18%) of the 1,585 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 2019

The workload of 31,360 for 2019 was arrived at by adding the 22,397 appeals received to the 8,963 appeals on hand at the beginning of the year.

APPEALS FINALISED IN 2019

We finalised 22,572 appeals in 2019.

The appeals finalised were broken down between:

- Appeals Officers (73.5%): 16,594 were finalised by Appeals Officers either summarily or by way of oral hearings (equivalent figure in 2018 was 14,145 or 76.4%);
- Revised Decisions (20.7%): 4,669 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 (3,425 or 18.5% in 2018). 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 (5.8%): 1,309 were withdrawn or otherwise not pursued by the appellant (937 or 5.1% in 2018).

APPEALS OUTCOMES IN 2019

The outcome of the 22,572 appeals finalised in 2019 can be broken down as follows:

- Favourable (56.7%): 12,807 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 (58.8% in 2018);
- Unfavourable (37.5%): 8,456 of the appeals finalised were disallowed by an Appeals Officer (36.1% in 2018); and
- Withdrawn (5.8%): As previously indicated, 1,309 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (5.1% in 2018).

DETERMINATIONS BY APPEALS OFFICERS IN 2019

16,594 appeals were finalised by Appeals Officers in 2019.

- Overall 8,138 (49.0%) had a favourable outcome for the appellant. 8,456 (51.0%) were disallowed.
- Oral Hearings: (35.1%) 5,829 of the 16,594 appeals finalised by Appeals Officers in 2019 were dealt with by way of oral hearing. 3,671 (63.0%) of these had a favourable outcome. In 2018, 63.9 % of the 5,397 cases dealt with by way of oral hearing had a favourable outcome.
- Summary Decisions: (64.9%): 10,765 of the appeals finalised were dealt with by way of summary decision. 4,467 (41.5%) of these had a favourable outcome. In 2018, 45.9% of the 8,748 cases dealt with by way of summary decision had a favourable outcome.

PROCESSING TIMES IN 2019

During 2019, the average time taken to process all appeals was 24.7 weeks (25.1 weeks in 2018).

Of the 24.7 weeks overall average

- 13.0 weeks was attributable to work in progress in the Department (9.6 weeks in 2018)
- 0.2 weeks was due to responses awaited from appellants (0.4 weeks in 2018)
- 11.6 weeks was attributable to ongoing processes within the Social Welfare Appeals Office (15.1 weeks in 2018).

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 2019 was 22.1 weeks (24.8 weeks in 2018), while the average time to process an oral hearing was 26.9 weeks (30.0 weeks in 2018). The average waiting times 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:

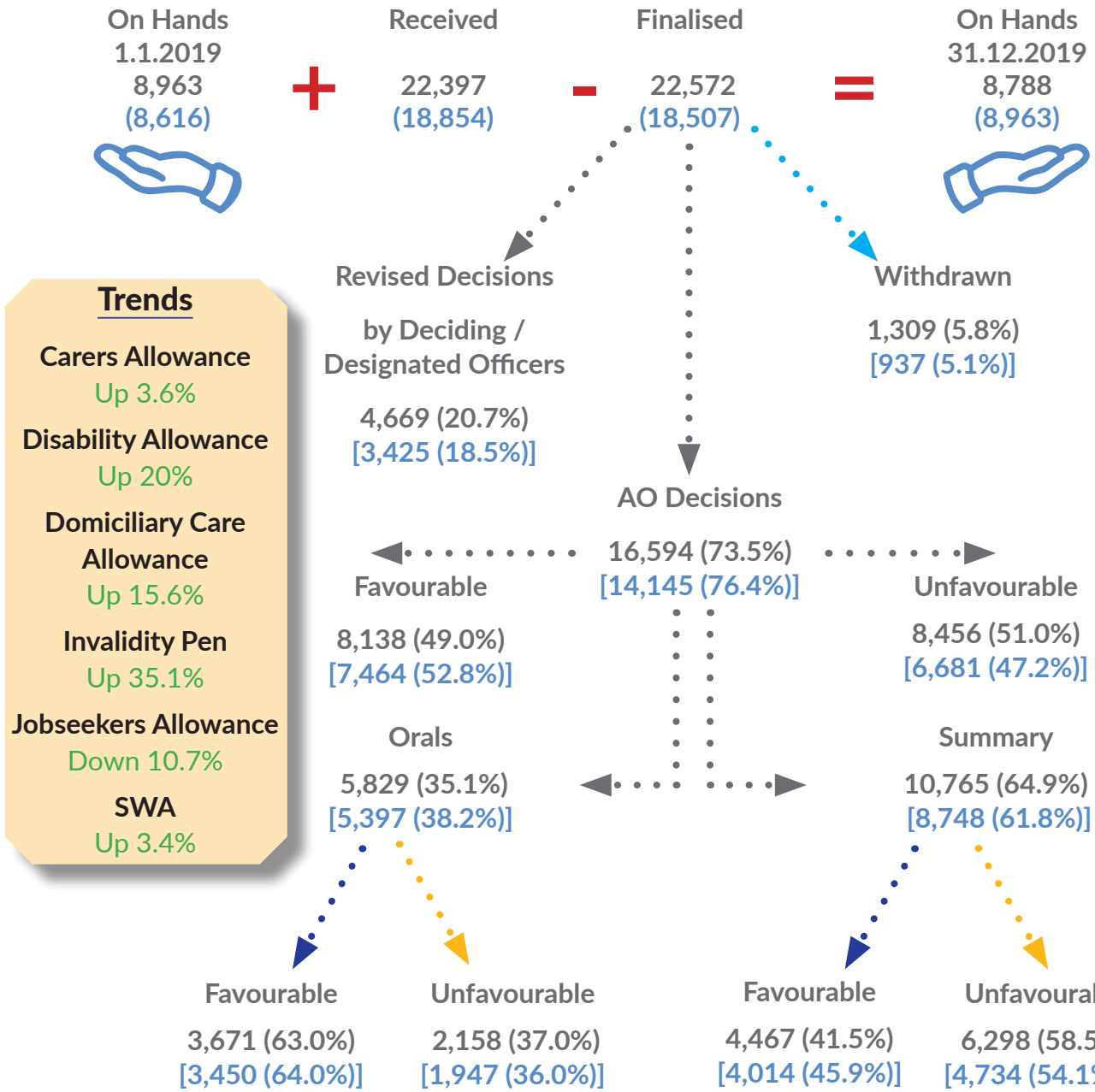
- seeking the Department's submission on the grounds for the appeal;
- further medical assessments by the Department in certain illness related cases;
- further investigation by Social Welfare Inspectors, where required; and
- the logistics involved in arranging oral appeal hearings, where deemed appropriate.

APPEALS BY GENDER IN 2019

A breakdown of appeals received in 2019 by gender show that 40.0% were from men and 60.0% from women. The corresponding breakdown for 2018 was 42.2% and 57.8% respectively. In terms of favourable outcomes in 2019, 58.5% of men and 62.6% of women benefited.

Social Welfare Appeals Workflow Chart 2019

(Corresponding figures for 2018 are in brackets)



Trends

Carers Allowance
Up 3.6%

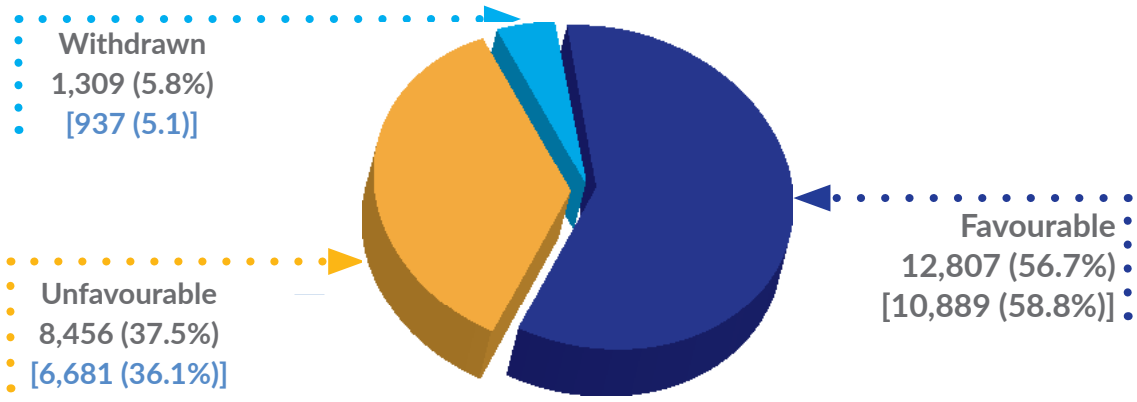
Disability Allowance
Up 20%

Domiciliary Care Allowance
Up 15.6%

Invalidity Pen
Up 35.1%

Jobseekers Allowance
Down 10.7%

SWA
Up 3.4%



Overall Outcomes 22,572

Table 1: Appeals received and finalised 2019

	In progress 01-Jan-19	Receipts	Decided	Revised Decision	Withdrawn	In progress 31-Dec-19
PENSIONS						
State Pension (Non-Contributory)	190	386	292	67	31	186
State Pension (Contributory)	199	457	297	81	16	262
State Pension (Transition)	1	-	-	-	1	-
Widows', Widowers' Pension (Contributory)	25	38	10	13	4	36
Death Benefit	-	1	-	-	-	1
Bereavement Grant	1	1	1	-	-	1
TOTAL PENSIONS	**416**	**883**	**600**	**161**	**52**	**486**
WORKING AGE INCOME & EMPLOYMENT SUPPORTS						
Jobseeker's Allowance	926	1,445	1,247	256	260	608
Jobseeker's Transitional	44	75	47	17	12	43
JBSE	-	3	-	-	-	3
Jobseeker's Allowance (Means)	830	1,188	1,047	171	230	570
One Parent Family Payment	186	302	222	48	51	167
Widow's Widower's Pension (Non-Contributory)	14	17	11	4	2	14
Deserted Wife's Allowance	1	-	1	-	-	-
Supplementary Welfare Allowance	375	888	664	144	165	290
Farm Assist	51	111	71	18	17	56
Jobseeker's Benefit	303	671	478	156	76	264
Deserted Wife's Benefit	6	6	6	-	-	6
Maternity Benefit	21	38	27	6	3	23
Paternity Benefit	7	8	8	1	1	5
Adoptive Benefit	1	-	1	-	-	-
Treatment Benefits	1	2	-	-	1	2
Partial Capacity Benefit	68	131	49	34	16	100
TOTAL WORKING AGE – INCOME & EMPLOYMENT SUPPORTS	**2,834**	**4,885**	**3,879**	**855**	**834**	**2,151**
ILLNESS, DISABILITY AND CARERS						
Disability Allowance	1,713	6,242	5,295	616	96	1,948
Blind Pension	6	15	10	1	1	9
Carer's Allowance	1,370	3,006	2,856	603	80	837
Domiciliary Care Allowance	674	1,656	1,142	517	31	640
Carer's Support Grant	65	165	123	25	4	78
Illness Benefit	289	916	232	490	38	445
Injury Benefit	32	53	25	18	5	37
Invalidity Pension	708	1,874	988	557	57	980
Disablement Benefit	185	278	293	28	6	136
Incapacity Supplement	5	1	6	-	-	-
Medical Care	3	7	-	6	1	3
Carer's Benefit	70	244	154	63	9	88
TOTAL - ILLNESS, DISABILITY AND CARERS	**5,120**	**14,457**	**11,124**	**2,924**	**328**	**5,201**

Table 1: Appeals received and finalised 2019 (continued)

	In progress 01-Jan-19	Receipts	Decided	Revised Decision	Withdrawn	In progress 31-Dec-19
CHILDREN						
Child Benefit	281	552	310	208	27	288
Working Family Payment	110	1,441	535	491	42	483
Back To Work Family Dividend	22	29	27	7	3	14
Guardian's Payment (Non-Contributory)	4	12	9	-	-	7
Guardian's Payment (Contributory)	13	27	18	5	2	15
Widowed Parent Grant	1	5	4	-	-	2
TOTAL - CHILDREN	**431**	**2,066**	**903**	**711**	**74**	**809**
Insurability of Employment	144	92	72	14	19	131
Liable Relatives	3	5	3	-	2	3
Recoverable Benefits & Assistance	15	9	13	4	-	7
TOTAL – ALL APPEALS	**8,963**	**22,397**	**16,594**	**4,669**	**1,309**	**8,788**

Table 2: Appeals received 2013 - 2019

	2013	2014	2015	2016	2017	2018	2019
PENSIONS							
State Pension (Non-Contributory)	279	323	348	397	370	347	386
State Pension (Contributory)	136	205	264	366	408	309	457
State Pension (Transition)	38	13	3	2	3	0	-
Widow's, Widower's Pension (Contributory)	40	49	40	49	45	38	38
Death Benefit	-	1	1	1	-	1	1
Bereavement Grant	78	63	6	3	1	1	1
TOTAL PENSIONS	**571**	**654**	**662**	**818**	**827**	**696**	**883**
WORKING AGE INCOME & EMPLOYMENT SUPPORTS							
Jobseeker's Allowance - Payments	2,644	2,610	2,058	2,031	1,676	1,570	1,445
Jobseeker's Transitional	-	-	34	43	41	70	75
Jobseeker' Benefit Self Employed	-	-	-	-	-	-	3
Jobseeker's Allowance - Means	2,923	2,648	2,174	2,050	1,504	1,380	1,188
One Parent Family Payment	612	573	368	313	244	273	302
Widow's, Widower's Pension (Non-Contributory)	30	24	25	26	23	18	17
Deserted Wife's Allowance	2	2	1	0	1	1	-
Supplementary Welfare Allowance	4,084	2,889	2,125	1,970	1,302	859	888
Farm Assist	286	214	201	196	130	84	111
Pre-Retirement Allowance	-	3	0	0	2	0	-
Jobseeker's Benefit	882	845	735	637	545	610	671
Deserted Wife's Benefit	11	7	19	7	7	8	6
Maternity Benefit	26	19	71	87	84	40	38
Paternity Benefit				1	16	14	8
Adoptive Benefit	-	1	0	0	2	1	-
Homemaker's	1	0	0	0	-	-	-
Treatment Benefits	5	0	3	5	1	2	2
Partial Capacity Benefit	70	33	42	42	38	75	131
TOTAL WORKING AGE - INCOME & EMPLOYMENT SUPPORTS	**11,576**	**9,868**	**7,856**	**7,408**	**5,616**	**5,005**	**4,885**
ILLNESS, DISABILITY AND CARERS							
Disability Allowance	6,836	5,554	6,435	4.912	5,077	5,200	6,242
Blind Pension	34	19	22	13	19	12	15
Carer's Allowance	3,869	2,907	3,188	3,887	3,200	2,902	3,006
Domiciliary Care Allowance	1,688	1,301	1,258	1,198	1,199	1,432	1,656
Carer's Support Grant	176	133	124	164	164	126	165
Illness Benefit	1,761	1,227	1,204	819	443	581	916
Injury Benefit	21	9	65	56	51	44	53
Invalidity Pension	4,501	2,571	1,857	1,362	1,381	1,387	1,874
Disablement Benefit	346	385	347	298	347	330	278
Incapacity Supplement	14	1	12	9	7	7	1
Medical Care	3	28	4	4	2	2	7
Carer's Benefit	115	121	93	95	110	162	244
TOTAL - ILLNESS, DISABILITY AND CARERS	**19,364**	**14,256**	**14,609**	**12,817**	**12,000**	**12,185**	**14,457**

Table 2: Appeals received 2013 – 2019 (continued)

	2013	2014	2015	2016	2017	2018	2019
CHILDREN							
Child Benefit	663	659	552	595	473	485	552
Working Family Payment	421	434	447	510	477	290	1,441
Back To Work Family Dividend	-	-	64	52	43	43	29
Guardian's Payment (Non-Contributory)	11	22	18	17	16	8	12
Guardian's Payment (Contributory)	42	42	49	38	34	22	27
Widowed Parent Grant	11	8	10	8	6	1	5
TOTAL - CHILDREN	**1,148**	**1,165**	**1,140**	**1,220**	**1,049**	**849**	**2,066**
OTHER							
Insurability Of Employment	95	91	156	151	132	86	92
Liable Relative	23	33	26	23	9	4	5
Recoverable Benefits & Assistance	-	2	26	24	25	29	9
TOTAL – ALL APPEALS	**32,777**	**26,069**	**24,475**	**22,461**	**19,658**	**18,854**	**22,397**

Table 3: Outcome of Appeals by Category 2019

	Allowed	Partially Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
PENSIONS						
State Pension (Non-Contributory)	74 19.0%	24 6.2%	67 17.2%	194 49.7%	31 7.9%	390
State Pension (Contributory	40 10.2%	17 4.3%	81 20.6%	240 60.9%	16 4.1%	394
State Pension (Transition)	- 00.0%	- 0.0%	- 0.0%	- 00.0%	1 100.0%	1
Widow's/Widower's Pension (Contributory)	2 7.4%	1 3.7%	13 48.1%	7 25.9%	4 14.8%	27
Bereavement Grant	- 0.0%	- 0.0%	- 0.0%	1 100.0%	- 0.0%	1
TOTAL PENSIONS	**116**	**42**	**161**	**442**	**52**	**813**
WORKING AGE INCOME/ EMPLOYMENT SUPPORTS						
Jobseeker's Allowance - Payments	252 14.3%	61 3.5%	256 14.5%	934 53.0%	260 14.7%	1,763
Jobseeker's Transitional	9 11.8%	2 2.6%	17 22.4%	36 47.4%	12 15.8%	76
Jobseeker's Allowance -Means	138 9.5%	59 4.1%	171 11.8%	850 58.7%	230 15.9%	1,448
One Parent Family Payment	63 19.6%	17 5.3%	48 15.0%	142 44.2%	51 15.9%	321
Widow's/Widower's Pension (Non-Contributory)	3 17.6%	3 17.6%	4 23.5%	5 29.4%	2 11.8%	17
Deserted Wife's Allowance	1 100.0%	- 00.0%	- 00.0%	- 00.0%	- 0.0%	1
Supplementary Welfare Allowance	178 18.3%	23 2.4%	144 14.8%	463 47.6%	165 17.0%	973
Farm Assist	13 12.3%	12 11.3%	18 17.0%	46 43.4%	17 16.0%	106
Jobseeker's Benefit	103 14.5%	29 4.1%	156 22.0%	346 48.7%	76 10.7%	710
Deserted Wife's Benefit	4 66.7%	1 16.7%	- 0.0%	1 16.7%	- 0.0%	6
Maternity Benefit	8 22.2%	- 0.0%	6 16.7%	19 52.8%	3 8.3%	36
Paternity Benefit	1 10.0%	- 00.0%	1 10.0%	7 70.0%	1 10.0%	10
Adoptive Benefit	0 0.0%	0 0.0%	0 0.0%	1 100.0%	0 0.0%	1
Treatment Benefits	- 0.0%	- 0.0%	- 0.0%	- 0.0%	1 100.0%	1
Partial Capacity Benefit	22 22.2%	1 1.0%	34 34.3%	26 26.3%	16 16.2%	99
TOTAL WORKING AGE – INCOME/EMPLOYMENT SUPPORTS	**795**	**208**	**855**	**2,876**	**834**	**5,568**

Table 3: Outcome of Appeals by Category 2019 (continued)

	Allowed	Partially Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
ILLNESS, DISABILITY AND CARERS						
Disability Allowance	3,416 56.9%	78 1.3%	616 10.3%	1,801 30.0%	96 1.6%	6,007
Blind Pension	1 8.3%	1 8.3%	1 8.3%	8 66.7%	1 8.3%	12
Carer's Allowance	1,230 34.8%	158 4.5%	603 17.0%	1,468 41.5%	80 2.3%	3,539
Domiciliary Care Allowance	811 48.0%	10 0.6%	517 30.6%	321 19.0%	31 1.8%	1,690
Carer's Support Grant	49 32.2%	6 3.9%	25 16.4%	68 44.7%	4 2.6%	152
Illness Benefit	62 8.2%	7 0.9%	490 64.5%	163 21.4%	38 5.0%	760
Injury Benefit	8 16.7%	1 2.1%	18 37.5%	16 33.3%	5 10.4%	48
Invalidity Pension	640 40.0%	9 0.6%	557 34.8%	339 21.2%	57 3.6%	1,602
Disablement Benefit	132 40.4%	30 9.2%	28 8.6%	131 40.1%	6 1.8%	327
Incapacity Supplement	1 16.7%	- 00.0%	- 00.0%	5 83.3%	- 0.0%	6
Medical Care	- 0.0%	- 0.0%	6 85.7%	- 0.0%	1 14.3%	7
Carer's Benefit	67 29.6%	5 2.2%	63 27.9%	82 36.3%	9 4.0%	226
TOTAL – ILLNESS, DISABILITY AND CARERS	**6,417**	**305**	**2,924**	**4,402**	**328**	**14,376**
CHILDREN						
Child Benefit	51 9.4%	18 3.3%	208 38.2%	241 44.2%	27 5.0%	545
Working Family Payment	125 11.7%	18 1.7%	491 46.0%	392 36.7%	42 3.9%	1,068
Back To Work Family Dividend	3 8.1%	1 2.7%	7 18.9%	23 62.2%	3 8.1%	37
Guardian's Payment (Non-Contributory)	5 55.6%	1 11.1%	- 0.0%	3 33.3%	- 0.0%	9
Guardian's Payment (Contributory)	8 32.0%	- 0.0%	5 20.0%	10 40.0%	2 8.0%	25
Widowed Parent Grant	1 25.0%	- 0.0%	- 0.0%	3 75.0%	- 0.0%	4
TOTAL – CHILDREN	**193**	**38**	**711**	**672**	**74**	**1,688**
OTHER						
Insurability	21 20.0%	1 1.0%	14 13.3%	50 47.6%	19 18.1%	105
Liable Relatives	1 20.0%	- 00.0%	- 0.0%	2 40.0%	2 40.0%	5
Recoverable Benefits & Assistance	- 0.0%	1 5.9%	4 23.5%	12 70.6%	- 0.0%	17
TOTAL APPEALS	**7,543**	**595**	**4,669**	**8,456**	**1,309**	**22,572**

Table 4: Appeals in progress at 31 December 2013 - 2019

	2013	2014	2015	2016	2017	2018	2019
PENSIONS							
State Pension (Non-Contributory)	143	134	165	179	206	190	186
State Pension (Contributory)	74	97	149	203	257	199	262
State Pension (Transition)	26	9	4	1	1	1	-
Widow's, Widower's Pension (Contributory)	25	15	24	13	27	25	36
Death Benefit	0	1	1	1	-	0	1
Bereavement Grant	40	17	0	1	1	1	1
TOTAL PENSIONS	**308**	**273**	**343**	**398**	**492**	**416**	**486**
WORKING AGE INCOME/ EMPLOYMENT SUPPORTS							
Jobseeker's Allowance - Payments	1,180	812	811	809	912	926	608
Jobseeker's Transitional	-	-	13	17	21	44	43
Jobseeker's Allowance - Means	1,453	1,029	947	838	889	830	570
One Parent Family Payment	411	231	190	156	143	186	167
Jobseeker's Benefit Self Employed							3
Widow's' /Widower's Pension (Non-Contributory)	16	9	9	13	13	14	14
Deserted Wife's Allowance	1	1	-	-	1	1	-
Supplementary Welfare Allowance	1,221	877	672	610	563	375	290
Farm Assist	176	102	118	99	87	51	56
Pre-Retirement Allowance	1	2	1	1	2	0	-
Jobseeker's Benefit	391	243	290	223	289	303	264
Deserted Wife's Benefit	3	5	6	2	4	6	6
Maternity Benefit	14	6	26	22	35	21	23
Paternity Benefit	-	-	-	1	9	7	5
Adoptive Benefit	0	0	-	-	-	1	0
Homemaker's	1	1	-	-	-	-	-
Treatment Benefits	2	0	2	1	1	1	2
Partial Capacity Benefit	81	21	25	32	25	68	100
TOTAL WORKING AGE - INCOME & EMPLOYMENT SUPPORTS	**4,951**	**3,339**	**3,110**	**2,824**	**2,994**	**2,834**	**2,151**

