

Social Welfare Appeals Office

Annual Report 2020



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Social Welfare Appeals Office

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Ms. Heather Humphreys T.D.
Minister for Social Protection
Áras Mhic Dhiarmada
Store Street
Dublin 1

June 2021

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 2020.

Yours sincerely,

A handwritten signature in blue ink that reads "Joan Gordon". The signature is written in a cursive, flowing style.

Joan Gordon
Chief Appeals Officer

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Foreword by the Chief Appeals Officer

Foreword by the Chief Appeals Officer

The Social Welfare Appeals Office aims to provide an independent, accessible and fair appeals service with regard to entitlement to social welfare payments and to deliver that service in a prompt and courteous manner.

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 2020 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 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 with regard to their entitlement under social welfare legislation.

The impact of the Covid-19 pandemic brought many challenges in how the appeals service was delivered in the course of the year. One of the early impacts was the suspension of in-person hearings from early March. Many of our staff also worked from home and some staff were diverted to other duties in order to support colleagues in the Department in the various activities associated with the Pandemic Unemployment Payment.

Notwithstanding the impacts of the pandemic, we maintained the appeals service while operating within the prevailing restrictions and public health guidance as they evolved over the course of the year. Our priority at all times was to safeguard the health and safety of our staff and people availing of the service. While the ever-evolving Covid-19 situation posed challenges it also brought opportunities to work differently. One such change was to the way oral hearings are conducted. The Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 was enacted in August 2020 and makes provision in a number of areas across civil and criminal legislation. The Act includes provision for the holding of meetings of State bodies, unincorporated bodies and designated bodies by remote meeting. Of particular relevance to this Office is the provision permitting bodies to be designated by a relevant Minister to hold a hearing remotely.

Under our own legislation Appeals Officers may determine appeals by way of oral hearing if deemed necessary. Such hearings were traditionally held in-person. However, given the public health restrictions and guidance that prevailed during 2020 it was necessary to suspend in-person oral hearings and, as outlined in the Report, a very small number of hearings were held. The Minister for Social Protection signed a Designation Order under the provisions of the 2020 Act enabling Appeals Officers in this Office to conduct hearings by electronic means. While this is a new way of working and poses its own challenges for Appeals Officers and appellants alike it is invaluable in ensuring the continuity of the appeals service.

Despite the challenges we faced in 2020, the Office made good progress in the processing and finalisation of appeals. In the course of the year, 23,664 appeals were received compared to 22,397 in 2019, representing an increase of just over 5.7% in the number of appeals received. The number of appeals finalised in 2020 was 26,790 representing an increase of 18.7% in output when compared to 22,572 finalised in 2019. There was an increase of over 23% in the number of appeals finalised by Appeals Officers. I am also pleased to report that the number of appeals on hand at the end of 2020 was 5,662 representing a significant decrease when compared to the end of 2019 position of 8,788 on hand.

A more detailed account of the statistical trends relating to 2020 is set out in Chapter 1. The data shows that the reduction in the number of appeals relates primarily to appeals on the Jobseeker's Allowance scheme. It shows the number of appeals in respect of Carer's Allowance increased by 20% and by over 18% in the case of Supplementary Welfare Allowance. A more detailed account of the business of the Office in the course of 2020, from staffing resources to operational issues, is contained in Chapter 2.

In this Report 70 case studies, including a number of reviews that I carried out under Section 318 of the Social Welfare Consolidation Act 2005, are featured. The case studies are contained in Chapter 3.

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 2020 and for the flexibility and dedication they have demonstrated. 2020 saw a number of staff leaving the Office on retirement or to avail of other opportunities and I would like to wish them well for the future. All new staff that joined the Office are most welcome and I look forward to working together in the coming year.

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

Joan Gordon

Chief Appeals Officer

June 2021



Chapter 1: Statistical Trends

Our main statistical data for 2020 is set out in commentary form below and in the "Workflow Chart" and tables which follow.

APPEALS RECEIVED IN 2020

In 2020, the Office received 23,664 appeals, which represents an increase of 5.7% on the 22,397 received in 2019.

CLARIFICATIONS IN 2020

In addition to the 23,664 appeals registered in 2020, a further 696 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 2020, a total of 457 appeals (equivalent to 66% of the 696 total number of cases identified for the clarifications process in the year) were formally registered as appeals in respect of the five schemes (State Pension (Contributory), Maternity Benefit, Paternity Benefit, Treatment Benefit and Liable Relatives) for which the clarification process is used. This is considered to be a very practical approach as it avoids unnecessarily invoking the full appeals process for a considerable proportion of such appeals.

WORKLOAD FOR 2020

The workload of 32,452 for 2020 was arrived at by adding the 23,664 appeals received to the 8,788 appeals on hand at the beginning of the year.

APPEALS FINALISED IN 2020

We finalised 26,790 appeals in 2020.

The appeals finalised were broken down between:

- Appeals Officers (76.6%): 20,520 were finalised by Appeals Officers either summarily or by way of oral hearings (equivalent figure in 2019 was 16,594 or 73.5%);
- Revised Decisions (19.4%): 5,204 were finalised as a result of revised decisions in favour of the appellant being made by Deciding Officers or Designated Persons before the appeals were referred to an Appeals Officer (4,669 or 20.7% in 2019). 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 (4.0%): 1,066 were withdrawn or otherwise not pursued by the appellant (1,309 or 5.8% in 2019).

APPEALS OUTCOMES IN 2020

The outcome of the 26,790 appeals finalised in 2020 can be broken down as follows:

- Favourable (53.2%): 14,239 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 (56.7% in 2019);
- Unfavourable (42.8%): 11,485 of the appeals finalised were disallowed by an Appeals Officer (37.5% in 2019); and
- Withdrawn (4.0%): As previously indicated, 1,066 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (5.8% in 2019).

DETERMINATIONS BY APPEALS OFFICERS IN 2020

20,520 appeals were finalised by Appeals Officers in 2020.

- Overall, 9,035 (44.0%) had a favourable outcome for the appellant. 11,485 (56.0%) were disallowed.
- Oral Hearings: (8.3%): 1,712 of the 20,520 appeals finalised by Appeals Officers in 2020 were dealt with by way of oral hearing. 1,090 (63.7%) of these had a favourable outcome. In 2019, 63.0% of the 5,829 cases dealt with by way of oral hearing had a favourable outcome.
- Summary Decisions: (91.7%): 18,808 of the appeals finalised were dealt with by way of summary decision. 7,945 (42.2%) of these had a favourable outcome. In 2019, 41.5% of the 10,765 cases dealt with by way of summary decision had a favourable outcome.

PROCESSING TIMES IN 2020

During 2020, the average time taken to process all appeals was 16.5 weeks (24.7 weeks in 2019)

Of the 16.5 weeks overall average

- 8.8 weeks was attributable to work in progress in the Department (13.0 weeks in 2019)
- 0.0 weeks was due to responses awaited from appellants (0.2 weeks in 2019)
- 7.7 weeks was attributable to ongoing processes within the Social Welfare Appeals Office (11.6 weeks in 2019).

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 2020 was 15.5 weeks (22.1 weeks in 2019), while the average time to process an oral hearing was 27.1 weeks (26.9 weeks in 2019). 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 2020

A breakdown of appeals received in 2020 by gender show that 39.5% were from men and 60.5% from women. The corresponding breakdown for 2019 was 40.0% and 60.0% respectively.

In terms of favourable outcomes in 2020, 51.4% of men and 55.0% of women benefited.

STATISTICAL TABLES

Table 1: Appeals received and finalised 2020

Table 2: Appeals received 2014 – 2020

Table 3: Outcome of appeals by category 2020

Table 4: Appeals in progress at 31 December 2014 - 2020

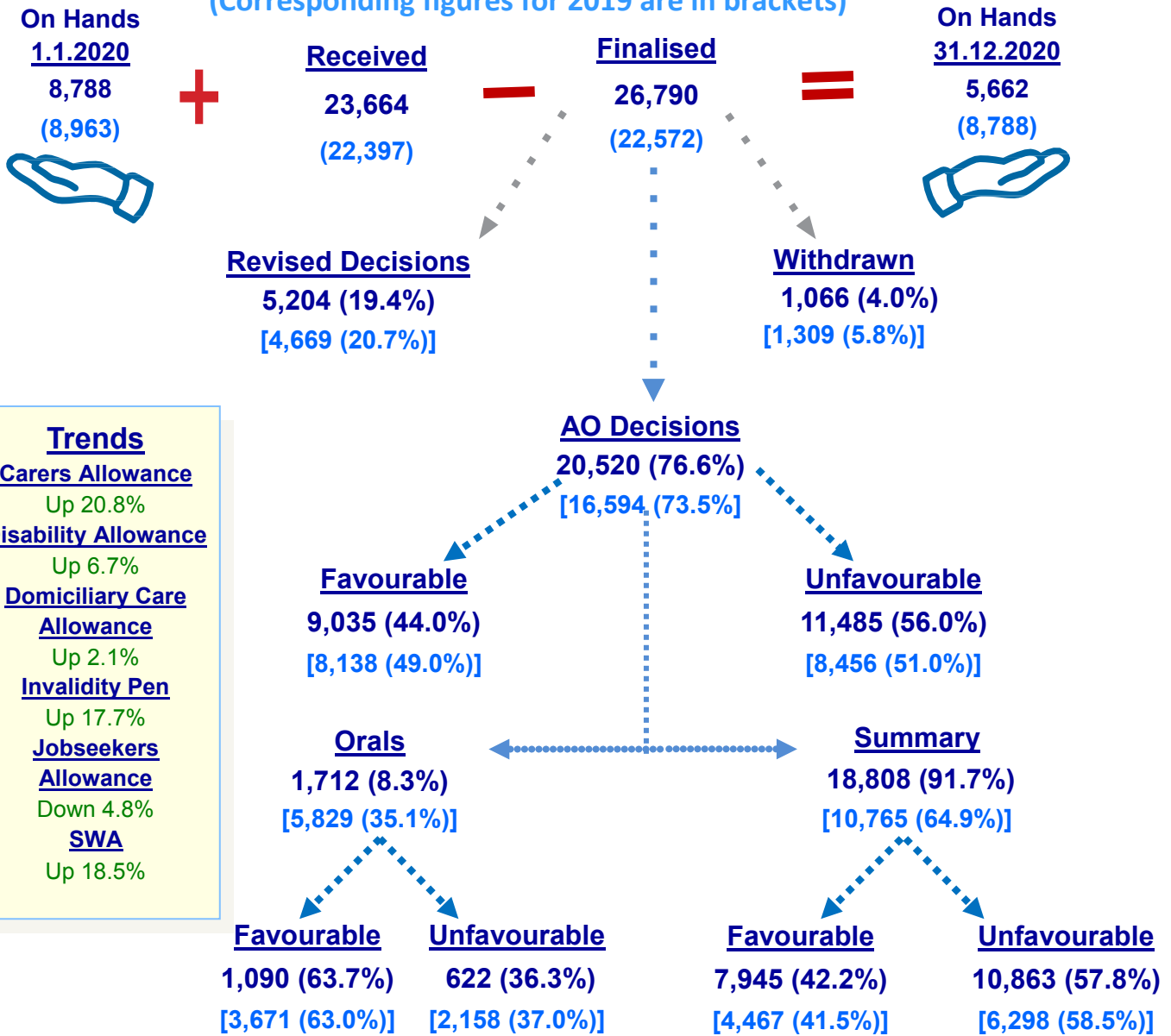
Table 5: Appeals statistics 1999 - 2020

Table 6: Appeals processing times by scheme 2020

Table 7: Appeals outstanding at 31 December 2020

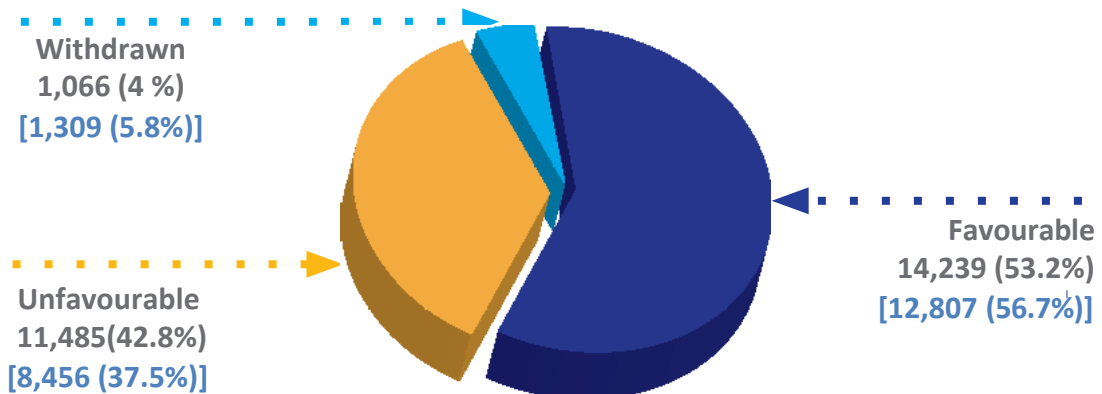
Social Welfare Appeals Workflow Chart 2020

(Corresponding figures for 2019 are in brackets)



Trends

- Carers Allowance**
Up 20.8%
- Disability Allowance**
Up 6.7%
- Domiciliary Care Allowance**
Up 2.1%
- Invalidity Pen**
Up 17.7%
- Jobseekers Allowance**
Down 4.8%
- SWA**
Up 18.5%



Overall Outcomes 26,790

Table 1: Appeals received and finalised 2020

	In progress 01-Jan-20	Receipts	Decided	Revised Decision	Withdrawn	In progress 31-Dec-20
<u>PENSIONS</u>						
State Pension (Non-Contributory)	186	350	323	73	12	128
State Pension (Contributory)	262	345	429	75	8	95
State Pension (Transition)	-	-	-	-	-	-
Widows, Widowers Pension (Contributory)	36	46	51	9	4	18
Death Benefit	1	2	2	-	-	1
Bereavement Grant	1	-	1	-	-	-
TOTAL PENSIONS	486	743	806	157	24	242
<u>WORKING AGE INCOME & EMPLOYMENT SUPPORTS</u>						
Jobseeker's Allowance -Payments	608	1,250	1,064	295	178	321
Jobseeker's Allowance (Means)	570	1,256	1,073	227	187	339
Jobseeker's Transitional	43	83	71	23	8	24
Farm Assist	56	76	74	20	7	31
Jobseeker's Benefit	264	759	539	194	95	195
Jobseeker's Benefit Self Employed	3	75	53	15	5	5
Pandemic Unemployment Payment	-	275	-	-	7	268
One-Parent Family Payment	167	272	247	67	45	80
Widows, Widowers Pension (Non-Contributory)	14	9	14	2	1	6
Deserted Wife's Allowance	-	1	-	-	-	1
Supplementary Welfare Allowance	290	1,052	740	158	119	325
Deserted Wife's Benefit	6	7	8	-	-	5
Maternity Benefit	23	74	62	19	2	14
Paternity Benefit	5	32	17	11	-	9
Parent's Benefit	-	3	1	2	-	-
Adoptive Benefit	-	-	-	-	-	-
Treatment Benefits	2	5	3	2	-	2
Partial Capacity Benefit	100	72	74	34	13	51
TOTAL WORKING AGE INCOME & EMPLOYMENT SUPPORTS	2,151	5,301	4,040	1,069	667	1,676
<u>ILLNESS, DISABILITY AND CARERS</u>						
Disability Allowance	1,948	6,661	6,699	657	54	1,199
Blind Pension	9	9	13	1	1	3
Carer's Allowance	837	3,630	3,175	614	39	639
Domiciliary Care Allowance	640	1,690	1,451	477	8	394
Carer's Support Grant	78	201	209	39	4	27
Illness Benefit	445	984	308	733	158	230
Injury Benefit	37	83	52	18	6	44
Invalidity Pension	980	2,206	2,039	631	34	482
Disablement Benefit	136	169	211	17	2	75
Incapacity Supplement	-	5	3	-	-	2
Medical Care	3	6	5	1	1	2
Carer's Benefit	88	331	173	181	7	58
TOTAL - ILLNESS, DISABILITY AND CARERS	5,201	15,975	14,338	3,369	314	3,155

Table 1: Appeals received and finalised 2020 (continued)

	In progress 01-Jan-20	Receipts	Decided	Revised Decision	Withdrawn	In progress 31-Dec-20
<u>CHILDREN</u>						
Child Benefit	288	460	388	132	17	211
Working Family Payment	483	1,037	802	448	32	238
Back To Work Family Dividend	14	25	19	11	3	6
Guardian's Payment (Non-Contributory)	7	8	11	2	-	2
Guardian's Payment (Contributory)	15	27	24	7	1	10
Widowed Parent Grant	2	10	10	1	-	1
TOTAL – CHILDREN	809	1,567	1,254	601	53	468
Insurability of Employment	131	73	75	3	6	120
Liabile Relatives	3	1	2	1	1	-
Recoverable Benefits & Assistance	7	4	5	4	1	1
TOTAL – ALL APPEALS	8,788	23,664	20,520	5,204	1,066	5,662

Table 2: Appeals received 2014 – 2020

	2014	2015	2016	2017	2018	2019	2020
<u>PENSIONS</u>							
State Pension (Non-Contributory)	323	348	397	370	347	386	350
State Pension (Contributory)	205	264	366	408	309	457	345
State Pension (Transition)	13	3	2	3	0	-	-
Widow's, Widower's Pension (Contributory)	49	40	49	45	38	38	46
Death Benefit	1	1	1	-	1	1	2
Bereavement Grant	63	6	3	1	1	1	-
TOTAL PENSIONS	654	662	818	827	696	883	743
<u>WORKING AGE INCOME & EMPLOYMENT SUPPORTS</u>							
Jobseeker's Allowance – Payments	2,610	2,058	2,031	1,676	1,570	1,445	1,250
Jobseeker's Allowance – Means	2,648	2,174	2,050	1,504	1,380	1,188	1,256
Jobseeker's Transitional	-	34	43	41	70	75	83
Farm Assist	214	201	196	130	84	111	76
Jobseeker's Benefit	845	735	637	545	610	671	759
Jobseeker's Benefit Self Employed	-	-	-	-	-	3	75
Pandemic Unemployment Payment	-	-	-	-	-	-	275
One-Parent Family Payment	573	368	313	244	273	302	272
Widow's, Widower's Pension (Non-Contributory)	24	25	26	23	18	17	9
Deserted Wife's Allowance	2	1	0	1	1	-	1
Supplementary Welfare Allowance	2,889	2,125	1,970	1,302	859	888	1,052
Pre-Retirement Allowance	3	0	0	2	0	-	-
Deserted Wife's Benefit	7	19	7	7	8	6	7
Maternity Benefit	19	71	87	84	40	38	74
Paternity Benefit	-	-	1	16	14	8	32
Parent's Benefit	-	-	-	-	-	-	3
Adoptive Benefit	1	0	0	2	1	-	-
Homemakers	0	0	0	-	-	-	-
Treatment Benefits	0	3	5	1	2	2	5
Partial Capacity Benefit	33	42	42	38	75	131	72
TOTAL WORKING AGE INCOME & EMPLOYMENT SUPPORTS	9,868	7,856	7,408	5,616	5,005	4,885	5,301
<u>ILLNESS, DISABILITY AND CARERS</u>							
Disability Allowance	5,554	6,435	4,912	5,077	5,200	6,242	6,661
Blind Pension	19	22	13	19	12	15	9
Carer's Allowance	2,907	3,188	3,887	3,200	2,902	3,006	3,630
Domiciliary Care Allowance	1,301	1,258	1,198	1,199	1,432	1,656	1,690
Carer's Support Grant	133	124	164	164	126	165	201
Illness Benefit	1,227	1,204	819	443	581	916	984
Injury Benefit	9	65	56	51	44	53	83
Invalidity Pension	2,571	1,857	1,362	1,381	1,387	1,874	2,206
Disablement Benefit	385	347	298	347	330	278	169
Incapacity Supplement	1	12	9	7	7	1	5
Medical Care	28	4	4	2	2	7	6
Carer's Benefit	121	93	95	110	162	244	331
TOTAL - ILLNESS, DISABILITY AND CARERS	14,256	14,609	12,817	12,000	12,185	14,457	15,975

Table 2: Appeals received 2014 – 2020 (continued)