Table 4: Appeals in progress at 31 December 2013 - 2019 (continued)

	2013	2014	2015	2016	2017	2018	2019
ILLNESS, DISABILITY AND CARERS							
Disability Allowance	3,121	1,944	1,639	1,376	1,519	1,713	1,948
Blind Pension	13	6	10	4	8	6	9
Carer's Allowance	1,913	1,434	1,131	1,394	1,178	1,370	837
Domiciliary Care Allowance	736	462	562	416	814	674	640
Carer's Support Grant	94	71	57	70	79	65	78
Illness Benefit	683	351	335	274	203	289	445
Injury Benefit	15	9	25	22	35	32	37
Invalidity Pension	1,889	938	674	382	415	708	980
Disablement Benefit	186	164	160	87	184	185	136
Incapacity Supplement	16	16	11	6	3	5	-
Medical Care	18	14	1	2	2	3	3
Carer's Benefit	45	32	15	39	45	70	88
TOTAL - ILLNESS, DISABILITY AND CARERS	**8,729**	**5,441**	**4,620**	**4,072**	**4,485**	**5,120**	**5,201**
CHILDREN							
Child Benefit	311	273	193	187	222	281	288
Working Family Payment	277	159	192	232	206	110	483
Back To Work Family Dividend	-	-	37	24	26	22	14
Guardian's Payment (Non-Contributory)	7	9	7	4	5	4	7
Guardian's Payment (Contributory)	24	17	18	14	15	13	15
Widowed Parent Grant	7	1	4	1	5	1	2
TOTAL - CHILDREN	**626**	**459**	**451**	**462**	**479**	**431**	**809**
OTHER							
Insurability of Employment	124	99	148	160	153	144	131
Liable Relative's	32	15	10	12	4	3	3
Recoverable Benefits & Assistance	-	2	15	10	9	15	7
TOTAL – ALL APPEALS	**14,770**	**9,628**	**8,697**	**7,938**	**8,616**	**8,963**	**8,788**

Table 5: Appeals statistics 1998 – 2019

APPEALS STATISTICS 1998 - 2019					
Year	On hands at start of year	Received	Workload	Finalised	On hands at end of year
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
2019	8,963	22,397	31,360	22,572	8,788

Table 6: Appeals processing times by scheme 2019

Scheme	SWAO (weeks)	Department of Employment Affairs and Social Protection (weeks)	Appellant (weeks)	Totals
Adoptive Benefit	25.5	3.8	4.4	33.7
Blind Person's Pension	15.4	17.9	-	33.3
Carer's Allowance	8.9	14.0	0.3	23.2
Carer's Benefit	9.0	9.7	0.1	18.9
Child Benefit	13.1	17.8	0.1	30.9
Disability Allowance	9.2	4.5	0.2	14.0
Illness Benefit	12.8	10.9	0.1	23.8
Partial Capacity Benefit	11.5	29.1	0.1	40.7
Domiciliary Care Allowance	9.8	14.1	0.3	24.1
Deserted Wife's Allowance	17.3	3.1	-	20.4
Deserted Wife's Benefit	44.6	8.0	0.3	53.0
Farm Assist	19.0	20.3	0.1	39.4
Bereavement Grant	37.4	2.4	-	39.7
Working Family Payment *	12.4	6.8	0.1	19.2
Invalidity Pension	7.9	19.4	0.5	27.5
Liable Relatives	14.4	13.8	-	28.3
Maternity Benefit	16.7	22.3	0.1	39.1
Paternity Benefit	13.1	19.7	-	32.8
One Parent Family Payment	20.6	17.6	0.1	38.2
State Pension (Contributory)	16.0	20.2	0.2	36.4
State Pension (Non-Contributory)	17.2	10.8	0.4	28.5
State Pension (Transition) **	99.8	8.9	-	108.7
Occupational Injury Benefit	26.7	11.9	0.3	38.9
Disablement Pension	16.7	10.2	0.3	27.2
Medical Care	0.1	27.2	-	27.2
Guardian's Payment (Contributory)	13.4	9.6	-	23.0
Guardian's Payment (Non-Contributory)	21.7	5.3	0.2	27.2
Jobseeker's Allowance (Means)	16.7	24.1	0.2	41.1
Jobseeker's Allowance (Payments)	15.5	21.1	0.2	36.9
BTW Family Dividend	14.1	23.5	0.1	37.7
Jobseeker's Transitional	18.2	13.6	-	31.8

Table 6: Appeals processing times by scheme 2019 (continued)

Scheme	SWAO (weeks)	Department of Employment Affairs and Social Protection (weeks)	Appellant (weeks)	Totals
Recoverable Benefits & Assistance	14.1	18.7	-	32.9
Jobseeker's Benefit	14.8	14.7	0.1	29.5
Carer's Support Grant	10.4	12.4	0.1	22.9
Incapacity Supplement	15.1	8.6	-	23.7
Treatment Benefit	0.1	11.1	-	11.0
Insurability of Employment	36.9	16.7	0.8	54.3
Supplementary Welfare Allowance	10.7	28.6	0.1	39.4
Widow/Widower's Pension (Contributory)	12.9	22.4	0.4	35.6
Widow/Widower's Pension (Non-Contributory)	31.0	29.9	-	60.9
Widowed Parent Grant	11.2	6.6	-	17.8
All Appeals	**11.6**	**13.0**	**0.2**	**24.7**

* Previously called Family Income Supplement

** State Pension (Transition) consists of one withdrawn appeal

Table 7: Appeals outstanding at 31st December 2019

Scheme	In progress in Social Welfare Appeals Office	Awaiting Department response	Awaiting Appellant response	Total
Jobseeker's Allowance/Benefit/JST	499	416	0	915
JA Means/Farm Assist	337	288	1	626
Supplementary Welfare Allowance	79	210	1	290
Disability Allowance	1,578	368	2	1,948
Carer's Allowance	587	248	2	837
Domiciliary Care Allowance	282	358	0	640
Invalidity Pension	267	713	0	980
Illness Benefit	89	355	1	445
Child Benefit	88	200	0	288
Other schemes	1,112	705	2	1,819
Totals	**4,918**	**3,861**	**9**	**8,788**

Chapter 3
Social Welfare Appeals Office 2019

THE BUSINESS OF THE OFFICE

3.1 Organisation

Staffing Resources

The number of staff serving in my Office at the end of 2019 was 85, which equates to 81.45 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
Office Manager	1.0
42 Appeals Officers (5 work-sharing)	40.75
2 Higher Executive Officers	2.0
12 Executive Officers (3 work-sharing)	11.4
25 Clerical Officers (5 work-sharing)	24.3
Total	**81.45**

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 competencies. The importance of continuous professional development cannot be overestimated and this has continued to be a priority for my Office during 2019.

A formal programme of training for Appeals Officers was developed in recent years by professional trainers working with experienced Appeals Officers and is reviewed and updated on a regular basis. 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 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 2019, 12 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, meetings of the Appeals Officers group in the course of the year provided further opportunities for sharing knowledge.

The Department has an educational partnership with the National College of Ireland to develop and deliver a suite of QQI accredited programmes for staff of the Department in front line roles. One of the approved programmes is a level 8 Certificate Special Purpose Award for Appeals Officers. The content of this programme is currently being designed and is it envisaged that the roll-out of the programme will commence in the latter part of 2020.

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

3.3 Process Improvements

Significant efforts and resources have been devoted to reforming the appeals process in recent years. As a result, appeal processing times in respect of all schemes have improved with an oral hearing decision taking on average 26.9 weeks (from 30 weeks in 2018) and a summary decision taking 22.1 weeks (from 24.8 weeks in 2018). Our ability to deal with the high volume of appeals received is dependent on the staff of my Office and I would again like to thank them for their work throughout 2019. As was the case in 2018 a number of experienced staff have availed of retirement or availed of other opportunities during 2019. Given the complexity of the appeals process it takes time for new staff to be trained and develop the same level of expertise as the staff that left the Office. These factors had an impact on overall processing times during 2019.

In 2018 a project was established to develop and implement a new Social Welfare Appeals Business Process including the manner in which the appeals process interacts with the Department. The project aims to significantly reduce the use of paper in the appeals process by developing a new case management system. In addition the project will provide online capabilities to provide a more efficient and streamlined service for people availing of services from my Office.

The development of the new Appeals Business Process has been on-going in 2019 and significant progress has been made to finalise the new process.

3.4 Operational Matters

Parliamentary Questions

During 2019, 312 Parliamentary Questions were put down (286 in 2018) in relation to the work of my Office. Replies were given in Dáil Éireann to 228 of those questions. 76 questions were transferred to the relevant scheme area of the Department and the remaining 8 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 7,574 hardcopy enquiries and representations were received from appellants or from public representatives on their behalf during 2019 (6,831 in 2018)..

In addition, a total of 15,848 enquiries were received by email in 2019 (14,256 in 2018)[1].

[1]The figure of 15,848 includes enquiries received by email directly from the Department of Employment Affairs and Social Protection.

Freedom of information

A total of 150 formal requests were received in 2019 (139 in 2018) under the provisions of the Freedom of Information Acts. Of these requests 149 were in respect of personal information and 1 request was in respect of non-personal information.

3.5 Feedback to the Department

A number of opportunities arise in the course of any year to provide feedback to the Department on issues that arise on appeal and while many such opportunities are informal they are nonetheless hugely important.

More formal opportunities during 2019 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 2019, 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.

In keeping with our agreement that issues relating to a person's right to reside in the State would be a standing item on our agendas a number of issues under this heading were discussed. Discussions also 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.

A number of Appeals Officers attended a training session organised by the DAO which was very beneficial and I would like to extend my appreciation to the head of the DAO for facilitating attendance at the session.

Other issues discussed included:

- Quality and consistency of our respective decisions;
- Interpretation of certain provisions of the Social Welfare Consolidation Act 2005;
- The onus on customers to provide information to the Department at claim stage and the continued obligation to notify of any changes in circumstances that may affect entitlement to payment. Issues that arose covered absence from the State, failure to disclose means and failure to produce travel documents;
- Difficulties arising from incomplete application forms; and
- 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 Officers group were held in April and November 2019 and in addition a number of informal meetings took place throughout the year. As many of our Appeal Officers are located outside of our headquarters in Dublin and given that a number of Appeals Officers are recently assigned to my Office, these meetings provided a valuable opportunity to share knowledge and experience, discuss issues of common interest and to promote best practice in decision making.

Consistency in decision making continues to be a major focus of 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 2019 to this topic. At the April conference a number of colleagues from the Department presented on the introduction of the Jobseeker's Benefit (Self-Employed) scheme.

This was a valuable opportunity for Appeals Officers to gain an understanding of the scheme in advance of its introduction on 1 November 2019.

I wish to extend my appreciation to colleagues in the Department for attending our conferences and for their very informative presentations on the new scheme.

Given that a number of Appeals Officers are new assignees to the Office a workshop approach was used at the November conference as a means of building and transferring knowledge and achieving a common understanding of the issues that arise on appeal. Issues discussed included the medical criteria for certain schemes, absence from the State provisions and the impact of this on entitlement. A group of Appeals Officers who deal with appeals on issues relating to the insurability of employment held a parallel workshop and their work built on a number of informal meetings of this group on this issue in the course of the year.

3.7 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.

Judgments delivered by the Supreme Court on 21 November 2019 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 were discussed at our conference in November.

The cases had their origin in Court of Appeal judgements delivered on 5 June 2018 in respect of two cases regarding Child Benefit. The Court of Appeal decided that Child Benefit should be backdated in respect of the two children who were considered to have entitlement to the benefit in respect of periods when the parents of the children involved did not have a right to reside in the State. Following appeals against those judgments, the Supreme Court unanimously allowed the appeals of the State in both cases.

3.8 Litigation

There were 7 applications for judicial review of decisions in 2019 and these cases are all on-going.

Chapter 4:
Case Studies
An Introduction

The case studies included in this Chapter represent a sample of appeals determined during 2019. My Office deals with appeals covering a wide and diverse group of people including families, people in employment, jobseekers, 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, 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 Social Welfare Consolidation Act 2005 provides the primary legislative basis for social welfare schemes. In the case studies included in this Chapter any reference to the 2005 Act refers to the Social Welfare Consolidation Act 2005.

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

4.1 Children and Family	
2019/01 Child Benefit	Question at issue: Backdating
2019/02 Child Benefit	Question at issue: Backdating (habitual residence condition)
2019/03 Child Benefit	Qualified Child – Ordinarily resident
2019/04 Domiciliary Care Allowance	Question at issue: Qualified child - level of care required
2019/05 Domiciliary Care Allowance	Question at issue: Backdating
2019/06 Domiciliary Care Allowance	**Question at issue: Qualified child - level of care required**
2019/07 One-Parent Family Payment	**Question at issue: Backdating**

4.2 Working Age – Illness, Disability and Carers	
2019/08 Invalidity Pension	Question at issue: Eligibility (medical)
2019/09 Invalidity Pension	Question at issue: Eligibility (medical)
2019/10 Invalidity Pension	Question at issue: Eligibility (medical)
2019/11 Invalidity Pension	Question at issue: Eligibility (medical)
2019/12 Invalidity Pension	Question at issue: Eligibility (medical)
2019/13 Invalidity Pension	Question at issue: Eligibility (medical)
2019/14 Illness Benefit	Question at issue: Eligibility (contributions)
2019/15 Illness Benefit	Question at issue: Eligibility (medical)
2019/16 Disability Allowance	Question at issue: Eligibility (means)
2019/17 Disability Allowance	Question at issue: Eligibility (medical)
2019/18 Disability Allowance	Question at issue: Eligibility (medical)
2019/19 Disability Allowance	Question at issue: Eligibility (medical)
2019/20 Disability Allowance	Question at issue: Eligibility (medical)
2019/21 Disability Allowance	Question at issue: Eligibility (medical)
2019/22 Disability Allowance	Question at issue: Eligibility (medical)
2019/23 Disability Allowance	Question at issue: Eligibility (medical)
2019/24 Disability Allowance	Question at issue: Eligibility (medical)
2019/25 Disability Allowance	Question at issue: Eligibility (habitual residence condition)
2019/26 Disability Allowance	Question at issue: Eligibility (habitual residence condition - right to reside)
2019/27 Carer's Allowance	Question at issue: Eligibility (care provided)
2019/28 Carer's Allowance	Question at issue: Eligibility (care required and care provided)

2019/29 Carer's Allowance	Question at issue: Eligibility (care required)
2019/30 Carer's Allowance	Question at issue: Eligibility (care required)
2019/31 Carer's Support Grant	Question at issue: Eligibility
2019/32 Carer's Benefit	Question at issue: Eligibility (care required)
2019/33 Disablement Benefit (OIB)	Question at issue: Eligibility (loss of faculty)

4.3 Working Age – Income Supports	
2019/34 Working Family Payment	Question at issue: Eligibility (means)
2019/35 Working Family Payment	Question at issue: Eligibility (qualified child -full-time education)
2019/36 Partial Capacity Benefit	Question at issue: Eligibility (medical)
2019/37 Partial Capacity Benefit	Question at issue: Eligibility (medical)
2019/38 Jobseeker's Allowance	Question at issue: Eligibility (failure to attend activation meetings)
2019/39 Jobseeker's Allowance	Question at issue: Eligibility (means)
2019/40 Jobseeker's Allowance	Question at issue: Eligibility (failure to attend activation meetings)
2019/41 Jobseeker's Benefit	Question at issue: Eligibility (substantial loss of employment)
2019/42 Jobseeker's Benefit	Question at issue: Award of reduced rate of Jobseeker's Benefit
2019/43 Jobseeker's Benefit	Question at issue: Backdating
2019/44 Jobseeker's Allowance	Question at issue: Eligibility (full-time education)
2019/45 Supplementary Welfare Allowance	Question at issue: Eligibility (means)
	Question at issue: Eligibility
2019/46 Supplementary Welfare Allowance	Question at issue: Eligibility (whether appellant's means were insufficient)
2019/47 Farm Assist	Question at issue: Eligibility (Means)
2019/48 Farm Assist	Question at issue: Eligibility (Means)
2019/49 Farm Assist	Question at issue: Eligibility (Means)
2019/50 Farm Assist	Question at issue: Overpayment
2019/51 Farm Assist	Question at issue: Eligibility (while spouse is on a Rural Social Scheme)

4.4 Retired, Older People and Other	
2019/52 State Pension (Contributory)	Question at issue: Backdating of increase for Qualified Adult
2019/53 State Pension (Contributory)	Question at issue: Eligibility for an increase for Qualified Adult
2019/54 State Pension (Contributory)	Question at issue: Eligibility (Contributions)
2019/55 State Pension (Non-Contributory)	Question at issue: Eligibility (Right to reside/ Habitual Residence Condition)
2019/56 State Pension (Non-Contributory)	Question at issue: Eligibility (means)
2019/57 Widow(er)'s (Non-Contributory) Pension	Question at issue: Eligibility (co-habiting)

4.5 Insurability of Employment	
2019/58 Insurability	Question at issue: Whether a worker has been employed or self-employed
2019/59 Insurability	Question at issue: Liability for PRSI Contributions

4.6 Reviews under Section 318 of the Social Welfare Consolidation Act 2005	
2019/318/60 Supplementary Welfare Allowance	Question at issue: Entitlement to Rent Supplement
2019/318/61 Maternity Benefit	Question at issue: Eligibility (contributions)
2019/318/62 Disability Allowance	Question at issue: Eligibility (Right to Reside)
2019/318/63 Carer's Allowance	Question at issue: Eligibility (care required)
2019/318/64 Jobseeker's Allowance	Question at issue: Entitlement (penalty rate)
2019/318/65 Insurability of Employment	Question at issue: Class of PRSI contribution payable
2019/318/66 Jobseeker's Benefit	Question at issue: Condition of right to benefit (identity)
2019/318/67 Working Family Payment	Question at issue: Calculating weekly family income
2019/318/68 Invalidity Pension	Question at issue: Eligibility (self-employed)
2019/318/69 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
2019/318/70 Insurability of Employment	Question at issue: Whether a worker was employed under a contract for services or a contract of service

4.1 Case Studies

Children & Family

2019/01 Child Benefit Summary Decision

Question at issue: Backdating

Background: The appellant, a non-EU national, made a claim for Child Benefit in May 2018. Her claim was awarded from June 2018 a month after her claim was received. The appellant in her application form informed the Department that she came to Ireland in December 2016. She then travelled home and was absent from the State from February 2017 to June 2017 and again from October 2017 to January 2018. The appellant requested that her claim be considered from January 2017 the month after she had first arrived in Ireland. However, backdating for the period January 2017 to May 2018 was disallowed by the Department on the grounds that the appellant was held not to have shown 'good cause' for the delay in making the claim. The Department contended that it publishes information leaflets as widely as possible, advertises changes of legislation in the national press and information is available on the Department's website regarding entitlement to payments.

Consideration: Section 241 of the 2005 Act provides that a claim for Child Benefit must be made within twelve months of a person becoming a qualified person within the meaning of section 220 of the 2005 Act. Where the claim is not made within the prescribed time, a person is disqualified for payment in respect of any day before the date on which the claim is made.

The Appeals Officer concluded that the appellant could not be considered a qualified person for receipt of Child Benefit for the periods that she was absent from the State and that she became a qualified person when she returned to the State in January 2018. The appellant made her claim in May 2018 which was within 12 months of becoming a qualified person. Therefore the Appeals Officer concluded that her claim should be awarded from February 2018 the month after she became a qualified person as laid down in the 2005 Act.

Outcome: Partially allowed

2019/02 Child Benefit Summary Decision

Question at issue: Backdating (Habitual Residence Condition)

Background: The appellant applied for Child Benefit in May 2018 and was awarded from March 2018. The appellant requested backdating of her claim to March 2014 the date on which she applied for approval of her immigration status. As the appellant did not have leave to remain in the State prior to March 2018 she could not be regarded as habitually resident under Social Welfare legislation.

Consideration: Section 220 (3) of the 2005 Act provides that a person must be habitually resident in the State for the purposes of establishing entitlement to Child Benefit.

Section 246 of the 2005 Act outlines the provisions with respect to habitual residence, including that a person who does not have a right to reside in the State shall not be regarded as being habitually resident in the State. Section 246(8) of the 2005 Act also provides that where a person is granted permission to remain in the State he or she shall not be regarded as being habitually resident for any period before the date on which the declaration or permission concerned was granted.

The Appeals Officer noted that the appellant was granted permission to remain in the State from March 2018 but had no such permission prior to this date.

While the Appeals Officer noted the contentions put forward on behalf of the appellant that there was an inordinate delay by the Department of Justice and Equality in processing her application for immigration status, the Appeals Officer concluded that she was bound by Social Welfare legislation. The legislation requires that the person making the application for Child Benefit is habitually resident in the State. The evidence confirmed that the appellant did not have permission to remain in the State prior to March 2018. The provisions of the governing legislation precluded the award of Child Benefit from an earlier date in those circumstances.

Outcome: Appeal disallowed

2019/03 Child Benefit Summary Decision

Question at issue: Qualified Child – ordinarily resident

Background: The appellant had been in receipt of Child Benefit in respect of her children which was disallowed for a period between September 2018 and April 2019. The family had left the State in August 2018 and the children were no longer regarded as being ordinarily resident in the State. The Department had not been notified of the intended absences from the State or the likely duration of the absences and consequently payment of the benefit continued during the absences. On revising the decision, the Department relying on Section 302(b) of the 2005 Act, also raised an overpayment which was in excess of €5,000. In her appeal submission the appellant set out the background that gave rise to the family's absences from the State, which included seeking work in another EU State, visiting family in America, participating in a training programme and ultimately leaving Ireland in order to work in another country.

Consideration: Section 219 (1) (c) of the 2005 Act provides that 'a child shall be a qualified child for the purposes of Child Benefit where he or she is ordinarily resident in the State'.

The term 'ordinarily resident' is not defined in legislation and in those circumstances decision makers can apply discretion having regard to the circumstances of the individual case, including the length of the absence.

The Appeals Officer concluded that having regard to the length of the absence, some 6 months, it could not be said that the children in this case were ordinarily resident in the State and in those circumstances found no grounds to allow the appeal. The overpayment as assessed by the Department also stood.

Outcome: Appeal disallowed

2019/04 Domiciliary Care Allowance Summary Decision

Question at issue: Qualified Child (level of care required)

Background: The appellant's application for Domiciliary Care Allowance in respect of her child who was a year old was disallowed by the Department on the grounds the she did not meet the qualifying conditions as the evidence did not indicate that the level of additional care her child required was substantially in excess of that required by a child of the same age without a disability.

The medical report completed by the GP confirmed that the child was diagnosed with dysplastic kidney and was attending hospital. The report also showed that the child had been on prescribed medication which had now stopped and the ability profile indicated that all of the child's abilities were normal and he was not affected by his condition. Additional medical evidence submitted included letters from a Consultant that confirmed the child's diagnosis and concluded that he was doing well and had met all his milestones and that he was discharged to the care of his GP.

The appellant submitted an updated medical report as grounds of appeal which indicated that the child's condition severely affected his feeding/diet with all other relevant abilities being normal.

Consideration: Section 186C(1) of the 2005 Act provides that a person who has not attained the age of 16 years 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. The Appeals Officer noted all of the evidence including the medical evidence and having done so concluded that while the appellant's son, who was aged 12 months at the date of claim, had some additional care requirements due to his medical condition, the evidence did not indicate that he had a severe disability or that he was so impacted by that disability as to require continual or continuous care and attention, which was substantially in excess of the care and attention normally required by a child of the same age.

Outcome: Appeal disallowed

2019/05 Domiciliary Care Allowance

Question at issue: Backdating

Background: The appellant made a claim for Domiciliary Care Allowance in January 2018 in respect of her son. The claim was awarded with effect from February 2018. In addition the Deciding Officer concluded that there was good cause for the delay in making the claim and payment was backdated to August 2017. The appellant appealed the date of award. She made reference to her son's medical history, the delay which occurred in obtaining a diagnosis, his ongoing care and attention needs and associated costs. The appellant submitted a copy of a Speech and Language Therapy report dated 2014 and a copy of the costs of taking her son to a specialist.

Considerations: The question before the Appeals Officer concerned the date of award of Domiciliary Care Allowance and the appellant's request that payment be made from an earlier, unspecified date. Social welfare legislation allows for backdating of Domiciliary Care Allowance claims for up to a maximum period of 6 months where good cause has been shown for the delay in making a claim. Having examined the evidence the Appeals Officer noted that the Deciding Officer had backdated the appellant's claim for 6 months which is the maximum period allowed under Social Welfare legislation. The Appeals Officer also noted that there was no basis in legislation for backdating payment beyond 6 months.

Outcome: Appeal disallowed

2019/06 Domiciliary Care Allowance Summary Decision

Question at issue: Qualified Child (level of care required)

Background: The appellant made a claim for Domiciliary Care Allowance in March 2019 in respect of her 8 year old son. Her claim was disallowed on the grounds that her son was not regarded as a qualified child under the governing legislation. Section 186C of the 2005 Act provides that a person who has not attained the age of 16 years 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.

In her application for Domiciliary Care Allowance the appellant outlined her son's care needs and stated that he had a lot of difficulty walking and climbing stairs. He required regular assistance in school and had access to an SNA to assist him throughout the day. The medical report completed by the GP confirmed that the child was diagnosed with dyspraxia. The Ability Profile which was contained in the GP's report indicated that the appellant's son was severely affected in manual dexterity, reaching/lifting/carrying and climbing stairs and profoundly affected on social skills, sensory issues, fine motor skills and gross motor skills.

Consideration: Domiciliary Care Allowance may be paid in respect of a child who has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, and the level of disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months.

The Appeals Officer noted all of the evidence including the GP's report, a letter from the child's Occupational Therapist and a letter from the child's school. Having examined all of the evidence the Appeals Officer concluded that it had been established that the requirement for substantial additional care on a continuous basis, as provided for in the governing legislation, had been met.

Outcome: Appeal allowed

2019/07 One-Parent Family Payment Oral Hearing

Question at issue: Back-dating

Background: The appellant applied for One-Parent Family Payment in October 2018 in respect of her son who was born in January 2018 and payment was awarded from the date of application. In her application the appellant requested payment to be backdated to February 2018 the month after her son was born.

The Department refused the application to back date the claim to February 2018 on the grounds that the appellant did not make the claim in the manner prescribed in the governing legislation and she did not demonstrate that there was a good reason for the delay in making her claim.

Oral Hearing: The appellant stated that she was overwhelmed when her son was born as he did not sleep and that she was up most days for 18-20 hours. She had to change accommodation at short notice and was exhausted much of the time. The appellant's GP stated in a letter that the appellant struggled with the reality of single motherhood. The appellant stated that at the time her child was born she was not aware of the One-Parent Family Payment and had not been informed by anyone of her entitlement to the payment. The Appeals Officer noted that on the application form the appellant stated in response to the relevant questions that she and her partner separated in August 2018. The appellant could not explain her response other than to state that she had made a mistake and was not good with dates.

Consideration: The relevant legislation in relation to the prescribed time for making a claim for One-Parent Family Payment is contained in Section 241(2) of the 2005 Act. Section 241(3) of the Act also provides for the backdating of a claim for up to 6 months where a person can show that there was good cause which precluded the submission of an application at an earlier date. The legislation does not provide for claims to be backdated for periods in excess of six months unless it can be shown that the delay in making a claim was due to incorrect information being supplied to a person by the Department or where the person can show that he or she was incapable of submitting a claim from the date when entitlement arose up to the date of application, by virtue of illness or incapacity.

While the appellant's GP stated that she struggled with the reality of single motherhood it did not indicate any illness or incapacity which would have prevented the appellant from submitting a claim at an earlier date. The Appeals Officer noted the appellant's evidence that she was not aware of One-Parent Family Payment when her son was born. The Appeals Officer concluded that the primary responsibility in making a claim rests with the claimant. The Department raises awareness of potential entitlements to its schemes through appropriate advertising of the existence of its schemes.

The Appeals Officer found no evidence of incorrect information being supplied to the appellant by the Department or any other service. In those circumstances the Appeals Officer concluded that the appellant had not established there was good cause for the delay in making her claim.

Outcome: Appeal disallowed

4.2 Case Studies

Working Age – Illness, Disability and Carers

2019/08 Invalidity Pension Summary Decision

Question at Issue: Eligibility (Medical)

Background: The appellant, in her 40's, applied for Invalidity Pension in 2018. The application was disallowed on the grounds that she was not permanently incapable of work. In this case, the appellant was required to show that she was incapable of work for at least a year from the date of her application. As per the medical report on file, the appellant was diagnosed with depression and anxiety which were deemed to severely affect her in terms of her mental health/behaviour. In support of her appeal, the appellant submitted additional medical evidence from her GP, where it was stated that the appellant had been unfit for work for many years with severe depression and anxiety. The GP certified that the appellant was not fit for work and was likely to be incapable for at least another year.

Consideration: Section 118 of the 2005 Act and article 76 of S.I. No. 142 of 2007 provide 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 it is established that the incapacity is of such a nature that the person is likely to be incapable of work for life.

The appellant, in this case, was required to show that she was likely to remain incapable of work for a further twelve months from the date of her application for Invalidity Pension.

The Appeals Officer examined the available evidence before him and also took due consideration of the additional medical evidence from the appellant's GP where it was stated that the appellant had been unfit for work since 2015 with severe depression and anxiety. It was stated by the GP that he felt the appellant was not fit for work and likely to be incapable of work for at least another year.

Based on the available medical evidence from the appellant's GP confirming the severity of her diagnosis and in the absence of evidence to the contrary, the Appeals Officer concluded that the appellant may be deemed to be permanently incapable of work for the purposes of qualifying for Invalidity Pension.

Outcome: Appeal allowed.

2019/09 Invalidity Pension Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant applied for Invalidity Pension in July 2018. Medical evidence from the appellant's GP stated that he suffered from bilateral carpel tunnel, arthritis and depression and that his condition would preclude him from returning to work for 12 to 18 months. The GP report deemed the appellant to be severely affected in reaching, manual dexterity, lifting/carrying, bending/kneeling/squatting, sitting/rising and climbing stairs/ladders, moderately affected in mental health/behavior, standing and walking and mildly affected in learning/intelligence.

Further medical evidence from the appellant's GP stated that the appellant had severe carpal tunnel syndrome affecting both hands and that he had been on a waiting list for over a year for surgery to treat this condition. The medical evidence also stated that the appellant was struggling with depression and was attending local psychiatry services.

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 12 months and is likely to remain incapable of work for a further twelve months, or
- it is established that the incapacity is of such a nature that the person is likely to be incapable of work for life.

Having considered all of the evidence the Appeals Officer noted that at the time of making the claim the appellant had not been incapable of work for 12 months and therefore in order to qualify for Invalidity Pension he needed to meet the condition of being likely to be incapable of work for life. The Appeals Officer concluded that while the appellant met the condition of being incapable of work, the evidence did not establish that the appellant was likely to be incapable of work for life.

Outcome: Appeal disallowed

2019/10 Invalidity Pension Oral Hearing

Question at issue: Eligibility (Medical)

Background: The appellant was diagnosed with motor and sensory conversion syndrome, depression and anxiety following an accident at work. She was attending neuropsychology, neurology and physiotherapy. She applied for Invalidity Pension in 2018 and was refused on the grounds that she was not considered permanently incapable of work.

Oral Hearing: The appellant was in receipt of Illness Benefit from 2016 until the payment exhausted in 2018 and she continued to submit medical certificates to the Department certifying that she was unfit for work. She had not been able to work since her accident. She had constant movement in her body, her face drooped on one side and she could drop things because of the numbness in her hands. She was depressed and suffered from constant shaking which caused poor balance and co-ordination. She also found it difficult to talk as the injury caused her to stammer. She continued to attend neurology, do physiotherapy exercises at home and tried to meditate to help her relax and sleep. She also has had some memory issues and had to focus to remember what she was doing. Her husband and mother helped around the house. The appellant gave permission to note in the Appeals Officer's report that she was visibly shaking and having difficulty with her co-ordination, concentration and speech throughout the hearing.

Consideration: The legislation governing Invalidity Pension is set out in Section 118 of the 2005 Act. The definition of permanently incapable of work for the purposes of that section is set out in Article 76 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No 142 of 2007) which provides:

"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.

From the medical evidence provided and the evidence adduced at the oral hearing, the Appeals Officer was satisfied that the appellant had been continuously incapable of work for a year prior to her claim for invalidity Pension in 2018 and that it had been established that she was likely to continue to be incapable of work for at least a further year until 2019 and therefore met the medical criteria for Invalidity Pension.

Outcome: Appeal allowed.

2019/11 Invalidity Pension Oral Hearing

Question at issue: Eligibility (Medical)

Background: The appellant, in her early 40's, applied for Invalidity Pension in January 2019 and was disallowed on the grounds that she was not considered to be permanently incapable of work. The medical evidence showed that the appellant suffered from anxiety disorder. The appellant had been in receipt of Illness Benefit from July 2017 to June 2019 and attended an in-person medical assessment with a Medical Assessor of the Department in May 2019. In the Medical Assessor's opinion the appellant's mental health was normal to mildly affected by her condition.

The GP's medical report stated that the appellant's condition resulted from a workplace incident and that her mental health was moderately affected by her condition. The report outlined that the appellant was on medication for her condition and had attended a psychiatrist in 2018.

Consideration: The appellant in this case was required to show that she was likely to be incapable of work for at least a further year from that date of her application for Invalidity Pension in January 2019. The Appeals Officer noted the appellant's account of her symptoms of anxiety disorder and how she spent a lot of time in bed during the day. In a report dated June 2019 the appellant's GP stated that her mental health was moderately affected and that her condition was likely to last for 3 to 6 months. The Appeals Officer also noted that following the in-person assessment the Medical Assessor was of the opinion that the appellant's mental health was normal to mildly affected.

The Appeals Officer concluded that while the appellant's mental health may continue to be adversely affected it had not been established that she was likely to be incapable of work for at least a further year.

Outcome: Appeal disallowed

2019/12 Invalidity Pension Oral Hearing

Question at issue: Eligibility (Medical)

Background: The appellant, in his early 50's, applied for Invalidity Pension in August 2018 in respect of a certified incapacity relating to a diagnosis of breast cancer. His claim was disallowed on the grounds that he was not considered permanently incapable of work.

Oral hearing: The appellant was a self-employed tyre fitter. The medical evidence showed that in early in 2018 he was diagnosed with cancer and began chemotherapy before having a mastectomy and removal of lymph nodes in November 2018.

As a result of the operation he had lost 75% of the power in his left arm and had been receiving radium therapy and Herceptin injections. The appellant last worked in February 2018 and at the time of the hearing the appellant was concerned that a second lump which had developed may have been cancerous.

Consideration: The GP's medical report indicated that the appellant's ability was affected in the following areas: moderate in relation to reaching, lifting/carrying and climbing stairs. The medical report stated that the appellant was being treated for cancer and outlined that his conditions were expected to last indefinitely. From the medical evidence and the evidence adduced at oral hearing the Appeals Officer was satisfied that the appellant was likely to remain incapable of work for life and therefore met the medical criteria for Invalidity Pension.

Outcome: Appeal allowed.

2019/13 Invalidity Pension Oral Hearing

Question under appeal: Eligibility (Medical)

Background: The appellant, in her mid-30's, applied for Invalidity Pension in October 2018 and the claim was disallowed in February 2019 as the Department determined that the appellant was not permanently incapable of work. A medical report dated September 2018 stated that the appellant was diagnosed with anxiety, vertigo and endometriosis. The appellant's GP indicated in the report that at that date the medical condition would continue for more than a year however indicators on the appellant's ability/disability profile were not completed.

Consideration: The question to be examined was whether the appellant could be regarded as being permanently incapable of work by reason of having been continuously incapable of work for the year immediately preceding her claim and that the medical evidence presented showed that she was likely to remain incapable of work for a further year.

An Illness Benefit claim from February 2017 addressed the first part of the question as medical certificates were being submitted and accepted by the Department. The second element that had to be considered was whether the condition was likely to continue for a further year. The Appeals Officer noted that in a Work Capacity Review carried out by a doctor nominated by the Department, it was indicated that all areas were on the range between normal and mildly affected. It was also noted that the greater part of a year had already elapsed since the date of application. A GP letter dated February, 2019 stated that the appellant was unfit for work because of physical and psychological symptoms. At the Oral Hearing, the appellant detailed how endometriosis continued to affect her ability to sustain employment despite her best repeated efforts.

In consideration of all of the evidence and notwithstanding the conflicting medical reports, having regard to the appellant's age and employment experience and to what was stated and observed at oral hearing, the Appeals Officer was satisfied that the appellant was permanently incapable of work as defined within the governing legislation.

Outcome: Appeal allowed.

2019/14 Illness Benefit Summary Decision

Question at Issue: Eligibility (Contributions)

Background: The appellant submitted an application for Illness Benefit in April 2018. Her claim was disallowed on the grounds that she did not meet the contribution conditions. She was advised by the Department that she did not have the required 39 paid or credited PRSI contributions in 2016 or the alternative 26 paid PRSI contributions in each of the years 2015 and 2016.

Consideration: Illness Benefit is a social insurance based scheme for people who are incapable of work due to illness. The PRSI contribution conditions are set down in Section 41 of the 2005 Act.

The legislation requires that a person must have a minimum of 104 paid PRSI contributions and at least 39 paid or credited contributions in the second last complete contribution year before the beginning of the year in which he/she is making a claim. If a person does not have 39 paid or credited contributions in the second last complete contribution year the condition can be met by having at least 26 paid contributions in each of the second last and third last complete contribution years before the beginning of the year in which a claim is made.

The appellant made a claim for Illness Benefit in 2018. She had more than the minimum of 104 paid contributions and met the first contribution condition. The second last complete contribution year for a claim made in 2018 was 2016. The available evidence showed that the appellant had 17 qualifying paid or credited PRSI contributions in 2016. This was 22 qualifying contributions below the minimum threshold of 39 qualifying contributions required to establish an entitlement to Illness Benefit on this basis. The third last complete contribution year was 2015. The available evidence showed that the appellant had 44 paid PRSI contributions and 14 credited PRSI contributions in respect of 2015.

Based on the evidence, although the appellant had more than 26 paid PRSI contributions in 2015, as she did not also have a minimum of 26 paid PRSI contributions in 2016, the Appeals Officer concluded that she had not established that she met the required PRSI contribution conditions as laid down in the governing legislation.

Outcome: Appeal disallowed.

2019/15 Illness Benefit Summary Decision

Question at Issue: Eligibility (Medical)

Background: Following a review of the appellant's entitlement to Illness Benefit her claim was disallowed as she was found to be capable of work. The appellant attended a medical assessment and the Medical Assessor was of the view that the appellant was capable of work. The Ability Profile contained in the medical report, completed by the appellant's GP, is designed to capture the degree to which the appellant had been affected in 16 general abilities. The appellant had been moderately affected in mental health. All other categories were described as normal. The GP's diagnosis was depression. In her appeal, the appellant stated that she had been suffering from depression and anxiety for a considerable number of years. She stated that she suffered panic attacks and that she had high blood pressure, anaemia and low haemoglobin. She stated that she suffered from fibroids and endometriosis.

The legislative provisions relating to Illness Benefit are set out in Part 2 - Chapter 8 (Sections 40 to 46) of the 2005 Act and Part 2 - Chapter 1 (Articles 20 to 28) of the Social Welfare (Consolidated Claims Payments and Control) Regulations, 2007 (S.I. No. 142 of 2007).

Section 40 (3) (a) of the 2005 Act provides that:
(3) For the purposes of any provision of this Act relating to illness benefit —
(a) a day shall not be treated in relation to an insured person as a day of incapacity for work unless on that day the person is incapable of work.

Consideration: The appeal contentions submitted by the appellant were reviewed and considered by the Appeals Officer together with the medical evidence. The Department's Medical Assessor conducted an in-person review and found the appellant to be capable of work. The Ability Profile which was completed by the appellant's GP stated that the appellant had been moderately affected in mental health. All other categories were described as normal. The Appeals Officer concluded that the medical evidence did not support a conclusion that the appellant was incapable of work for the purposes of Illness Benefit.

Outcome: Appeal disallowed.

2019/16 Disability Allowance Summary Decision

Question under appeal: Eligibility (Means)

Background: The appellant, in her late 20's, applied for Disability Allowance in February 2018. Her file was sent to a Social Welfare Inspector (SWI) for investigation. Having met with the appellant and having received further information from the executors of the appellant's grandfather's estate the SWI reported the appellant had capital in the form of savings of €83,000. This amount consisted of savings in a UK bank account in the amount of €75,000 and savings in Irish bank accounts in the amount of €8,000. The Deciding Officer reviewed the file and the appellant was assessed with means of €78.00 per week. She was awarded a Disability Allowance at a reduced rate on this basis.

In her appeal the appellant contended that she did not have weekly means as assessed by the Department. She stated that the savings left to her from her grandfather's estate were in a bank account to which she did not have access. This was due to an understanding between both the appellant and the executors of her grandfather's estate as she suffered from bipolar disorder symptoms which included impulsive spending and poor money management. She stated that the money was only released in limited circumstances such as to meet extraordinary medical expenses. The appellant further stated that due to the prospect of a "no deal Brexit" the money in the UK bank account had been subsequently transferred to her Irish bank account.

Consideration: In line with the provisions of Social Welfare legislation, a person's financial circumstances (means) must be assessed in order to determine entitlement to Disability Allowance. Having considered all of the evidence the Appeals Officer was satisfied that the appellant was the beneficiary of the capital in the form of the savings as assessed by the Department. The Appeals Officer was satisfied that the Department had assessed the appellant's means in accordance with the governing legislation.

Outcome: Appeal disallowed.

2019/17 Disability Allowance Summary Decision

Question at issue: Eligibility (Medical)

Background: The appellant, in her late 30's, had a diagnosis of neck pain and anxiety following a road traffic accident in 2015. She made a claim for Disability Allowance in October 2018. Her claim was refused by the Department on the grounds that she was not substantially restricted in undertaking suitable employment by reason of a specified disability.

The appellant submitted an appeal where she outlined that she had been told by numerous medical professionals that she was not fit for work. The appellant stated that she had a cleaner as she was not able to clean her house and that she was receiving pain injections. She submitted letters from her GP and her pain specialist.

Consideration: The appellant had Leaving Cert standard education and Fetac level 5 in childcare and ECDL. She was employed by a crèche. It was noted by the Appeals Officer that, in completing the ability/disability profile, her G.P. assessed her condition as affecting her to a severe degree in the area of manual dexterity, to a moderate degree in relation to mental health/behaviour, to a mild degree in relation to continence, reaching, lifting/carrying, bending/kneeling/squatting, sitting/rising, standing, climbing stairs/ladders and walking, with an expectation of the condition continuing indefinitely. Her GP reported that she had relevant investigations and attended specialists in orthopaedics and pain and took prescribed medications which were outlined. Having assessed the evidence the Appeals Officer concluded that the appellant had met the qualifying criteria for receipt of Disability Allowance in that she was substantially restricted in undertaking suitable employment by reason of a specified disability, as outlined in the governing legislation.

Decision: Appeal allowed.

2019/18 Disability Allowance Oral Hearing

Question at issue: Eligibility (Medical)

Background: The appellant, in his early 60's, 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. The appellant did not complete substantial portions of the application form, including work history and how his illness was affecting him. The medical reports submitted indicated that there had been serious medical issues accumulating for some time, and that the appellant was restricted physically in some aspects.

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 relevant legislation.

Oral Hearing: The Appeals Officer adduced further information at the hearing in relation to the appellant's work history, which was primarily physical in nature. The Appeals Officer considered this information with the medical information, both contemporary and historical. The Appeals Officer determined that the most suitable employment, given the appellant's qualifications, age and experience, seemed to be skilled welding or fitting type work, otherwise general construction foreman or labouring type work.

The medical evidence indicated that the appellant's condition substantially restricted him from engaging in such work and this restriction was likely to continue for at least a further year.

Outcome: Appeal allowed.

2019/19 Disability Allowance Summary Decision

Question at issue: Eligibility (Medical)

Background: The appellant's application for Disability Allowance was refused by the Department as it was determined that the medical condition was not met, in that the appellant was not substantially restricted. The appellant, in his late 50's, was educated to Intermediate/Junior Certificate level. Having been unemployed for a number of years, the appellant undertook some self-learning online courses.

The medical evidence informed that the appellant suffered a stroke 3 years prior to his application for Disability Allowance and had been diagnosed with Type 2 diabetes in the previous year. The appellant had been admitted to hospital for a time following the stroke. The appellant had not undergone any other medical interventions and had not actively attended any specialist for his conditions. An Ability Profile Report in which a medical assessment is made of the impact of the appellant's condition in relation to 16 daily activities advised that the appellant was mildly affected in relation to vision, bending/kneeling/squatting and climbing stairs, otherwise he was not negatively affected by his medical conditions. The appellant advised that he would have to attend additional medical appointments in the future as a result of his diabetes diagnosis and that his condition would negatively impact him in the future.

The appellant failed to attend an oral hearing convened to afford him an opportunity to provide additional evidence or a personal account of the impact of his condition on his ability to work. The Appeals Officer determined that the appellant had not established that he was substantially restricted in obtaining suitable employment having regard to his age, qualification and experience as required by the governing legislation.

Outcome: Appeal disallowed

2019/20 Disability Allowance Summary Decision

Question at issue: Eligibility (Medical)

Background: The appellant, in her early 60's, had a diagnosis of mood disorder, generalised arthritis, asthma and osteoarthritis, expected to continue indefinitely. She made a claim for Disability Allowance in December 2018. The appellant stated that she had primary level standard education and completed a secretarial course in the UK about 40 years ago. She last worked as a shop assistant 15 years ago. Her GP outlined that since the original application the appellant had developed a cardiac problem and was awaiting further evaluation of this.

The GP further stated that the cardiac problem may have caused a collapse about a week earlier which resulted in the appellant suffering a hand injury that required corrective surgery. The GP confirmed ongoing musculoskeletal problems and stated that while the appellant's mental health was stable, it required continuing professional input. The GP's letter confirmed the evolving nature of the appellant's illnesses.

Consideration: The Appeals Officer noted that in completing the ability/disability profile, the GP had assessed the condition as affecting the appellant's abilities of mental health/ behaviour to a severe degree, moderately in the areas of balance/co-ordination, reaching, lifting/carrying, bending/kneeling/squatting and standing, mildly in the areas of manual dexterity, sitting/rising, climbing stairs/ladders and walking. The GP reported that the appellant had relevant investigations and was on prescribed medication.

Having assessed the evidence, the Appeals Officer concluded that the appellant met the qualifying criteria for receipt of Disability Allowance, as outlined in the governing legislation.

Outcome: Appeal allowed.

2019/21 Disability Allowance Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her late 40s, had a diagnosis of chronic lower back pain which she had suffered for over a year, and the condition was certified by her GP to be expected to continue indefinitely.

The GP's medical report stated that the appellant was on a waiting list for an Orthopaedic Consultant but that she had no hospital admissions and had no relevant investigations to date. Her application 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 it was established that the appellant had experienced a bad fall in very poor weather conditions almost 2 years earlier. The appellant had not attended hospital at that time. She then began to experience a great deal of pain arising from the fall and this had worsened over time. Her GP had prescribed and recommended pain relieving medication, physiotherapy treatments and sought an appointment for the appellant with an Orthopaedic Consultant.

The appellant was experiencing severe back pain and pain in her hands, legs, feet and shoulder. On a daily basis, the appellant required assistance in performing what were previously for her normal everyday tasks such as lifting or carrying, dressing herself, and also assistance when rising from a chair or her bed. The appellant was taking prescribed pain relief medications but she found that these were not improving her condition. The appellant's mental health had also been adversely affected by the daily pain and the impact on her ability to function normally and independently.

The appellant was waiting for an appointment with an Orthopaedic consultant and her GP had advised that surgery may be considered in her particular case following that appointment. The appellant had been to a number of physiotherapists without success or improvement in her condition.