	2014	2015	2016	2017	2018	2019	2020
<u>CHILDREN</u>							
Child Benefit	659	552	595	473	485	552	460
Working Family Payment	434	447	510	477	290	1,441	1,037
Back To Work Family Dividend	-	64	52	43	43	29	25
Guardian's Payment (Non-Contributory)	22	18	17	16	8	12	8
Guardian's Payment (Contributory)	42	49	38	34	22	27	27
Widowed Parent Grant	8	10	8	6	1	5	10
TOTAL – CHILDREN	1,165	1,140	1,220	1,049	849	2,066	1,567
<u>OTHER</u>							
Insurability of Employment	91	156	151	132	86	92	73
Liable Relatives	33	26	23	9	4	5	1
Recoverable Benefits & Assistance	2	26	24	25	29	9	4
TOTAL – ALL APPEALS	26,069	24,475	22,461	19,658	18,854	22,397	23,664

Table 3: Outcome of Appeals by category 2020

	Allowed	Partially Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
<u>PENSIONS</u>						
State Pension (Non-Contributory)	56 13.7%	32 7.8%	73 17.9%	235 57.6%	12 2.9%	408
State Pension (Contributory)	37 7.2%	13 2.5%	75 14.6%	379 74.0%	8 1.6%	512
Widow's/Widower's Pension (Contributory)	4 6.3%	0 00.0%	9 14.1%	47 73.4%	4 6.3%	64
Death Benefit	- 0.0%	- 0.0%	- 0.0%	2 100.0%	- 0.0%	2
Bereavement Grant	- 0.0%	- 0.0%	- 0.0%	1 100.0%	- 0.0%	1
TOTAL PENSIONS	97	45	157	664	24	987
<u>WORKING AGE INCOME & EMPLOYMENT SUPPORTS</u>						
Jobseeker's Allowance - Payments	213 13.9%	50 3.3%	295 19.2%	801 52.1%	178 11.6%	1,537
Jobseeker's Allowance -Means	121 8.1%	38 2.6%	227 15.3%	914 61.5%	187 12.6%	1,487
Jobseeker's Transitional	11 10.8%	6 5.9%	23 22.5%	54 52.9%	8 7.8%	102
Farm Assist	10 9.9%	8 7.9%	20 19.8%	56 55.4%	7 6.9%	101
Jobseeker's Benefit	99 12.0%	33 4.0%	194 23.4%	407 49.2%	95 11.5%	828
Jobseeker's Benefit Self Employed	15 20.5%	0 0.0%	15 20.5%	38 52.1%	5 6.8%	73
Pandemic Unemployment Payment	- 0.0%	- 0.0%	- 0.0%	- 0.0%	7 100.0%	7
One-Parent Family Payment	75 20.9%	15 4.2%	67 18.7%	157 43.7%	45 12.5%	359
Widows, Widowers Pension (Non-Contributory)	2 11.8%	1 5.9%	2 11.8%	11 64.7%	1 5.9%	17
Supplementary Welfare Allowance	181 17.8%	31 3.0%	158 15.5%	528 51.9%	119 11.7%	1,017
Deserted Wife's Benefit	4 50.0%	- 00.0%	- 0.0%	4 50.0%	- 0.0%	8
Maternity Benefit	15 18.1%	5 6.0%	19 22.9%	42 50.6%	2 2.4%	83
Paternity Benefit	8 28.6%	- 00.0%	11 39.3%	9 32.1%	0 00.0%	28
Parent's Benefit	0 0.0%	0 0.0%	2 66.7%	1 33.3%	0 0.0%	3
Treatment Benefits	- 0.0%	- 0.0%	2 40.0%	3 60.0%	0 00.0%	5
Partial Capacity Benefit	28 23.1%	1 0.8%	34 28.1%	45 37.2%	13 10.7%	121
TOTAL WORKING AGE INCOME & EMPLOYMENT SUPPORTS	782	188	1,069	3,070	667	5,776

Table 3: Outcome of Appeals by category 2020 (continued)

	Allowed	Partially Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
<u>ILLNESS, DISABILITY AND CARERS</u>						
Disability Allowance	3,930 53.0%	127 1.7%	657 8.9%	2,642 35.7%	54 0.7%	7,410
Blind Pension	0 0.0%	1 6.7%	1 6.7%	12 80.0%	1 6.7%	15
Carer's Allowance	1,079 28.2%	115 3.0%	614 16.0%	1,981 51.8%	39 1.0%	3,828
Domiciliary Care Allowance	912 47.1%	51 2.6%	477 24.6%	488 25.2%	8 0.4%	1,936
Carer's Support Grant	54 21.4%	13 5.2%	39 15.5%	142 56.3%	4 1.6%	252
Illness Benefit	81 6.8%	10 0.8%	733 61.1%	217 18.1%	158 13.2%	1,199
Injury Benefit	16 21.1%	0 0.0%	18 23.7%	36 47.4%	6 7.9%	76
Invalidity Pension	1,113 41.2%	2 0.1%	631 23.3%	924 34.2%	34 1.3%	2,704
Disablement Benefit	58 25.2%	14 6.1%	17 7.4%	139 60.4%	2 0.9%	230
Incapacity Supplement	- 00.0%	- 00.0%	- 00.0%	3 100.0%	- 0.0%	3
Medical Care	3 42.9%	- 0.0%	1 14.3%	2 28.6%	1 14.3%	7
Carer's Benefit	44 12.2%	6 1.7%	181 50.1%	123 34.1%	7 1.9%	361
<u>TOTAL – ILLNESS, DISABILITY AND CARERS</u>	7,290	339	3,369	6,709	314	18,021
<u>CHILDREN</u>						
Child Benefit	42 7.8%	15 2.8%	132 24.6%	331 61.6%	17 3.2%	537
Working Family Payment	170 13.3%	23 1.8%	448 34.9%	609 47.5%	32 2.5%	1,282
Back To Work Family Dividend	0 0.0%	0 0.0%	11 33.3%	19 57.6%	3 9.1%	33
Guardian's Payment (Non-Contributory)	6 46.2%	2 15.4%	2 15.4%	3 23.1%	- 0.0%	13
Guardian's Payment (Contributory)	8 25.0%	- 0.0%	7 21.9%	16 50.0%	1 3.1%	32
Widowed Parent Grant	2 18.2%	- 0.0%	1 9.1%	8 72.7%	- 0.0%	11
<u>TOTAL – CHILDREN</u>	228	40	601	986	53	1,908
<u>OTHER</u>						
Insurability of Employment	21 25.0%	5 6.0%	3 3.6%	49 58.3%	6 7.1%	84
Liabile Relatives	- 00.0%	- 00.0%	1 25.0%	2 50.0%	1 25.0%	4
Recoverable Benefits & Assistance	- 0.0%	- 0.0%	4 40.0%	5 50.0%	1 10.0%	10
TOTAL APPEALS	8,418	617	5,204	11,485	1,066	26,790

Table 4: Appeals in progress at 31 December 2014– 2020

	2014	2015	2016	2017	2018	2019	2020
<u>PENSIONS</u>							
State Pension (Non-Contributory)	134	165	179	206	190	186	128
State Pension (Contributory)	97	149	203	257	199	262	95
State Pension (Transition)	9	4	1	1	1	-	-
Widow's, Widower's Pension (Contributory)	15	24	13	27	25	36	18
Death Benefit	1	1	1	-	0	1	1
Bereavement Grant	17	0	1	1	1	1	-
TOTAL PENSIONS	273	343	398	492	416	486	242
<u>WORKING AGE INCOME & EMPLOYMENT SUPPORTS</u>							
Jobseeker's Allowance – Payments	812	811	809	912	926	608	321
Jobseeker's Allowance – Means	1,029	947	838	889	830	570	339
Jobseeker's Transitional	-	13	17	21	44	43	24
Farm Assist	102	118	99	87	51	56	31
Jobseeker's Benefit	243	290	223	289	303	264	195
Jobseeker's Benefit Self Employed							
Pandemic Unemployment Payment	-	-	-	-	-	-	268
One-Parent Family Payment	231	190	156	143	186	167	80
Widows, Widower's Pension (Non-Contributory)	9	9	13	13	14	14	6
Deserted Wife's Allowance	1	-	-	1	1	-	1
Supplementary Welfare Allowance	877	672	610	563	375	290	325
Pre-Retirement Allowance	2	1	1	2	0	-	-
Deserted Wife's Benefit	5	6	2	4	6	6	5
Maternity Benefit	6	26	22	35	21	23	14
Paternity Benefit	-	-	1	9	7	5	9
Adoptive Benefit	0	-	-	-	1	0	-
Homemakers	1	-	-	-	-	-	-
Treatment Benefits	0	2	1	1	1	2	2
Partial Capacity Benefit	21	25	32	25	68	100	51
TOTAL WORKING AGE INCOME & EMPLOYMENT SUPPORTS	3,339	3,110	2,824	2,994	2,834	2,151	1,676
<u>ILLNESS, DISABILITY AND CARERS</u>							
Disability Allowance	1,944	1,639	1,376	1,519	1,713	1,948	1,199
Blind Pension	6	10	4	8	6	9	3
Carer's Allowance	1,434	1,131	1,394	1,178	1,370	837	639
Domiciliary Care Allowance	462	562	416	814	674	640	394
Carer's Support Grant	71	57	70	79	65	78	27
Illness Benefit	351	335	274	203	289	445	230
Injury Benefit	9	25	22	35	32	37	44
Invalidity Pension	938	674	382	415	708	980	482
Disablement Benefit	164	160	87	184	185	136	75
Incapacity Supplement	16	11	6	3	5	-	2
Medical Care	14	1	2	2	3	3	2
Carer's Benefit	32	15	39	45	70	88	58
TOTAL - ILLNESS, DISABILITY AND CARERS	5,441	4,620	4,072	4,485	5,120	5,201	3,155

Table 4: Appeals in progress at 31 December 2014– 2020 (continued)

	2014	2015	2016	2017	2018	2019	2020
<u>CHILDREN</u>							
Child Benefit	273	193	187	222	281	288	211
Working Family Payment	159	192	232	206	110	483	238
Back To Work Family Dividend	-	37	24	26	22	14	6
Guardian's Payment (Non-Contributory)	9	7	4	5	4	7	2
Guardian's Payment (Contributory)	17	18	14	15	13	15	10
Widowed Parent Grant	1	4	1	5	1	2	1
TOTAL – CHILDREN	459	451	462	479	431	809	468
<u>OTHER</u>							
Insurability of Employment	99	148	160	153	144	131	120
Liable Relatives	15	10	12	4	3	3	-
Recoverable Benefits & Assistance	2	15	10	9	15	7	1
TOTAL – ALL APPEALS	9,628	8,697	7,938	8,616	8,963	8,788	5,662

Table 5: Appeals statistics 1999 – 2020

Year	On hands at start of year	Received	Workload	Finalised	On hands at end of year
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
2020	8,788	23,664	32,452	26,790	5,662

Table 6: Appeals Processing Times by Scheme January – December 2020

Scheme	SWAO (weeks)	Department of Social Protection (weeks)	Appellant (weeks)	Totals
Bereavement Grant	8.1	12.9	-	21.0
Blind Person's Pension	17.8	10.6	-	28.4
Back to Work Family Dividend	6.2	12.2	-	18.4
Carer's Allowance	8.7	4.7	-	13.4
Carer's Benefit	7.9	10.3	-	18.2
Carer's Support Grant	6.7	7.2	-	13.9
Child Benefit	10.8	18.2	-	29.0
Death Benefit	13.3	16.4	-	29.7
Deserted Wife's Benefit	26.4	13.0	-	39.4
Disability Allowance	8.6	3.6	-	12.2
Disablement Pension	14.3	12.1	-	26.4
Domiciliary Care Allowance	9.9	11.9	0.1	21.9
Farm Assist	12.0	16.0	-	28.0
Guardian's Payment (Contributory)	15.0	13.3	-	28.4
Guardian's Payment (Non-Contributory)	16.2	10.0	-	26.2
Illness Benefit	11.0	14.8	-	25.8
Incapacity Supplement	13.7	5.6	-	19.3
Insurability of Employment	38.3	16.4	0.1	54.8
Invalidity Pension	7.7	15.2	0.1	22.9
Jobseeker's Allowance (Means)	14.4	12.3	-	26.7
Jobseeker's Allowance (Payments)	12.8	12.5	-	25.3
Jobseeker's Benefit	10.6	9.5	-	20.1
Jobseeker's Benefit Self Employed	5.3	6.4	-	11.7
Jobseeker's Transitional	13.2	9.7	-	22.9
Liabile Relatives	10.0	35.4	-	45.4
Maternity Benefit	7.6	7.0	-	14.6
Medical Care	4.0	18.6	-	22.6
Occupational Injury Benefit	12.9	8.6	-	21.5
One-Parent Family Payment	22.3	16.0	0.1	38.4
Pandemic Unemployment Payment	0.1	5.3	-	5.2
Parent's Benefit	3.6	3.1	-	6.7
Partial Capacity Benefit	11.9	35.6	0.4	47.9
Paternity Benefit	4.1	4.6	-	8.7
Recoverable Benefits & Assistance	10.8	14.5	-	25.3
State Pension (Contributory)	14.3	8.2	-	22.5
State Pension (Non-Contributory)	16.8	9.1	0.2	26.1
Supplementary Welfare Allowance	8.9	16.0	0.1	25.0
Treatment Benefit	4.1	38.9	-	43.0

Table 6: Appeals Processing Times by Scheme January – December 2020 (continued)

Scheme	SWAO (weeks)	Department of Social Protection (weeks)	Appellant (weeks)	Totals
Widows, Widowers Pension (Contributory)	12.9	16.8	-	29.7
Widows, Widowers Pension (Non-Contributory)	11.8	12.5	-	24.3
Widowed Parent Grant	4.1	8.7	-	12.8
Working Family Payment	11.1	7.2	0.1	18.4
All Appeals	7.7	8.8	-	16.5

Table 7: Appeals outstanding at 31st December 2020

Scheme	In progress in Social Welfare Appeals Office	Awaiting Department response	Awaiting Appellant response	Total
Jobseeker's Allowance/Benefit/JST	200	339	1	540
Jobseeker's Allowance Means/Farm Assist	132	238	0	370
Supplementary Welfare Allowance	112	212	1	325
Disability Allowance	475	723	1	1,199
Carer's Allowance	336	302	1	639
Domiciliary Care Allowance	139	255	0	394
Invalidity Pension	174	308	0	482
Illness Benefit	25	204	1	230
Child Benefit	36	175	0	211
Other schemes	467	803	2	1,272
Totals	2,096	3,559	7	5,662



Chapter 2:

Social Welfare

Appeals Office 2020

THE BUSINESS OF THE OFFICE

2.1 Organisation

Staffing Resources

The number of staff serving in my Office at the end of 2020 was 85, which equates to 81.95 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
41 Appeals Officers (4 work-sharing)	40.0
3 Higher Executive Officers	3.0
12 Executive Officers (3 work-sharing)	11.55
26 Clerical Officers (4 work-sharing)	24.40
Total	81.95

2.2 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 2020.

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 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.

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

During 2020, four 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 2.6 online 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. Work was carried out on the design and content of this programme during the year and it is envisaged that the programme will be delivered in the first half of 2021.

2.3 Process Improvements

An Appeals Modernisation Project is in progress 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.

Significant progress was made during 2020 across the various elements of what is a complex and large-scale project.

2.4 Operational Matters

Parliamentary Questions

During 2020, 156 Parliamentary Questions were submitted (312 in 2019) in relation to the work of my Office.

Replies were given in Dáil Éireann to 121 of those questions. 31 questions were transferred to the relevant scheme area of the Department and the remaining four 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 2,978 hardcopy enquiries and representations were received from appellants, their representatives or from public representatives on their behalf during 2020 (7,574 in 2019).

In addition, a total of 41,696 enquires were received by email from appellants, their representatives or from public representatives on their behalf during 2020 (15,848 enquiries were received in 2019).

Freedom of Information

A total of 89 formal requests were received in 2020 (150 in 2019) under the provisions of the Freedom of Information Acts. 42 of these requests were transferred to the Department and three were withdrawn. Of the 44 requests answered, 43 were in respect of personal information and one request was in respect of non-personal information.

2.5 Feedback to the Department

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

In the main, feedback to the Department is provided through regular meetings with the Department's Decisions Advisory Office (DAO). Given the restrictions on in-person meetings that prevailed during 2020 many of our formal meetings were virtual and more regular contact was maintained through informal discussions on issues as they arose in the course of the year.

Meetings with Decisions Advisory Office (DAO)

During 2020, my Office met on a number of occasions with the head of the DAO and his 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.

Issues discussed with the DAO during 2020 included:

- The right of residence for EU nationals and their families under EU Directive 2004/38 and the European Communities (Free Movement of Persons) Regulations 2015 - S.I. No. 548 of 2015. This is a standing item on our Agenda for a number of years and discussions continue to include the 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. Our discussions also included consideration of the types of permissions, conditions, and stamps granted /applied by INIS in the context of access to social welfare payments.
- The habitual residence condition and the application of a 'once and done' approach.
- Use of Revenue's real time look-up facility when assessing means.
- Attendance of Deciding Officers/Designated Persons at oral hearings.
- Provision of files to claimants/appellants without the need to make a formal request under the Freedom of Information Act.
- Application of the genuinely seeking work condition during the COVID-19 pandemic.
- As both my Office and the Decisions Advisory Office have a shared interest in the quality and consistency of our respective decisions a number of discussions took place on this issue during 2020.
- Issues relating to specific schemes and individual cases that are of interest to both Offices.
- Consideration of legal advice and court judgments of relevance to both Offices.

2.6 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.

In the normal course of events, two formal meetings of the Appeals Officer group would be held in the Spring and Autumn of each year. Arrangements for the Conference scheduled to take place in April were cancelled.

It was nonetheless possible to have a number of online meetings. The impact of the COVID-19 pandemic on the continuity of the business of the Office was to the forefront of our discussions. The onset of the pandemic saw a number of changes to our working arrangements to ensure a safe working environment. One of the inevitable changes was the suspension of in-person oral hearings. It was possible to progress and conclude some appeals by way of telephone calls and in some cases by way of written correspondence on issues relating to an appeal which might otherwise have been ascertained in the course of an oral hearing. In the course of the year it was possible to put video technology in place to support remote hearings.

The Office is now using video technology for some appeal hearings and Appeals Officers have been designated as a body that may conduct remote hearings by electronic means. The Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 made provision for such designation.

A number of framework documents have been developed by the Organisation Transition Board set up by the Department in April to look at how the organisation as a whole would organise its work and plan and oversee changes in response to COVID-19. This Office is represented on the Board and the framework document on *Customer Facing Roles* is of particular relevance to the Office. In line with the 'Digital First' approach outlined in that framework, the Office will continue to explore the use of other technology solutions.

The online meetings also provided an opportunity for Appeals Officers to discuss a number of judgments delivered by the Courts in the course of the year.

2.7 Caselaw from the Courts

Many appeals that come before Appeals Officers must be considered in the context of EU legislation, most notably the provisions on the coordination of social security schemes (Regulation (EC) 883/2004) and under legislation on the free movement of persons within the EU (Residence Directive 2004/38 and the European Communities (Free Movement of Persons) Regulations 2015 – (S.I. No. 548 of 2015). A number of judgments delivered by the Courts in the course of the year were concerned with various provisions of these instruments and were of particular relevance to the Office. These included questions on the categorisation of social assistance payments for the purposes of Regulation (EC) 883/2004, the right of residence of EU nationals and their family members within the EU and the jurisdiction of Appeals Officers and the Chief Appeals Officer and in particular whether the Office is a tribunal for the purposes of referring questions to the Court of Justice of the European Union.

In a case where a person's entitlement to Child Benefit was at issue as the person failed to make a claim within the prescribed time the High Court considered that given the issues raised in relation to the application of Regulation (EC) 883/2004 it was appropriate to make a reference to the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union.

Right of residence for EU nationals and their families within the EU is governed by EU Directive 2004/38 and the European Communities (Free Movement of Persons) Regulations 2015 - S.I. No. 548 of 2015. A decision of the High Court delivered in May 2020 concerning the rights of certain family members and the transposition of certain provisions of the 2004 Directive has been appealed by the State to the Supreme Court.

The free movement of persons provisions were also central in a case in which judgment was delivered in November 2020. A key issue in the case revolved around whether certain activities undertaken by a person constituted work and thus affording the person the status of worker. The High Court had regard to a number of judgments delivered by the Court of Justice of the European Union relating to the concepts of effective and genuine activities and activities of such a small scale as to be regarded as marginal and ancillary. Based on the particular facts of the case the Court found that the activities pursued by the person did not constitute work.