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 was satisfied from the evidence that for over a 2 year period and despite ongoing physiotherapy and pharmacological treatments the appellant was still experiencing high levels of pain and also very substantial restrictions of movement while she was awaiting an appointment with an Orthopaedic Consultant. The Appeals Officer concluded that the appellant was substantially restricted in undertaking suitable employment having regard to her age, qualifications and experience as specified in the governing legislation.

Outcome: Appeal allowed.

2019/22 Disability Allowance Oral Hearing

Question at issue: Eligibility (Medical)

Background: The appellant, in her mid 20s, had a diagnosis of gender dysphoria and depression. Medical reports on file outlined that the appellant prefered to be identified/addressed in the feminine context. The appellant had voluntarily left her most recent employment as she couldn't cope with the male environment. 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.

The appellant had previously attended both psychiatric and endocrinology clinics. She had also received zoladex injections and medication was noted as sertraline.

Oral Hearing: At the oral hearing the appellant stated that she had no hospital admissions in relation to her condition. The appellant was attending a counselling psychologist within the Mental Health Services. She informed the Appeals Officer that she had received a diagnosis on the autistic spectrum in 2005 from her clinincal psychologist. She stated that her sleep pattern was badly affected and that she found it difficult to interact with others or hold down a conversation. She stated that she often forgot to eat and as a result had weight issues. The appellant stated she could carry out all normal daily tasks which included hobbies such as playing in a band that often perform around the country.

She informed the Appeals Officer that she had received support and information regarding gender transition from the LGBT community and had access to support from the Transgender Equality Network Ireland.

Consideration: The Appeals Officer noted the GPs opinion in the medical report that the appellant was deemed to be mildly affected in mental health and that all other categories were deemed normal. It was further noted that in the GPs opinion the appellant's condition would last between 12-24 months.

On the appellant's application form her GP stated that it would be in the appellant's best interest to get back to work or college. The Appeals Officer concluded that while the appellant had some limitations and was experiencing a difficult period in her life, the medical evidence on file and that adduced at oral hearing 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.

2019/23 Disability Allowance Oral Hearing

Question at issue: Eligibility (Medical)

Background: The appellant, aged 16 years, had a diagnosis of diabetes type 1 and hyperthyroid. An application for Disability Allowance was refused in April 2019 as the Department found that the appellant was not substantially restricted in undertaking suitable employment, by reason of a specified disability, which was expected to last for a period of at least one year. The medical report dated February 2019 confirmed the appellant's diagnosis. The GP indicated that these conditions would continue indefinitely.

Oral Hearing: The appellant explained to the Appeals Officer at the hearing that her conditions were over-lapping and medication to alleviate one condition adversely affected the other. All areas on the ability/disability profile were shown as normal or mild, although it was not stated whether the appellant would be suitable for work or training for rehabilitative purposes. The appellant was attending school.

Consideration: The question to be examined was whether the appellant's medical condition could be held to be a substantial restriction in carrying out employment 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.

The Appeals Officer noted the indicators shown on the ability/disability profile that some level of monitoring was required to avert and minimise the risk of harm. However, having regard to the totality of available evidence and having regard to the appellant's age, qualifications and experience, the Appeals Officer was not satisfied that the appellant was substantially restricted in seeking suitable employment, by reason of a specified disability, which was expected to continue for a period of at least one year.

Outcome: Appeal disallowed.

2019/24 Disability Allowance Oral Hearing

Question at issue: Eligibility (Medical)

Background: The appellant, aged 16 years, had a diagnosis of ADHD (Attention Deficit Hyperactivity Disorder/Asperger's). He applied for Disability Allowance in January 2019 and was refused on the basis that he 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.

Oral Hearing: The question to be examined was whether the appellant's medical condition could be held to be a substantial restriction in carrying out employment 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. At the hearing the appellant referred to medical evidence contained within his application and determined that his condition had a significant effect on his ability to interact in a calm and sustained manner or to take direction. The appellant continued to attend school with assistance of supports and planned to undertake the Leaving Certificate in 2021.

Consideration: As per the medical report of January 2019, the appellant was diagnosed with ADHD Asperger's. The GP indicated an indefinite duration for this medical condition. The ability profile, contained within this report, is designed to capture the degree to which the medical conditions adversely affect the claimant in 16 general abilities. In the appellant's case it was noted that both mental health/behaviour and learning/intelligence were severely affected while most other categories were between normal and moderately affected.

The appellant was on a range of medication specifically to assist in the management of stabilising his condition. He was attending school and studying a reduced number of subjects for his Leaving Certificate planned in June 2021. However, it was noted that while in transition year, he completed only 2 one-hour days' work experience (out of 20). This placement had been facilitated by his mother with a local employer. In his application, appeal submission and at the oral hearing, the appellant's mother referred to this and other examples of her son's high level of support needs.

Having regard to his age and acknowledging that continuing to attend mainstream school should assist in developing skills and qualifications, it could not be determined that the effects of his current condition would lessen sufficiently to the extent that he would be able to undertake suitable employment as defined within governing legislation. In consideration of this, the Appeals Officer found that the appellant was substantially restricted in seeking suitable employment, by reason of a specified disability, which had or was expected to continue for a period of at least one year.

Outcome: Appeal allowed.

2019/25 Disability Allowance Summary Decision

Question at issue: Eligibility (HRC)

Background: The appellant, an EU National, made a claim for Disability Allowance in August 2016 and this was disallowed in November 2018 and re-stated in a decision in May 2019. The appellant was living at an address with his partner who is an Irish national and the appellant was an adult dependant on his partner's claim. He stated that he came to Ireland in March 2016. He was allocated a PPSN in May 2017 and was employed for part of the period between May 2017 and September 2018. Records show that during this period the appellant had 38 paid PRSI contributions. He returned to his country of origin for 3 months from September to December 2018.

He had a health diagnosis of hepatitis B with cirrhosis and attended a hepatology clinic but was not on medication nor had he had any recent hospital admissions. It was indicated that these conditions which commenced in 2015, prior to his arrival in Ireland, would continue indefinitely. In the appeal submission, the appellant acknowledged that he was out of the State for a three month period in 2018.

Governing Legislation: European Communities (Free Movement of Persons) Regulations 2015 (S.I. 548 of 2015) sets out the circumstances in which an EU citizen has the right to reside in the State. Section 210(9) of the 2005 Act states that in order to qualify for Disability Allowance the person must be habitually resident in the State.

Section 246(5) of the 2005 Act provides that a person, who does not have a right to reside in the State, shall not be regarded as being habitually resident in the State.

The main legislative provisions relating to Disability Allowance are contained in Sections 209 to 212 of the Act of 2005 and Articles 137 to 140 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007).

Consideration: The Appeals Officer identified the governing legislation as Section 210 of the 2005 Act 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).

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 the person may be deemed to be habitually resident with reference to the 5 factors outlined in Section 246 of the 2005 Act.

The Appeals Officer noted that Section 246 of the 2005 Act provides that when determining whether a person is habitually resident in the State, 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 noted that the appellant retained worker status for 6 months after his employment ended in September 2018. However, as the appellant was no longer in employment or self-employment, was not self-sufficient or a student he did not have a right to reside in the State. The Appeals Officer also concluded that the appellant did not have access to social assistance beyond the 6 months following the cessation of his employment.

In those circumstances the Appeals Officer concluded that the appellant did not have a right to reside in the State and could not be regarded as being habitually resident in the State.

Outcome: Appeal disallowed

2019/26 – Disability Allowance Oral Hearing

Question at issue: (Eligibility – HRC right to reside)

Background: The appellants, both EU nationals, first came to Ireland in 2015 to join their daughter who was living in Ireland for some years and was in employment, and applied for Disability Allowance. While they were considered medically suitable for Disability Allowance they were refused on the grounds that they did not have the right to reside in the State and therefore did not meet the habitual residence condition for Disability Allowance. Neither appellant had any employment history in Ireland.

Oral Hearing: The hearing was attended by the appellants and their daughter. The habitual residence condition was explained to the appellants including the information required by the Appeals Officer to make the decisions. The appellants outlined their history and family circumstances before coming to Ireland in 2015.

They stated that their daughter was their only child. They had some siblings in their country of origin but the links were tenuous and their parents were now deceased. They had both been in employment in their country of origin. Since they ceased employment they had both been in receipt of a state pension and had lived on these pensions. They no longer had a family home in their country of origin and had no bank accounts there or in Ireland. They received one-off financial assistance from their daughter in 2014 while they were living in their country of origin. There was no documentary evidence of this financial transaction.

They confirmed that they did not receive any other financial support from their daughter prior to coming to Ireland. They continued to get their pensions via a family friend who collected their pensions and transferred the money to Ireland. They stated that their daughter had been supporting them since coming to Ireland but they did not want to be a burden on her. They stated that they would love to work in Ireland but there were too many barriers for them given their medical conditions.

Consideration: Section 210 (9) of the 2005 Act provides that a person shall not be entitled to Disability Allowance unless he or she is habitually resident in the State. Section 246 (4) of the 2005 Act provides generally for the defining characteristics of what it means to be 'habitually resident' in particular 5 factors to be considered when assessing the person's main centre of interest and future intentions. Section 246(5) of the 2005 Act states that a person who does not have a right to reside in the State shall not be regarded as being habitually resident.

Determining if a person is habitually resident is a two part process which firstly requires that the person has a right to reside in the State and secondly, if a right to reside is established, an assessment under 5 factors to determine the person's centre of interest and future intentions. Section 246(6) of the 2005 Act provides for persons who shall be taken to have the right to reside in the State and includes "a person who has the right under the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) to enter and reside in the State or is deemed under those Regulations to be lawfully resident in the State". The first step was therefore to consider the appellants' right to reside having regard to the fact that they were now resident in the State for more than 3 months.

The appellants came to Ireland in 2015 and as they had not resided in Ireland for a continuous period of 5 years did not have the right to reside under EU Regulations.

Their only income was small pensions from their country of origin and support from their daughter who had a limited income herself and was caring for her own child. They were applying for Disability Allowance as a long-term support having both indicated that they would be unable to work due to their medical conditions.

This indicated that they did not have sufficient resources not to become an unreasonable burden on the social assistance system of the State. Neither of the appellants were in education or studying. The appellants did not therefore have a right to reside under Article 6 of EU Regulations S.I. 548 of 2015.

The appellant's daughter is a Union citizen who has a right to reside as she is in employment. The question to be considered was if the appellants had the right to reside as qualifying family members which is defined in Article 3(5) of EU Regulations. The appellants were direct relatives in the ascending line of their daughter but to be considered qualifying family members they must both be considered to be a 'dependent' relative of their daughter. Based on the guidance from the EU Commission in 2009 the 'dependency' must have already existed in the previous country of residence and cannot be created by virtue of the fact that they moved to Ireland. The dependency covers material supports received to meet essential needs having regard to financial and social conditions and requires documentary evidence.

The appellants supported themselves through work in their country of origin and subsequently through their combined pensions. The only support they reported from their daughter prior to coming to Ireland was one off financial support in 2014 of which there was no documentary evidence. The evidence did not establish any pre-dependency on their daughter prior to coming to Ireland. The Appeals Officer concluded that the appellants could not be considered to be dependent direct relatives of their daughter and did not as a result have the right to reside in Ireland under S.I. 548 of 2015. In those circumstances they did not meet the habitual residence condition for the purposes of Disability Allowance.

Outcome: Appeal disallowed

Section 317 review request: The appellants subsequently requested a review of the Appeals Officer's decisions and provided additional information. The Appeals Officer reviewed the decisions in light of the information provided and noted that the contentions raised were not presented by any attendees during an in depth examination of the issue at the oral hearing and that these new contentions had not been substantiated. The Appeals Officer concluded that there was insufficient evidence to revise the decisions and that the decisions not to allow the appeals stood.

Section 318 review request: The appellants requested a review by the Chief Appeals Officer of the decisions given by the Appeals Officer. The Chief Appeals Officer having reviewed the Appeals Officer's decisions and the outcome of the review conducted by the Appeals Officer pursuant to Section 317 of the 2005 Act, did not consider that the Appeals Officer had erred in fact or law and declined to revise the decisions of the Appeals Officer.

2019/27 Carer's Allowance Oral Hearing

Question at issue: Eligibility (care provided)

Background: The appellant's application for Carer's Allowance was refused on the basis that she was not providing full-time care and attention as required by the governing legislation. On the application form, the appellant stated that she assisted the caree in bathing and showering, dressing and toileting. The caree also needed assistance with mobility. The appellant completed a full-time care and attention form, issued by the Department, in which she stated that she resided a short distance from the caree. She stated that she provided care to the caree 7 hours per day, 3 days per week, and set out the type of assistance she provided. The caree resided alone. In her appeal, the appellant provided additional medical information and a schedule of care which she provided for the caree, in which she stated that she had increased the hours during which she provided care.

Oral Hearing: At the oral appeal hearing the appellant stated that the caree's medical condition had worsened and she was now prone to falls. The appellant stated that she increased the number of hours that she provided care, since the original decision was made, to 5 hours on three days and 9 hours on another three days. Further letters were provided relating to the caree's medical condition.

Consideration: The Appeals Officer noted the level of care which the appellant stated that she was providing prior to the Deciding Officer's decision being made on her application. He also noted that the level of care, which she submitted with her appeal, commenced some months after that decision had been made, as confirmed by the appellant at the oral hearing. The Appeals Officer was restricted to taking account of evidence which existed at, or prior to, the date of the application. As the caree's circumstances had changed since the date of the original decision, and the level of care provided as set out in the appeal was based on those changed circumstances, the Appeals Officer was restricted to assessing the evidence on the basis of the level of care that was being provided at the date of claim.

The Appeals Officer concluded that at the date of claim the appellant was not providing full-time care and attention to the caree as required by the governing legislation. The appellant was advised that it was open to her to re-apply for Carer's Allowance and have her current eligibility assessed on the basis of any change in circumstances.

Outcome: Appeal disallowed

2019/28 Carer's Allowance Summary Decision

Question at issue: Eligibility (care required and care provided)

Background: The appellant applied for Carer's Allowance and was refused on the basis that she was not providing full-time care and attention to the caree and that the caree was not in need of full-time care and attention as required by the governing legislation.

The appellant stated on the application form that she provided care to the caree 13 hours per day, 7 days per week and she outlined the daily duties that she performed for the caree. The appellant stated that she was working up to 15 hours per week and planned to remain working for up to 15 hours per week. The appellant's employer completed a form confirming the number of hours that the appellant worked each week for a set period. The employer stated that she worked not less than 24 hours for each week during the period in question. In her appeal the appellant stated that she had to work full-time in order to pay off her mortgage. She stated that if she was unsuccessful in her application she would reduce her working hours.

The medical report in respect of the caree, completed by his GP, stated that he had severe depression for a number of years. He had a medical history of severe and chronic depression, hypertension and mild coronary artery disease. He had multiple admissions to hospital as a result of his medical conditions and had attended specialists and was prescribed multiple medications. The manner in which his medical condition affected his ability to perform certain activities was stated to be severe to profound in the case of mental health/behaviour and normal in the case of all other listed activities. In her appeal, the appellant stated that the caree had been an in-patient in two hospitals on several occasions. She stated that on his last visit he was deemed not to be fit to live on his own and she elaborated further on the care requirements of the caree.

Consideration: The questions to be considered by the Appeals Officer were whether the caree was in need of full-time care and if the appellant was providing full-time care as set out in the governing legislation.

The Appeals Officer noted the caree's medical condition, the treatment that he was receiving and the degree to which it affected his activities of daily living, as certified by his GP. The Appeals Officer also noted the description of his medical condition and his care needs, as set out by the appellant in her appeal. On the basis of the information available to him the Appeals Officer determined that the caree was in need of full-time care and attention within the meaning of the governing legislation.

The Appeals Officer noted the documentation provided by the appellant's employer stating that she continually worked more than 15 hours per week for the period from July 2018 to March 2019. The relevant regulations provide that a person who is working outside the home for more than 15 hours per week cannot be considered to be providing full-time care to a caree. On the basis of the information available to the Appeals Officer, he determined that the appellant was working more hours outside the home than those permitted by the regulations and that the appellant could not be considered to be providing full-time care. The appellant was advised that should her circumstances change it was open for her to re-apply for a Carer's Allowance and have her eligibility assessed on the basis of any change in her circumstances.

Outcome: Appeal disallowed

2019/29 Carer's Allowance Oral Hearing

Question at issue: Eligibility (care required)

Background: The appellant's application for Carer's Allowance in respect of the care of his wife was disallowed by the Department on the grounds that it had not been established that the caree required full-time care and attention. The appellant's wife, who was in her late 30's, had diagnoses of fibromyalgia, chronic fatigue, chronic back pain and depression. She was in receipt of Disability Allowance. The appellant indicated on his application form that the daily duties he carried out for his wife included: household chores, looking after their child, school runs, grocery shopping, cooking, laundry, and caring for his wife's daily needs.

Oral hearing: At the oral hearing, the appellant provided a detailed account of his wife's medical conditions and how they affected her daily functioning. The appellant explained how his wife needed assistance in getting out of bed, going up and down stairs, getting in and out of the car, and putting on socks. He described how she could not manage ordinary household chores or to look after their two young children without assistance.

He stated that she managed her own medication, and used the toilet, bathed/showered and dressed herself, apart from putting on her socks, independently. The appellant stated that he was not employed himself and had never been employed. His wife had worked full-time prior to becoming ill.

Consideration: The Appeals Officer noted that from the detailed account provided by the appellant in his written evidence and at oral hearing, it was evident that he took responsibility for all household tasks. It was noted that the appellant looked after the couple's two children as well as providing practical assistance to his wife with whatever she needed in addition to giving her emotional support.

Full-time care and attention is defined in Section 179 (4) of the 2005 Act as "continual supervision and frequent assistance throughout the day in connection with normal bodily functions", or "continual supervision in order to avoid danger to himself or herself". While the Appeals Officer accepted that the appellant's wife required assistance and was restricted in many of her otherwise normal daily activities, she was not satisfied that it reached the level where it could be considered that she required full-time care and attention as defined in the governing legislation.

Outcome: Appeal disallowed

2019/30 Carer's Allowance Summary Decision

Question at issue: Eligibility (care required)

Background: The appellant applied for Carer's Allowance in May 2018 in respect of the care she provided to her husband. The application was disallowed on the grounds that the caree was not in need of full-time care and attention as prescribed in the governing legislation. The caree was in his early 60s and was diagnosed with Ischaemic Heart Disease (IHD) with recent coronary artery bypass surgery, Chronic Obstructive Pulmonary Disease (COPD) and peripheral vascular disease for which he was awaiting surgery. He was deemed to be severely affected in terms of his manual dexterity, ability to reach, to lift/carry, to bend/kneel/squat to sit/rise, to stand, to climb stairs and to walk. The appellant explained that her husband had been advised that he was facing more cardiac surgery. She stated that due to COPD, he could not go anywhere without assistance. She stated that he would become very faint and lethargic which left him with a very poor quality of life and she stated that his independence was gone. She explained that her husband needed her assistance on a daily basis and at night time, it could be difficult for him given that he could wake up feeling breathless.

In support of her appeal, the appellant submitted additional medical evidence which included a report from her husband's doctor. It stated that the caree had a quadruple bypass in April 2018 and he had shortness of breath on minimal exertion and got cramps in both legs when walking. It stated that his shortness of breath may be caused from mild COPD and IHD.

Consideration: The appellant's husband was suffering from serious illnesses and had quadruple by-pass surgery in April 2018. The appellant's GP had certified that the caree was severely affected in all aspects of his agility and mobility.

It was noted that the caree would require further surgery which was complicated by the fact that he was suffering with COPD. As per her letter of appeal, the appellant had clearly outlined her husband's ill health.

It was accepted that the caree was likely to recover from his surgery; however, he remained severely affected by his condition and the Appeals Officer took due consideration for the requirement for further surgery as confirmed by the caree's GP.

Having therefore, considered all of the evidence on file and noting that the caree was severely affected in terms of agility and mobility, the Appeals Officer concluded the evidence confirmed that the caree was severely compromised in terms of his ability to manage basic tasks of daily life without significant care and attention. In such circumstances, the Appeals Officer was satisfied that the caree required full-time care and attention. The evidence also indicated the requirement for supervision given that the caree was severely affected with mobility and suffered with shortness of breath on movement. The evidence also indicated that the caree was likely to require full-time care and attention for at least 12 consecutive months, as provided for in the governing legislation.

Outcome: Appeal allowed.

2019/31 Carer's Support Grant Summary Decision

Question under appeal: Eligibility

Background: The appellant had been awarded Carer's Allowance from January 2018 and was advised of this decision in July 2018. The decision from the Department outlined that the appellant had worked in excess of 15 hours per week in the period from April to July 2018 and as such she was not entitled to receive Carer's Allowance during this period. The relevant legislation in this case is provided in Sections 179(1) and (4) and 224 of the 2005 Act and Articles 136, 163 and 164 of S.I. 142 of 2007. Of relevance to this case is article 136 which specifies that a carer may not work more than 15 hours per week and article 163 which provides that a person who is in receipt of Carer's Allowance on the 1st Thursday in June satisfies the conditions for entitlement to Carer's Support Grant.

Consideration: The Appeals Officer noted that the appellant was advised of the Department's decision in July 2018. The appellant acknowledged that she did in fact work more than 15 hours some weeks but stated that this was out of financial necessity.

The appellant informed the Appeals Officer that she had cared for the caree since 2017 and only became aware of Carer's Allowance in early 2018. The legislation in relation to Carer's Allowance and the Carer's Support Grant are prescriptive and therefore the Appeals Officer, while noting the appellant's evidence, had no discretion in this matter.

As the appellant had not been entitled to a Carer's Allowance payment on the 1st Thursday in June, the Carer's Support Grant could not be paid for 2018.

Outcome: Appeal disallowed

2019/32 Carer's Benefit Summary Decision

Question under appeal: Eligibility (care required)

Background: The appellant applied for Carer's Benefit in respect of care provided to her father. The application was refused on the grounds that the caree did not require continual supervision and frequent assistance throughout the day with normal bodily functions or continual supervision in order to avoid danger to himself. The caree was diagnosed with paranoid schizophrenia, deafness and psycho-organic syndrome. The GP stated in the application form that the conditions were expected to last indefinitely. In the ability/disability profile, the caree was deemed to be affected to a profound degree in most categories, moderately affected in one and severely affected in three. The appellant stated that her father was confined to bed for the past four years, used incontinence pads, could not eat or drink independently, could not walk or sit, had problems sleeping and could spend nights shouting. Her mother was elderly and could no longer take care of her husband.

Consideration: The relevant legislation in this case is Section 99(2) of the 2005 Act which provides that a person shall not be regarded as requiring full-time care and attention unless the person has such a disability that he or she requires from another person –

a. continual supervision and frequent assistance throughout the day in connection with normal bodily functions , or

b. continual supervision in order to avoid danger to himself or herself.

From the evidence presented, the Appeals Officer was satisfied that the appellant had established that the caree required full-time care as defined in the relevant legislation.

Outcome: Appeal allowed

2019/33 Occupational Injury Benefit/Disablement Benefit Oral Hearing

Question under Appeal: Eligibility (loss of faculty)

Background: The appellant, in his early 20's, sustained an occupational accident in 2013. As a result, the tips of his index and middle fingers on one hand were amputated. He informed the Appeals Officer that he still worked with his employer, who did not dispute the circumstances of the accident. The appellant outlined his treatment at the time of the accident which included a short hospital stay. He required further surgeries and in 2017 had surgery under a new consultant. He lost more of his fingers and will have to have another amputation to the little finger. Prior to the medical assessment by the Assessor from the Department, the appellant outlined the impact of his injury. He suffered frequent infection, soreness, restriction and self-awareness. He provided photographic images. He was not affected in many activities of daily living but indicated he sometimes had flashbacks and dreams about what happened.

At the Department's medical assessment, the appellant reported how the accident occurred and the extent of the injuries. He reported he had recurring infections and would require further surgery. The impact of his injury is that the tips of both fingers are very sensitive, can be painful in cold weather and his grip was not as reliable as it had formerly been. He felt self-conscious about his injury and if using a vibrating tool at work this caused pain at the injury site. The Medical Assessor noted he was right hand dominant and was able to function at his job. The Medical Assessor reported clinical findings that his left index finger was stable and that he had a grip of 85% of normal capacity. The Medical Assessor reported he was mildly affected in manual dexterity and in lifting/carrying with his left hand. A loss of faculty of 11% was recommended - 5% for his index finger, 4% for his middle finger and 2% for psychological sequelae.

In his appeal, the appellant outlined the detrimental effect the injuries had on his life and how the ongoing treatment and effect of his occupational injury, impacted on him from a physical and psychological perspective. Supporting medical evidence was provided outlining the most recent effects and the further treatment that would be required.

Consideration: The Appeals Officer referred to the prescribed degrees of disablement, set out in Section 75 of the 2005 Act, for the various types of injuries sustained. The appellant was awarded 11% loss of faculty in total. The Appeals Officer examined the 3 components of this award individually.

With regard to the appellant's index finger, the Appeals Officer considered the available medical and photographic evidence provided at the medical assessment and also observations at the oral hearing. The appellant was awarded 5% loss of faculty which was the prescribed percentage set out in legislation for such an injury to an index finger. The appellant had not had further surgery on this finger, and the conclusion of the Appeals Officer was that this assessment was in line with the provisions of the relevant legislation.

With regard to his second finger, the Appeals Officer referred to the need for further surgery, after the assessment by the Medical Assessor from the Department. It was concluded that the appellant essentially lost part of this finger to "one phalanx". The appellant was awarded 4% loss of faculty which is the prescribed percentage set out in legislation for "guillotine amputation of tip without loss of bone" for a middle finger. The award for loss of this finger to "one phalanx" is 7% and the Appeals Officer concluded that 7% loss of faculty was appropriate for his middle finger.

The final part of the decision related to sequelae. Reference was made to the appellant's own evidence and activities of daily living which the appellant indicated are affected by the injuries sustained in the occupational accident. The Appeals Officer concluded the appellant was entitled to an increase in the percentage award, from 2% to 3%, in respect of sequelae, based on his description of the effect of his injuries, his ongoing suffering and medical interventions required. In summary, the Appeals Officer concluded the appellant qualified for Disablement Benefit at the rate of 15% loss of faculty for life.

Outcome: Appeal Allowed

4.3 Case Studies

Working Age – Income Supports

2019/34 Working Family Payment Oral Hearing

Question at Issue: Eligibility (means)

Background: The appellant's application for renewal of Working Family Payment was disallowed on the grounds that her combined income from employment, weekly social welfare payment and weekly maintenance under a Court Order exceeded the limit to qualify for this payment. The appellant contended that her ex-partner was not honouring the Court Order for maintenance. The Department contended that weekly maintenance under a Court Order continued to be assessable as means for Working Family Payment even in circumstances where it was not being honoured and that the onus was on the appellant to pursue its implementation.

Oral Hearing: At the appeal hearing the appellant confirmed that her income, as set out in the Department's means assessment report was not in dispute. However the appellant stated that the Court Order for maintenance in place at the time of the renewal of the Working Family Payment was not being honoured by the father of her child and she confirmed he had only paid intermittently. The appellant also confirmed that she had since returned to the Courts and a revised Court Order had reduced the maintenance payment in March 2019. The Appeals Officer explained to the appellant that the income test for Working Family Payment is assessed at date of claim and that if the means of the appellant either increase or reduce during the year the original assessment stands. If a claim is disallowed, it is open to a person to re-apply for this payment if the combined means reduce below the current threshold for Working Family Payment of €521 per week for 1 child while continuing to work the required hours.

Consideration: The Appeals Officer determined that according to the governing legislation for Working Family Payment (Sections 227 to 233 of the 2005 Act and articles 173 and 174 of S.I. No. 142 of 2007) that all income, including maintenance from a Court Order, is liable to be assessed in full in determining a person's entitlement or continued entitlement to Working Family Payment less any statutory deductions. While the appellant confirmed that the maintenance was not paid regularly the Appeals Officer concluded that her total weekly income was assessed correctly by the Department.

Outcome: Appeal disallowed

2019/35 Working Family Payment Summary Decision

Question at issue: Qualified Child (full-time education)

Background: The appellant had been in receipt of Working Family Payment on the basis that he had one qualified child. At renewal date in April 2019 the appellant did not qualify as the qualified child had reached 22 years of age earlier in 2019. The appellant appealed on the basis that his son, aged 22, was in full-time education.

Consideration: Social Welfare legislation defines a qualified child as one who is under 18 years of age or over 18 and less than 22 years of age and receiving full-time education. If a qualified child reaches age 22 while still in full-time education, payment will continue to be made until the end of the academic year or the end of the claim if that is earlier. The appellant's child reached 22 years of age in early 2019 and was therefore no longer a qualified child at the claim renewal date in April 2019. While the Appeals Officer noted the appellant's grounds of appeal he concluded that the legislation is clear as to the definition of a qualified child and that no discretion is allowed in that regard.

Outcome: Appeal disallowed

2019/36 Partial Capacity Benefit Oral Hearing

Question at Issue: Eligibility (medical)

Background: The appellant applied for Partial Capacity Benefit in October 2017. Her application was approved from January 2018 at the rate of 50%, based on the medical assessment of being moderately affected by her medical circumstances. The appellant appealed the assessment of moderate.

The appellant had intended to start work in November 2017 for 8 hours per week. However, she did not start that job and as a result the Partial Capacity Benefit did not go into payment. She was then in receipt of Invalidity Pension.

The available medical evidence at the time of her application certified that she suffered from narcolepsy. She was certified as being severely to profoundly affected in mental health/ behaviour, moderately affected in learning/intelligence, consciousness/seizures, balance/ co-ordination climbing stairs/ladders and mildly affected in manual dexterity and walking. A number of medical reports from a sleep disorder specialist were also provided.

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. For the purpose of the appellant's claim for Partial Capacity Benefit, the Appeals Officer noted that the appellant was in receipt of Invalidity Pension which was awarded since her application for Partial Capacity Benefit was approved and that the appellant never commenced employment as planned.

The Appeals Officer considered all of the evidence, including the medical evidence regarding the appellant's ongoing symptoms and noted that the appellant had been out of the workforce since 2016, concluded that the appellant had a residual capacity to do some work at present, albeit at a minimal level at least at the outset, and therefore, decided that she had a profound restriction on her capacity for work at that time.

Outcome: Appeal allowed

2019/37 Partial Capacity Benefit Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant was in receipt of Invalidity Pension and her application for Partial Capacity Benefit was refused. The appellant stated that she suffered from pins and needles, pain, shakes, fatigue, aches, forgetfulness, disturbed sleep and muscle spasms. She could not sit for long periods and standing for long periods caused pain. A medical report was completed by her GP. The diagnosis was fibromyalgia and the condition was of indefinite duration. The medical history was fatigue, migraine and drooping eyelid. The appellant attended a Rheumatology Unit and was due to have more investigations of her condition. The appellant stated that she had been in receipt of Illness Benefit, Disability Allowance and Invalidity Pension for the previous 7 years.

Consideration: The governing legislation specifies the conditions for which a person would be assessed as having a profound, severe, moderate or mild restriction on his or her capacity for work. A person is assessed as having a moderate restriction on his or her capacity for work if that person is assessed as having a capacity for work which was greater than one half and not more than four fifths of the norm for a person of the same age who had no restriction on his or her capacity for work. The Ability Profile completed by her GP stated that the appellant had been moderately affected in lifting/carrying, bending/kneeling/squatting, sitting/rising, standing and climbing stairs/ladders.

She had been mildly affected in reaching, manual dexterity and walking. The Appeals Officer noted that the appellant attended the Rheumatology Unit and was due to have more investigations of her condition. Having considered all of the evidence, the Appeals Officer concluded that the appellant's medical condition was such that she continued to have a moderate restriction on her capacity for work.

Outcome: Appeal allowed

2019/38 Jobseeker's Allowance Summary Decision

Question at issue: Eligibility (failure to attend activation meetings)

Background: The appellant was in receipt of Jobseeker's Allowance and in connection with that claim was referred to a Job-Path service provider. The appellant failed to attend two separate appointments with the service provider. An officer of the Department met the appellant and explained to him the penalty rate guidelines and the possibility of a reduction in his payment if he did not engage with the service provider. The appellant agreed to attend future appointments but failed to attend a further scheduled meeting and a penalty rate was applied.

Two further appointments were scheduled and the appellant failed to attend both. The appellant contacted his local Intreo Centre and said that he kept forgetting to attend the appointments. The officer agreed to reinstate his payment on the strict understanding that the appellant would attend his next meeting. The appellant did not attend this meeting.

The Department wrote to the appellant advising him that a penalty rate would be applied and his payment would be reduced/ The appellant was also advised that a further appointment with the service provider would be scheduled and that if after 21 days on the reduced payment he continued, without good cause, to fail to comply that he would be disqualified from receiving Jobseeker's Allowance for a period of 9 weeks. The appellant failed to attend 2 further meetings with the service provider. The Department wrote to the appellant advising him that he was disqualified from payment for a period of 9 weeks on the grounds that he was on a penalty rate for 21 days or more for failure or refusal, without good cause, to attend activation meetings.

Consideration: The question under appeal was whether the appellant failed, without good cause, to attend activation meetings which led initially to a penalty rate being applied followed by a 9 week disqualification. Sections 141A and 141B of the 2005 Act allow for the imposition of a penalty rate to a person's Jobseeker's Allowance when that person fails, without good cause, to attend activation meetings, or other prescribed schemes, programmes or courses relating to Jobseeker's Allowance.

The penalty rate is applied for 21 days. If, after 21 days, a person still fails, without good cause, to attend activation meetings or other prescribed schemes, programmes or courses, they shall then be disqualified from Jobseeker's Allowance for up to 9 weeks. From the appellant's letter of appeal, the Appeals Officer noted that he offered no reason as to why he failed to attend 9 activation meetings.

The appellant stated he was suffering from depression but this had never been disclosed to the Department and there was no supporting medical evidence made available.

Having considered the details of the case the Appeals Officer was satisfied that the penalty rate and the subsequent disqualification were applied correctly and in line with the relevant legislation. The appellant did not establish good cause for his failure to attend the activation meetings.

Outcome: Appeal disallowed

2019/39 Jobseeker's Allowance Oral Hearing

Question at issue: Eligibility (means)

Background: The appellant applied for and was refused Jobseeker's Allowance in 2018. The Department advised the appellant that he was not entitled to Jobseeker's Allowance on the grounds that his means were in excess of the rate of Jobseeker's Allowance that would be payable based on the appellant's family circumstances.

Consideration: In his letter of appeal, the appellant listed factors which he felt should have been taken into account in deciding his claim. The appellant disputed the method used in calculating his means with regard to his wife's income from insurable employment.

He requested that deductions be allowed in respect of mortgage payments and household expenses and that consideration should have been given to the fact that his wife was 31 weeks pregnant at the time of his application and had two pregnancy related medical conditions. The appellant stated that he was not entitled to a medical card or GP visit card. He stated that as he had previously worked in Canada he felt that the social insurance contributions he made in Canada should be reckonable when calculating his entitlement in Ireland.

The legislative provisions governing the assessment of means are contained in Part 1 & 2 of Schedule 3 of the 2005 Act, and Articles 141 to 158 of S.I. 142 of 2007. Article 153(2) of the 2007 Regulations states that when calculating the means derived from the insurable employment of a spouse, civil partner, or cohabitant, it shall be taken as 60% of the average weekly earnings from that employment.

Article 153(4) states that average weekly earnings are calculated by deducting PRSI, pension contributions, union fees, and €20 in respect of each day of insurable employment, subject to a maximum of €60 per week.

The appellant disputed the figures used in calculating means and stated that his wife's gross salary as taken into account was not a true reflection of the family income.

Having examined the Deciding Officer's calculations, the Appeals Officer was satisfied that they were calculated in line with the relevant legislation and had allowed for all permissible deductions to be made. The appellant's means as assessed were in excess of the maximum rate of Jobseeker's Allowance payable based on his family circumstances. The legislation regarding payment of Jobseeker's Allowance does not allow for specific individual deductions as described in the letter of appeal.

The Appeals Officer noted that while the governments of Ireland and Canada have a bilateral agreement on social security the main purpose of the agreement is to protect the pension rights of persons who have paid social insurance contributions in Ireland and have reckonable periods in the other country. Jobseekers Benefit is not one of the schemes covered by this agreement.

Outcome: Appeal disallowed

2019/40 Jobseeker's Allowance Summary Decision

Question at issue: Background: Eligibility (failure to attend activation meetings)

The appellant had been in receipt of Jobseeker's Allowance from 2016. He failed to attend a number of activation appointments in 2018 and was aware that further non-engagement would result in a penalty rate being applied. Subsequently, he did not attend activation meetings on three occasions between 2018 and 2019 and a penalty rate was applied to his Jobseeker's Allowance claim. The appellant was advised by letter that his Jobseeker's Allowance was reduced by €44.00 per week for a three week period as he had failed to attend activation appointments. Under section 195 of the 2005 Act recourse to Supplementary Welfare Allowance is precluded in respect of any Jobseeker's Allowance claim that is subject to a penalty rate.

When the appellant received notification from the Department of the application of the penalty rate, he attended at the Department offices and was advised that the penalty rate would be lifted if he attended a re-engagement meeting. However, he failed to attend this meeting and a further re-engagement meeting that was scheduled.

His claim was then suspended for a period of 9 weeks as he had been on a penalty rate for over 21 days and had not re-engaged with the activation process as advised in writing by the Department. During the 9 week period three further activation appointments were arranged for the appellant. The appellant did not avail of the opportunity to attend these meetings and did not provide any good cause for his non-attendance.

The appellant was advised by letter from the Department that his Jobseeker's Allowance claim was being disqualified and payment of the claim suspended. He did not subsequently seek to re-engage with the activation process. It was noted that the Department instituted a review of his claim in 2019 and the appellant also failed to attend these meetings.

Consideration: Section 141 of the 2005 Act allows for the imposition of a penalty rate to a person's Jobseeker's Allowance claim when that person fails, without good cause, to attend at activation meetings, or other prescribed schemes, programmes or courses relating to Jobseeker's Allowance. The penalty rate is applied for 21 days. If, after 21 days, a person still fails, without good cause, to attend activation meetings or other prescribed schemes, programmes or courses, the person can be disqualified from Jobseeker's Allowance for up to 9 weeks. The Appeals Officer in this case was satisfied that the appellant repeatedly failed to engage with the activation process as required under the relevant legislation and good cause for failure to attend scheduled meetings had not been demonstrated.

Outcome: Appeal disallowed

2019/41 Jobseeker's Benefit Summary Decision

Question at issue: Eligibility (substantial loss of employment)

Background: The appellant had been working full-time and returned to work on a part-time basis in 2018 following maternity leave. She applied for Jobseeker's Benefit and her claim was refused on the grounds that she was not deemed to be available for full-time work or making reasonable efforts to genuinely seek employment.

She re-applied for Jobseeker's Benefit later in 2018 and her claim was again refused on the same grounds. In her letter of appeal, she outlined that her financial circumstances had come to such a point that both she and her partner could not afford to continue with their part-time work arrangements and as they had underestimated the costs of raising their young family they made the decision that the appellant would seek alternative full-time work. The appellant stated that her family was enduring severe financial hardship and had mounting household expenses. She also requested to have her claim reviewed in the light of the substantial loss of employment rule.

Consideration: In order to qualify for Jobseeker's Benefit, the governing legislation prescribes that a person must suffer a "substantial loss of employment", which includes sustaining a loss of earnings and a loss of at least one day of employment in their normal working week. In determining the normal level of employment prior to the date of application, regard must be had to the pattern of employment during a representative period preceding the date of claim (i.e. usually the 13 weeks preceding the claim as was applied in this instance). In this case the evidence showed that the appellant's normal pattern of employment prior to her second claim in 2018 was 2 days per week and she continued to work 2 days per week. However, the Department in its guidelines outlines that where the person's level of employment fluctuated because of unusual circumstances, the Deciding Officer may look at the record of employment over the previous 26 or 52 weeks. The Appeals Officer considered that such circumstances applied in this case in that the appellant was on maternity leave for 6 months. Having considered the particular circumstances of this case, the Appeals Officer decided that the Department should re-examine the appellant's claim on the basis of her work pattern over a 52 week period prior to her Jobseeker's Benefit claim.

Outcome: Appeal allowed

2019/42 Jobseeker's Benefit Summary Decision

Question at issue: Entitlement (reduced rate)

Background: The appellant made a claim for Jobseeker's Benefit and was awarded a reduced rate of Jobseeker's Benefit based on her earnings in the relevant tax year. The relevant tax year was 2016 and based on the stated average earnings, the appellant had an entitlement to a reduced rate of Jobseeker's Benefit. The Department submitted that it had advised the appellant to make a claim for Jobseeker's Allowance but an application had not been received. The appellant submitted an appeal outlining she had been in receipt of Maternity Benefit and Illness Benefit throughout 2016 and was paid holiday pay in 2016 as she had no earnings from work. The appellant requested that the decision to award a reduced rate of Jobseeker's Benefit be reviewed.

Consideration: The appellant submitted that she had no earnings from employment in the relevant contribution year but had holiday pay in that year. In accordance with the Department's guidelines the total reckonable gross earnings in the governing year is divided by the number of qualifying contributions (Class A, H, or P) in the governing contribution year.

It was noted that the appellant had 4 Class A contributions in the year 2016 and therefore reckonable earnings should have been based on the total stated reckonable gross earnings divided by 4. The Appeals Officer concluded that the calculation used by the Department was not in line with its guidelines.

Outcome: Appeal allowed

2019/43 Jobseeker's Benefit Oral Hearing

Question at issue: Backdating

Background: The appellant applied for Jobseeker's Benefit in October 2018 and stated on his application that he had been unemployed since his dismissal in July 2018. He indicated that he delayed submitting an application for Jobseeker's Benefit as he had a case for unfair dismissal pending before the Workplace Relations Commission (WRC). The appellant stated that he was confident that this case would be successful. The appellant applied for Jobseeker's Benefit on learning that any arrears of wages arising from a successful WRC hearing would be less any amount of Jobseeker's Benefit to which he would have been entitled. The appellant sought the backdating of his Jobseeker's Benefit claim to the date of his dismissal in July 2018.

His application to have his Jobseeker's Benefit claim backdated for the period from July 2018 to October 2018 was disallowed on the grounds that he had not demonstrated good reason for the delay in making his claim.

In his notice of appeal the appellant referred to the circumstances of his dismissal from the civil service, which he was contesting as unfair, he submitted that the unusual circumstances of his dismissal would constitute a good reason for the delay in making his claim.

Consideration: Section 241 of the 2005 Act and Article 186 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) set out the conditions for backdating applications, which in the case of Jobseeker's Benefit is limited to six months.

Having considered the appellant's evidence the Appeals Officer considered that it was not unreasonable for a person to delay making an application for Jobseeker's Benefit in the immediate aftermath of an unexpected dismissal from work where the person was confident of a quick resolution and restoration of his employment.

The Appeals Officer concluded that the circumstances leading to the appellant's delay in making his application for Jobseekers Benefit constituted good cause.

Outcome: Appeal Allowed

2019/44 Jobseeker's Allowance Summary Decision

Question at issue: Eligibility (full-time education)

Background: The appellant was in receipt of Jobseeker's Allowance as a casual worker from September 2017. Following a review of her claim by the Department it emerged that the appellant was registered as a full-time student on a course in an ETB college for the academic year 2017/2018 which covered the period September 2017 to May 2018.

A revised decision was made by the Department in April 2018 disqualifying the appellant from receiving Jobseeker's Allowance for the period from September 2017 to March 2018 on the grounds that she was attending a full-time day course of study. The decision was made in accordance with Sections 148(1) and 302(a) of the 2005 Act. The decision resulted in an overpayment being assessed against the appellant.

Consideration: Section 148(1) of the 2005 Act states 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. A course of study is further defined as "a full-time day course of study, instruction or training which may take place over more than one academic year at an institution of education".

The Appeals Officer noted that the appellant did not dispute that she was attending a full-time course and there was evidence from the college confirming this.

The decision to disallow the appellant's Jobseeker's Allowance was made under Section 302(a) of the Act which provides for a revised decision to be made due to the person wilfully concealing relevant information or providing false or misleading information. In her application form for Jobseeker's Allowance, the appellant indicated that the course was part-time, 8 hours per week.

The Appeals Officer concluded that as the appellant was in full-time education she was not entitled to Jobseeker's Allowance from the date of claim and that she had provided misleading information to the Department.

Outcome: Appeal disallowed

2019/45 Supplementary Welfare Allowance (Rent) Oral Hearing

Question at issue: Eligibility (means assessment)

Background: The appellant had been absent from work due to illness and was last paid in February 2019. She applied for Rent Supplement under the Supplementary Welfare Allowance (SWA) scheme. The application was refused on the grounds that her means exceeded the allowable limit. The means were assessed from Illness Benefit, maintenance and a capital assessment on half the value of a property jointly owned with her ex-husband. The property in question was bought for €79,680 and the current mortgage was €281,850. The property was re-mortgaged for her ex-husband's business purposes and to pay off loans. The current value of the property was €235,000. To ascertain the means the Department took the current value less the original cost, divided the amount in two and assessed means as set out in Schedule 3 of the 2005 Act. The means from capital were assessed at €208.00 per week. The appellant's total means were deemed to be €473.84.

In calculating the appellant's entitlement to Rent Supplement, excess means were €161.84, (€473.84 less the SWA rate at the time of €312.00). Therefore €161.84 and €30 (statutory minimum deduction) or €191.84 was deemed to be the total liability. As this amount was in excess of the rent payable of €167.30 the application was refused. The property was rented for €1,300 per month and the mortgage was €1,200. From the evidence on file the mortgage was in arrears, with three loans on the property.

Oral Hearing: The appellant outlined she was recovering from cancer but hoped to return to work in the near future. She had three children and was parenting alone. She received minimal maintenance. The appellant confirmed that she was joint owner of a property with her ex-husband.

She confirmed that both names were on the property but she was paying the mortgage from the rental income. She confirmed that the original mortgage was topped up twice for business loans and that the business had failed. She had no income from the property and could not sell it without her husband's permission. It was in negative equity. Her income was less than the SWA rate when the assessment of the value of the property was disregarded.

Consideration: Under the SWA scheme, Rent Supplement may be paid to persons who are in need of accommodation on a short-term basis and unable to provide it from their own resources, subject to a means test. Under the governing legislation, account shall be taken of the weekly value of property belonging to the person (not being property personally use or enjoyed by the person) which is invested or is otherwise put to profitable use by the person, or which though capable of investment or profitable use, is not invested or put to profitable use and the weekly value calculated constitutes the weekly means of that person from that property. The Appeals Officer concluded that based on the evidence and applying the above calculation, the property did not have an assessable value as it was in negative equity. Whether the loans were for business or otherwise, they were outstanding on the property loan. The Department's report confirmed the property value at €235,000 and the loans on the property exceeded that amount.

The Appeals Officer concluded that the appellant's total weekly income should therefore have been calculated as €265.84 (€237.00 Social Welfare Payment and €28.84 from maintenance). This was less than the basic minimum SWA payment of €312.00. It is a requirement that a person would pay a minimum contribution towards their rent which in this case was €30. The rent was €167.30 per week, less €30.00 which gave a weekly Rent Allowance entitlement of €137.30 from the date of application.

Outcome: Appeal allowed

2019/46 Supplementary Welfare Allowance Summary Decision

Question at issue: Eligibility (means)

Background: The appellant was absent from work due to illness and applied for Illness Benefit in early January 2019 but did not qualify for this payment. The appellant then applied for Supplementary Welfare Allowance. The Department stated on the decision letter that Supplementary Welfare Allowance was a means tested payment and was payable 10 days after an applicant's last wage was paid. The appellant was last paid from her employment on the 29th January 2019 which resulted in the Supplementary Welfare Allowance claim being awarded from the 7th February 2019.

The Supplementary Welfare Allowance claim was closed as the appellant transferred to Jobseeker's Allowance. The appellant appealed the decision not to back date her Supplementary Welfare Allowance to the 7th January 2019 which was the last day she had worked. She advised that while she received her final salary at the end of January 2019 it covered the period from the 22nd December 2018 to the 7th January 2019. She stated that this added up to 7 days and it was not a full month's salary as she was normally paid at the end of every month. She advised that she had explained this to the Department on a number of occasions but never got a reply.