A judgment of the Court of Appeal delivered in January 2020 dealt with an appeal arising from a High Court judgment. The issue in the case was whether a decision by a Deciding Officer under the 2005 Act refusing to revise a decision of a Deciding Officer is capable of being appealed as 'a revised decision' or as 'the decision'. The Court of Appeal agreed with the findings of the High Court which concluded that a mere refusal to revise a decision does not give rise to a revision of that decision and is, therefore, not subject to appeal by virtue of Section 301 of the 2005 Act. The Court also found that a decision 'not to revise' an original decision does not come within the meaning of 'the decision' under Section 311 of the 2005 Act and therefore is not appealable. An appeal has been lodged to the Supreme Court against the judgment of the Court of Appeal.

Two judgments delivered by the High Court which dealt with the rules governing the assessment of means for certain payments under social welfare legislation have been appealed to the Court of Appeal.

2.8 Litigation

There were fourteen applications for judicial review of decisions in 2020. Of those applications, one case has been heard and judgment is awaited, three cases were settled and the remaining ten cases are on-going.

In addition to the judicial review applications, there were two appeals to the High Court on a point of law pursuant to Section 327 of the 2005 Act. This Section provides that any person, who is dissatisfied with the decision of an Appeals Officer or the revised decision of the Chief Appeals Officer, may appeal that decision or revised decision to the High Court on any question of law. Settlement was reached in one case and the other case stands adjourned.



Chapter 3: Case Studies - An Introduction

The case studies included in this Chapter represent a sample of appeals determined during 2020. 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, PRSI contribution conditions and insurability of employment.

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 Social Protection (DSP). 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. Any reference to the 2007 Regulations refers to the Social Welfare (Claims, Payments and Control) Regulations 2007, (S.I. No 142 of 2007).

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

3.1 Children and Family	
2020/01 Child Benefit	Question at issue: Qualified Person
2020/02 Child Benefit	Question at issue: Eligibility (habitual residence condition)
2020/03 Domiciliary Care Allowance	Question at issue: Qualified Child (level of care required)
2020/04 Domiciliary Care Allowance	Question at issue: Qualified Child (level of care required)
2020/05 One-Parent Family Payment	Question at issue: Backdating
2020/06 One-Parent Family Payment	Question at issue: Eligibility (cohabitation)
2020/07 Working Family Payment	Question at issue: Eligibility (qualified child and wholly maintaining other parent)
2020/08 Working Family Payment	Question at issue: Calculation of Rate
2020/09 Working Family Payment	Question at issue: Eligibility (means)

3.2 Working Age – Illness, Disability and Carers	
2020/10 Invalidity Pension	Question at issue: Eligibility (medical)
2020/11 Invalidity Pension	Question at issue: Eligibility (medical)
2020/12 Invalidity Pension	Question at issue: Eligibility (medical)
2020/13 Illness Benefit	Question at issue: Eligibility (medical)
2020/14 Illness Benefit	Question at issue: Eligibility (medical)
2020/15 Illness Benefit	Question at issue: Eligibility (contributions)
2020/16 Disability Allowance	Question at issue: Eligibility (means and medical)
2020/17 Disability Allowance	Question at issue: Eligibility (medical)
2020/18 Disability Allowance	Question at issue: Eligibility (medical)
2020/19 Disability Allowance	Question at issue: Entitlement (participation on a Community Employment scheme)
2020/20 Disability Allowance	Question at issue: Eligibility (habitual residence condition)
2020/21 Disability Allowance	Question at issue: Eligibility (habitual residence condition)
2020/22 Carer’s Allowance	Question at issue: Eligibility (care provided)

2020/23 Carer's Allowance	Question at issue: Eligibility (care provided)
2020/24 Carer's Allowance	Question at issue: Eligibility (care required)
2020/25 Carer's Allowance	Question at issue: Eligibility (care required)
2020/26 Carer's Allowance	Question at issue: Eligibility (care required and care provided)
2020/27 Carer's Allowance	Question at issue: Eligibility (means)
2020/28 Carer's Benefit	Question at issue: Eligibility (employment condition)
2020/29 Carer's Benefit	Question at issue: Eligibility (care required)
2020/30 Carer's Support Grant	Question at issue: Eligibility (care provided)
2020/31 Disablement Benefit (OIB)	Question at issue: Eligibility (place of accident)
2020/32 Disablement Benefit (OIB)	Question at issue: Eligibility (loss of faculty)

3.3 Working Age – Income Supports	
2020/33 Partial Capacity Benefit	Question at issue: Eligibility (medical)
2020/34 Jobseeker's Allowance	Question at issue: Eligibility (available for and genuinely seeking work)
2020/35 Jobseeker's Allowance	Question at issue: Eligibility (habitual residence condition)
2020/36 Jobseeker's Allowance	Question at issue: Eligibility (means)
2020/37 Jobseeker's Allowance	Question at issue: Eligibility (means)
2020/38 Jobseeker's Benefit	Question at issue: Entitlement (reduced rate)
2020/39 Jobseeker's Benefit	Question at issue: Eligibility (substantial loss of employment)
2020/40 Jobseeker's Benefit	Question at issue: Eligibility (available for and genuinely seeking work)
2020/41 Jobseeker's Benefit (Self-Employed)	Question at issue: Eligibility (engaged in self-employment)
2020/42 Jobseeker's Transitional Payment	Question at issue: Eligibility (means)

2020/43 Supplementary Welfare Allowance	Question at issue: Eligibility
2020/44 Supplementary Welfare Allowance	Question at issue: Backdating
2020/45 Supplementary Welfare Allowance	Question at issue: Eligibility
2020/46 Farm Assist	Question at issue: Eligibility (means)
2020/47 Farm Assist	Question at issue: Eligibility (if applicant is a farmer)
2020/48 Farm Assist	Question at issue: Eligibility (no longer deemed to be a farmer)

3.4 Retired, Older People and Other	
2020/49 State Pension (Contributory)	Question at issue: Eligibility (increase for qualified adult)
2020/50 State Pension (Contributory)	Question at issue: Backdating
2020/51 State Pension (Contributory)	Question at issue: Backdating (increase for qualified adult)
2020/52 State Pension (Non-Contributory)	Question at issue: Eligibility (means)
2020/53 State Pension (Non-Contributory)	Question at issue: Eligibility (rate of pension for person in receipt of other payment)
2020/54 Widow (er)'s (Non-Contributory) Pension	Question at issue: Entitlement (cohabitating)

3.5 Insurability of Employment	
2020/55 Insurability	Question at issue: Insurability of employment and the correct PRSI Class
2020/56 Insurability of employment	Question at issue: Whether a worker had been employed or self-employed?

3.6 Reviews under Section 318 of the Social Welfare Consolidation Act 2005	
2020/318/57 Child Benefit	Question at issue: Eligibility (qualified child and resident in the State)
2020/318/58 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
2020/318/59 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
2020/318/60 Disability Allowance	Question at issue: Entitlement to Living Alone Allowance
2020/318/61 Disability Allowance	Question at issue: Eligibility (medical criteria)
2020/318/62 Disability Allowance	Question at issue: Means (benefit from a Member State of the EU)
2020/318/63 Carer's Allowance	Question at issue: Care required
2020/318/64 Carer's Allowance	Question at issue: Care required
2020/318/65 Jobseeker's Allowance	Question at issue: Entitlement (penalty rate)
2020/318/66 Jobseeker's Allowance	Question at issue: Entitlement (penalty rate)
2020/318/67 Jobseeker's Allowance	Question at issue: Right to reside in the State
2020/318/68 Jobseeker's Benefit	Question at issue: Disqualification in the context of a redundancy payment
2020/318/69 Supplementary Welfare Allowance	Question at issue: Genuine and effective employment
2020/318/70 Guardian's Payment (Non-Contributory)	Question at issue: Whether the eligibility criteria had been met

3.1 Case Studies:

Children & Family

2020/01 Child Benefit Summary Decision

Question at issue: Qualified Person

Background: The Department revised its decision in relation to the appellant's entitlement to Child Benefit on foot of information received that the child was in shared care from 2017 and full-time care from November 2018. Payment of Child Benefit was discontinued from November 2018. The effect of the revised decision also resulted in the raising of an overpayment of almost €1,000.

Consideration: Section 220 of the 2005 Act provides that a person with whom a qualified child normally resides shall be qualified for Child Benefit in respect of that child and is referred to as "a qualified person".

The Appeals Officer noted the appeal contentions that throughout the period in question the appellant was in regular contact with her child, he was a weekly visitor to her home, she maintained a home for him, provided food, shelter and clothing for him and that during this period he essentially was in the dual care of the appellant and the relevant state agency. The appellant stated that she was not aware that in collecting Child Benefit for him and providing for him as she did, that she was doing anything untoward.

The Appeals Officer concluded that for the purposes of the governing legislation that the appellant could not be regarded as the "qualified person" to receive Child Benefit, as on the basis of the available evidence, her child could not be regarded as normally residing with her from November 2018.

Outcome: Appeal disallowed

2020/02 Child Benefit Summary Decision

Question at issue: Eligibility (habitual residence condition)

Background: The appellant applied for Child Benefit in respect of her two children in April 2020. The appellant was a third country national and lived in Southeast Asia for a number of years. She was separated from the father of her children, an Irish citizen. She stated that she and the children relocated to Ireland in October 2019 in order to be close to family and for the children to grow up Irish.

Her claim was disallowed on the grounds that she did not meet the habitual residence condition. The decision stated that the length and nature of her residence did not provide for approval of habitual residence; she had not entered employment; her centre of interest was not Ireland; her future intentions to remain in Ireland were uncertain and from the evidence produced there was nothing to substantiate that she was habitually resident in Ireland.

In appealing the decision, the appellant stated that she relocated to Ireland permanently in October 2019 and was in and out of Ireland for two years prior to that as she separated from her partner. There were no reported absences from the State from October 2019. She attached her ex-partner's passport and evidence of the family's travel back to Ireland. She stated that she had not entered employment because of the young age of her children, and she was supported by her ex-partner. She stated that her centre of interest was Ireland – the children were young and needed to be close to their father and they were in school full-time. She had rented a house and had an Irish bank account. She stated that it was not true that her future intentions were uncertain, it was a permanent decision to relocate so that her children could grow up with their father and their cousins.

Consideration: Section 220(3) of the 2005 Act provides that a person shall not be a qualified person for the purposes of Child Benefit unless he or she is habitually resident in the State. The habitual residence condition is a two-part process: establishing a right of residence and an assessment under the five factors contained in Section 246(4) of the 2005 Act:

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

As the appellant had been granted a Stamp 4 permission to live/work in Ireland she had a right to reside in the State. It was necessary to examine her circumstances in line with the five factors set out in the legislation in order to establish if she was habitually resident in the State.

Having examined the circumstances of the appellant's residence in Ireland, the Appeals Officer was satisfied that when the family returned to Ireland in October 2019 this represented a change of their centre of interest to Ireland for the longer term. The Appeals Officer did not consider that the evidence supported a conclusion that her centre of interest was elsewhere.

The fact that the children were Irish, their father was Irish, their extended family lived in Ireland and that the appellant and her ex-partner had made the decision to raise the children in Ireland with that family, all pointed to their future intentions being centred in Ireland. The Appeals Officer was satisfied that the appellant satisfied the habitual residence condition from October 2019.

Outcome: Appeal allowed

2020/03 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 six-year-old son was disallowed by the Department on the basis that the evidence did not indicate that the level of care required by the child was substantially in excess of that required by a child of the same age without a disability.

The medical report completed by the child's GP confirmed that the child was diagnosed with developmental coordination disorder and had a history of dyspraxia. The report also indicated that many of the child's abilities were affected to a severe degree by his condition and some were moderately affected.

Consideration: Section 186C (1) of the 2005 Act provides that in order to qualify for Domiciliary Care Allowance a child must have a disability so severe that it requires the child needing care and attention substantially in excess of another child of the same age without the disability and that the child is likely to need that level of care and attention for at least 12 months.

The Appeals Officer noted that most of the child's abilities were affected to a severe degree on the ability/disability profile of the medical report and concluded that the child's disability was a severe disability.

The appellant described in detail on her application form how she assisted her son with the activities of daily living on a continual basis. The Appeals Officer noted that while any six-year-old child is likely to require significant amounts of support and assistance, he concluded that the level of care and attention described by the appellant was substantially in excess of that required by a typical six-year-old child.

Two additional medical reports were provided in the appeal documentation from a psychologist with the HSE psychological service and an educational psychologist. These reports in combination supported the appellant's description of the level of care and attention required by her child.

Based on the medical evidence the Appeals Officer concluded that the appellant's son had 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. There was nothing in the medical evidence to indicate that the condition of the appellant's child was likely to improve within 12 months.

Outcome: Appeal allowed

2020/04 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 respect of her 10-year-old son who had a diagnosis of camptodactyly, hammer toes and innocent systolic murmur of the heart. Her claim was disallowed on the grounds that the child was not regarded as a qualified child as provided for in the legislation. The documentary evidence submitted in support of the claim included a medical report completed by the GP, a consultant's letter, a letter from the senior occupational therapist, a letter from the child's social worker and a psychological test report.

In her application the appellant informed that her son had mobility issues following surgery on his leg/feet. He required assistance with washing, dressing and toileting. He attended mainstream school but was diagnosed with dyslexia. He had access to a special needs assistant and attended both resource hours and learning support. He had difficulty crossing the road as he got confused between his left and right. The appellant stated in her application form that the child needed her help most of the time to pick things up as his hand was constantly closed. He no longer participated in sport as his mobility was limited due to issues he had with his feet.

The appellant stated that he got frustrated when he could not complete his homework and his GP confirmed that he had undergone 10 operations to date. His most recent hospital admission resulted in him being wheelchair bound for a period of 10 weeks. He attended both an orthopaedic and a plastic surgeon and physiotherapy and occupational therapy. The Appeals Officer also noted he would require further surgeries in the future.

Consideration: The Appeals Officer was satisfied that the need for ongoing additional supports, supervision and care with regards to the child's certified medical condition had been established and was substantially in excess of the care and attention normally required by a child of the same age. The Appeals Officer concluded that as the child grew, he may have a deterioration of his presentation and could require more frequent appointments to manage movement in his fingers.

He also noted from a letter from his schoolteacher that the child required substantial independent assistance in order for him to progress to his class level.

Outcome: Appeal allowed

2020/05 One-Parent Family Payment Summary Decision

Question at issue: Backdating

Background: A claim form for additional children on the appellant's One-Parent Family Payment claim was received in the local Intreo Centre in April 2020. The claim was in respect of the appellant's twin children who were born in December 2019. The increase for the two additional qualified children was awarded from April 2020. The increase was not awarded from December 2019 as the appellant did not submit her claim within three months of the birth of her children.

The appellant sought backdating of the increase on the grounds that she was hospitalised for a period of time after her children were born. She stated that she called to the Intreo Centre a number of times and the One-Parent Family Payment section was closed. She stated that it is difficult to get out and about with three young children. The Deciding Officer stated the appellant could have requested to have an application form sent to her in the post. The appellant stated that she did not realise this.

Consideration: Section 241(3) of the 2005 Act provides for backdating of a claim for an increase for up to six months where a person can show that there was good cause for the delay in making the claim.

The Appeals Officer having considered the circumstances of the case, in particular the appellant's health issues and that she was caring for two infant children, was satisfied that the appellant had shown good cause for the delay in making her claim for an increase in respect of her additional children and allowed backdating to December 2019.

Outcome: Appeal allowed

2020/06 One-Parent Family Payment Summary Decision

Question at issue: Eligibility (cohabitation)

Background: The appellant's application for One-Parent Family Payment was refused by the Department on the basis that she had failed to show that she was not cohabiting with another person. In her application the appellant included the liable relative of her child as part of her household profile. She attached a personal statement in which she said their relationship had ended but they were still living at the same address for financial reasons. She said they shared the bills and rent, and she stated he paid a specified amount of maintenance.

The Social Welfare Inspector reported that the appellant and the father of her son had been living at the address since August 2016. The report stated that he was in receipt of Family Income Supplement (now known as Working Family Payment) from November 2016 to November 2019 when the appellant commenced employment. It said based on the household expenditure form completed by the appellant they had shared the cost of all household bills 50/50 except the grocery bill. It said they both cooked their own meals. It said they each had minded their son when the other was working and there were childcare arrangements if both worked at the same time.

In appealing the decision, the appellant stated that she considered herself a lone parent as while she had physically lived with her ex-partner it was for financial reasons and particularly the issue around availability and affordability of housing. She outlined that it was the best situation for their son's health and welfare. She stated her ex-partner had lived in a different room and shopped and cooked for himself.

Consideration: In order to qualify for One-Parent Family Payment, a person must be a 'qualified parent' and must not be a cohabitant.

The Appeals Officer noted that when a person makes a claim for a social welfare payment, the onus is on the person to show that they meet the conditions of the scheme. The Appeals Officer concluded that the evidence pointed to a cohabiting relationship and was not satisfied that the appellant met the conditions of the scheme.

Outcome: Appeal disallowed

2020/07 Working Family Payment Summary Decision

Question at issue: Calculation of Rate

Background: The appellant's Working Family Payment entitlement was reviewed and, based on her income from employment and her One-Parent Family Payment, she was awarded €54.00 per week. The rate of payment decision was subsequently appealed on the grounds that her income was lower than what she was assessed with when her claim was renewed.

Consideration: Legislation provides that all income is liable to be assessed in determining a person's entitlement or continued entitlement to Working Family Payment. In accordance with Article 173(1) of the 2007 Regulations, weekly family income, when it comprises earnings, is calculated by reference to the weekly average of the gross amount of such earnings received in the two months immediately prior to the date on which the claim for Working Family Payment has been made where such earnings are received at monthly intervals, or in the four weeks immediately prior to such date where such earnings are received at weekly or fortnightly intervals. However, Article 173(2) allows that where a Deciding Officer or an Appeals Officer considers that the periods mentioned in sub-article (1) would not suffice to determine the amount of weekly family income, he or she may have regard to such other period which appears to be appropriate for that purpose. Where a person's income fluctuates an average income over the year may be used.

The Appeals Officer noted that the Department had access to up-to-date records from Revenue which indicated that the appellant's income fluctuated from week to week. Therefore, the Deciding Officer had averaged her weekly income from her insurable employment over a 44 week period covered by a payslip which dated from the time of the review of her entitlement. The Appeals Officer was satisfied that this method of calculation of the appellant's weekly income was correct in those circumstances. However, in reviewing the calculation of her weekly income, the Appeals Officer established that the Department had not allowed for the relevant disregards in respect of income tax, PRSI and USC. The Appeals Officer found that the appellant's total assessable income from her insurable employment for the purposes of her Working Family Payment should be reassessed allowing for these disregards with effect from the date of the Deciding Officer's decision.

Outcome: Appeal allowed

2020/08 Working Family Payment Summary Decision

Question at issue: Calculation of Rate

Background: The appellant's claim for Working Family Payment was awarded at the rate of €23 per week from February 2020 based on net weekly family income. The income was derived from employment and income from a rental property overseas. The rate of payment was appealed on the grounds that due to the Covid-19 pandemic the appellant's tenants were unable to pay rent and consequently the appellant had to terminate the lease, place the property for sale and no longer had rental income.

Consideration: Section 230 of the 2005 Act provides that once Working Family Payment is awarded, the rate remains the same for a 52 week period regardless of changes in circumstances. The only exception to this rule is the addition of another child or an increase payable where One-Parent Family Payment has ceased on account of the youngest child reaching the relevant age threshold. At the time of award, the rate of payment was correctly calculated and awarded for a period of 52 weeks.

The Appeals Officer concluded that the appellant's change in circumstances did not come within the exceptions provided for in the governing legislation

Outcome: Appeal disallowed

2020/09 Working Family Payment Summary Decision

Question at issue: Eligibility (means)

Background: The appellant applied for Working Family Payment in May 2019. The Department assessed the weekly family income at €522.81 based on the appellant's and his wife's average assessable earnings of €502.81 and €20.00 respectively. The Department decided that the appellant was not entitled to Working Family Payment as the weekly family income exceeded the prescribed income limit of €521.00 for his family size of one qualified child.

Consideration: The appellant did not dispute the assessment of the average assessable earnings. Instead, the grounds of his appeal centred on his daily travel expense and his increased monthly rent. He asked for these expenses to be disregarded from the income.

The Appeals Officer noted that Article 174 of the 2007 Regulations lists the items disregarded in determining weekly family income. The Appeals Officer concluded that the legislation does not allow for any amount to be disregarded in respect of travel expenses or rent/mortgage and that the weekly family income was correctly determined by the Department.

Outcome: Appeal disallowed

3.3 Case Studies

Working Age –

Illness, Disability and
Carers

2020/10 Invalidation Pension Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant's application for Invalidation Pension made in 2019 was refused on the grounds that he was not considered permanently incapable of work. He was diagnosed with epilepsy and hypothyroidism, his incapacity for work commenced in 2017 and he was deemed to be severely affected in relation to his mental health, consciousness/seizures and lifting/carrying abilities. His GP certified that the epilepsy was proving difficult to treat, that he struggled with speech, coordination, got prolonged severe headaches, had marked insomnia and was unable to work or partake in activities. He was under the care of a neurology team. The appellant outlined the impact of epilepsy on his home, work and family life and that he was no longer able to carry out simple tasks such as bringing his daughter to school due to the risk of seizures.

Consideration: Section 118 of the 2005 Act and Article 76 of the 2007 Regulations provide that entitlement to Invalidation 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 he was likely to remain incapable of work for a further twelve months from the date of application for Invalidation Pension.

The appellant's condition affected three abilities severely and five moderately and was expected to continue indefinitely. His GP had also advised that the epilepsy was proving difficult to treat and certified him as unable to work. From the medical evidence and the evidence from the appellant of the impact of his condition on his daily living, the Appeals Officer was satisfied that the appellant had been continuously incapable of work for a year prior to his claim for Invalidation Pension in 2019 and that it had been established that he was likely to continue to be incapable of work for at least a further year. The Appeals Officer concluded therefore that the appellant could be considered to be permanently incapable of work for the purposes of Invalidation Pension.

Outcome: Appeal allowed

2020/11 Invalidity Pension Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her mid-40s, applied for Invalidity Pension in May 2019. Her application was disallowed on the grounds that she was not considered permanently incapable of work. The medical evidence from her GP confirmed that she suffered from debilitating back pain, severe sciatica and depression and that it was unknown how long these conditions would preclude her from returning to work. The medical evidence also deemed her to be severely affected in relation to mental health/behaviour, reaching, manual dexterity, lifting/carrying, bending/kneeling/squatting, sitting/rising, standing, climbing stairs/ladders and walking, moderately affected in relation to balance/co-ordination and mildly affected in relation to learning/intelligence, consciousness/seizures and continence.

Additional specialist reports confirmed that an MRI showed protrusions on the cervical and lumbar spine and that the appellant experienced no improvement in symptoms despite two months of physiotherapy. Confirmation of an appointment with a Cognitive Behavioural Therapist was also provided. An Occupational Health report confirmed that the appellant could only walk at a very slow pace, could not stand for more than 10 minutes and was not capable of simple tasks.

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 2007 Regulations which provides that the condition is satisfied where, at the time of making a claim, a person has been continuously incapable of all types of work for:

- twelve months and is likely to remain incapable of work for a further twelve months, or
- less than twelve months and is likely to be incapable of work for life.

From the medical evidence provided and the additional evidence adduced at the oral hearing, the Appeals Officer was satisfied that the appellant's back and neck pain were having a very significant impact on her quality of life and her ability to carry out general activities of daily living. He also noted the impact of the back and neck pain on her mental health and the services that she was attending in this regard.

The Appeals Officer concluded that the appellant had been continuously incapable of work for a year prior to her claim for Invalidity Pension and that it had been established that she was likely to continue to be incapable of work for at least a further year and therefore met the medical criteria for Invalidity Pension.

Outcome: Appeal allowed

2020/12 Invalidity Pension Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in his 40s, applied for Invalidity Pension in 2019. He was refused on the grounds that he was not considered permanently incapable of work. The medical evidence showed a diagnosis of prostate cancer and remedial meniscal tear. In a questionnaire completed by appellant he indicated difficulties with all activities due to a combination of a knee operation, prostate cancer and depression. In his appeal submission the appellant stated that he was unable to work, had mental health issues, was awaiting treatment for cancer and his future and outcome was unclear.

Oral Hearing: The evidence adduced at oral hearing was that the appellant was in recovery from knee and prostate cancer surgery. He was engaging with mental health services and was on medication. He was able to drive, walk, do some exercise and stated he may be capable of going back to work in the future.

Consideration: Section 118 of the 2005 Act provides that entitlement to Invalidity Pension is subject to a person being permanently incapable of work. Article 76 of the 2007 Regulations provides that the condition is satisfied where, at the time of making a claim, a person has been continuously incapable of all types of work for:

- twelve months and is likely to remain incapable of work for a further twelve months, or
- less than twelve months and is likely to be incapable of work for life.

From the evidence provided the Appeals Officer noted that as the appellant had worked up to five months prior to his application, the question at issue was whether the appellant could be considered to be permanently incapable of work as defined in the legislation, in this case likely to be incapable of work for life. The Appeals Officer also noted the evidence presented at oral hearing included that the appellant was in recovery and may be capable of going back to work in the future.

The Appeals Officer concluded that the appellant had not established that he was permanently incapable of all types of work for life and therefore did not satisfy the conditions for the receipt of Invalidity Pension.

Outcome: Appeal disallowed

2020/13 Illness Benefit Summary Decision

Question at Issue: Eligibility (medical)

Background: The appellant was in receipt of Illness Benefit from June 2018. He underwent a medical review assessment in the Department in September 2019. The Medical Assessor formed the opinion that the appellant was capable of light work with some restrictions. The appellant provided additional medical evidence to support his contention that he remained incapable of work. This additional medical evidence was reviewed by a Medical Assessor in January 2020, who formed the opinion that the appellant was capable of 'other' types of work.

The available medical evidence was that MRI scans of the appellant's lumbar spine showed L5-S1 discopathy with nerve root pressure. The appellant had undergone recurrent rehabilitation treatment. A medical certificate dated February 2020 confirmed that he continued to attend rehabilitation and that on a visit for rehabilitation in February 2020 ultrasound and cryotherapy for analgesic and anti-inflammatory effects were performed. Other rehabilitation provided included spine massage, TENS currents, magnetotherapy and individual exercises to reduce the pain associated with discopathy of his lumbar spine. The appellant was also diagnosed with symptoms of adjustment disorder for which he was prescribed medication.

There were differences in the expressed medical opinions as to the extent to which the appellant's conditions continued to impact his work capacity. Both medical opinions outlined that the appellant remained incapable of returning to his usual type of work in construction. The disparity was as to whether the appellant was or was not capable of light work or 'other' work, from February 2020.

Consideration: The legislative provisions relating to Illness Benefit are set out at Part 2- Chapter 8 (Sections 40 to 46) of the 2005 Act and at Part 2- Chapter 1 (Articles 20 to 28) of the 2007 Regulations. Section 40 (3) (a) of the 2005 Act provides that, for the purposes of any provision of this Act relating to illness, a day shall not be treated as a day of incapacity for work unless on that day the person is incapable of work.

The Appeals Officer concluded that as the evidence was that the appellant had commenced treatment for mental health issues, in addition to being treated for physical health issues, and also, as the evidence was that he continued to receive rehabilitative treatment on his back, he was not, due to the combination of physical and mental health issues, currently, well enough to return to any work environment. The evidence was that treatment for the appellant's adjustment disorder combined with rehabilitation treatment for his discopathy condition may bring about sufficient improvement, in the short to medium term, to allow him to return to work of a type that did not place high physical demands on his body. However, the Appeals Officer was satisfied, from the available evidence, that the impact of the appellant's combined medical conditions continued to render him incapable of work at that time.

Outcome: Appeal allowed

2020/14 Illness Benefit Oral Hearing

Question under appeal: Eligibility (medical)

Background: The appellant was in receipt of Illness Benefit from July 2018 with diagnoses of hypertension, sciatica and anxiety disorder associated with heavy alcohol use and obesity. He attended an in-person assessment with a Medical Assessor from the Department in September 2019 and was found not to be incapable of work.

The opinion of the Medical Assessor was that the appellant was capable of light to moderate work. The report of the Medical Assessor indicated that the appellant had been in employment between 2001 and 2018. The report explained that the appellant's blood pressure was stable and controlled while on medication. The sciatica was no longer present unless he over-exerted himself. The Medical Assessor reported that the appellant was not on any medication for anxiety or attending any counselling.

Oral Hearing: The appellant submitted that the problem with his sciatica started in 2009. He said he had attended physiotherapy for this complaint but had stopped previous to his claim. He indicated to the Appeals Officer that he helped his brother in law move some furniture in December 2019 and as a result tweaked his back again. He stated that he could manage to cut the lawn and attend to his garden so long as he did not have to bend down. He reported that he enjoyed walking for up to 45 minutes three to four times a week. He could drive but said he had not driven for a while. He cooked for himself. The appellant informed the Appeals Officer that he had no scheduled medical appointments.

Consideration: For Illness Benefit purposes, 'incapacity for work' does not take account of what might be 'suitable' work for a person given their age, work experience etc. Unlike Disability Allowance for example, it simply requires that a person is incapable of work generally.

The appellant was diagnosed with hypertension and stated that he suffered from sciatica and back pain since 2009. He was certified as incapable of work and in receipt of Illness Benefit from July 2018. The latest certificate of incapacity for work in November 2019 indicated the appellant's incapacity as hypertension. The Appeals Officer noted that the Illness Benefit questionnaire completed by the appellant in September 2019 indicated that he had on-going issues with back pain and sciatica, took medication for high blood pressure and could not pick items up without feeling pain. No other functions/activities were reported to be affected.

The Appeals Officer concluded that while it was clear that the appellant experienced some residual effects from hypertension/anxiety/back pain which restricted him from engaging in heavy work, he was capable of lighter duties. In these circumstances, he could not have been said to be incapable of work for the purposes of Illness Benefit.

Outcome: Appeal disallowed

2020/15 Illness Benefit Summary Decision

Question at Issue: Eligibility (contributions)

Background: The appellant's application for Illness Benefit in May 2020 was disallowed on the grounds that he did not satisfy the PRSI contribution conditions. The Department outlined that the appellant did not have 13 paid contributions at the appropriate class in order to requalify for Illness Benefit.

Consideration: Illness Benefit is a social insurance based scheme for people who are incapable of work due to illness. The qualifying conditions in relation to PRSI contributions are contained in Sections 41 to 4 of the 2005 Act. The legislation provides that where entitlement to the benefit has exhausted, a person can requalify by way of 13 paid contributions since the last day for which the person was entitled to benefit.

The appellant based his grounds of appeal on medical circumstances and the impact of his diagnosed conditions on his capacity for work. However, the reasons for refusal of his claim were not related to the medical criteria but rather on the grounds that he did not meet the PRSI contribution conditions.

The Appeals Officer concluded that the appellant did not have the required 13 paid PRSI contributions in the relevant period as required by the governing legislation.

Outcome: Appeal disallowed

2020/16 Disability Allowance Summary Decision

Question at issue: Eligibility (means and medical)

Background: The appellant was asked by the Department in connection with his claim for Disability Allowance to submit certain information in relation to accounts held in financial institutions. He was also asked to fully complete the application form. The appellant responded but did not supply the requested information regarding a Post Office account which he had declared in the application form.

Consideration: A medical report was completed by the appellant's GP. The diagnosis was anxiety and the condition was of indefinite duration. In the ability/disability profile his condition was described as moderately affecting his mental health and he had been prescribed medication.

In appealing the decision, the appellant stated that he suffered from social anxiety. He also stated that he submitted the information requested by the Department. However, the Department stated that the information regarding the Post Office account was still outstanding.

The Appeals Officer found that the appellant had not established that he was substantially restricted in undertaking suitable employment by reason of a specified disability which had continued for or was expected to last for a period of at least one year. The Appeals Officer also found that the appellant failed to show that his means did not exceed the maximum rate payable as he had failed to provide information requested by the Department.

Outcome: Appeal disallowed

2020/17 Disability Allowance Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in his early 60s, had a diagnosis of epilepsy and a history of chronic obstructive pulmonary disease . His claim for Disability Allowance was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability.

The appellant submitted on appeal that he remained under the care of a neurologist and had recently undergone a series of scans in relation to brain abnormalities that had been identified as a result of an epilepsy diagnosis. He outlined how the onset of the epilepsy had affected him in terms of work and home life.

Consideration: The appellant had worked in construction all of his life and was no longer able to do so due to health and safety concerns arising from the impact of epilepsy. He could no longer drive and his ability to retrain for another occupation was affected. It was noted by the Appeals Officer that in completing the ability/disability profile his GP had assessed his condition as affecting him to a severe degree in relation to consciousness/seizures, climbing stairs/ladders and walking, to a moderate degree in relation to balance/coordination and standing and to a mild degree in relation to lifting/carrying. His GP reported that he was attending relevant specialists and had ongoing investigations and hospital admissions. He was on medication for his condition.

The Appeals Officer concluded that the appellant had met the qualifying criteria for receipt of Disability Allowance in that he was substantially restricted in undertaking suitable employment by reason of a specified disability, as outlined in the governing legislation.

Outcome: Appeal allowed

2020/18 Disability Allowance Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in his early 40s, applied for Disability Allowance. The application was refused on the grounds that he 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. He was diagnosed with diabetes and shoulder pain which started prior to 2013 and was expected to continue indefinitely. He was attending diabetic and musculoskeletal clinics and at the time of the appeal he was awaiting the administration of an injection to alleviate shoulder pain and stiffness.

The appellant had worked as a waiter for a number of years in the previous decade. No other information was provided in relation to any other employment. The appellant stated his mental health was affected due to disturbed sleep and fatigue. He said his physical health was affected due to diabetes and he had difficulties in standing, walking and lifting. He said he could not participate in sporting activities, read for very long periods and could not help with housework.

The appellant's GP stated that the appellant was on Illness Benefit due to diabetes which was difficult to control, had chronic shoulder pain and was unfit for work until the diabetes was controlled.

Consideration: The question before the Appeals Officer was 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 governing legislation.

The Appeals Officer noted the appellant's medical conditions and the degree to which they affected his activities of daily living as certified by his GP. The Appeals Officer also noted the indicators shown on the ability/disability profile which indicated that the appellant's ability was normal in 14 of the 16 activities profiled. While the Appeals Officer accepted that the appellant experienced some difficulties as a result of his medical conditions, he was not satisfied that the evidence supported a conclusion that the appellant was substantially restricted in undertaking employment that would otherwise be suitable having regard to his age, experience and qualifications.

Outcome: Appeal disallowed

2020/19 Disability Allowance Summary Decision

Question at issue: Entitlement (participation on a Community Employment scheme)

Background: The appellant had been in receipt of Disability Allowance which was suspended by the Department when the appellant commenced participation on a Community Employment (CE) scheme. The question before the Appeals Officer was whether the appellant retained entitlement to Disability Allowance while participating on the scheme.

Consideration: The Appeals Officer noted that the appellant was paid a training allowance by SOLAS which was equal to, or above, the rate of Disability Allowance and entitlement to Disability Allowance was suspended.

The Appeals Officer concluded that the appellant did not retain an entitlement to Disability Allowance while participating on the CE scheme. The Appeals Officer noted that once the scheme ended payment of Disability Allowance may be resumed, provided the person satisfied the qualifying criteria. The Appeals Officer also noted that this appeared to have been the case in the appellant's situation.

Outcome: Appeal disallowed

2020/20 Disability Allowance Summary Decision

Question at issue: Eligibility (habitual residence condition)

Background: The appellant, an EU national aged 16 years, came to Ireland in 2018 to reside with his uncle who had been granted guardianship of the appellant. Prior to coming to Ireland the appellant lived with his mother, grandmother and other relatives. His grandmother cared for him but owing to ill-health neither his mother nor grandmother could continue to care for him.

An application for Disability Allowance was disallowed as the Department determined that the appellant was not habitually resident in the State. This was based on the determination that the appellant did not derive a right to reside in the State as he was not a qualified or permitted family member under the European Communities (Free Movement of Persons) Regulations 2015, (S.I. No. 548 of 2015).

On appeal, the appellant submitted that he was a dependent of his uncle both prior to and since coming to Ireland and that in those circumstances he had a right to reside in the State under the 2015 Regulations.

Consideration: The Appeals Officer relied on Sections 210(9) and 246 of the 2005 Act and Articles 3 and 5 of the European Communities (Free Movement of Persons) Regulations 2015, (S.I. No. 548 of 2015).

The Appeals Officer concluded that the appellant did not satisfy the condition of being a qualified family member as he was not a spouse, civil partner, direct descendant or dependent direct relative in the ascending line of the Union citizen.

The Appeals Officer went on to consider if the appellant was a permitted family member under the 2015 Regulations. Article 5 of the 2015 Regulations makes provision for family members who are not the spouse/partner, direct descendants or dependent direct relatives in the ascending line. Under the provisions of Article 5 such other family members, referred to as permitted family members, have the right to have their entry and residence facilitated in the host EU country if:

- they are dependent on the EU citizen; or
- they are members of the EU citizen's household; or
- where on serious health grounds strictly require the personal care of the EU citizen.

The Appeals Officer concluded that, based on the facts of the case, the appellant did not satisfy any of these requirements.

Outcome: Appeal disallowed

2020/21 Disability Allowance Oral Hearing

Question at issue: Eligibility (habitual residence condition)

Background: The appellant, an EU national in her late 20s, applied for Disability Allowance in May 2019. Her application was refused in September 2019 on the grounds that she was not habitually resident in the State. The length and continuity of her residence in the State was specifically cited.

In her application, the appellant stated she had lived in her home country until coming to the State in February 2017. She indicated she had lived continuously in Ireland since her arrival. She had been in employment but had been on sick leave since February 2019.

The appellant stated she had been renting a house with an ex-partner but became homeless when the relationship broke up. She was registered with the local homeless outreach team and the local multidisciplinary team regarding her mental health. She was attending therapy twice a week. She had an Irish bank account. She had no dependents or property in the State.

In her appeal, the appellant stated that she came to Ireland with the intention of working and studying here. She stated that her mother was living close by and she recently moved to a new tenancy. She had three jobs since coming to Ireland but had to resign from her last employment due to her mental health.

Oral Hearing: The appellant provided a letter from her Local Authority advising she was eligible for local authority housing and had been placed on the housing list. She said she had returned to her home country for less than a fortnight on a holiday to visit her grandmother. She indicated that she was not in work in Ireland at that stage. She had been permanently employed but had to resign her job in March 2019. She stated that she explored the possibilities of getting a job in Ireland before she arrived. She stated that she was looking for, and actively seeking, employment. She stated that she planned to stay and live in Ireland and to go back to work, if that was possible. She had participated in local sport events, planned to join a local club and to do some more volunteer work. She stated that she was going to therapy. She indicated that she did not hold bank accounts in other countries. She stated that her mother resided in Ireland. She provided a copy of her tenancy agreement and a letter confirming that her tenancy had been registered with the Residential Tenancies Board.

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, 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.

In relation to the length and continuity of residence in the State or in any other particular country, the appellant had resided continuously in the State since 2017, with the exception of one brief absence. In relation to the length and purpose of any absence from the State, she had one holiday, of less than a fortnight duration, to visit her grandmother. In relation to the nature and pattern of her employment, she had been in almost continuous employment since her arrival in the State, up to the date on which she ceased employment due to illness. In relation to her main centre of interest, she had no property in the State or abroad and her mother resided in the State. She had also been deemed eligible for local authority housing. In relation to her future intentions as they appeared from all the circumstances, the appellant intended to remain in the State and there was no evidence that demonstrated otherwise. On the basis of the evidence, the Appeals Officer concluded that the appellant was habitually resident in the State.

Outcome: Appeal allowed

2020/22 Carer's Allowance Summary Decision

Question at issue: Eligibility (care provided)

Background: The appellant's application for Carer's Allowance was refused on the grounds that he was not providing full-time care and attention as required by the governing legislation. In his application form, the appellant stated that he resided 10 kilometres from the care recipient's address, he worked during the week and sometimes at weekends and that he intended to remain at work for up to 15 hours per week. He stated that he provided care seven days a week but did not state how many hours per day he provided this care. He outlined that there was a communication link between the residences. He described the daily duties that he performed for the care recipient as reminding him to eat sometimes and to take medication. He stated that he brought the care recipient to collect his pension and also helped with personal hygiene and housework. He stated that the care recipient resided alone.

In his appeal, the appellant stated that he was providing full-time care to the care recipient who had substantial medical needs. A letter from a public representative was provided which stated that the appellant was of the view that he had been providing quite substantial care to the care recipient. At the time of the appeal the appellant informed the Appeals Officer that he had ceased caring for the care recipient and stated that he had been available and looking for full-time employment.

Consideration: The Appeals Officer noted the information provided by the appellant in his application form. He noted that the appellant stated that he was in employment and that he intended to work less than 15 hours per week. He noted that while the appellant stated that he was providing care to the care recipient seven days a week, he did not state how many hours care he provided each day. The Appeals Officer concluded that while the appellant set out in general terms the duties he had been performing for the care recipient, he had not provided sufficient information in either his application or in his appeal to demonstrate that he was providing care to a level or for a sufficient time period that could be considered to be full-time in nature within the meaning of the governing legislation.