Consideration: The appellant was refused a payment under the Supplementary Welfare Allowance scheme on the basis that Supplementary Welfare Allowance is a means tested payment and where relevant is payable 10 days after the applicant's last wage is paid. Section 189 of the 2005 Act states that 'every person in the State whose means are insufficient to meet his or her needs and the needs of any qualified adult or qualified child of the person shall be entitled to Supplementary Welfare Allowance'.

It was noted that the appellant had outlined that the earnings she received in January 2019 covered the period 22nd December 2018 until her last working day on 7th January 2019. The Appeals Officer could find no reason to dispute this and there was no evidence on the file to state otherwise. Having examined the evidence including the appellant's submission, the Appeals Officer concluded that at the time of application, the appellant had an entitlement to a basic payment under the Supplementary Welfare Allowance scheme. The Appeals Officer was satisfied that the appellant's means were insufficient to meet her needs at that time. In the circumstances, the appeal was allowed providing all other criteria as set out in social welfare legislation were met.

Outcome: Appeal allowed

2019/47 Farm Assist Summary Decision

Question at issue: Eligibility (Means)

Background: The appellant was in receipt of Farm Assist. The appellant's means were reviewed and he was assessed with means from farming of €25.00 per week. This assessment was based on the appellant's profit and loss statement and the report completed by the Social Welfare Inspector. The appellant stated in his appeal that the means assessed were excessive and he enclosed his calculations as supporting evidence in relation to phone and light/power.

Consideration: Schedule 3, Part 2, Rule 1(9) (b) of the 2005 Act provides that where a farmer is entitled to or in receipt of Farm Assist, means are based on the gross yearly income which the farmer may reasonably be expected to receive from farming or any other form of self-employment, less any expenses necessarily incurred in carrying on that self-employment.

Only expenses directly related to the running of the farm are allowed and as a result only a portion of the phone and light/power expenses were allowed.

Outcome: Appeal disallowed

2019/48 Farm Assist Summary Decision

Question at Issue: Eligibility (Means)

Background: The appellant applied for Farm Assist in August 2018. The Department found his net income from farming to be €26,975 per annum, based on the 2017 accounts supplied by the appellant, giving weekly means from farming of €363 which were in excess of the statutory limit for his personal or family circumstances.

In his notice of appeal, the appellant contended that as a result of the disposal of a number of dairy cows in 2017 he had higher stock sales than normally associated with his farm. His cow numbers dropped during the year as a result of additional sales and that in Spring 2018 he had to acquire new breeding stock to replace and replenish his numbers at an additional cost.

Consideration: The governing legislation is Section 213 (2) and Rule 9 (b) in Part 2 of Schedule 3 of the 2005 Act. This provides that the appellant's means, for the purpose of entitlement to Farm Assist, shall consist of the gross income he may reasonably be expected to receive from farming or any other form of self-employment less any expenses necessarily incurred in carrying on any form of self-employment. The Appeals Officer noted the stock on hand at date of investigation, stock purchases and sales over a number of years and that the appropriate allowance was made for losses. The Appeals Officer further noted that while the means assessment was based on the income for the previous year, the assessment must give a fair and reasonable assessment of the net income which the holding provides annually i.e. an average annual income over the next number of years. This is based on the expected annual income, based on normal output and costs appropriate to normal stock levels, capacity and market trends. In this regard, the Appeals Officer noted that the appellant's average profit over the previous five years, based on his own accounts was €29,202.

The Appeals Officer concluded that the assessment of means by the Department at €26,975 per annum was in line with the provisions governing assessment of means.

Outcome: Appeal disallowed

2019/49 Farm Assist Oral Hearing

Question at Issue: Eligibility (means)

Background: The appellant's continuing entitlement to Farm Assist was reviewed by the Department. He was assessed with weekly means of €455 per week from September 2018. Means consisted of the net yearly income from the farm, the appellant's self-employment and his spouse's insurable employment. The appellant contended that the purchase price of stock had not been taken into account, that his operating costs were significantly higher than those allowed and that he expected to make a loss in the coming year.

Oral Hearing: The appellant provided a spreadsheet of expenses as prepared by his bookkeeper and a detailed discussion followed on the income and expenses which had been included in the farm assessment completed by the Social Welfare Inspector.

Consideration: The governing legislation is Section 213 (2) and Rule 1(9) (b) of Part 2 of Schedule 3 of the 2005 Act. This provides that the appellant's means, for the purpose of entitlement to Farm Assist, shall consist of the gross income he may normally expect to receive from farming or any other form of self-employment less any expenses necessarily incurred in carrying on any form of self-employment. Section 215 of the 2005 Act provides that where the weekly means of the claimant or beneficiary are equal to or exceed the scheduled rate, no Farm Assist shall be payable.

The Appeals Officer noted that the farm assessment had in fact taken account of the purchase price of stock in the previous year in arriving at net income. The Appeals Officer found the Social Welfare Inspector's assessment of expected annual gross income to be fair and reasonable on the basis of the evidence. The Appeals Officer found that additional expenses in relation to the running of the farm amounting to €645 were not included in the expenses allowed in the Department's assessment of means. Expenses were increased by that amount and the assessment of means from the net yearly income from the farm was reduced accordingly. However, the appellant's means remained in excess of the scheduled rate.

Outcome: Appeal disallowed

2019/50 Farm Assist Summary Decision

Question at Issue: Overpayment

Background: The appellant applied for Farm Assist and his means were assessed from farming and from his spouse's insurable employment. The appellant's spouse had been awarded Illness Benefit for a four week period in 2016 and the appellant's Farm Assist was increased from the date of award of Illness Benefit. The appellant's continuing entitlement to Farm Assist was reviewed in December 2018 arising from his application for Fuel Allowance. The Department contended that when the appellant's spouse returned to work from illness, the Department was never informed and the appellant continued to receive a higher weekly payment than that which he was entitled to. When this came to light, on his application for Fuel Allowance in November 2018, the appellant's means were re-assessed and the Department's decision gave rise to an overpayment of in excess of €12,000. The appellant contended that the overpayment was unfair and gave rise to severe financial hardship.

Consideration: Section 302(b) of the 2005 Act provides that consideration can be had to whatever new evidence has emerged and all the circumstances of a particular case in determining the effective date of any revised decision. The Appeals Officer noted the Department's contentions that they were never informed when his spouse returned to work. However, the Appeals Officer noted that the Department were aware of the appellant's spouse's return to work as Illness Benefit ceased on her return to work. The Appeal's Officer also noted that the appellant had informed the Department that his spouse was in employment. The Appeals Officer considered that had the Department acted on this information an overpayment would not have arisen. The Appeals Officer observed that in his application for Fuel Allowance in November 2018, the appellant had declared that his spouse was in employment. The Appeals Officer considered that the delay in revising the appellant's means consequent on his wife returning to work after a short period on Illness Benefit arose from an administrative oversight rather than any delay or neglect on the appellant's behalf. The Appeals Officer applied Section 302(b) of the 2005 Act to vary the effective date of the decision with the result that the overpayment was negated.

Outcome: Appeal allowed

2019/51 Farm Assist Summary Decision

Question at Issue: Entitlement to Farm Assist while spouse is on a Rural Social Scheme.

Background: The appellant applied for Farm Assist in June 2018. Her spouse was participating on a Rural Social Scheme for many years. The couple had only one Herd Number and this had been used on the Rural Social Scheme. The Department's decision was that Farm Assist could not be awarded to the appellant while her spouse was participating on the Rural Social Scheme for the same period. In her letter of appeal, the appellant stated that while her spouse was participating on a Rural Social Scheme, she believed she was entitled to Farm Assist as she was actively farming and satisfied a means test.

Consideration: The Appeals Officer outlined that the legislative provisions in this case are contained in Section 247 of the 2005 Act. The Appeals Officer found that in this case the appellant's spouse was participating on a Rural Social Scheme. There was only one Herd Number and this had been used for the purposes of the Rural Social Scheme. The legislation provides that where Farm Assist and Rural Social Scheme would be payable to or in respect of a person/spouse in respect of the same period, only one shall be paid.

Outcome: Appeal disallowed

4.4 Case Studies

Retired, Older People & Other

2019/52 State Pension Contributory Summary Decision

Question at Issue: Back-dating of Increase for Qualified Adult

Background: The appellant applied for State Pension Contributory in January 2008 and was awarded from May 2008. He was also awarded a reduced weekly rate of increase for a qualified adult from the same date on the basis of information supplied by him that his spouse was self-employed as a farmer. When his claim was awarded he was advised of the obligation to notify the Department immediately about any change in his or his wife's circumstances.

The Department contacted the appellant in 2014 regarding the rate of State Pension Contributory payable. He was advised that a reduced rate of increase for a qualified adult was being paid based on his wife's weekly means. He was also advised that in order for a review to be carried out additional information including details of any change in his financial circumstances would be required.

The appellant contacted the Department in May 2018 and requested a review of the weekly rate of increase for a qualified adult. Following an investigation and review, the appellant was awarded maximum rate of increase for a qualified adult from May 2018 which was the date of receipt of the request for review as his wife was assessed as having nil means. The appellant requested further back dating and a revised decision was made allowing for an increase for a qualified adult from November 2017 (i.e. 6 months prior to the date of receipt of his request for review). The appellant requested that the increase for his spouse be backdated for 8 years as she had no income during that time. The appellant submitted that he had not become aware of his entitlement until he changed accountants.

Consideration: Social Welfare legislation provides for backdating of claims (for up to 6 months) where it is accepted that there was good cause for the delay and where entitlement throughout the period in question is established. The circumstances in which a claim may be backdated further are more onerous to establish and are specified in legislation as an incapacity to make a claim and where incorrect information was given by the Department. The Department had already backdated the weekly rate of increase for qualified adult by 6 months and having considered all the circumstances, the Appeals Officer did not consider that the appellant had established good cause for further backdating of this increase as provided for in the legislation. He was advised to notify the Department of changes in his circumstances at the time his claim was awarded. He was also advised in 2014 why he had been awarded a reduced rate of increase for a qualified adult. He did not make any further enquires in this regard until his accountants contacted the Department in May 2018. The appellant did not contend that he received incorrect information from the Department or that he was suffering from incapacity to make a claim.

Outcome: Appeal disallowed

2019/53 State Pension Contributory Summary Decision

Question at Issue: Eligibility for an Increase for Qualified Adult

Background: The appellant's spouse was assessed with income from two sources - a salary from part-time work at €2,000 per annum, equating to €38.46 per week and a shareholding in a company which owned and rented a house. The house achieved a rental income of €34,000 per annum. There was no evidence of any liability on the house and it was valued at €250,000. The company's only business was renting this house. There was no additional evidence provided. The Department assessed the appellant's spouse's income at €16,660 per annum or €320.38 per week, from this source.

Consideration: Social Welfare legislation provides for an increase in the weekly rate of State Pension Contributory where a claimant has a qualified adult. This legislation also prescribes the circumstances in which a spouse is specified to be a qualified adult, for purposes of payment of an increase for a qualified adult. The relevant legislation is contained in Articles 6 to 10 of S.I. 142 of 2007. Article 6 prescribes that a spouse who is wholly or mainly maintained by a claimant is specified to be a qualified adult of the claimant. Article 7 prescribes that a person, being one of a couple, shall be regarded as wholly or mainly maintaining his/her spouse where the spouse's weekly income does not exceed €100. Article 8 prescribes the manner in which income is to be assessed. Article 10 prescribes that a reduced rate of increase for a qualified adult may be paid, where a spouse's income, assessed in accordance with Article 8, exceeds €100 but does not exceed €310 per week.

The Appeals Officer concluded that the company, in which the appellant's spouse owns a shareholding, is the registered owner of the house, that it is rented and that the rental income paid on this house is paid to the company. The company is a separate legal entity. The Appeals Officer concluded that it was incorrect to assess the rental income as a personal income paid to the appellant's spouse. The Appeals Officer concluded that the appellant's spouse's income derived from a shareholding of 49% in the company should be assessed in accordance with Article 8 (1)(c) of S.I. No. 142 of 2007, based on the capital value of the shares she owned.

The appellant had not provided information to facilitate a valuation of his spouse's shares. In the absence of alternative evidence on which to place a value on the company shares, the Appeals Officer considered it in the context of the likely value of the assets owned by the company. The company fully owns the house that achieved an annual rental income of €34,000.

The Appeals Officer was satisfied, from the available evidence that the house was not valued at less than €250,000. The Appeals Officer determined that the appellant's spouse, based on her 49% ownership of shares in this company, had capital valued at €122,500, for assessment purposes. The weekly income assessed based on shares valued at €122,000 was €358 per week. The appellant's spouse's total weekly income, assessed in accordance with the relevant legislation and based on a valuation on her share ownership was €396.46 (€38.46 employment + €358). The Appeals Officer determined, from the available evidence, that the appellant's spouse's weekly income exceeded €310, when calculated in accordance with relevant legislation. For this reason, the Appeals Officer decided that the appellant had not established an entitlement to an increase for a qualified adult.

Outcome: Appeal disallowed

2019/54 State Pension Contributory Oral Hearing

Question at Issue: Eligibility (Contributions)

Background: The appellant appealed the decision to disallow an application for State Pension Contributory on the grounds that he had not satisfied the contribution conditions in accordance with the provisions of Section 110 (2) of the 2005 Act which provides that "A State Pension (contributory) shall not be payable in respect of any period preceding the date on which all self-employment contributions, referred to in subsection (1)(b), payable by the person concerned have been paid".

The appellant had unpaid self-employed contributions in the last 6 years of his working life. The appellant stated that he had paid contributions from 1967 to 2016 and had sufficient contributions to qualify for the State Pension Contributory. He contended that he was being denied a State Pension on the basis of a small amount of outstanding self-employed contributions. The appellant argued that it was disproportionate to refuse to consider his State Pension Contributory, on the basis of his Class A contributions which formed the bulk of his employment contributions over his working life. The Appeals Officer was of the view that the legislation under Section 110 of the 2005 Act does not envisage the disregard of Class A paid contributions.

Consideration: The Appeals Officer was satisfied that this provision was not intended to disqualify a State Pension Contributory application where qualification could be achieved on the basis of paid Class A contributions only. It was noted that the appellant had a relatively low level of self-employed contributions for 6 of his 49 years working life. The Appeals Officer considered the application of the legislation was incorrect and led to a disproportionate impact on the appellant who should have had his entitlement to a State Contributory Pension examined on the basis of his paid Class A Contributions.

Outcome: Appeal allowed

2019/55 State Pension Non-Contributory Summary Decision

Question at issue: Eligibility: Right to Reside/Habitual Residence Condition

Background: The appellant applied for State Pension Non-Contributory in April 2018. The claim was refused on the basis that the appellant had not established a right to reside in the State. In her appeal, the appellant outlined that she moved to Ireland from another EU country with her husband in 2016. They sold their property and bought a house in Ireland to be close to their daughter. The appellant's husband passed away in 2018 and as a result her pension from her country of origin had been reduced and she applied for the State Pension Non-Contributory.

Consideration: Section 246(5) of the 2005 Act makes it clear that a decision in relation to whether a person fulfils the habitual residence condition is a two-step process. Firstly, the person must establish a right to reside in the State. Social welfare legislation prescribes that a person who does not have a right to reside in the State shall not be regarded as being habitually resident in the State. All EU citizens have an unqualified right of residence for up to three months. Thereafter the right of residence is conditional on the person satisfying one of the conditions set out in Article 6 of the European Communities (Free Movement of Persons) Regulations 2015. A right of permanent residence is acquired after five years legal residence. The appellant in this case had not been resident in the State for five years and, given her circumstances, there was only one option in the legislation by which she could establish a right to reside at that time i.e. as a person with sufficient resources so as not to be an unreasonable burden on the social assistance system of the State.

Sufficient resources/unreasonable burden are not defined in legislation but the EU Commission has provided some guidance in this area and focuses, amongst other things, on issues such as the length of time the person is likely to require support, the possibility that the EU citizen will exit the safety net, the length of residence in the host State, any history of contributing to the finances of the host State, etc. Given the fact that the appellant had a pension from her country of origin and her own home in the State, the Appeals Officer did not consider that the appellant would represent an unreasonable burden on the social assistance system. Based on the evidence the Appeals Officer concluded that the appellant satisfied the habitual residence condition.

Outcome: Appeal allowed

2019/56 State Pension (non-contributory) Summary Decision

Question at issue: Eligibility (Means)

Background: The appellant applied for State Pension (non-contributory) in November 2018. The claim was refused on the basis that the appellant failed to establish his entitlement as he had not disclosed all relevant information in relation to the assessment of his weekly means.

On the application form the appellant indicated that he was married. In seeking to assess his means the Department requested all relevant documentation including bank statements in relation to the appellant's wife. The appellant failed to provide the requested information in relation to his wife's bank account. In his appeal the appellant stated that the Department requested his wife's bank statements which had nothing to do with him.

Section 153 of the 2005 Act provides that

"Subject to this Act, a person shall be entitled to State pension (non-contributory) where—

(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.".

Part 3 of Schedule 3 of the 2005 Act relates to the assessment of means for State Pension (Non-contributory) purposes and the assessment of means derived from income. The legislation provides that when a person is one of a married couple who are living together their means are taken to be one-half of the total means of the couple. Therefore in order to establish the appellant's means, his wife's means had to be taken into account.

Article 181 of S.I. No. 142 of 2007 provides that 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.

Consideration: State Pension (Non-Contributory) is a means tested payment. In order to establish a person's eligibility for the payment a means test must be completed. Having examined all of the available evidence the Appeals Officer concluded that by not providing details of his wife's income as requested by the Department, the appellant had not established his entitlement to State Pension (Non-Contributory) in accordance with the governing legislation.

Outcome: Appeal disallowed

2019/57 Widower's (Non-Contributory) Pension Oral Hearing

Question at Issue: Entitlement: co-habiting

Background: The appellant was in receipt of Widower's (Non-Contributory) Pension since the late 1990s. Following a review by the Department in 2018 of his continued entitlement, it came to light that the appellant had been in a cohabiting relationship since January 2016. The Department issued a revised decision outlining that the appellant was not entitled to Widower's (Non-Contributory) Pension. An overpayment covering the period from 2016 to 2018, which was in excess of €20,000, was raised by the Department by reference to Section 302(a) of the 2005 Act. At the oral hearing of the appeal, the Deciding Officer stated that there was willful concealment of the cohabiting relationship and therefore reliance was placed on Section 302(a) of the 2005 Act. The appellant, on the other hand, stated that he did not realise the implications of being in a cohabiting relationship for his continued entitlement to this payment and as far as he was concerned he was still a widower and would remain a widower unless and until he re-married.

Consideration: The Appeals Officer was satisfied that the appellant had not willfully concealed the fact that he was in a cohabiting relationship and the appellant himself stated that he had now realised the implications arising from this change in his status. Section 166 of the 2005 Act provides that 'a widow, widower or surviving civil partner, as the case may be, shall not, if and so long as he or she is a cohabitant, be entitled to and shall be disqualified for receiving payment of pension'. Section 302(a) of the 2005 Act relates to situations where there is evidence that the person deliberately gave false or misleading information or deliberately concealed relevant information. As the standard of proof is high there must be evidence, not just that the person gave false information or withheld relevant information, but also that this was done deliberately. Section 302(b) applies in situations where new facts or new evidence have come to light but there was no evidence that the person deliberately gave false or misleading information or deliberately concealed relevant facts. Under this provision, the Deciding Officer had discretion to determine the date of effect of a revised decision, having regard to the new facts or new evidence and to all the circumstances of the case.

The Appeals Officer was not satisfied that the Department had discharged the onus of proof required to make a decision under Section 302(a) of the 2005 Act. The Appeals Officer, therefore, upheld the decision of the Department insofar as the appellant was not entitled to the payment in the period in question and therefore the amount of the overpayment stood. However, the Appeals Officer considered that a decision by reference to Section 302(b) of the 2005 Act was appropriate.

Outcome: Appeal partially allowed

4.5 Case Studies

Insurability of Employment

2019/58 Insurability of employment Oral Hearing

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

Background: The appeal by a company against a decision of the Department arose as part of an investigation of the company's worker's circumstances subsequent to her claim for Jobseeker's Allowance made in April 2016. Correspondence from the employer stated the worker had recently commenced working as a graphic designer on a sub-contractual basis of 20 hours a week at €10.00 per hour.

As part of the investigation, both parties completed an **INS1** form stating the nature of the employment. Both parties agreed the date the work commenced and that the worker was engaged as a graphic designer for 20 hours per week. There was no written contract between the parties. The worker was paid €200.00 per week on submission of an invoice and the rate of pay was decided by the contractor. It was agreed the business exercised the right of control and direction as to how, what and where the work was to be done. The business held the right to re-assign the individual from one task to another and held the right to dismiss. It was agreed the worker was free to take up similar work elsewhere. She supplied labour only. The work could be done at the worker's home or at the business premises as decided by the worker. She was not required to provide public liability insurance. It was agreed the worker could not lose or gain financially from the work. The worker was required to do the work herself and it was not open to her to send a substitute. It was agreed that the individual was to be directed by the company as to how the work would be done, where the work was to be done and when it was to be done. The worker indicated she had no other employment.

In a reply to a request from a Social Welfare Inspector, the worker stated she continued to be engaged by the company, there had been no changes to her working conditions and she was not engaged in self-employment on a sub contractual basis with any other business

In August 2018, the Deciding Officer on examining the case noted that while there were some indicators for employment under a contract for services overall she was satisfied the employment was under a contract of service and that a normal employer/employee relationship existed. She noted that both parties agreed the individual was subject to control and direction, the business had the right to control and direct, she worked set hours and paid a set rate, she was engaged by advertisement, she could be taken from one task and allocated another, she could be dismissed and supply her labour only, she was not required to carry her own insurance, she could not gain or lose financially, she was not free to send a substitute.

The Deciding Officer found that the employment of the worker during the period in question was insurable under the Social Welfare Acts for all benefits and pensions that PRSI Class A provided. A letter in January 2019 from the company's accountant indicated that the employer had completed form INS1 without reading it. The accountant understood that the worker was entitled to a social welfare payment. It described the recent history of the business and expansion plans which did not materialise. It stated previous graphic designers had been engaged on a self-employed basis as the business did not have sufficient work or turnover to employ one directly.

An appeal, submitted by the company, stated form INS1 was not properly understood. It was submitted that the worker had returned all her income, including income from the company, as self-employed income for 2016. A revised INS1 was completed by the company. A report from the Social Welfare Inspector confirmed the history of the engagement as previously set out. The Deciding Officer found nothing in the additional INS1 to warrant a revision of her previous decision.

The worker wrote to concur with the appeal of the company and said she established her own business in 2016 and had traded on a self-employed basis since that date. She submitted the work done for the company was on a project basis. She said the form INS1 was incorrectly completed.

Consideration: The matter to be determined was whether the working arrangements between the appellant and the worker during the period were consistent with a contract for services or a contract of service.

Where the question of the type of employment contract arises, precedent, as established through the relevant caselaw has identified four main tests –

- the test of mutuality of obligation
- the control test
- the integration test, and
- the all-encompassing enterprise test and whether or not the individual is in business on their own behalf.

The issue of mutuality of obligation was not disputed. It was evident that the worker undertook to do certain work for the company in consideration of a fee. She had a reasonable expectation that the company would offer her work on a regular and ongoing basis and there was equally an expectation that where work was offered the worker would accept it and would do the work for the amount and to the deadline agreed.

The courts have directed that for any kind of contract to exist there must be mutuality of obligation. However, where mutuality of obligation is established, it is necessary to examine the evidence to determine whether the contract is one of contract for services or contract of service. In relation to the level of control exercised by the company over the worker in the performance of her duties, the Appeals Officer considered it was fair to say that the answers given on form INS1 indicated an employee/employer relationship and a contract of service.

Oral Hearing: The oral hearing served to clarify the parties' understanding of control and it appeared that control was exercised in relation to the standard of work expected. The company exercised control in relation to the final appearance of the product and would direct the worker as to the performance of her duties to achieve the desired result.