Outcome: Appeal disallowed

2020/23 Carer's Allowance Summary Decision

Question at issue: Eligibility (care provided)

Background: The appellant's application for Carer's Allowance was refused on the grounds that she was not providing full-time care to the care recipient as required by the governing legislation.

The appellant lived three kilometers from the care recipient and stated in her application form that she provided 28 hours care over seven days every week. The medical report showed that the care recipient was diagnosed with anxiety, panic disorder and depression and the conditions were expected to last indefinitely. In the ability/disability profile the care recipient was assessed as severely affected in relation to mental health and had hospital admissions in connection with psychiatric issues. He was on high doses of medication to treat his conditions. The medical evidence also outlined that the care recipient's mental health had deteriorated dramatically in the previous year and he could not function or look after himself. A social worker was visiting weekly and a new plan was being put in place for homecare.

Consideration: At the oral hearing the appellant provided a detailed account of the care provided to the care recipient. She outlined that on a typical day she went to the care recipient's house and, in addition to attending to household chores, assisted with getting the care recipient out of bed, washing, dressing and preparing food. The care recipient was prescribed some 20 tablets per day and the appellant dispensed this medication. At lunchtime the appellant brought the care recipient to her home until late evening when he returned to his own home. The appellant also informed that since the date of the Department's decision the care recipient had been diagnosed with vertigo and prescribed additional medication in connection with that diagnosis.

The Appeals Officer noted that while full-time care is not defined in legislation, the Department considers 35 hours of care per week to be necessary to meet the full-time care standard set out in the governing legislation. The Appeals Officer also noted that the Department was not satisfied that the appellant's provision of care met this threshold. However, having regard to the evidence adduced at the oral hearing the Appeals Officer was satisfied that the appellant had not included the hours of care provided to the care recipient in her own home. In those circumstances, the Appeals Officer was satisfied that the appellant was providing full-time care and that the level of care provided was well in excess of the guidelines set out by the Department.

Outcome: Appeal allowed

2020/24 Carer's Allowance Summary Decision

Question at issue: Eligibility (care required)

Background: The appellant's application for Carer's Allowance was disallowed on the grounds that it was considered that it had not been demonstrated that the care recipient was in need of full-time care and attention as required by the governing legislation.

The medical report stated that the care recipient, aged in his early 40s, suffered from lower back pain arising from an accident several years previously. He had no history of surgery or recent hospital admissions. At the time of application, he was waiting to see a specialist and was prescribed medication for his condition which was stated to affect his mental health. The medical evidence stated that the care recipient was independent in terms of feeding, continence, and bathing/showering, and dependent in dressing. He was independent in terms of mobility but had some difficulty with walking due to pain. His GP stated that he sustained a deficit in his activities of daily living of at least 25% to 30% since his accident. Letters from a specialist were provided which stated that the care recipient was walking/moving independently. Following the results of an MRI the care recipient was advised to continue with physiotherapy and was encouraged to do core strengthening exercises and pool-based exercises.

In his appeal, the appellant stated that he did everything for the care recipient and referred to the content of the report completed by the care recipient's GP.

Consideration: The Appeals Officer noted that the care recipient's GP indicated that he was independent in most functions with the exception of mental health and dressing. Based on the GP's report that the care recipient "can need help" with dressing the Appeals Officer concluded that the need for help was occasional and not continuous or frequent. The Appeals Officer also noted that the GP stated that the care recipient had some difficulty with mobility, despite indicating that he was independent in relation to this activity.

Section 179(4) of the 2005 Act provides that a person shall not be regarded as requiring full-time care and attention unless the person has such a disability that requires "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".

Having regard to the totality of the evidence presented in this case, the Appeals Officer concluded that the need for continuous supervision or frequent assistance in connection with normal bodily functions had not been demonstrated or supported by the evidence. Consideration of the need for supervision in order to avoid danger to himself did not arise.

Outcome: Appeal disallowed

2020/25 Carer's Allowance Summary Decision

Question at issue: Eligibility (care required)

Background: The appellant's application for Carer's Allowance was disallowed on the grounds that the care recipient did not require full-time care and attention as required by the governing legislation. The care recipient, in her late 40s, had diagnoses of abdominal wall defect and mental health issues. The care recipient's GP certified that the care recipient suffered from bipolar disorder and her physical ailments had an adverse effect on her mental health. It was stated that she required someone with her at all times, required assistance getting in and out of the bath and was dependent due to restricted mobility caused by abdominal pain. It was stated that the care recipient was expected to require on-going care for a period of 12 to 24 months.

In support of his claim the appellant submitted an additional GP report where it was certified that the care recipient had a long history of mental health issues and required numerous medications. She was diagnosed with a stage 1B melanoma which had been excised and required on-going treatment. It was stated that she had suffered severely with abdominal wall issues over the last number of years which required surgery. Following complications arising from surgery the care recipient was on a waiting list for combined plastic surgery and gastrointestinal surgeons to coordinate a repair. It was stated that she had an open wound which needed repair and had been in constant pain related to this issue. The GP outlined that the care recipient had been suffering from unusual seizure like episodes and had been diagnosed with a functional neurological disorder. It was stated that the combined issues had a significant debilitating effect on her day to day quality of life.

In appealing the decision, the appellant outlined that the care recipient had a long history of poor health for which she had been heavily medicated for the past number of years. He explained that due to abdominal issues she had been in constant pain and unable to walk or complete basic tasks and required strong doses of morphine. He outlined that arising from the certified neurological condition the care recipient was prone to collapse and therefore he had to be with her at all times.

Consideration: Section 179(4) of the 2005 Act provides that a person shall not be regarded as requiring full-time care and attention unless the person has such a disability that requires "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".

The Appeals Officer noted that the care recipient had been diagnosed with multiple chronic conditions and had significant mobility issues for which she required assistance. Having regard to the care report the Appeals Officer noted that due to mental health issues and other diagnoses the care recipient required someone with her at all times. The Appeals Officer was satisfied that the evidence confirmed that the care recipient required continual supervision and frequent assistance throughout the day and that this requirement was likely to continue for a period in excess of at least one year.

Outcome: Appeal allowed

2020/26 Carer's Allowance Summary Decision

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

Background: The appellant's application for Carer's Allowance in respect of the care of her mother was disallowed on the grounds that full-time care and attention was not required by the person being cared for and that, although the appellant was providing a certain level of care, the time involved was not considered to be full-time.

The care recipient, in her early 70s, had diagnoses of anaemia and chronic obstructive pulmonary disease. She lived across the road from the appellant, with the appellant's sibling who was in full-time employment. The appellant indicated that she provided four hours of care each weekday and five hours of care each day at the weekend.

In appealing the decision, the appellant stated that she lived one minute from her mother's house and was available during the day whenever the need arose. She stated that she prepared breakfast as otherwise the care recipient would not eat. She assisted with washing/showering in the morning and helped with changes of clothes which were sometimes wet due to incontinence. She prepared lunch and dinner, arranged GP visits, brought the care recipient to medical appointments, collected prescriptions, supervised the taking of medication, collected her pension, paid household bills, did the shopping and assisted with cleaning. A GP letter was submitted with the appeal which summarised what the appellant had informed the GP of in terms of her mother's care needs. The GP stated that he would further review the care recipient regarding these concerns.

Consideration: The Appeals Officer considered the medical evidence which consisted only of the GP medical report and which noted diagnoses of COPD and anaemia. It indicated that the care recipient was on two inhalers and no other medication. The care recipient was noted to have become forgetful and was due to attend for assessment of same. She was also awaiting assessment by a gynaecologist in relation to continence. Mild anxiety was reported. No impairment or care needs were reported in relation to consciousness/seizures, speech/hearing, vision or dressing. The GP noted the appellant prepared meals, but the care recipient was able to feed herself. She needed some assistance to shower. She was independent in her mobility but needed inhalers for any walks. The appellant estimated that she provided approximately 30 hours of care per week.

The Appeals Officer accepted from the evidence that the appellant provided considerable supports to her mother on a daily basis, both in terms of practical household support (cooking, cleaning, shopping, collecting pension) and some support with her mother's personal care (assistance with showering, changing/dressing and taking medication). However, on the basis of the evidence, the Appeals Officer was not satisfied that it had been established that the extent and nature of the care that was required, and that was being provided by the appellant, was at a level where it could be considered either continual supervision and frequent assistance throughout the day in connection with normal bodily functions, or continual supervision to avoid danger to herself.

Outcome: Appeal disallowed

2020/27 Carer's Allowance Summary Decision

Question under appeal: Eligibility (means)

Background: The appellant's claim for Carer's Allowance was disallowed on the basis that his means, assessed as being over €2,000 per week, were in excess of the statutory limit applicable in his case. The means derived from property, investments and an occupational pension.

In appealing the decision, the appellant submitted that he had no family support and was not receiving any state support to reflect the reality of their situation. He stated that he wanted to care for his wife at home for as long as possible and that the Carer's Allowance would make a great difference. The appellant acknowledged that his income exceeded the means test limit and he did not contest the assessment of means but stated that he has been advised by many to make the application.

Consideration: The Appeals Officer outlined that, in accordance with Section 179(3) of the 2005 Act, a person's means for the purposes of Carer's Allowance must be calculated in accordance with the Rules contained in Part 5 of Schedule of that Act. The Appeals Officer outlined that under the governing legislation all cash income, investments, and the yearly advantage of any property other than a domestic dwelling are taken into account. The Appeals Officer also outlined that in assessing the means of a couple for the purposes of Carer's Allowance, Article 144(b) of the 2007 Regulations provides for a weekly income disregard of €665.

The Appeals Officer was satisfied that the appellant's means were assessed correctly in accordance with the legislative provisions and that there was no discretion to deviate from these provisions.

Outcome: Appeal disallowed

2020/28 Carer's Benefit Summary Decision

Question at issue: Eligibility (employment condition)

Background: The appellant's application for Carer's Benefit was initially refused by the Department on two grounds: (i) that she was not providing full-time care and attention, and (ii) that she had not been working for the required minimum number of hours for at least eight weeks within a 26 week period prior to her application for Carer's Benefit. Following a review by the Department it was decided that the appellant was providing full-time care and attention but the disallowance on the grounds of not meeting the required number of hours over eight weeks within a 26 week period remained unchanged.

Consideration: The Appeals Officer outlined that in accordance with Section 100 of the 2005 Act in order to be entitled to Carer's Benefit a person must, among other things, have been working for at least 16 hours per week for not less than eight weeks within a 26 week period prior to the date of application for Carer's Benefit.

The evidence originally provided at the time of application showed that the applicant did not meet this requirement. The appellant provided additional general information in relation to her employment but did not provide specific details in relation to the period in question.

The Appeals Officer concluded that it had not been established that the appellant had been working for the required minimum number of hours for at least eight weeks within a 26 week period prior to her application for Carer's Benefit.

Outcome: Appeal disallowed

2020/29 Carer's Benefit Oral Hearing

Question at issue: Eligibility (care required)

Background: The appellant was in receipt of Carer's Benefit from December 2018 to March 2019. She was re-awarded from March 2019 to September 2019. She subsequently applied for another extension up until March 2020. By decision dated in November 2019, the Department stated that following medical review, the appellant was not entitled to any further period of Carer's Benefit beyond September 2019 on the grounds that the care recipient did not require full-time care and attention as laid down in the governing legislation.

Oral Hearing: At the time of appeal, the care recipient was two-years-old. The appellant explained that when the care recipient was born in October 2017 she was diagnosed with extreme prematurity and chronic lung disease. She said this is a lifelong disease and can lead to serious complications. The care recipient was treated in the maternity hospital from birth. For the first two winters of her life, the care recipient received immunotherapy to protect her against viruses. She was then discharged into community care. By the time of the oral hearing, she had been commenced on an inhaler. The care recipient had been admitted to hospital in December 2019 with suspected pneumonia.

The appellant said as the main carer, she was required to restrict all outdoor activities and avoid crowded areas in an effort to prevent further trauma and damage to the care recipient's lungs. Even a simple head cold massively impacted the care recipient and her ability to breathe. The appellant had to limit the care recipient's interactions with everyone, even close family. She said they could not have a childminder as this would put her at risk. She said placing the care recipient in the care of others would have put her in danger of picking up harmful viruses, damaging her lungs further and suppressing her already weakened immune system. The appellant said due to her occupation in the medical profession she recognised the early signs of any respiratory illnesses and acted immediately by performing nasal flushes and aspirations and also steamed her in the shower a few times a day. She said it was these actions that prevented the care recipient being admitted to hospital regularly. Subsequent to the oral hearing, the appellant provided a letter of support from the consultant neonatologist in the maternity hospital.

Consideration: Section 99 (2) of the 2005 Act 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 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.

Having examined the medical evidence, and having had regard to the appellant's grounds of appeal and information adduced at oral hearing which served to clarify the support required by the care recipient in the context of her diagnosis, the Appeals Officer concluded that the care recipient required full-time care and attention in line with the provisions of the governing legislation.

Outcome: Appeal allowed

2020/30 Carer's Support Grant Summary Decision

Question at issue: Eligibility (care provided)

Background: The appellant's application for Carer's Support Grant made in January 2020 was refused by the Department on the grounds that she was not providing full-time care and attention and as a result was not providing full-time care and attention for a continuous six month period including the 1st Thursday in June 2019 as required under the governing legislation.

The appellant was providing care to four family members across two households. The question before the Appeals Officer related to the care provided in respect of one of those family members. The appellant provided a diary of care with her application stating that she provided the care recipient with assistance with dressing, showering, bringing cooked meals to his house daily, cleaning, shopping, paying the bills and taking him to all medical appointments. She stated she provided 19 hours of care per week over seven days and that the care recipient lived 20 kilometers from her. The appellant provided a second diary of care with her appeal which showed two to three hours of daily care provided to the care recipient and the care recipient's spouse combined.

Consideration: The Appeals Officer outlined that the legislation governing entitlement to the Carer's Support Grant is set out in Part 5 of 2005 Act and Part 5 of the 2007 Regulations.

In order to qualify for Carer's Support Grant the carer must be providing full-time care and attention to the relevant person for such periods and on such dates as may be prescribed. The 2007 Regulations provide that the grant shall be payable on the first Thursday in June of each year and that on this date the carer shall have provided full-time care and attention, be likely to provide full-time care and attention, or a combination of both, to the relevant person for a continuous period of not less than 183 days, such period to include the date on which the grant is payable.

The Appeals Officer concluded that the evidence showed that the appellant was providing care to the care recipient but concluded, based on the appellant's care diary, that she provided on average two to three hours of care seven days a week to both the care recipient and the care recipient's spouse combined. The Appeals Officer noted that it was not possible under the legislation to combine the care of a number of care recipients to meet the full-time care requirement.

Based on the evidence the Appeals Officer found that the level of care provided could not be considered to be full-time care. In those circumstances the question of the date/period on which the care was provided was moot.

Outcome: Appeal disallowed

2020/31 Occupational Injury Benefit Oral Hearing

Question at issue: Eligibility (place of accident)

Background: The appellant applied for Occupational Injury Benefit stating his incapacity for work was caused by an accident at work that occurred in August 2018, which resulted in a pain in his right hip. His employer would not confirm that an accident occurred in the course of employment and was not satisfied an accident had occurred. The employer also contended that the appellant's difficulties related to injuries sustained in the past. The manager who completed the form stated he was away on leave when the alleged accident happened. The employer stated there were no witnesses to the accident.

The appellant continued to work for a month after the alleged accident. The appellant contended he was unable to walk long distances and found routine tasks difficult since the accident. He was referred to an orthopaedic consultant in relation to his injury. A letter from the appellant's GP in June 2019 outlined his medical condition and stated that he awaited surgery, but it made no reference to his medical condition being as a result of an occupational accident.

The Department submitted the appellant was enduring pain and difficulties from a previous fall at home, which led to him walking with a limp.

In appealing the decision, the appellant stated that in August 2018 he sustained an injury at work in his employment as a cleaner/maintenance person. On the date of the accident he said he was requested to transfer heavy goods onto a vehicle by the barman. His line manager was away at the time. He never received manual handling or health and safety training. In carrying out this duty he sustained an injury to his right hip and since then had been in constant pain and unable to walk long distances.

Oral Hearing: The appellant attended the oral hearing and outlined his contentions in relation to the accident which he submitted took place at his place of work on a specified date in August 2018. He provided oral evidence that he previously sustained an injury to his right hip around 2011 or 2012, a small chip injury to his right hip, that being the same hip he injured in the occupational accident.

He informed the Appeals Officer that he fractured his ankle in November 2015 when he tripped while walking on a footpath. He was off work for over five months at that time and in a cast for over three months. He accepted he walked with a limp since his accident in 2015. In that incident he tripped with his left leg and fell on his right leg/hip/side.

The Appeals Officer noted there were no witnesses to the accident at work in August 2018 and that the appellant had not sought any confirmation from colleagues that he had reported an injury to them on the day.

The Appeals Officer noted the appellant had not provided any medical evidence to suggest that the injury to his right hip was as a direct result of any occupational accident and the evidence from the appellant informed that the X-ray and MRI scans did not report any apparent recent injury.

The Appeals Officer noted the appellant did not formally report any accident on the date the accident occurred. The employer submitted that the appellant had been limping quite badly for a number of months prior to August 2018 and had informed his manager that he had aggravated an old hip injury.

The Appeals Officer further noted the appellant continued to work for a significant period of time after the date of the alleged accident.

Occupational Injury Benefit is governed by legislation which provides that a person must establish that they have suffered an occupational accident. The obligation is on a person to establish that an accident at work did take place.

The Appeals Officer concluded that the appellant had not established he suffered a personal injury as a result of an accident, arising out of and in the course of his insurable (occupational injuries) employment, on a specified date in August 2018.

Outcome: Appeal disallowed

2020/32 Occupational Injury Benefit/Disablement Benefit Oral Hearing

Question at issue: Eligibility (loss of faculty)

Background: The appellant applied for Disablement Benefit in May 2019 in respect of an occupational accident that occurred in April 2019 resulting in a fractured small finger following an assault. The appellant was assessed with a 5% disability following a medical examination in August 2019 which found that he was mildly affected in relation to manual dexterity and lifting/carrying. After the accident the appellant was off work for 18 weeks and had an obvious deformity of his finger. He said he had to give up activities such as Taekwondo.

The Department's Medical Assessor noted that the appellant was able to function at his job. The Medical Assessor reported clinical findings in relation to the injury to the finger and found that the appellant was mildly affected in manual dexterity and in lifting/carrying as a result of his injuries. A loss of faculty of 5% was recommended. The appellant outlined the detrimental effect the injuries had on his life and how the ongoing treatment and effect of the injury impacted him from a physical and psychological perspective.

Oral Hearing: At oral hearing, and supported by medical evidence, the appellant presented an account of significant injury which had resulted in an ongoing inability to pursue pastimes and hobbies such as martial arts and cycling.

Consideration: Section 75 of the 2005 Act outlines the circumstances in which Disablement Benefit may be payable, as follows:

75.—(1) Subject to this Act, an insured person who suffers personal injury caused on or after 1 May 1967 by accident arising out of and in the course of his or her employment, being insurable (occupational injuries) employment, shall be entitled to disablement benefit where he or she suffers as a result of the accident from loss of physical or mental faculty such that the extent of the resulting disablement assessed in accordance with subsections (3) to (11) amounts to not less than 15 per cent.

The appellant, in his early 40s, had been in employment for 13 years, having previously served in the Defence Forces. In April 2019 he was assaulted at work and had to be brought to hospital.

His small finger was broken and the hospital put a splint on for four weeks. He was subsequently referred to an orthopaedic consultant who diagnosed further injuries and a different type of splint was applied. His consultant stated that he had 25% less power in his left hand than the right following the injury. There was an obvious deformity of his finger and surgery could help cosmetically but it would not improve power or dexterity.

The appellant stated that he was not as dexterous as before and had problems using equipment at work and could no longer carry out his full range of duties. He said this made him feel less part of the team. Prior to the injury he was a yellow belt in Taekwondo which he practiced with his son. He was no longer able to practice as he was afraid of injury. He said he had to stop cycling as his hand went numb after 20 minutes of cycling. He changed to an automatic car in case his hand let him down when driving. He was also affected as regards buttons and zips.

As outlined, Section 75 of the 2005 Act provides for an assessment of disablement with reference to loss of faculty. The Appeals Officer concluded that an assessment of 15% from the start of claim was reasonable. This comprised 12% for the physical aspect and 3% for mental distress.

Outcome: Appeal allowed

3.3 Case Studies

**Working Age –
Income Supports**

2020/33 Partial Capacity Benefit Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her mid-30s, applied for Partial Capacity Benefit in September 2018. The Deciding Officer deemed the appellant's restriction on her capacity for work to be mild and the appellant's claim was refused. The appellant submitted that the restriction on her capacity for work was severe.

The GP reported that the appellant's mental health was moderately affected by her condition as were some aspects of her mobility. She had a medical history of chronic back pain and sciatica, chronic sinusitis, pelvic pain and endometriosis. She attended psychology and physiotherapy. The appellant submitted a letter from her GP which outlined that she had multiple medical problems which limited her ability to work. She had constant pain, had an anxiety disorder and was due to have surgery in 2019. The appellant also submitted a detailed medical report from a psychotherapist, which covered her presenting issues and interventions from May 2018 to September 2019.

Consideration: Partial Capacity Benefit is payable in cases where a person has a restriction on capacity for work due to a medical condition in comparison to the norm, and the person applies to join or re-join the workforce. The governing legislation provides that a person may qualify for Partial Capacity Benefit if their restriction on capacity for work is assessed as moderate, severe or profound.

The Appeals Officer noted that the appellant commenced working part-time in September 2018 and worked for 24 hours per week over three days. She was absent from work due to surgery for a number of months in 2019. The appellant stated that she saw part-time work as part of her recovery and as a way of progressing back into the workplace. She continued to have treatment for physical and mental health conditions.

The governing legislation provides that a person shall be regarded as having a severe restriction on his or her capacity for work where that person has a residual capacity for work which is not more than a half of the norm in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work. The Appeals Officer noted that the appellant had been working 24 hours per week over three days when she made a claim for Partial Capacity Benefit in September 2018. Given the extent of her employment, the Appeals Officer did not consider that the appellant's residual capacity for work did not exceed half of the norm at that time.

Based on the evidence the Appeals Officer was however satisfied that the appellant had a residual capacity for work which was not more than four fifths of the norm in relation to the capacity for work of a person of the same age, who has no restriction on his or her capacity for work and concluded therefore that the appellant had a moderate restriction in her capacity for work with effect from September 2018.

Outcome: Appeal partially allowed

2020/34 Jobseeker's Allowance Summary Decision

Question at issue: Eligibility (available for and genuinely seeking work)

Background: The appellant's claim for Jobseeker's Allowance was disallowed by the Department on the grounds that he was not available for or looking for full-time work. In his application he stated that he had left his employment for medical reasons. He also stated in his application that he was not available for or seeking full-time work. The appellant submitted a letter explaining that he was not available for or looking for full-time work as he had not worked since early 2016 due to medical reasons and was trying to ease back into the workplace. He also outlined that he had to provide assistance to his ill parent. The appellant appealed the Department's decision and stated that he wished to retract the original answer on his application form and change it to that he was looking for and available for full-time work. He stated that his parent only needed help sometimes during the week and he would be available to provide help outside of work hours. The Department did not accept this submission and the decision remained unchanged.

Consideration: The Appeals Officer identified the relevant legislation in this case as Section 141(1)(b) of the 2005 Act and Articles 15 and 16 of the 2007 Regulations. It is a condition of entitlement to Jobseeker's Allowance that a person is genuinely seeking work and is available for full-time work.

The Appeals Officer noted the evidence submitted by the appellant at application stage that he was neither available for nor seeking full-time work. While the appellant later stated that he would be available for full-time work the Appeals Officer noted that this statement of availability only came about when his Jobseeker's Allowance application was disallowed. The Appeals Officer concluded that the weighting to be afforded to this evidence was significantly reduced and concluded that the appellant had not shown that he was willing and able to take up, at once, an offer of suitable employment and had not shown that he could be regarded as genuinely seeking employment as required by the governing legislation.

Outcome: Appeal disallowed

2020/35 Jobseeker's Allowance Summary Decision

Question at issue: Eligibility (habitual residence condition)

Background: The appellant's application for Jobseeker's Allowance submitted in December 2019 was disallowed by the Department on the grounds that the appellant was not habitually resident in the State. In its decision, the Department outlined that since his arrival in the State in December 2018 the appellant had two brief periods of employment in 2019 and that he previously resided in another country for ten years.

Consideration: The evidence before the Appeals Officer was that the appellant, in his early 40s, was born outside of Ireland in the late 1970s, had a difficult childhood and was fostered by a family in Ireland in the early 1990s and resided in Ireland for some 20 years up to the end of 2010. The evidence showed that the appellant left Ireland in 2010 to spend some time with his birth-mother who died in 2018. On his return to Ireland in 2018 the appellant was supported by his foster family and also accessed services for mental health issues. The appellant submitted that he was returning to Ireland as a place where he had history and current supports.

In his consideration of the appeal the Appeals Officer outlined that in accordance with Section 246 (4) of the 2005 Act in determining whether a person is habitually resident in the State account shall be taken of all the circumstances of the case, including the five factors outlined in that provision.

Having regard to the circumstances in this case and in particular the reason for the appellant's absence from the State and his strong connection to Ireland over a substantial period of his life the Appeals Officer was satisfied based on the totality of the evidence that the appellant was habitually resident in the State for the purposes of his claim for Jobseeker's Allowance.

Outcome: Appeal allowed

2020/36 Jobseeker's Allowance Summary Decision

Question at issue: Eligibility (means)

Background: The appellant's application for Jobseeker's Allowance was refused 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. His means were derived from self-employment.

Consideration: Jobseeker's Allowance is a means tested payment calculated in accordance with the Rules contained in Part 2 of Schedule 3 of the 2005 Act.

In his letter of appeal the appellant indicated that he found the calculation of his means puzzling and that he would like a further breakdown. He also indicated that he had lost his biggest client in 2019, had paid tax on some of his income in another State and he also outlined his family circumstances. The Department subsequently provided a detailed breakdown of the means assessment and the appellant was afforded the opportunity to comment. No reply was received from the appellant.

In its reply to the appellant, the Department outlined that the gross income was taken from the 2019 accounts which the appellant had submitted and that income from the lost client was disregarded in the calculation of means. The Department also provided a breakdown of the expenses allowed.

The Appeals Officer, having examined the calculations, was satisfied that the expenses allowed by the Department in respect of landline/broadband, heating and other utility expenses, car insurance, fuel, An Post, travel and car repairs were reasonable. The Appeals Officer also noted that while it was accepted that the appellant had expenditure on other outgoings, the legislation did not provide for the exclusion of domestic or personal expenses.

The Appeals Officer found that the appellant's means from self-employment were correctly calculated by the Department in accordance with the governing legislation

Outcome: Appeal disallowed

2020/37 Jobseeker's Allowance Summary Decision

Question at issue: Eligibility (means)

Background: The appellant's application for Jobseeker's Allowance was refused by the Department on the grounds that her means were in excess of the rate of Jobseeker's Allowance that would be payable based on her family circumstances.

Consideration: The Appeals Officer outlined that the appellant was aged 20 and where a person under 25 years of age is living with parents in the family home, an assessment is made of the yearly value of any benefit and privilege enjoyed by that person by virtue of residing with parents. The value of the benefit and privilege assessed is based on the level of the parents' income.

The Department assessed the appellant's benefit and privilege on the basis of her father's income from employment. The information was taken from a copy of a payslip provided by the appellant. The payslip showed gross income for 24 insurable weeks.

The Appeals Officer determined that the Deciding Officer took the incorrect figure as gross income from the payslip. The figure taken was the tax cut-off point instead of the year to date gross income. The tax cut-off point figure was approximately 2½ times more than the year to date gross income and resulted in a means assessment of €332 per week.

When the correct gross income figure was used and all relevant disregards applied the benefit and privilege enjoyed by the appellant by virtue of residing with her parents amounted to nil when calculated in accordance with the Department's guidelines. As the appellant had no other source of means she was entitled to Jobseeker's Allowance at maximum rate applicable to her age.

Outcome: Appeal allowed

2020/38 Jobseeker's Benefit Summary Decision

Question at issue: Entitlement (reduced rate)

Background: The appellant was awarded Jobseeker's Benefit from 5th December 2018 at the weekly rate of €155.10.

Consideration: Article 48 of the 2007 Regulations provides that where a person's earnings are less than €300.00 per week in the governing contribution year (in this case 2016) a reduced rate of benefit is payable.

The appellant submitted that she had been working and paying taxes for the past four or more years and queried why she was not getting the full amount. As the appellant's application for Jobseeker's Benefit was made in 2018 the governing contribution year was 2016 and according to the records held by the Department the appellant had average weekly earnings of €295.13 in that year. As her average weekly earnings for 2016 fell below the threshold of €300.00, the reduced rate of €155.10 was determined to be the amount of her entitlement.

The Appeals Officer concluded that the rate of entitlement to Jobseeker's Benefit as determined with reference to the level of the appellant's earnings from employment in the governing contribution year was awarded in accordance with the governing legislation.

Outcome: Appeal disallowed

2020/39 Jobseeker's Benefit Summary Decision

Question at issue: Eligibility (substantial loss of employment)

Background: The appellant's claim for Jobseeker's Benefit in June 2019 was disallowed on the grounds that she had not shown that she had lost at least one day's insurable employment along with a loss of earnings.

The appellant worked four days a week in a secondary school in the school year and also worked part-time in a cultural institution. The appellant submitted that she did not normally have work with that institution in the summer months.

The appellant stated that she had been working in the same jobs in this pattern for nearly 20 years and queried why it was only in 2019 that she did not qualify for Jobseeker's Benefit. She stated that she only worked 44 weeks of the year and had not worked four days a week over 52 weeks. She said as far as she was aware other people in the school sector were paid over the holidays and queried whether she would have to give up her work in the cultural institution to qualify. She said her work there was a zero-hour contract and she had been providing casual dockets for this work as there was very little or no work over the summer months.

The Department contended that from the combined employments the appellant had worked a specified number of days in period June 2018 to June 2019 which averaged four days per week over the 52 week period and that as she continued to work an average of four days per week over 52 weeks, she did not have a loss of employment. As a result, this was her normal level of employment and remained her normal level of employment. The Department contended that while the appellant stated she worked 44 weeks a year, she is required to be available and looking for work for 52 weeks. It also stated that the appellant worked with two employers for approximately 44 weeks of the year for 18 years and had not suffered a substantial loss. The Department stated that even if the appellant were to give up her second employment, this would not change her level of employment as she still worked 44 weeks in the year in the school sector.

Consideration: In order to qualify for Jobseeker's Benefit, a person must, among other things, have lost at least one day's employment and as a result be unemployed for at least four days out of seven days. A person's earnings must also have been reduced because of this loss of employment.

The Appeals Officer noted that the legislation does not prescribe the method of assessing the normal level of employment but it is usual for the 13 week period immediately preceding the date of claim to be used for the purpose of establishing a claimant's normal level of employment. During that period the appellant's normal pattern of work was four days a week in the school sector and additional days in the second employment. At the date of claim the appellant's work in the school sector had ceased for the summer break and she was getting little or no work with her other employment. The Appeals Officer concluded that the appellant had shown that she had lost a day's insurable employment per week and that her earnings had been reduced because of the loss of employment.

Outcome: Appeal allowed

2020/40 Jobseeker's Benefit Summary Decision

Question at issue: Eligibility (available for and genuinely seeking work)

Background: The appellant's claim for Jobseeker's Benefit following a reduction in her working hours was disallowed on the grounds that she was not genuinely seeking work. She confirmed on her application that she was not available for full-time work, was not looking for full-time work and would not accept any other type of work. In appealing the decision, she enclosed details of her job search and stated that she was in the process of arranging childcare.

Consideration: Section 62 of the 2005 Act and Articles 15 and 16 of the 2007 Regulations provides that in order to qualify for Jobseeker's Benefit a person must be unemployed and satisfy the conditions of being available for and genuinely seeking full-time employment.

In order to be considered genuinely seeking employment a person must demonstrate in the relevant period that s/he has taken steps that offer the best prospect of employment, including applications to persons with advertised jobs or who appear to be in a position to offer employment and availing of reasonable opportunities for suitable training. The relevant period was the period in respect of which the person concerned had made a declaration that s/he had been continuously unemployed since the date of application for Jobseeker's Benefit.

The appellant clearly stated on her application that she was not available for, and not looking for, full-time work. She subsequently confirmed that caring for her child was hindering her flexibility to work. While the Appeals Officer noted the appellant's grounds of appeal regarding efforts made to arrange childcare and secure employment, she concluded that the appellant had not established that she was available for and genuinely seeking work at the time of application in accordance with the governing legislation.

Outcome: Appeal disallowed

2020/41 Jobseeker's Benefit for Self-Employed Summary Decision

Question at issue: Eligibility (engaged in self-employment)

Background: The appellant applied for Jobseeker's Benefit as a self-employed person in November 2019. Her application was disallowed by the Department on the grounds that as her business was deemed to be only temporarily closed, she was considered to be engaged in self-employment.

In appealing the decision, the appellant stated that her last contract finished in November 2019, she was not able to secure work on or after that date and that it was not seasonal work. She queried how her business could be considered to be temporarily closed and questioned what was temporary when she had been without an income for four weeks. She stated that she was a self-employed person but was not engaged in self-employment at that time as she was not working.

The Department stated that the appellant declared that she was between contracts as a TV producer and was seeking further employment as a TV producer either as a self-employed person or in insurable employment. The Department submitted that if a person's contract ends, it is considered a temporary closure and the person is considered to be still engaged in self-employment and is not entitled to Jobseeker's Benefit for the self-employed. The Department also submitted that a person must have lost self-employment involuntarily and not as a consequence of a temporary shutdown or seasonal closure arising in the normal course of business.

Consideration: The legislation provides that in order to qualify for Jobseeker’s Benefit as a self-employed person one cannot be engaged in self-employment. The question at issue was whether the appellant was engaged in self-employment at the time of application.

The appellant was a self-employed freelance TV producer. Her employment history demonstrated that this work was contract based and that during the period 2017 to 2019 she had only one gap of two weeks, and a second gap of one month between contacts. At the time of application, the appellant’s contract had finished, she declared this was not on a temporary basis or due to a seasonal closure. Further correspondence indicated that the appellant did not find further employment until February 2020 and this was insurable employment.

On the basis of the evidence the Appeals Officer concluded that the appellant lost her self-employment involuntarily and not as a consequence of a temporary or seasonal closure of the business and as such she could not have been considered to be engaged in self-employment.

Outcome: Appeal allowed

2020/42 Jobseeker’s Transitional Payment Summary Decision

Question at issue: Eligibility (means)

Background: The appellant was assessed by the Department as having weekly means of €11. The appellant was provided with a breakdown of the means assessment calculation.

Consideration: The Appeals Officer outlined that the relevant legislation was Sections 141, 142, 148A and Part 2 of Schedule 3 of the 2005 Act. The means assessed were derived from a monthly maintenance payment received by the appellant from her son’s father of approximately €200 monthly. The appellant submitted in her appeal that she paid weekly rent of a specified amount and that her son’s father used the monthly maintenance payment to fund activities with his son during access visits. She said the father considered the maintenance payment to be his son’s money.

Jobseeker’s Transitional Payment is a means tested payment and the manner in which a means assessment is to be carried out is prescribed in the governing legislation. The disregards to be applied are also set out in the legislation. The Appeals Officer outlined that payments made in respect of rent or a mortgage may be deducted from a maintenance payment up to a maximum value of €95.23. Thereafter, 50% of the maintenance payment may be assessed as means.

The Appeals Officer reviewed the Department’s calculations in this case and concluded that the appellant’s means were correctly assessed having regard to the governing legislation.

Outcome: Appeal disallowed

2020/43 Supplementary Welfare Allowance (Rent Supplement) Summary Decision

Question at issue: Eligibility

Background: The appellant's application for Rent Supplement for the period from April 2020 to July 2020 was refused on the grounds that the appellant lived in a Housing Assistance Payment (HAP) designated area and did not fulfil the qualifying criteria for Rent Supplement.

The appellant moved into the property in April 2020 and was awarded HAP from July 2020. Prior to April 2020 the appellant lived in a different property for three months and previously had been staying with friends.

The appellant submitted that she applied for HAP at the beginning of April having submitted all the relevant documentation. She had paid rent since April at €925.00 per month. She submitted that this was three months' rent that she had to pay out of her own pocket and she was in debt to her family as they had to help her in paying her rent. She had two young children and her eldest child had special needs and she advised that she was struggling financially.

Consideration: The Appeals Officer identified Section 198 (3) of the 2005 Act and Article 38 of the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S. I. No. 412 of 2007) as the relevant legislation.

In accordance with the governing legislation Rent Supplement may be paid to persons who are in need of accommodation on a short-term basis and who are unable to provide it from their own resources.

The legislation provides that for households in a HAP designated area, it is necessary that a claimant is a *bona fide* tenant and was previously in receipt of Rent Supplement within 12 months of the date of application. If this condition is not met, the legislation prescribes that Rent Supplement may be paid where at the commencement of the tenancy the person had an expectation that he/she could continue to be able to pay the amount of the rent and had experienced a substantial change in their circumstances such that he/she was unable to pay the amount of the rent.

The Appeals Officer noted that the appellant was awarded HAP from July 2020 and that guidelines in operation at the time advised that persons applying for Rent Supplement should not be directed to the local authority for social housing support, including HAP, until after the Covid-19 emergency.

The Appeals Officer outlined that Article 38 of the above Regulations provides that a Designated Person may award a supplement in any case where it appears that the circumstances of the case so warrant. The Appeals Officer noted that the appellant's claim was not considered having regard to this provision.

Taking all the circumstances of the case into consideration, including the Covid-19 restrictions prevailing at that time, the appellant's social circumstances and the fact that she was awarded HAP from July 2020, the Appeals Officer was satisfied that the appellant was entitled to Rent Supplement under Article 38 of the above Regulations for the period from the date of application in April 2020 to the date of award of HAP in July 2020.

Outcome: Appeal allowed

2020/44 Supplementary Welfare Allowance (Rent Supplement) Summary Decision

Question at issue: Backdating

Background: The appellant's application for Supplementary Welfare Allowance was approved by the Department from a specified date in 2019. The appellant sought backdating to the date she applied for Illness Benefit. She stated in her letter of appeal that she had been involved in a road traffic accident and as a consequence was physically unable to apply at an earlier date.

Consideration: The Appeals Officer outlined that in accordance with Article 20 of the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S.I. No. 412 of 2007) the prescribed time for making a claim for Supplementary Welfare Allowance is the day in respect of which the claim is made. Those Regulations also provide that where a person fails to make a claim within the prescribed time, the person shall be disqualified from receiving payment in respect of any period before the date on which the claim is made. An exception to this latter provision is provided for in Article 22 of the Regulations to the effect that where the person can show that, in addition to being entitled to the allowance, there was good cause for the delay in making the claim.

The Appeals Officer noted that the appellant's reason for the failure to make the claim at an earlier date and was satisfied that the appellant had shown good cause.

Outcome: Appeal allowed

2020/45 Supplementary Welfare Allowance (Rent Supplement) Summary Decision

Question at issue: Eligibility

Background: The appellant's claim for Rent Supplement was disallowed by the Department on the grounds that the appellant was living in a Housing Assistance Payment (HAP) designated area and the appellant was not in receipt of Rent Supplement in the previous 12 months nor living in private rented accommodation and paying rent for a period of 183 days in the preceding 12 months. The Department submitted that as the appellant was not a *bona fide* tenant and as she was not in receipt of a Rent Supplement within 12 months of the date of application she did not qualify for a Rent Supplement and would instead have to apply for payment under the HAP scheme.

The appellant's previous tenancy, which was for a lengthy period, had terminated in 2018. The appellant had been living at a friend's address for the period of 12 months prior to obtaining her current accommodation.

Consideration: The Appeals Officer outlined that since the introduction of HAP, a Rent Supplement may only be awarded in a HAP designated area where a person is a *bona fide* tenant and is residing in private rented accommodation in circumstances where at the commencement of the tenancy the person could have reasonably afforded the rent and had experienced a substantial change in circumstances such that the person was unable to pay the rent. The person must have been in private rented accommodation and meeting the cost of rent for a period of at least 183 days within the preceding 12 months of the date of claim for Rent Supplement. The evidence in this case was that the appellant had been living with a friend since early 2018 and had not been living in private rented accommodation in that period. The Appeals Officer concluded that the appellant did not meet the conditions set out in legislation in order to qualify for payment of Rent Supplement.

Outcome: Appeal disallowed

2020/46 Farm Assist Summary Decision

Question at issue: Eligibility (means)

Background: The appellant's application for Farm Assist was disallowed on the grounds that his means exceeded the limit applicable to his personal circumstances. He was assessed with weekly means of €450 derived from farming, his spouse's insurable employment and capital from savings and a rental property.