The Appeals Officer found the parties' evidence less convincing as to the matter of managerial control, the worker was not expected to attend for work at set times or on set days, she had autonomy to do the majority of the work in her own time and in her own home, she was only expected to attend the office as the deadline for publication approached. The Appeals Officer found that the control and direction exercised by the company over the worker was not akin to managerial control as it would be expected in the case of an employer/employee relationship.

The Appeals Officer was satisfied that the working relationship between the parties was mutually beneficial and productive to both. The Appeals Officer concluded that it was evident that the worker was closely associated with the product and she valued her involvement as it generated her primary source of income. Her involvement was equally valued by the company as she provided a regular and essential service in the production of the company's product. Consequently, it could be argued that she was integrated into the day to day running of the business far more than would be expected of a contractor supplying a service but at arm's length. However, the business was on a small scale and the input of the graphic designer was of vital importance and in such circumstances her close association was unavoidable. However this did not of itself make her an employee.

At the oral hearing the Appeals Officer clarified the extent of the worker's own business and felt her evidence appeared in some ways to contradict the impression she had given to the Social Welfare Inspector where she appeared to suggest she only did work for the appellant. The worker clarified that she could work from home, she had the necessary equipment there and did work for others as a graphic designer but readily accepted that the appellant was her principal, largest and only source of repeat work.

The Appeals Officer noted that this was a small business where some of the issues identified would not normally arise. The question of hiring help did not arise, but there was nothing to prevent the worker from engaging the services of another in her own business but due to the limited nature of her enterprise, the issue did not arise. There was little scope for investment or financial risk taking. It was not excessively expensive to set up as a graphic designer from home. However, the Appeals Officer found that the worker did supply her own equipment in that she used her own PC/laptop to do her work. She managed her own time and was free to make decisions as to when she would do the work. The parties appeared to have reached a mutually beneficial understanding as to the payment arrangement for the work. The worker was paid per hour at a fixed rate per month in anticipation of the volume of work necessary. Where her input exceeded this norm, it was stated she was paid extra.

The Appeals Officer agreed with the Deciding Officer that there were indicators of both employment for service and employment of service. However, having had the benefit of the oral hearing and in particular, the evidence that the worker traded and did other work outside of the appellant company, the Appeals Officer found that she could be said to be in business on her own account and that the work undertaken for the company was part of that business and consequently was under a contract for services.

Outcome: Appeal allowed

2019/59 Insurability

Question at issue: Liability for PRSI Contributions

Background: The appellant appealed a decision of the Department to amend his PRSI record for the years 2015, 2016 and 2017 on the grounds that the income returned by an Approved Retirement Fund in respect of the appellant was less than €5,000. The Department determined the correct PRSI class was class M. The review of his PRSI record arose following an application for Treatment Benefit. The decision was appealed on the grounds that the appellant had contacted the Department on a number of occasions and was told he was credited with Class S contributions for these years and was now at a disadvantage due to the amendment to his record.

Rule 3 of Part 3 to the First Schedule to the 2005 Act exempts a person from paying PRSI at Class S where reckonable income is below the prescribed amount. Article 92 of SI 312 of 1996 prescribes the amount as €5,000 in a contribution year.

Consideration: The appellant accepted that his income for the years in question was below €5,000. However, he was aggrieved that PRSI Class S contributions were credited to his record and more especially that he received confirmation on a number of occasions that contributions were awarded for those years when he made an enquiry as to the number of contributions he had in respect of future entitlement to a State Pension Contributory. He stated that the loss of those years would negatively impact on his expected rate of pension. He stressed that had he been aware that he had no liability for those years he could have taken action to ensure he had a reckonable contribution. He said the incorrect award of Class S contributions for those years had deprived him of this option. He said it was unacceptable to incorrectly award PRSI contributions and only to advise the person involved of the mistake when a claim for benefit was made. He submitted evidence from Treatment Benefit Section to the effect that his claim for benefit was allowed notwithstanding the revocation of the social insurance contributions credited for 2015, 2016 and 2017. He submitted that a similar approach should be adopted in respect of his application for State Pension Contributory.

The income limit is prescribed in legislation under article 92 of S.I. 312 of 1996 and it is not open to an Appeals Officer to award Class S contributions where the income is less that the amount prescribed. Subsequent to the oral hearing, the Appeals Officer asked the Department to look at the matter again and in particular the difficulties the erroneous crediting of Class S contributions had caused the appellant in planning for possible pension entitlement. The Appeals Officer was informed that the Department wrote to the appellant in August 2019 and suggested the option of the appellant becoming a voluntary contributor for the period in question. That is a matter to be determined in the first instance between the Department and the appellant.

The Department informed the Appeals Officer that they were aware of the system deficiencies that had led to the crediting of Class S contributions where the income from an Approved Retirement fund was below the threshold of €5000 and were taking steps to address this. However having considered all of the evidence the Appeals Officer concluded that the decision of the Department was correct and the appellant was found not to be a liable contributor for PRSI Class S during the years 2015, 2016 and 2017 as it was accepted his income from the fund in question was below €5000.

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

2019/318/60 Supplementary Welfare Allowance

Question at issue: Entitlement to Rent Supplement

Background: The appellant sought a review of the Appeals Officer's decision on the basis of error in fact and law in that it was contended that (a) the Appeals Officer erred in stating that the appellant had not requested a letter from a specified local authority; and (b) that the appellant's housing, as provided by the local authority, highlighted the unsuitability of two previous offers of accommodation. The appellant in this case had refused two offers of accommodation made by the relevant local authority and as a consequence payment of Rent Supplement was withdrawn. The appellant contended that the housing offered was not suitable to her needs as they were not wheelchair accessible and were also unsuitable for her son who had mobility issues. The Appeals Officer outlined that in accordance with Section 199 of the 2005 Act and Article 9 (2)(f) of the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S.I. No. 412 of 2007) where a person refuses two offers of accommodation within a 12 month period a supplement shall not be payable for a period of 12 months from the date of the last refusal of an offer of accommodation.

The appellant had been advised by the Department that it was open to her to discuss the matter directly with the local authority concerned and to outline her reasons why the properties allocated were not suitable and to provide a letter to the Department to that effect. She was advised that entitlement to Rent Supplement could then be re-examined with a view to it being reactivated and back-dated. At the time of the appeal hearing the appellant had not provided any confirmation that she had contacted the local authority in question. In disallowing the appeal the Appeals Officer outlined that in accordance with the governing legislation, Rent Supplement in the appellant's case could not be paid for a period of 12 months from the date of the last refusal of an offer of accommodation.

Review: The legislative provisions governing Supplementary Welfare Allowance are set out in Chapter 9, Part 3 of the 2005 Act and the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S.I. No. 412 of 2007).

The conditions of entitlement to rent supplement are set out in Article 9. Article 9(2) provides that it shall be a condition of any claimant's entitlement to a supplement that –

'(f) the claimant has not refused for a second time, within any continuous 12 month period commencing on or after 27 July 2009, an offer of accommodation provided by either a housing authority or a body approved by the Minister for the Environment, Heritage and Local Government for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act 1992 (including accommodation provided under the scheme known as the Rental Accommodation Scheme) and, where such refusal has occurred, a supplement under sub-article (1) shall not be payable for a period of 12 months from the date of the refusal.,'

The appellant had refused two offers of accommodation within a continuous 12 month period and as such did not meet the conditions of entitlement to rent supplement. In those circumstances I noted that the governing legislation is framed in mandatory terms and as such the Appeals Officer has no discretion in this matter. I therefore did not consider that the Appeals Officer had erred in law or fact on this ground. It was also contended that the Appeals Officer had erred in stating that the appellant didn't request a letter from the relevant local authority which the appellant stated she did, both by letter and email, and that the local authority could be asked for proof of same.

Insofar as this contention was concerned, I outlined that it was a matter for the appellant to provide whatever documentary evidence was required or considered relevant in support of her appeal and it was not open to the Appeals Officer to make such enquiries with the local authority as contended. From my review of the file, I noted that there was no correspondence on file from the local authority concerned. The role of the Appeals Officer in this case was confined to considering whether the condition of entitlement to a supplement as provided for in social welfare legislation had been met by the appellant. The suitability of accommodation offered by a local authority was not a matter for the Appeals Officer.

Outcome: Decision not revised

2019/318/61 Maternity Benefit

Question at issue: Maternity Benefit - Eligibility - Contribution Condition

Grounds for review: The appellant sought a review of the Appeals Officer's decision on the basis of error in fact and/or law in that it was contended that Section 47, and specifically subsection (3), of the 2005 Act provides discretion to an Appeals Officer to allow for arrangements to be exercised for Maternity Benefit to be paid to women who qualify for the benefit save for the fact that the contribution conditions in Section 48 of the 2005 Act are not satisfied.

In support of this contention I was referred to a statement of the Tánaiste on 24th October 2017 to the Select Committee of Foreign Affairs, Trade and Defence wherein it is stated that Deputies are committed to ensuring that disadvantages that arise due to public servants and their families taking up foreign postings will be minimised. I was also referred to information relating to the residency situation of families posted abroad in the service of the State, and their continued tax and social insurance contributions to the State.

It was submitted that the appellant's case is one where discretion should have been properly considered and that the Appeals Officer did not consider whether discretion could be applied and as such had erred in fact and/or law.

Background: The appellant submitted a claim for Maternity Benefit which was disallowed by a Deciding Officer of the Department on the grounds that the appellant did not meet the contribution conditions for Maternity Benefit as set out in Section 48 of the 2005 Act. That decision stood following a review carried out by the Department. It was clear from the file that the appellant accompanied her husband who was posted abroad in connection with his official duties and this accounted for the gaps and insufficient contributions in the applicable contribution years.

Review: In my review, I outlined that 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 decision given by the Deciding Officer in this case was that the appellant's claim for Maternity Benefit was disallowed on grounds that she did not satisfy the contribution conditions. I outlined that Appeals Officers, including the Chief Appeals Officer, must operate within the confines of the governing legislation as set out in the 2005 Act and Regulations made thereunder.

In line with the legislative provisions governing social welfare appeals the question, and the only question, to be determined by the Appeals Officer was whether the appellant satisfied the contribution conditions for receipt of Maternity Benefit as set out in Section 48 of the 2005 Act. The Appeals Officer was also required to consider if those contribution conditions had been varied in any way by Regulations made by the Minister exercising the power given to her pursuant to Section 47 of the 2005 Act and which may apply to the appellant's circumstances.

The provisions governing entitlement to Maternity Benefit are contained in Chapter 9 of Part 2 of the 2005 Act. The contribution conditions to be satisfied in order to be entitled to Maternity Benefit are contained in Section 48. The provisions governing entitlement and duration of the benefit are contained in Section 47 and subsection (3) provides:

Regulations may provide for entitling to maternity benefit, subject to the conditions and in the circumstances that may be prescribed, the class or classes of women who would be entitled to that benefit but for the fact that the contribution conditions in section 48 are not satisfied.

I outlined that the Minister had exercised this power in relation to volunteer development workers and that provision can be found in Article 31 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007). However, the Minister had not made any provision in relation to any other class or classes of women and in the absence of a specific provision in the legislation that varies the contribution conditions in the circumstances of the appellant's case the Appeals Officer was bound by the legislation and had no discretion or authority to vary the contribution conditions applicable.

Outcome: Decision not revised

2019/318/62 Disability Allowance

Question at issue: Eligibility (Right to Reside in the State)

Grounds for review: An advocate acting on behalf of the appellant requested a review of the Appeals Officer's decision on the basis that the Appeals Officer erred in law. The question at issue was whether the appellant had a right to reside in the State.

Background: The appellant, an EU national, came to Ireland to live with her daughter who was herself living and working in Ireland for a number of years. The appellant applied for Disability Allowance and this was refused by the Department on the grounds that the appellant had not established that she had a right to reside in the State. The Appeals Officer found that while the appellant had established a right to reside as a direct dependent in the ascending line of a worker she nonetheless did not have access to social assistance.

Review: From my review of the Appeals Officer's decision it was clear that the Appeals Officer was satisfied that the appellant was a dependent direct relative in the ascending line of a Union citizen who was a worker in Ireland. In accordance with guidance from the EU Commission on implementing these provisions, the Appeals Officer was also satisfied that the appellant had established that the dependency existed prior to her joining her daughter in Ireland. Notwithstanding that, the Appeals Officer concluded that the appellant was not entitled to receive assistance under the Social Welfare Acts. The grounds for review were to the effect that, once the right to reside had been established, the appeal should have been allowed and the question of whether the appellant was habitually resident could be considered thereafter.

From my review of the Appeals Officer's decision it was clear that the Appeals Officer considered that the appellant had a right to reside on the basis of being a dependent direct relative in the ascending line of a Union citizen who is a worker in Ireland, and accordingly the provisions of Article 6 (3)(a) (iv) of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) applied. In my review I outlined that in accordance with the Directive 2004/38/EC and the Regulations of 2015 (S.I. 548 of 2015) giving further effect to the Directive, the right to reside in the State is not unconditional. The Directive and the Regulations draw a distinction between economically active persons and those who are not.

Article 11 of S.I. 548 of 2015, dealing with the retention of rights of residence provides:

A person residing in the State under Regulation 6, 9 or 10 shall be entitled to continue to reside in the State for as long as he or she satisfies the relevant provision of the regulation concerned and does not become an unreasonable burden on the social assistance system of the State.

While the appellant was residing in the State under Article 6 the right to reside was not unconditional and she may continue to reside for as long as she satisfied the provisions of Article 6 and did not become an unreasonable burden on the social assistance system of the State. In those circumstances I did not consider that the Appeals Officer had erred in law on the grounds submitted on behalf of the appellant.

Outcome: Decision not revised

2019/318/63 Carer's Allowance

Question at issue: Eligibility (Care Required)

Grounds for review: An advocate acting on behalf of the appellant requested a review of the Appeals Officer's decision on the basis that the Appeals Officer erred in fact and in law. The question at issue was whether the appellant's son required care within the meaning of the governing social welfare legislation. Specifically, it was contended that the Appeals Officer failed to:

- fully assess the appellant's application and subsequent oral hearing in a manner compatible with natural and constitutional justice and fair procedures – in this respect it was asserted that the Appeals Officer did not fully consider the factors given at the oral hearing;
- give appropriate weight to the evidence presented;
- assess the risk factor in relation to the child's safety; and
- fully recognise the additional care needs carried out by the appellant for her son.

Background: The appellant's claim for Carer's Allowance in respect of the care of her son was refused on the basis that the Deciding Officer of the Department considered that the person being cared for did not meet the care requirements as set out in Section 179(4) of the 2005 Act. The subsequent appeal was disallowed and the position remained unchanged following a review conducted by the Appeals Officer under the provisions of Section 317 of the 2005 Act in light of additional evidence provided by the appellant.

Review: The conditions for receipt of Carer's Allowance are contained in Chapter 8 of Part 3 of the 2005 Act and Regulations made thereunder. In accordance with Section 179 (1) there are 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.

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 2005 Act 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."

In my review of the Appeals Officer's decision, I found no grounds to support the contention that the Appeals Officer had failed to consider all of the evidence presented by the appellant. The remaining contentions related by and large to the weight the Appeals Officer afforded to the evidence submitted by the appellant and the medical evidence.

I noted that the Appeals Officer formed the view that there was no doubt but that the appellant's son required a level of care, but it had not been established that he required continual supervision and frequent assistance throughout the day in connection with normal bodily functions or continual supervision in order to avoid danger to himself.

It was also asserted that the Appeals Officer erred in refusing to obtain photographic evidence on the grounds that it was not medical evidence and therefore irrelevant. From my review it was unclear what specific evidence was being referred to but the appellant was afforded an opportunity to submit this evidence which could then be reviewed under the provisions of Section 317 of the 2005 Act.

Insofar as it was contended that the Appeals Officer erred in failing to access the risk factor in relation to the safety of the appellant's son, it seemed to me that this assertion was related to the contention that if the appellant did not provide constant care and attention her son's health would deteriorate rapidly and this would ultimately result in him being admitted to ICU. From my review of the file, I was satisfied that this assertion was not supported by the evidence. The Appeals Officer reported that the appellant's son's last admission to hospital was some years previous and the medical evidence before the Appeals Officer indicated that the appellant's son was moderately affected by his conditions in some areas. While the caree needed assistance with diet and sugar monitoring, insulin calculation and administration, all other activities were indicted as normal. The evidence also indicated that the caree could manage many functions of daily living independently but required supervision with bathing and showering. However, the evidence did not, in my opinion, support a conclusion that the caree required 'continual supervision in order to avoid danger to himself' as required by Section 179 (4) of the 2005 Act.

The evidence which was before the Appeals Officer regarding this latter aspect of the legislative care test included the documentary and oral evidence adduced at the oral hearing. The medical evidence made no specific references to the question of danger. Having regard to the totality of the evidence that was before the Appeals Officer, I did not consider that the evidence supported a conclusion of a need for continual supervision to be provided to the caree in order to avoid danger to himself.

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 appellant's son did not meet the statutory requirements. The question of care being provided was not at issue. I noted however that many of the points submitted by the appellant's advocate related to the care provided by the appellant. While the question of care provided is an important element to be considered, the focus of the appeal in this case had to be on the care required by the caree and not on the care provided by the carer.

Outcome: Decision not revised

2019/318/64 Jobseeker's Allowance

Question at issue: Entitlement (Penalty Rate)

Grounds for review: The appellant submitted in his request for a review of the Appeals Officer's decision that the JobPath scheme is administered in contravention of national data protection legislation (citing the DPA 2003) and a European Union Directive on the protection of individuals with regard to the processing of person data (citing Directive 95/46/EC). The appellant contended that his personal data had been unlawfully shared by the Department with a named provider and used illegitimately by that provider. He expressed the view that the Appeals Officer erred in his assertion that 'the Department made every effort to assure' him regarding the security of his personal data. The appellant also asserted that the decision of the Deciding Officer was not made in accordance with natural justice and that before such decisions are taken a designated person in the Department should meet with the claimant concerned.

Background: The appellant was in receipt of Jobseeker's Allowance and in connection with that claim was invited to attend meetings arranged by the Department for the purpose of providing information intended to improve his knowledge of the employment, work experience and other opportunities available to him. He failed to attend a number of scheduled meetings and a Deciding Officer applied a penalty rate to his claim resulting in a reduction of €44 to his weekly payment.

While the appellant was ultimately disqualified for receiving Jobseeker's Allowance, the question before the Appeals Officer at that point in time was whether the appellant had without good cause failed to attend the scheduled meetings. As the Appeals Officer considered that the appellant had not demonstrated good cause for his failure to attend the meetings the appeal was disallowed.

Review: As the appellant's grounds for review included issues relating to the administration of the JobPath Programme, I highlighted that the role of the Social Welfare Appeals Office is to determine appeals against decisions of Deciding Officers and/or Designated Persons of the Department. Section 300(2) of the 2005 Act gives statutory power to Deciding Officers of the Department to determine questions relating to social assistance. All such decisions can be appealed under the provisions of Section 311 of the 2005 Act to an Appeals Officer. I outlined that, in accordance with these statutory provisions, Appeals Officer have no role in relation to the administration of JobPath. The Appeals Officer's role therefore was confined to the decision of the Deciding Officer which resulted in the reduction in the appellant's weekly payment.

The provisions governing entitlement to Jobseeker's Allowance are contained in Chapter 2 of Part 3 of the 2005 Act and Chapter 1 of Part 3 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007 (S.I. No 142 of 2007).

Section 141A of the 2005 Act provides that a person receiving Jobseeker's Allowance may be requested to attend meetings for the purpose of assisting the person in their search for employment or for the assessment of the person's education, training or development needs – generally referred to as activation meetings.

Section 141A also sets out the penalties that may be applied where the person refuses or fails to attend activation meetings and in this respect subsection (2) provides:

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).

Insofar as the appellant's assertion that the decision [of the Deciding Officer] was not made in accordance with natural justice, while noting that all decisions must be made in accordance with natural justice, I outlined that the legislation does not provide for meetings and/or that any such meetings must be presided over by a designated person. From my review of the file that was before the Appeals Officer, I noted that prior to the Deciding Officer making her decision there was correspondence on file from the Department's Offices outlining the obligations on jobseekers to attend activation meetings and the consequences of failure to attend was also outlined.

The appellant had also acknowledged that he had read the material and was aware that if he failed to attend interviews his payment may be reduced. In those circumstances I did not find that the decision of the Appeals Officer was erroneous.

Insofar as it was asserted that the Appeals Officer erred in his assertion that 'the Department made every effort to assure the appellant regarding the security of his personal data,' I did not find that the Appeals Officer had erred in fact or law in this respect. From my review of the file, there was correspondence on file which showed that the Department made considerable efforts to provide information and assurances to the appellant as regards his personal data and the sharing of that data with the JobPath companies. While I concluded that it was reasonable that the appellant would seek assurances as to the protocols which apply and the safeguards put in place with reference to the provisions of the Data Protection Acts, I considered that the evidence indicated that the requirement to attend scheduled meetings as requested by the Department had not been fulfilled by the appellant and, in light of the assurances given to him by the Department, his concerns as regards data protection did not constitute "good cause" for failure to attend scheduled meetings.

Outcome: Decision not revised

2019/318/65 Insurability of Employment

Question at issue: Class of PRSI contribution payable

Grounds for review: The Department in its request for a review asserted that the Appeals Officer had erred in law in relying on Section 19 of the Social Welfare and Pensions Act 2014 and should instead have relied on Section 16 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013.

The Department also outlined that it considered that PRSI Class A was appropriate for the full period of the appellant's engagement with a named company and that the Appeals Officer had pointed out that there was no significant change in the appellant's working conditions or her involvement with the company when her shareholding increased in 2013.

Background: The appellant in this case, the spouse of the majority shareholder, became a Director shortly after the company was incorporated with a 1% shareholding. Her shareholding increased to 41% in March 2013. The business was a limited company. A Deciding Officer of the Department decided that the appellant's employment from 1st January 2007 was insurable at PRSI Class A. Following a review by a Deciding Officer, and relying on Section 16 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013, that decision was upheld.

The Appeals Officer decided that the appellant's employment was insurable under the Social Welfare Acts at PRSI Class A for the period from 1st January 2007 until 31st December 2013, and at PRSI Class S from 1st January 2014. In reaching this conclusion the Appeals Officer relied on Section 19 of the Social Welfare and Pensions Act 2014.

Review: In carrying out this review I considered it was necessary in the first instance to set out the legislation relating to contributors and contributions and the amendments to these provisions which I considered were of relevance.

Legislation governing contributions

The legislation relating to Employed Contributors and Employment (PRSI) Contributions is contained in Chapter 2 of Part 2 of the 2005 Act. The legislation relating to Self-Employed Contributors and Self- Employment Contributions is contained in Chapter 3 of Part 2 of the 2005 Act.

Section 12(1)(a) of the 2005 Act provides for the payment of PRSI by employed contributors. It provides inter alia that every person who, being over the age of 16 years and under pensionable age, is employed in any of the employments specified in Part 1 of Schedule 1, not being an employment specified in Part 2 of that Schedule, shall be an employed contributor for the purposes of this Act. The employments listed in Part 2 of Schedule 1 of the 2005 Act are known as excepted employments.

Similar provision is made in relation to self-employed contributors in Section 20 (1)(a) of the Act of 2005. It provides inter alia that every person who, being over the age of 16 years and under pensionable age (not being a person included in any of the classes of person specified in Part 3 of Schedule 1) who has reckonable income or reckonable emoluments, shall be a self-employed contributor for the purposes of this Act regardless of whether the person is also an employed contributor. The contributors listed in Part 3 of Schedule 1 are known as excepted self-employed contributors.

The two amendments to the Act of 2005 which were of relevance to the review were:

- Amendment to Section 12 and Part 2 of Schedule 1; and
- Amendment to Part 3 of Schedule 1

Amendment to Section 12 and Part 2 of Schedule 1

Section 16 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013, which came into force on the 28th June 2013, provided for an amendment to Section 12 and Part 2 of Schedule 1 of the Act of 2005, which now contain the provisions governing the insurability of working directors.

In accordance with these provisions directors who own or control 50% or more of the shareholding of the company are not employed contributors of that company for the purposes of social insurance. Accordingly, they are insured for social insurance purposes as self-employed contributors and are liable to pay PRSI at Class S. The PRSI classification of directors who own or control less than 50% of the shareholding of the company is determined on a case by case basis, taking account of the Code of Practice for Determining Employment and Self-Employment Status of Individuals and having regard to the tests and other factors that have evolved over time from judgments of the Courts.

As the appellant in this case owned or controlled less than 50% of the shareholding of the company the PRSI classification fell to be considered on this latter basis.

For the period from 1st January 2008 until 31st December 2013 both the Deciding Officer and Appeals Officer concluded that the appellant's employment was insurable under the Social Welfare Acts at PRSI Class A. While the Deciding Officer concluded that the appellant's employment after 31st December 2013 continued to be insurable at PRSI Class A, the Appeals Officer concluded that from 1st January 2014 the employment was insurable at PRSI Class S.

Amendment to Part 3 of Schedule 1

The Appeals Officer relied on the amendment to the Act of 2005 introduced by Section 19 of the Social Welfare and Pensions Act 2014 which came into force on 17th July 2014. The text of that amendment is as follows:

Excepted self-employed contributors

19. (1) Part 3 of Schedule 1 to the Principal Act is amended by substituting the following paragraph for paragraph 1:

"(1) A prescribed relative of a self-employed contributor who—

(a) participates in the business of the self-employed contributor,

and

(b) performs the same tasks or ancillary tasks to those performed by the self-employed contributor, other than a person—

(i) who is a partner in the business of the self-employed contributor, or

(ii) to whom subparagraphs (a) and (b) apply and who is the husband, wife or civil partner of the self-employed contributor."

(2) Subsection (1), in so far as it relates to liability for a contribution under Chapter 3 of Part 2 of the Principal Act by virtue of subparagraph (ii) of paragraph 1 (amended by subsection (1)) of Part 3 of Schedule 1 to the Principal Act, applies—

(a) in respect of any reckonable emoluments received by a person to whom subparagraph (ii) of paragraph 1 of Part 3 of Schedule 1 to the Principal Act applies, on or after 1 August 2014, and

(b) in respect of any reckonable income received by a person to whom subparagraph (ii) of paragraph 1 of Part 3 of Schedule 1 to the Principal Act applies—

(i) in respect of the contribution year commencing on 1 January 2014, and

(ii) in respect of each subsequent contribution year."

Prior to this amendment the spouses or civil partners of a self-employed worker who participated in the activities of their self-employed spouse or civil partner performing the same or ancillary tasks were listed as excepted self-employed contributors. The amendment provided for by Section 19 of the Social Welfare and Pensions Act 2014 extended liability for social insurance contributions to spouses and civil partners of self-employed contributors who are not business partners or employees, where they perform the same or ancillary tasks.

Prior to the amendment only one of the couple could be insured as a self-employed worker for social insurance purposes. The effect of the amendment was to ensure that the spouse or civil partner would be able to establish entitlement over time to Maternity Benefit, Widow's, Widower's or Surviving Civil Partner's Contributory Pension and State Pension Contributory in their own right.

As outlined by the Appeals Officer the amendment provided for the transposition of Directive 2010/41/EU on the application of equal treatment between men and women engaged in self-employment activity, in so far as that Directive related to ensuring that the spouse or civil partner of a self-employed worker can benefit from social protection in accordance with national law. The central question in the context of this review was whether the amendment introduced by Section 19 of the Social Welfare and Pensions Act 2014 applied to the circumstances of the appellant's employment?

I considered that it did not apply to the appellant in that the amendment provided for in Section 19 extended liability for social insurance contributions to spouses and civil partners of self-employed contributors who are not business partners or employees, where they perform the same or ancillary tasks. In other words the provision extended social insurance cover to those workers who had previously been excepted self-employed contributors. However, the Appeals Officer determined that the appellant was an employee of the limited company and that determination had to be based on Section 12 and Part 2 of Schedule 1 of the Act of 2005 as amended by Section 16 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013. Based on these findings the appellant was not excluded from social insurance.

While it was clear that the Appeals Officer was attempting to give effect to the spirit of the amendment introduced by Section 19 of the Social Welfare and Pensions Act 2014, I considered that the Appeals Officer had erred in law in that the appellant's employment did not come within the scope of the amendment provided for in that Section. Having decided that the employment of the appellant by the limited company was insurable under the Social Welfare Acts, at PRSI Class A for the period from 1st January 2007 until 31st December 2013, there was no basis in the amendment introduced by Section 19 of the 2014 Act to classify the employment at PRSI Class S from 1st January 2014.

Outcome: Decision revised

2019/318/66 Jobseeker's Benefit

Question at issue: Condition of right to benefit (Identity)

Grounds for review: The appellant sought a review of the Appeals Officer's decision on the grounds that the Appeals Officer relied on the incorrect provision of Section 241 of the 2005 Act and/or conflated the concept of satisfying the condition as to identity in Section 241(1)(b) with making an application in the prescribed manner required by Section 241(1)(a).

It was contended that the Appeals Officer erred in interpreting Section 241(1C) as prescribing how an identity may be authenticated when the primary obligation is to be found in Section 241(1)(b) with Section 241(1C) providing a number of specific measures that are available to the Minister but which are not mandated to be used. In addition, it was submitted that the Appeals Officer did not indicate why it was necessary for an electronic photograph to be taken and a signature to be provided to satisfy the Minister as to the appellant's identity and that the Appeals Officer incorrectly characterised certain arguments submitted as part of the appeal contentions as arguments which went beyond the legislative provisions.

Background: The appellant made a claim for Jobseeker's Benefit and in connection with that claim, was asked to attend an 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 as the appellant did not agree to have his Public Services Card (PSC) processed. The claim was disallowed on grounds that the appellant had not established his identity in line with the provisions of the governing legislation - specifically that he had not allowed an electronic format of his photograph to be taken and had not provided an electronic signature. The legislative provisions relied on by the Deciding Officer were cited as those outlined in Section 247(C) of the 2005 Act. In his appeal the appellant submitted that he had concerns about the PSC which were not addressed by the Intreo staff. It was also submitted that the decision of the Deciding Officer was unlawful as the appellant was not "a person receiving benefit" and the provisions of Section 247(C) were not applicable to him as a person making a claim. The main contention submitted by the appellant was that he had provided sufficient information and documentary proof of identity and it was unnecessary and not mandatory to have his photograph taken and to provide an electronic signature. In this respect it was submitted that there is no lawful basis for taking a photograph for the purposes of facial recognition and an electronic signature for automatic verification and such personal data is biometric data and classified as special category data.

It was asserted that there is no provision in Irish or EU law that permits the Minister to process such special category personal data as part of the SAFE registration process and as such it was ultra vires the powers of the Minister to require the appellant to submit to unlawful processing of his personal data. It was submitted that the Appeals Office has a duty

to ensure the effectiveness of EU law and that the law relied on [by the decision makers] conflicts with EU law.

Review: Insofar as it was asserted that the decision of the Deciding Officer was unlawful as reliance was based on the incorrect provision of the 2005 Act (Section 247C, which relates to a person receiving benefit), the Appeals Officer was satisfied that the intention of the Deciding Officer was to disallow the claim based on Section 241 of the 2005 Act (which relates to new claims). While it was fully accepted that the incorrect legislative provision was relied on by the Deciding Officer, it is the case that the provisions contained in Section 247C (3) correspond to the provisions contained in Section 241 in relation to authenticating the identity of a person irrespective of whether the person is receiving benefit or making a claim for benefit as in the appellant's case.

Insofar as it was asserted that the Appeals Officer erred or appeared to have conflated the provisions of Section 241(1)(a) making a claim in the prescribed manner) and Section 241(1)(b) (satisfying the Minister as to identity) I was satisfied that the Appeals Officer considered whether the appellant had met the condition outlined in Section 241(1)(b). This was evident from the substantive part of her decision and the evaluation of the evidence.

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 2005 Act.

Section 241 provides that it is 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 was 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. 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). As the Appeals Officer relied on these provisions, and in my view was required to do so, I did not consider that she has erred in fact or law.

Given the contentions submitted by the appellant in relation to the role of the Appeals Officer and the Office itself, I outlined that the function of the Social Welfare Appeals Office is to determine appeals against decisions of Deciding Officers and/or Designated Persons of the Department. The questions to be decided by Deciding Officers are set out in Section 300 of the 2005 Act. The legislation governing the appeals process is contained in Chapters 2, 3 and 4 of Part 10 of the 2005 Act and the Social Welfare (Appeals) Regulations, 1998 (S.I. No. 108 of 1998).

Section 311 of the 2005 Act provides that:

311.—(1) Subject to subsection (4), where any person is dissatisfied with the decision given by a deciding officer or the determination of a designated person in relation to a claim under section 196, 197 or 198, the question shall, on notice of appeal being given to the Chief Appeals Officer within the prescribed time, be referred to an appeals officer.

The appeal procedure provided for in Section 311 is clearly predicated upon the existence of a decision which is made by a Deciding Officer pursuant to Section 300.

The decision given by the Deciding Officer in the appellant's case outlined that his claim was disallowed on the grounds that he had failed to prove his identity in line with the provisions of Social Welfare legislation.

Appeals Officers, including the Chief Appeals Officer, must operate within the confines of the governing legislation as set out in the 2005 Act. I considered that assertions made by the appellant that went beyond these legislative provisions do not come within the remit of the appeal process. It was not a matter for the Appeals Officer to indicate why it was necessary for an electronic photo and/or signature to be provided. The role of the Appeals Officer was to determine if the statutory provisions had been met and in the appellant's case the question was whether he had satisfied the Minister as to his identity as required by Section 241(1)(b) and for that purpose if he had complied with the requirements of Section 241(1C), which specifies the manner in which the Minister may be satisfied as to a person's identity.

I formed the view that Appeals Officers do not have discretion under the governing social welfare legislation to alter the manner in which the Minister may be satisfied as to a person's identity. I was also of the view that any arguments advanced concerning unlawful processing of personal data does not come within the remit of the Social Welfare Appeals Office.

Outcome: Decision not revised

2019/318/67 Working Family Payment

Question at issue: Calculating weekly family income

Grounds for Review: The appellant sought a review of the Appeals Officer's decision as she considered that the Appeals Officer erred in taking account of profits made by the limited company of which her spouse was a Director and a shareholder. The appellant outlined that she had been receiving Working Family Payment for a number of years based on the same set of circumstances but her most recent renewal claim was rejected. It was outlined that her spouse takes a weekly wage from the company but any profits are not earnings or money received and are used to finance the company's debt.

Background: The appellant's renewal application for Working Family Payment was disallowed by a Deciding Officer of the Department on the basis that the weekly family income was greater than the limit applicable to her family size. In calculating weekly family income account was taken of her own earnings, those of her spouse and 50% of the profit made by the company. The Appeals Officer concluded that it was not unreasonable to take account of the profit made by the company and disallowed the appeal.

Review: The central question before the Appeals Officer was whether in calculating the appellant's entitlement to Working Family Payment account of her spouse's share of the net profit from the company should have been taken into account. The company made a profit of €62,600 in 2017 and 50% of these profits - €601.92 weekly – were taken into account in calculating the Working Family Payment assessment. The legislation governing entitlement to Working Family Payment is set out in Part 6 of the 2005 Act and certain provisions of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) also apply.

Section 227 of the 2005 Act provides that "weekly family income" means subject to Regulations under Section 232, the amount of income received in a week by a family, less certain specified deductions e.g. income tax, PRSI, USC etc. Article 174 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations (S.I. No. 142 of 2007) makes provision for the disregard of certain items (e.g. social welfare payments) in determining weekly family income. I noted that the legislation does not make any specific provision as to how, as in this case, the profits made by the company are to be treated. However, I was of the view that it is clear that legislation governing Working Family Payment is concerned with the amount of income received in a week by a family and as such implies at least that in order to include an amount as income in the calculation it must be received by the family. In this respect I noted that Working Family Payment differs from means-tested payments.

From my review of the papers that were before the Appeals Officer I noted that the Social Welfare Inspector of the Department in his report confirmed that the appellant's spouse was provided with a salary from the company and that any profits were held within the business. In those circumstances the Social Welfare Inspector recommended that only the salary paid to the appellant and her spouse be taken into account. A note on the file in the context of the Department reviewing the decision of the Deciding Officer outlined that the reviewing officer believed that there were grounds for revising the decision based on the recommendation from the Social Welfare Inspector.

However, there was an additional note which outlined that the decision of the Deciding Officer should stand 'as spouse takes a wage and 50% profit from the business.' Having reviewed the documents on file I noted from the Directors' Report and in line with the Social Welfare Inspector's report, that profits were retained in the business. In those circumstances I was satisfied that the profit made by the company could not be regarded as income received by the family in accordance with Section 227 of the 2005 Act.

Outcome: Decision revised

2019/318/68 Invalidity Pension

Question at issue: Eligibility while self-employed as a farmer

Grounds for Review: The appellant in his request for a review of the Appeals Officer's decision set out a number of grounds in support of the contention that the Appeals Officer erred in fact and law in disallowing his appeal. Many of these grounds were procedural issues in relation to the processing of the application within the Department and did not come within the remit of the appeal process. The central issue was whether the appellant was permanently incapable of work while working on his farm. It was submitted that an error of fact had occurred in that the appellant as a self-employed person played two roles: that of employer and employee. It was stated that as an employee the appellant had been declared unfit for work by his GP and that as an employer he was responsible for the work to be done on the farm which he ensured by engaging others to perform on his behalf. It was submitted that the decision to refuse the application for Invalidity Pension was based on a technicality in that on paper the appellant was registered as a self-employed person but did not in fact engage in any work activities on the farm.

Background: The person concerned applied for Invalidity Pension which was disallowed by a Deciding Officer of the Department on the basis that the appellant could not be considered to be permanently incapable of work as he was working as a farmer.

An Appeals Officer disallowed the appeal on the same grounds. On receipt of further correspondence including medical evidence the Appeals Officer who determined the appeal reviewed the decision under Section 317 of the 2005 Act but did not consider that the correspondence contained new facts or evidence that rendered her decision incorrect and in those circumstances the Appeals Officer declined to revise her decision.

Review: Insofar as the substantive issue was concerned I outlined that the legislation provides that a person is entitled to Invalidity Pension where he or she is permanently incapable of work and satisfies the conditions as to contributions. It was the first of these tests that was before the Appeals Officer. The conditions under which a person shall be regarded 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.

(2) Sub-article (1) shall not apply where it is subsequently shown to the satisfaction of a deciding officer or an appeals officer that the person is no longer likely to continue to be incapable of work for at least a further year or for life, as the case may be."

I formed the view that the definition of being permanently incapable of work does not draw any distinction between a person being an employer or an employee or having a dual role. The definition is neutral in this respect and is framed in terms of a person being incapable of work and this was the central question before the Appeals Officer. I found no evidence that the Appeals Officer gave undue weight to any aspect of the Social Welfare Inspector's Report which informed the decision of the Deciding Officer and it was evident from the Appeals Officer's decision and the evaluation of the evidence that she considered all of the evidence on the appellant's file and that adduced at the oral hearing itself.

While the Appeals Officer recognised/acknowledged that the appellant had multiple health issues that were causing him significant difficulty the Appeals Officer was not satisfied that the appellant met the criteria to qualify for Invalidity Pension as prescribed in legislation. I also formed the view that it was inaccurate to assert that the Appeals Officer's decision to disallow the appeal was based on a technicality.

Outcome: Decision not revised

2019/318/69 Domiciliary Care Allowance

Question at issue: Whether the child was a qualified child

Grounds for Review: The appellant requested a review of the Appeals Officer's decision on the basis that the Appeals Officer gave insufficient weight to the appellant's evidence. It was asserted that as the Department was not represented at the oral hearing there was no evidence provided that contradicted the appellant's evidence. It was also asserted that the Appeals Officer's report of the oral hearing and the evidence given clearly demonstrated that the child's care needs were substantially in excess of that required by other children of the same age without a disability.

Background: The appellant's claim for Domiciliary Care Allowance was disallowed by a Deciding Officer of the Department on the grounds that the child was not regarded as a qualified child under the governing legislation. Neither the Deciding Officer on review nor the Appeals Officer on appeal changed that outcome.

Review: A qualified child for the purposes of the payment of Domiciliary Care Allowance is set out in Section 186C of the 2005 Act which provides as follows:

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

where—

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

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

(c) the child—

(i) is ordinarily resident in the State, or

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

and

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

From my review of the Appeals Officer's decision it was clear that the Appeals Officer concluded that while the child required additional care and attention he was not satisfied it had been established that the care and attention required was substantially more than that compared with another child of the same age without the diagnosed condition as outlined in the governing legislation. In those circumstances the appeal was disallowed.

Insofar as it was submitted that the Appeals Officer's report of the oral hearing demonstrated that the statutory criteria were met, I was satisfied that the report was merely an account of the evidence submitted by the appellant including an account of her oral evidence provided at the hearing. It did not contain any commentary by the Appeals Officer or evaluation of the weight afforded to the evidence and could not be read in isolation from the actual decision of the Appeals Officer which did include an evaluation of the evidence.

Insofar as it was contended that there was no evidence provided by the Department to the contrary as the Department was not represented at the oral hearing, it was the case that the Appeals Officer had the decision of the Deciding Officer and the outcome of the review conducted by a Deciding Officer in the context of the appeal, both of which set out in a comprehensive way the reasons for the decision and the non-revision of that decision. I did not consider that the Appeals Officer had erred in fact or law in this respect – it is a matter for the Appeals Officer to determine whose attendance is required at an oral hearing and there is no mandatory requirement for the Deciding Officer or representative of the Department to attend.

There was no conflict as regards the facts pertaining in the case and the question to be determined by the Appeals Officer was whether he considered that it had been established that the child "has a severe disability and was so impacted by that disability as to require continual or continuous care and attention, substantially in excess of the care and attention normally required by a child of the same age, and would require that level of additional care for at least 12 consecutive months".

Having regard to the totality of the evidence I did not consider that the Appeals Officer has erred in fact or law and found no reason to revise his decision on any of the grounds submitted by the appellant in support of the request for a review of that decision.

Outcome: Decision not revised

2019/318/70 Insurability of Employment

Question at issue: Whether a worker was employed under a contract for services or a contract of service

The company sought a review of the Appeals Officer's decision and submitted that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts. In support of that contention the company asserted that:

- There could be no mutuality of obligation so as to form an employer/employee relationship as there was no contractual relationship between the company and the worker but rather the contractual relationship was with a distinct legal entity from the worker. In this regard it was submitted that the Appeals Officer erred in disregarding the principle of separate legal personality.
- It was asserted that the Appeals Officer erred by relying on a non-statutory Code of Practice, that being The Code of Practice for determining Employment and Self-Employment status of Individuals.
- It was submitted that there is ample common law authority where mutuality of obligation was described as the "irreducible minimum" of a contract of service. In this respect it was asserted that the Appeals Officer erroneously decided that the existence of a mutuality of obligation was determinative.

Background: The appellant sought a determination from the Department in relation to his employment status with a company since a date in 2003. The Deciding Officer of the Department found that the worker had been working under a contract for services and was therefore insurable at the PRSI self-employed Class S rate. The worker appealed that decision. The Appeals Officer outlined that the question at issue was whether the worker was working for the company concerned under a contract of service or under a contract for services in the period from 2003 to 2017. In his report of the oral hearing the Appeals Officer outlined that in the course of the working relationship it became company policy that consultants were required to submit invoices from limited companies to facilitate payments.

For this purpose the worker established a limited company. There was no dispute between the parties on this point but it was contended by the company seeking the review that the contractual relationship was with this newly established limited company with a distinct legal entity and not with the worker and the Appeals Officer should not have looked beyond that.

The Appeals Officer determined that more elements of a contract of service existed rather than elements of a contract for services and accordingly allowed the appeal.

Review: On review, I outlined that Section 300(2) of the 2005 Act gives statutory power to Deciding Officers of the Department to determine questions relating to the insurability of employment for social insurance purposes. All such determinations/decisions can be appealed under the provisions of Section 311 of the 2005 Act to an Appeals Officer.

It is common case that the terms 'employed' and 'self-employed' are not defined in law. In the absence of a legal definition 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. It is well established that there are four main tests that should be applied in determining if the working relationship between the parties is a contract of service and a contract for services - mutuality of obligation, control, integration and the economic reality.

It is also, in my view, well established that each case must be considered in the light of its particular facts and by reference to the general principles developed by the Courts. It is clear that one of those principles is that in making a determination one must have regard to the reality of the working relationship between the parties, irrespective of how the parties describe or organise themselves. I did not consider that the Appeals Officer has erred in the manner contended for the reason that if he were precluded from looking at all the facts, including the circumstances that resulted in the establishment of a limited company, he would not have examined the reality of the working relationship in a comprehensive way. It was incumbent on the Appeals Officer to consider the evidence presented in relation to the establishment of the limited company. It appeared that the company did not disagree with the worker's evidence that he was compelled to form a limited company if he wished to continue working for the company.

I was satisfied from my review of the Appeals Officers decision that he examined the issue in a comprehensive manner having regard to the principles developed by the Courts and looked at the totality of the evidence which led him to conclude that more elements of a contract of service existed rather than elements of a contract for services.

I found no error of fact or law in the Appeals Officer's approach to determining if there was mutuality of obligations between the parties. I noted that the Appeals Officer outlined that he would begin by addressing the mutuality of obligation test which is the minimum requirement to be satisfied if a contract of service is to exist and he set out the case-law from the Courts that he was being guided by. The Appeals Officer concluded that mutuality of obligation existed and that was the one sine qua non which can firmly be identified as an essential to the existence of a contract of service.

I did not consider that the Appeals Officer had erred by relying on a non-statutory code, that being the Code of Practice for Determining Employment and Self-Employment Status of Individuals. I outlined that the Code, which was initially drawn up in 2001 and updated in 2007, has the stated objective of 'eliminating misconceptions and providing clarity'. The Code of Practice 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 sets out criteria in determining employment status and, in my view, reflects precedents and principles as developed by the Courts.

I formed the view that there is no precedent which prevented the Appeals Officer having regard to guidance, such as the Code, because it is non-statutory. I consider that the Code of Practice is an authoritative document and I am satisfied that it was open to the Appeals Officer to consult the Code for guidance. It was also clear from the decision of the Appeals Officer that he did not rely exclusively on the Code of Practice but also relied on the case law and the legal principles that have evolved over-time from the Courts.

I noted that in a judgment delivered by the High Court in 2016 the legal principles to be applied to the determination of an employment relationship were stated as follows:

The legal principles to be applied to the determination of an employment relationship have been the subject of numerous decisions of both the High Court and Supreme Court from the seminal decision of Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1998] 1 IR 34 to more recent cases such as Brightwater Selection v. Minister for Social and Family Affairs [2011] IEHC 510. Those decisions have established various principles and tests to be applied in situations where a Court or decision maker seeks to ascertain the employment status of an individual. The principles, which are still evolving, include inter alia, that the decision maker should first consider whether a mutuality of obligation exists between the parties (Minister of Agriculture v. Barry [2008] IEHC 216); that the decision maker should have regard to the working of the contract in practice (Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare [1998] 1 IR 34; Castleisland Cattle Breeding Society Limited v. Minister for Social Welfare [2004] IR 150); that the degree of control exercised over how the work is to be performed is a factor to be taken into account (Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare; Brightwater Selection v. Minister for Social and Family Affairs) as is the tax status of the individual (Henry Denny & Sons (Ireland) Ltd. v. Minister for Social Welfare; Castleisland Cattle Breeding Society Limited v. Minister for Social Welfare).

What is stressed in all of the decisions, is that the tests to be applied and the significance of the respective tests to the decision in question, is very much dependent on the facts of the particular case.

On reviewing the Appeals Officer's decision in this case I noted that the Appeals Officer gave careful consideration to those indicators as outlined in the case law, including the test of mutuality of obligation, the control test, the integration test, and the test of 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 or organised themselves. It is clear from the case law that questions relating to the classification of employment for social insurance purposes cannot be approached in any formulaic sense as it is the overall picture which will determine the issue.

I was of the view 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 in the case law and the Code of Practice, concluded that more elements of a contract of service existed than elements of a contract for services.

Outcome: Decision not revised

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