In the notice of appeal the appellant contended that the Department did not take into account expenses in relation to loans on the farm and the purchase of farm machinery, PRSI, property tax, credit card repayments, maintenance of the family home, family medical expenses, running costs of his spouse's car for work and the cost of transporting children to their sports activities and his health.

Consideration: Section 213 (2) and Rule 1(9) (b) of Part 2 of Schedule 3 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 any form of self-employment.

The Appeals Officer noted that while the means assessment is based on the income for the previous year the assessment must give a fair and reasonable assessment of the net income which the holding will provide annually i.e. an average annual income over the next number of years. It is based on the expected annual income having regard to normal output and costs appropriate to normal stock levels, capacity and market trends.

The Appeals Officer found that the assessment of farm means was fair and reasonable on the basis of the evidence. It was noted that the assessment took account of interest on farm loans and had allowed reasonable deductions in relation to fuel costs for the farm and the purchase of farm machinery. The Appeals Officer noted that there is no provision in governing legislation which allows domestic or personal living expenses including medical expenses, property tax, fuel expenditure in relation to family activities, home maintenance etc. to be taken into account.

Article 153 of the 2007 Regulations provides for the method of the calculation of means from a spouse's insurable employment. A disregard of €20 a day for each day worked up to a maximum of three days a week (€60 a week) had been applied. The Appeals Officer was satisfied that the calculations were correct and in accordance with the governing legislation. The Appeals Officer was also satisfied that the assessment in relation to capital was in line with the governing legislation.

The Appeals Officer concluded that the assessment of means by the Department was in line with the provisions for assessment of means in relation to farm income, spouse's insurable employment and capital. The appellant's means remained in excess of the limit applicable to his personal circumstances.

Outcome: Appeal disallowed

2020/47 Farm Assist Summary Decision

Question at issue: Eligibility (whether the appellant was a farmer)

Background: The appellant applied for Farm Assist on the basis of growing vegetables on a small rented plot (0.0003 hectares). The application was disallowed by the Department on the grounds that it was not satisfied that the appellant was a farmer as defined in Section 213 of the 2005 Act. The appellant submitted that he was farming as defined in the same section of the 2005 Act and relied in particular on the term 'using land for the purposes of husbandry'.

Consideration: The Appeals Officer outlined that in accordance with Section 213 of the 2005 Act "farming" means farming farm land including commonage, which is owned or leased by a person and used for the purposes of husbandry, or does not form part of a larger holding and is used for the purposes of husbandry.

The Appeals Officer noted that the appellant had no documentation from other statutory sources to support the contention that he was a farmer. There were no receipts to indicate commercial activity. The Appeals Officer outlined that such examples might include documentation from the Department of Agriculture in relation to the Single Farm Payment or details of registration with a farming organisation.

The Appeals Officer was not satisfied that the appellant was 'farming farm land' as specified in Section 213 of the 2005 Act and he was not satisfied that the appellant could be considered to be a farmer.

Outcome: Appeal disallowed

2020/48 Farm Assist Summary Decision

Question at issue: Eligibility (no longer deemed to be a farmer)

Background: The appellant had been in receipt of Farm Assist for a period of 12 years. Following a review by the Department the claim was disallowed on the grounds that she was not deemed to be a farmer as defined in Social Welfare legislation and had no farming activity other than the forestry element of her business. The appellant had a number of acres under forestry which was planted in 1992 by the Department of Agriculture. The forest was never thinned out and was lying idle and the appellant submitted that she could not afford to thin it out.

In appealing the decision, the appellant contended that she was farming as defined in the governing legislation. She submitted that the definition of farming means farming farm land including commonage which is owned and used for the purposes of husbandry. The appellant also submitted that the definition of "husbandry" (as outlined on the Department's operational guidelines) means working of the land with the object of extracting the traditional produce of the land and that this includes the cultivation of crops or trees (forestry) and the keeping of livestock and poultry.

Consideration: The Appeals Officer outlined that "farming" as defined in Section 213 of the 2005 Act means farming farm land including commonage, which is owned, and used for the purposes of husbandry by the claimant and "husbandry" means the working of the land with the object of extracting the traditional produce of the land.

The Appeals Officer also outlined that the Department's guidelines define "husbandry" as the working of the land with the object of extracting the traditional produce of the land. This includes the cultivation of crops or trees (forestry) and the keeping of livestock and poultry.

The Appeals Officer concluded that while the appellant did not engage in any work on the farm, the legislation does not elaborate on the definition of working insofar as it applies to a person cultivating forestry. The Appeals Officer also noted that as a general rule the Department accepted that forestry is classed as farming from a husbandry point of view and that the appellant was in receipt of Farm Assist for 12 years on that basis. There was no evidence submitted which showed any change in the appellant's farming practice that warranted a change in her entitlement to Farm Assist and the Appeals Officer concluded that the appellant's farming practices were no different to when she was initially awarded the allowance.

Outcome: Appeal allowed

3.4 Case Studies

Retired, Older People
& Other

2020/49 State Pension (Contributory) Summary Decision

Question at Issue: Eligibility (increase for qualified adult)

Background: The appellant transferred to State Pension (Contributory) at the maximum rate on his 66th birthday in March 2015 having been in receipt of Invalidity Pension immediately before that. His spouse was a qualified adult and the rate of payment included an increase in respect of a qualified adult at a reduced rate.

The appellant's spouse was later awarded State Pension (Contributory) from her 66th birthday. At this point it came to light that the spouse's earnings were in excess of the limit prescribed for the purposes of paying an increase for a qualified adult for some periods of the appellant's claim. Following a more detailed review carried out by the Department it was established that appellant had no entitlement to an increase for the period from January 2018 as his spouse had means in excess of €310 per week. He had entitlement to an increase at a reduced rate for the period January 2017 to January 2018 as his spouse had income from employment between €100 and €310. He had entitlement to a higher rate for the period March 2015 to January 2017. The decision resulted in an overpayment being assessed with offset for arrears due to the appellant for the period March 2015 to January 2017.

Consideration: Social Welfare legislation provides for an increase in the weekly rate of State Pension (Contributory) where a claimant has a qualified adult. The legislation also prescribes the circumstances in which a spouse is specified to be a qualified adult for the purposes of payment of an increase for a qualified adult. The relevant legislation is contained in Articles 6 to 10 of the 2007 Regulations.

The Appeals Officer noted that when the appellant transferred from Invalidity Pension to State Pension (Contributory) no review was carried out with regard to his continued entitlement to an increase in respect of a qualified adult and no reviews were carried out between 2015 and 2019.

The appellant submitted that he was unaware that he was being underpaid for the period from March 2015 to January 2017 and the Appeals Officer accepted that the appellant was also unaware that he was being overpaid for the other periods.

Taking all the circumstances of the case into account the Appeals Officer concluded that it was appropriate to apply the provisions of Section 302 (b) of the 2005 Act. The effect of the decision was that no overpayment arose.

Outcome: Appeal allowed

2020/50 State Pension (Contributory) Summary Decision

Question at Issue: Backdating

Background: The appellant appealed the decision to disallow an application for State Pension (Contributory) for a period during which the appellant did not satisfy the contribution conditions contained in Section 110 (2) of the 2005 Act. Section 110 (1) of the 2005 Act provides that the contribution conditions for State Pension (Contributory) shall not be regarded as being satisfied unless all self-employment contributions payable by a person have been paid. Subsection (2) goes on to provide that a State Pension (Contributory) shall not be payable in respect of any period preceding the date on which all self-employment contributions payable by a claimant have been paid.

The appellant submitted an application for State Pension (Contributory) prior to reaching her 66th birthday which was refused on the grounds that she had outstanding unpaid self-employment contributions. The appellant paid the outstanding contributions in July 2019 and her application for State Pension (Contributory) was awarded from July 2019. The appellant requested that her entitlement be back-dated to the date of her 66th birthday, in May 2019, on the grounds that she paid the outstanding liability as soon as the Department notified her that she had unpaid contributions. She contended that, had she received notification prior to reaching the age of 66, she would have paid the outstanding monies in advance of reaching pension age.

Consideration: The Appeals Officer noted that the appellant had paid the outstanding self-employment contributions as soon as she was made aware of the amount outstanding. However, the Appeals Officer outlined that Section 110(2) of the 2005 Act does not allow for any discretion to award payment of State Pension (Contributory) for any time prior to the date on which all self-employment contributions had been paid.

Outcome: Appeal disallowed

2020/51 State Pension (Contributory) Summary Decision

Question at Issue: Backdating (increase for qualified adult)

Background: The appellant was awarded State Pension (Contributory) from a specified date in 2014. He was also awarded an increase in respect of a qualified adult at a reduced rate with effect from a date in 2015. The reduced rate was based on weekly means from letting income of €210. In his application the appellant had indicated that his spouse had no income from self-employment or otherwise. During a review of his pension entitlement the appellant queried the reduced rate awarded in respect of a qualified adult and stated that his spouse had no separate source of income, savings or any independent source of income. In March 2020 the appellant requested backdating of the increase in respect of a qualified adult to March 2015 as he had stated in Part 8 of his original application that his spouse had no source of income. The appellant was awarded the maximum increase from February 2019, the date coinciding with his request for a review. Further backdating of six months was allowed to August 2018, that being the maximum period of backdating permitted under legislation.

The appellant appealed the decision and submitted he had supplied the correct information at the time of his original application but that due to Departmental error his spouse was mistakenly treated as having independent means.

Consideration: The Appeals Officer outlined that legislation provides that a person is disqualified from receiving payment, including any increase in that payment, where the claim is not made within the prescribed time. Notwithstanding these provisions, a payment may be backdated for up to six months where it is established that throughout the period between the earlier date and the date on which the claim was made, there was good cause for the delay.

The circumstances in which a claim may be backdated for more than six months are limited to incapacity to make a claim or where incorrect information is given by an officer of the Minister. The Appeals Officer was satisfied that the appellant had provided the correct information at the time of his original application but that the officer handling his claim had mistakenly assessed his wife as having independent means.

The mistake arose in the completion of the qualified adult means questionnaire by the appellant's spouse. In the questionnaire she was mistakenly listed as the claimant and the appellant as the spouse/partner. The means from self-employment were incorrectly attributed by the Department to the qualified adult rather than to the appellant.

The Appeals Officer concluded that the Department should have noticed that the questionnaire was actually completed by the spouse and that the income from self-employment related to the appellant's self-employment. In those circumstances, and relying on Article 186(2) of the 2007 Regulations, the Appeals Officer considered that payment of the increase in respect of a qualified adult should be approved from March 2015.

Outcome: Appeal allowed

2020/52 State Pension (Non-Contributory) Summary Decision

Question at Issue: Eligibility (means)

Background: The appellant's application for the State Pension (Non-Contributory) was disallowed on the grounds that by failing to provide information requested by the Department he had failed to show that his means did not exceed the maximum rate payable.

The appellant was interviewed by a Social Welfare Inspector of the Department in relation to his means. The appellant said he was living with his landlady and his rent was covered by doing odd jobs. He told the Social Welfare Inspector that he received a significant inheritance and he had some income from odd jobs, gardening, painting etc. for family and friends. Following the interview, the Social Welfare Inspector asked the appellant to provide a number of documents, including proof of how he was supporting himself. The appellant was subsequently advised that, having failed to furnish any of the documents requested, his claim had been refused.

The appellant submitted that he fully disclosed his means and provided bank statements as requested. He said he did not have any income from employment or self-employment or assets and it was not possible to provide any documentation in this regard. He submitted that the Department's request to provide information in relation to income he did not have was unreasonable. The appellant also submitted that he could not provide details of 'proof of support' as he did not receive any formal supports, other than informal family supports and irregular support in exchange for odd jobs. The appellant provided a letter from his landlady and recent bank and credit union statements. He outlined that after spending 20 years caring for his mother he continued to live in the family home until it was sold. He was living off his savings for some time and his landlady had agreed to defer payment of rent until the award of pension.

Consideration: Section 153 of the 2005 Act provides that a person shall be entitled to State Pension (Non-Contributory) where the means of the person 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 the person in accordance with Section 156.

The Appeals Officer outlined that Article 181 of the 2007 Regulations 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 a claim.

The Appeals Officer was satisfied that the letter from the appellant's landlady and updated statements in relation to a bank account and a credit union account were provided and the transactions in these accounts supported the appellant's contention that he had no income and was living off his savings. The evidence also showed that the only transaction on the bank account in a six month period was for the exact amount that was withdrawn when the appellant's credit union account was cleared on the same day.

The Appeals Officer was satisfied that the appellant had provided a credible account of his means and provided documentary evidence in so far as that existed. The Appeals Officer accepted that the appellant could not produce receipts and proof of support as these did not exist.

The Appeals Officer concluded that the appellant had provided sufficient information in order to determine means for the purposes of his application for State Pension (Non-Contributory).

Outcome: Appeal allowed

2020/53 State Pension (Non-Contributory) Summary Decision

Question at Issue: Eligibility (rate of pension for person in receipt of other payment)

Background: Section 159 of the 2005 Act provides that where a person was in receipt of Disability Allowance immediately before becoming entitled to State Pension (Non-Contributory), the rate of pension cannot be lower than what was payable on Disability Allowance.

The appellant applied for State Pension (Non-Contributory) in November 2019 prior to his 66th birthday having been in receipt of Disability Allowance at the maximum rate. He owned some land, which when last assessed in 2011 for Disability Allowance purposes had a capital valuation of €44,000. As there is a €50,000 disregard of capital for the purposes of the Disability Allowance scheme the appellant was assessed with nil means.

Following his application for State Pension (Non-Contributory) an up-to-date valuation of €75,000 was provided. The capital disregard for State Pension (Non-Contributory) is €20,000 and if applied, the appellant's rate of State Pension (Non-Contributory) would have been €97 weekly.

The Deciding Officer contacted the Disability Allowance section in the Department to establish what rate of Disability Allowance would have been payable if a valuation of €75,000 had applied. The Deciding Officer was informed that it would have been €155.50 weekly. The nearest State Pension (Non-Contributory) rate to this was €157.00 and the appellant was awarded this rate.

Consideration: The grounds of appeal centred on Section 159 of the 2005 Act, which provides that a person moving to State Pension (Non-Contributory) immediately after Disability Allowance cannot get a lower rate on State Pension (Non-Contributory) than was payable on Disability Allowance.

The Appeals Officer found that the only person who can decide what was payable on Disability Allowance immediately before State Pension (Non-Contributory) is a Deciding Officer of the Department. A Deciding Officer in the Disability Allowance section declined to revise the last decision made which meant that the maximum rate of Disability Allowance was the rate payable. Accordingly, the Appeals Officer decided that in accordance with Section 159 of the 2005 Act, the appellant was entitled to the next highest rate of State Pension (Non-Contributory) of €204.50 weekly.

Outcome: Appeal allowed

2020/54 Widower's (Contributory) Pension Oral Hearing

Question at Issue: Eligibility (cohabitation)

Background: The appellant's application for Widower's (Contributory) Pension was refused on the basis that he was a cohabitant. Following investigation by a Social Welfare Inspector of the Department it was reported that the appellant stated that the named person was a tenant in his home and that she had been renting a room from him for the previous 12 years. He provided a tenancy agreement. He stated that he had renovations carried out to the house to ensure privacy for the tenant. He stated that they did their own cooking and washing and there were no shared household chores other than he would drop the named person to the shops if she needed a lift. He stated she had a disability pass and he had displayed this in his car as she did not own a car. He was listed as her next of kin for emergencies. He stated that they went on holiday on one occasion some years previous and her mother accompanied them. He stated that the named person minded his dogs during the day and that they walked the dogs together every Sunday. When asked if they were known as a couple in the area he stated that he did not think so but that they would be known for walking their dogs together on a Sunday.

The Department's Inspector also interviewed the named person regarding her own payment. She produced bank statements and the Inspector was of the opinion that the person in question was not paying rent to the appellant even though she was in receipt of Rent Allowance. This suggested that there was more than a landlord/ tenant relationship between the couple and based on all this information the Inspector was of the opinion that they were cohabiting.

Consideration: The appellant appealed the decision and submitted an affidavit and documentation in support of his appeal. He submitted that he did not live with another person as a couple, that the person in question was a tenant in his property for some 15 years, he provided documentary evidence of payment of rent from June 2018 to July 2019, he was listed as the person's landlord for the purposes of Rent Supplement from the Department and he availed of 'rent a room' relief and declared the rental income in his annual tax return.

The Appeals Officer noted that Section 124 (3) of the 2005 Act provides that a widow, widower or surviving civil partner shall be disqualified for receiving a pension if and so long as he or she is a cohabitant. The Appeals Officer outlined that in accordance with Section 2 (1) of the 2005 Act "cohabitant" means a cohabitant within the meaning of Section 172(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 which provides, among other things, that a cohabitant is one of two adults who live together as a couple in an intimate and committed relationship and who are not related to each other.

The Appeals Officer referred to the Department's guidelines which list the criteria by which cohabitation can be established and which also outline that no single criterion can necessarily support a decision and that evidence, or lack of it, in any criterion may not necessarily be conclusive. Those criteria are:

- the duration of the relationship
- the basis on which the couple live together
- the degree of financial dependence of either adult on the other and any agreements in respect of their finances
- the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property
- whether there are one or more dependent children
- whether one of the adults cares for and supports the children of the other
- the degree to which the adults present themselves to others as a couple

The Appeals Officer noted that the appellant had invited the Department's Inspector to visit his house to view the living arrangements but this invitation was declined. The Appeals Officer also made reference to the fact that while the Inspector could not find any evidence of payments for rent, the appellant had submitted a copy of the Rent Book for the period June 2018 to July 2019. The Appeals Officer also took account of the fact that the named person was in receipt of payments from the Department and was not being assessed with means as a cohabiting person. There was no evidence of shared ownership of property or financial dependence between the couple and there were no dependent children.

The Appeals Officer concluded that it had not been established that the appellant was a cohabitant as defined in the governing legislation. Having regard to the criteria outlined and evidence presented the Appeals Officer found that there was evidence which pointed to the relationship being one of landlord/tenant rather than one of a couple living together in an intimate and committed relationship.

Outcome: Appeal allowed

3.5 Case Studies

Insurability of Employment

2020/55 Insurability Summary Decision

Question at Issue: Insurability of Employment and the correct PRSI Class

Background: The appellant worked as a practice manager with her spouse who was a medical doctor. In 2019, when she was approaching pension age, she made enquiries with the Department about her entitlement to State Pension (Contributory). A mixture of PRSI Class S, K, and M contributions had been returned since she started working with her spouse and the question of the insurability of her employment was referred to a Social Welfare Inspector for investigation. The appellant, her spouse, and their accountant were interviewed by a Social Welfare Inspector and an INS1 form was completed.

A Deciding Officer in the Scope Section of the Department concluded that the appellant was employed under a contract for services i.e. self-employed. On this basis, he decided that her employment was not insurable under the Social Welfare Acts from 2003 until 31 July 2014 and PRSI Class M applied to this period. The Deciding Officer also concluded that the appellant's employment was insurable at PRSI Class S (provided she had reckonable income of €5,000 per year) from 1 August 2014 until she reached retirement age.

The decision was appealed and a submission was made by the appellant's accountant who stated that the appellant worked as a self-employed contributor and as such was entitled to pay Class S contributions for all of the years.

Consideration: The Appeals Officer outlined that Schedule 1 of the 2005 Act provides that a person who is employed in the service of their spouse is not insurable under the Social Welfare Acts. There is an exception for the spouse of a self-employed contributor when the spouse is herself/himself a partner in the business. In that situation, the person could be insurable as a self-employed contributor.

The Appeals Officer noted that the decision of the Deciding Officer that the appellant was employed under a contract for services had not been disputed. No evidence was submitted, or any suggestion made, that the appellant was a partner in her spouse's business. The Appeals Officer concluded that from 2003 until 31 July 2014, the appellant's employment was not insurable under the Social Welfare Acts and she was not entitled to pay PRSI Class S contributions for that period. PRSI Class M applied.

The Appeals Officer went on to outline that the law changed in 2014 and that from 1 August 2014, there is an exception for self-employed contributors if the spouse of a self-employed contributor participates in the business of the self-employed contributor and performs the same or ancillary tasks to those performed by the self-employed person. In this case the person is insurable as a self-employed contributor.

On the basis of the evidence provided by the appellant, the Appeals Officer was satisfied that the appellant participated in the business of her spouse, who was also self-employed, and that she performed ancillary tasks to those performed by her spouse. She therefore qualified as a self-employed contributor from 1 August 2014 and from that point until she reached pension age her employment was insurable at PRSI Class S.

Outcome: Appeal disallowed

2020/56 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 following a request from the worker for a decision on the insurability of his employment with the appellant from 1966 to 1994. He claimed that he was working under a contract of service as a panel beater in the garage from 1966 to 2005.

The Deciding Officer examined the worker's insurability from 1981 only and determined that the employment of the worker from 6 April 1981 to 5 April 1991 and 6 April 1991 to 5 April 1994 was insurable under the Social Welfare Acts at PRSI Class A.

According to the INS1 form completed by the worker he was recruited directly by the garage owner and was subject to direction and control similar to any other employee. He was not free to take up any other work and could be dismissed, he received holiday pay. He stated that the garage supplied all equipment and he only had to supply labour. He submitted an affidavit sworn by a former employee who worked for the appellant from 1981 to 2003 who stated that during that period the worker was working in the body shop as an ordinary employee.

The appellant provided a number of short statements in relation to the worker's employment. He claimed that the worker was self-employed up to 1994 when he became an employee. He stated that the worker was self-employed and had some employees himself in the 1970s. He stated that the worker regularly worked in the USA in the 1980s. He pointed out that the worker had made self-employed returns for the years 1988, 1989 and 1990. He later completed an INS1 form reiterating his earlier statements.

In his letter of appeal the appellant stated that he shared premises with the worker from 1966 and that the worker operated as a panel beater. The appellant stated he was himself a manager with a separate company from 1964 to 1970. When the appellant moved premises in the early 1970s to set up his own business, the worker also moved to the new premises and at that stage the worker had one employee in his panel beating business. The worker carried out some work for the appellant's garage as well as having his own customers. He stated the worker set his own hours and was paid for the work performed for the garage. He stated the worker worked abroad in the 1980s and wondered how he could be working for the appellant if abroad and self-employed for a number of years.

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 case law has identified four main tests –

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

Oral Hearing: The worker stated that he never knew that a full contribution was not being paid for him until he reached pension age and only qualified for payment at a reduced rate. He stated that he was working for the appellant in the old garage and then in the new premises from 1966 right up to 2005. In that time the only holiday he ever took was six weeks in the USA to visit his brother which was what the appellant was referring to when he said that he was abroad. In the early days he got paid by the work done but he said that subsequently the appellant got an agency for a large company so he received a set wage every week. He had no reason to believe a contribution was not being paid for him.

The Appeals Officer noted that, as with many of these types of cases, the nature of the employment relationship contained both elements of a contract of service and a contract for services. The Appeals Officer was satisfied that there was mutuality of obligation between the parties and noted the fact that the worker provided his own equipment and that for at least a three year period he registered as self-employed for tax purposes. The Appeals Officer considered that the strongest indicator of a contract of service was the level of control that existed in the relationship and the worker's integration into the company as a whole. The Appeals Officer noted the evidence from a former worker (now deceased).

It was clear to the Appeals Officer that the appellant and the worker were at total odds in their evidence and both clearly had very different views of the employment status. The Appeals Officer believed that the reality of the relationship lay somewhere in between in that the worker initially was self-employed but that he gradually was assimilated into the business at some stage in the 1980s. The Appeals Officer agreed with the approach of the Deciding Officer of Scope Section of the Department who took 1981 as the starting date for employment based on the affidavit of the employee which was sworn in September 2015.

The Appeals Officer concluded that the worker was employed under a contract of service insurable under the Social Welfare Acts at PRSI Class A where reckonable earnings were above €38 weekly from April 1981 to 5 April 1994.

Outcome: Appeal disallowed

3.6 Case Studies

Section 318 Reviews

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

2020/318/57 Child Benefit

Question at issue: Eligibility (qualified child and resident in the State)

Grounds for Review: The appellant contended that the Appeals Officer erred in law in finding that the child in respect of whom Child Benefit was claimed could not be regarded as ordinarily resident in the State and that the appellant could not be considered to be a 'qualified person'.

Background: The appellant applied for Child Benefit in respect of a child who was living with her in the State but whose parents lived outside the State. Evidence presented to the Appeals Officer included a notarised letter to the effect that the child's parents had appointed the appellant guardian of the child and it was asserted that this act should be interpreted as having transferred custody of the child in line with the principles contained in the Guardianship of Infants Act, 1964.

Review: The legislation governing entitlement to Child Benefit is set out in Part 4 of the 2005 Act and certain provisions of the 2007 Regulations.

Section 219 of the 2005 Act provides that a child shall be a 'qualified child' where, among other things, she/he is ordinarily resident in the State.

Section 220 provides that a person, known as a 'qualified person', with whom a qualified child normally resides shall be qualified for Child Benefit in respect of that child. Section 220 also provides that the Minister may make rules for determining with whom a qualified child shall be regarded as normally residing. Those rules are contained in Article 159 of the 2007 Regulations.

Rule 4 was applicable in this case in determining if the child could be regarded as normally residing with the appellant and provides:

Subject to Rule 8, a qualified child, who is resident elsewhere than with a parent or a step-parent and whose mother is alive, shall, where his or her mother is entitled to his or her custody whether solely or jointly with any other person, be regarded as normally residing with his or her mother and with no other person.

From my review of the papers that were before the Appeals Officer there was no evidence that the child's mother was not entitled to custody of the child.

I considered that as guardianship and custody are different legal concepts it was not open to the Appeals Officer to conclude based on the evidence presented that the child's mother was not entitled to custody of the child and in those circumstances the Appeals Officer could not exclude the application of Rule 4.

Outcome: Decision not revised

2020/318/58 Domiciliary Care Allowance

Question at issue: Eligibility (qualified child)

Grounds for Review: The appellant requested a review of the Appeals Officer's decision on the basis that the Appeals Officer erred in fact and in law by not taking account of all of the medical evidence and supporting documentation outlining the child's severe mental health, learning difficulties and the need for supervision and support in daily activities. It was asserted that the Appeals Officer placed too much emphasis on the child's ability to do certain activities independently and without supervision. These activities were primarily concerned with road usage and road safety. It was submitted that the child met the medical criteria as outlined in the governing legislation and in the Department's guidelines: *Medical Eligibility Guidelines for Domiciliary Care Allowance* with specific reference to Chapter 5, paragraph 5.6 which states that:

After some consideration, the definition of disability agreed was:- any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a child compared to a child of the same age.

In the review request it was outlined that the child was awarded Disability Allowance from his 16th birthday and Carer's Allowance has been awarded to his mother. It was submitted that this demonstrated the caring needs presently and that these caring needs had not changed since the application was submitted. In this respect it was contended that the caring needs to qualify for Carer's Allowance are similar to the caring needs to qualify for Domiciliary Care Allowance.

Background: The appellant's claim for Domiciliary Care Allowance was disallowed by a Deciding Officer of the Department on the grounds that the child, who at the date of application was 13 years of age, was not regarded as a qualified child under the governing legislation. It was outlined that Domiciliary Care Allowance can only be paid in respect of a child who has a severe disability that requires care and attention substantially in excess of that required by a child of the same age without that disability. The decision of the Deciding Officer remained unchanged following a review by the Deciding Officer and an appeal which was determined by the Appeals Officer by way of an oral hearing was disallowed.

Review: The substantive question before the Appeals Officer was whether at the date of claim it had been established that the child was a qualified child for the purposes of the payment of Domiciliary Care Allowance as set out in Section 186C of the 2005 Act.

For the purposes of the review I read the Department's guidelines relating to the medical eligibility for Domiciliary Care Allowance. I formed the view that the paragraph I was referred to related specifically to the Expert Medical Group's agreed definition of '*disability*'. I was satisfied that the Appeals Officer accepted that the child had a disability and that additional care and attention was required but the central question before him was whether the child had a disability so severe that he required care and attention substantially in excess of another child of the same age without the disability.

Insofar as it was submitted that undue weight was afforded to the evidence that the child was allowed to do certain activities independently and unsupervised and that this is not provided for in legislation I was satisfied that while the legislation does not specifically mention independent action or road safety it was open to the Appeals Officer to explore this aspect of the child's care needs.

In this respect I noted that the application form for Domiciliary Care Allowance (Dom Care 1) allows the person claiming the allowance to provide details of the child's care needs and specifically to set out the extra care needs compared with a child of the same age without the same disability.

The application form includes questions relating to safety and one of those questions specifically relates to comprehension or perception of road safety. In those circumstances the Appeals Officer was not precluded from considering this aspect of the child's care needs. Insofar as it was asserted that the Appeals Officer afforded undue weight to this evidence, I was of the view that having regard to the totality of the evidence presented this assertion was unfounded. The Appeals Officer had considered all of the evidence including the GP's report which outlined that the child's conditions affected him severely in the case of mental health and to a mild/moderate extent in nine other categories.

Insofar as it was outlined that the award of Disability Allowance to the child and Carer's Allowance to his mother was evidence of meeting the qualifying conditions for Domiciliary Care Allowance I was satisfied that the Appeals Officer was confined to considering the child's care needs at the date of application for Domiciliary Care Allowance. While acknowledging that the qualifying conditions for receipt of Carer's Allowance were met and payment awarded from when the child reached 16 years of age I was satisfied that it cannot be concluded that the care required some years earlier when the child was aged 13 had also been met. While acknowledging that the care required by a child of 13 may not be substantially different to the care required by a child at age 16 I outlined that the critical aspect in order to meet the legislative condition for receipt of Domiciliary Care Allowance is whether the care and attention required by the child is substantially more than a child of the same age without the condition. I was satisfied that, having regard to the totality of the evidence before the Appeals Officer, the evidence did not support a conclusion that the care required by the child was substantially more than a child of the same age without the condition.

Outcome: Decision not revised

2020/318/59 Domiciliary Care Allowance

Question at issue: Eligibility (qualified child)

Grounds for Review: The appellant requested a review of the Appeals Officer's decision on the basis that the evidential threshold was set too high and insufficient emphasis had been placed on the evidence presented.

It was submitted that it was clear from the evidence presented that the child met the statutory criteria and that insufficient weight was attached to the evidence that the child had been assigned a special needs assistant. It was submitted that the criteria for a special needs assistant closely mirrors that of Domiciliary Care Allowance in that it must be established that the care needs of the child are substantially more than those of the child's peers. In this respect it was submitted that it was irrational to suggest that the child required a substantial level of care provision in a school environment that he did not require at home.

Background: The appellant's claim for Domiciliary Care Allowance was disallowed by a Deciding Officer on the grounds that the child was not regarded as a qualified child as defined in Section 186C of the 2005 Act. That outcome remained unchanged following a review by the Deciding Officer and the subsequent appeal was unsuccessful.

Review: The Appeals Officer concluded that the evidence presented indicated that the child required ongoing additional supports, supervision and care with regard to certified medical conditions. The evidence also indicated that the child attended mainstream school and had been assigned a special needs assistant, was able to travel to school by bus without assistance, washed and dressed independently and participated in sport activities. Having regard to the totality of the evidence the Appeals Officer concluded that it had not been established that the child was so severely disabled 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. From my review of the decision it was clear that the Appeals Officer considered all the evidence, including that adduced at an oral hearing of the appeal, and his decision was based on the totality of the evidence. I found no evidence that the evidential threshold was set too high by the Appeals Officer or that insufficient emphasis had been placed on any of the evidence presented.

Insofar as it was contended that it was irrational to suggest that the child required a substantial level of care provision in a school environment that he did not require at home, I found no evidence that the Appeals Officer made such a suggestion. From my review the Appeals Officer set out in a clear and factual manner the evidence presented in support of the application. While the Appeals Officer noted that the child had a special needs assistant and that fact formed part of the evidence the Appeals Officer took into account, I was satisfied that the legislation governing entitlement to Domiciliary Care Allowance is that contained in Section 186C of the 2005 Act and not the legislation or criteria relating to the allocation of a special needs assistant.

Insofar as it was contended that there was insufficient analysis at the oral hearing in respect of a psychological report indicating that the child continued to achieve significantly below expectation for a child of his age, I was satisfied that the report in question primarily related to recommendations for future supports for the child and it did not support a conclusion that the child required continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age without the disability. Other medical evidence submitted in support of the request for a review of the Appeals Officer's decision also related to a referral to support services but did not support a conclusion that the child met the statutory conditions for receipt of Domiciliary Care Allowance.

Outcome: Decision not revised

2020/318/60 Disability Allowance

Question at issue: Entitlement to Living Alone Allowance

Grounds for Review: The Department in its request for a review asserted that the Appeals Officer erred in fact by allowing payment of an increase in respect of living alone in circumstances where the appellant's child resided with her. The Department outlined that in order to qualify for this increase the person must live completely alone. There are very limited exceptions to this rule: one of which relates to a person who is residing alone but stays with a relative/friend at night or a relative/friend stays overnight for security reasons.

Background: The appellant was in receipt of Disability Allowance and applied for an increase in that payment in respect of living alone. The appellant's child lived with her. The Appeals Officer allowed the appeal with the effect that the increase in respect of living alone was awarded.

Review: On review I noted that Section 211 (1)(c) of the 2005 Act provides that the rate of Disability Allowance shall be increased by the amount set out in Column 6 of Part 1 of Schedule 4 of the Act where the person is living alone. Section 3 (1) of the 2005 Act provides that *(e) the circumstances in which a person is to be regarded as living alone shall be specified in regulations*. In circumstances where no such regulations have been made and in the absence of such legislation I considered that the words should be given their ordinary meaning.

It was clear that the appellant was not living alone and this was not disputed and the circumstances of her living arrangements did not come within the limited exceptions outlined by the Department.

The appellant could not therefore be considered to be living alone within the meaning of the governing legislation.

Outcome: Decision revised

2020/318/61 Disability Allowance

Question at issue: Eligibility (medical)

Grounds for Review: The appellant submitted that in circumstances where the medical evidence in a Disability Access Route to Education (DARE) application referred to “significant ongoing illness” that will “remain static” the medical criteria for Disability Allowance had been met and the Appeals Officer erred in law with regard to the weight afforded to this evidence.

Background: The appellant, aged 16 years, had diagnoses of Type 1 diabetes and hyperthyroid which the treating GP indicated were likely to continue indefinitely. The decision of the Deciding Officer to refuse the claim was made by reference to Section 210(1)(b) of the 2005 Act. The subsequent appeal was disallowed. The Appeals Officer noted that the ability/disability profile indicated that the degree to which the appellant was affected by the diagnosed conditions was normal in some categories and mild in the remaining categories.

A review of the Appeals Officer’s decision was conducted under Section 317 of the 2005 Act. In support of that request a copy of a DARE application was submitted. DARE is a third level alternative admissions scheme for school leavers whose disabilities have a negative impact on their second level education and offers reduced points places to school leavers who, as a result of having a disability, experience additional educational challenges. However, the Appeals Officer did not consider that the additional information in the DARE application warranted a revision of his earlier decision.

A further review of the Appeals Office’s decision was conducted under Section 317 of the 2005 Act in light of additional correspondence consisting of confirmation of the original diagnoses and advising that the appellant had been referred to CAMHS and to counselling/psychiatric services. However, the Appeals Officer did not consider that the additional information was such as would refute the determination already made.

Review: From my review of the Appeals Officer’s decision and subsequent reviews it was clear that the Appeals Officer fully accepted that the appellant was restricted by certified medical conditions. The question before the Appeals Officer was whether the appellant was substantially restricted in undertaking employment in accordance with the legislation governing entitlement to Disability Allowance. It was clear that the information outlined in the DARE application was evidence of diagnoses and prognosis for a specific purpose but I did not consider that it was evidence of the impact of those diagnoses on the appellant’s capacity to undertake suitable employment.

I therefore did not consider, as was submitted, that in circumstances where the medical evidence referred to “significant ongoing illness” that will “remain static” that this equated to the criteria for Disability Allowance having been met. I was also satisfied that the Appeals Officer had sufficient regard to this evidence and considered it in the context of the totality of the evidence presented by the appellant.

I also reviewed the material that was before the Appeals Officer which outlined that the appellant had been referred to CAMHS, was on a waiting list for an appointment for the treatment of anxiety and depression and had also been referred to a counsellor and psychiatrist for similar treatment. In this respect the Appeals Officer fully accepted that the appellant availed of and benefited from various supports and interventions. However, the Appeals Officer also referred to the ability/disability profile completed at the time of application for Disability Allowance. This profile is designed to capture the degree to which the medical conditions affect a claimant in 16 general abilities. In the appellant's case all areas were shown as normal or being mildly affected. Having regard to the totality of the evidence presented the Appeals Officer was not satisfied that the appellant could be regarded as substantially restricted in undertaking suitable employment within the meaning of the governing legislation. I did not consider that the Appeals Officer had erred in fact and/or law and the contentions submitted by the appellant did not point to error of fact and/or law such that the decision of the Appeals Officer should be revised.

Outcome: Decision not revised

2020/318/62 Disability Allowance

Question at issue: Means (benefit from a Member State of the EU)

Grounds for Review: The review in this case was sought on the basis that the Appeals Officer erred in law in failing to apply specified provisions of Regulation (EC) 883/2004 in the assessment of means in order to establish entitlement for Disability Allowance.

Background: The appellant suffered a workplace accident in the UK which had left him unable to work and he was awarded an Industrial Injury Disablement Benefit by the UK authorities.

The appellant's claim for Disability Allowance was disallowed by the Deciding Officer on the grounds that the appellant's means were in excess of the statutory limit applicable to a person in his circumstances. The Industrial Injury Disablement Benefit paid to the appellant by the UK authorities was assessed as means.

The Appeals Officer disallowed the subsequent appeal and outlined that in accordance with the Rules for calculating means all income in cash and any non-cash benefits must be taken into account. The Appeals Officer noted that Table 2 of Schedule 3 in the 2005 Act outlines the monies and payments that are specifically disregarded and decided that as the UK Industrial Injury Disablement payment was not mentioned it fell to be included in the means assessment.

Relying on Articles 4 and 5 of Regulation (EC) 883/2004, it was submitted that the Industrial Injury Disablement payment is equivalent to Disablement Benefit under the Occupational Injuries Scheme under Irish legislation (the 2005 Act) and should be excluded in the means test for Disability Allowance.

Review: The legislation governing entitlement to Disability Allowance is contained in Chapter 10 of Part 3 of the 2005 Act. Section 209 provides that means shall be calculated in accordance with the Rules contained in Part 2 of Schedule 3 of the Act.

In accordance with the Rules account shall be taken of all income in cash but excluding amounts set out in Table 2 to Schedule 3. The exclusions include *inter alia* any moneys by way of benefit and assistance under the 2005 Act. Disablement Benefit is a benefit under the Occupational Injuries Benefits provided for by Chapter 13 of Part 2 of the 2005 Act and as such is excluded when calculating a person's means for the purposes of Disability Allowance.

Social security arrangements for migrant workers and their families are coordinated across the EU in accordance with Regulation (EC) 883/2004 and its' implementing Regulation (EC) 987/2009. Both Regulations became applicable on 1st May 2010.

Article 5 of Regulation (EC) 883/2004 provides for the assimilation of facts as follows:

Equal treatment of benefits, income, facts or events

Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;

(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.

For the purpose of this review and in order to establish if the Industrial Injuries Disablement Benefit from the UK authorities is *like* Disablement Benefit under the Occupational Injuries Benefits under the 2005 Act, I consulted the relevant government websites.

The www.gov.ie website describes Disablement Benefit as a payment under the Occupational Injuries Scheme payable to an insured person who suffers a loss of physical or mental faculty as a result of an occupational accident or a prescribed occupational disease, on or after 1 May 1967.

References to occupational accidents include reference to prescribed occupational diseases as well as occupational injuries.

The www.gov.uk website describes Industrial Injuries Disablement Benefit as a payment to help if a person is ill or disabled from an accident or disease caused by work. The scheme also covers more than 70 prescribed occupational diseases.

In light of the above descriptions I was satisfied that the Industrial Injuries Disablement Benefit under UK legislation is a benefit *like* Disablement Benefit under the Occupational Injuries Scheme under Irish legislation.

The purpose of Article 5 of Regulation (EC) 883/2004 is to ensure that persons who have exercised their right of free movement within the EU should be treated equally with persons who have been subject to the legislation of just one Member State. The principle of assimilation of facts provided for in Article 5 of Regulation (EC) 883/2004 obliges Member States when applying their own legislation to take into account *like facts or events* that have occurred in other Member States or under the legislation of other Member States.

As the Industrial Injuries Disablement Benefit under UK legislation is a benefit *like* Disablement Benefit under the Occupational Injuries Scheme under Irish legislation I concluded that Article 5 of Regulation (EC) 883/2004 applied and the Industrial Injuries Disablement Benefit fell to be excluded from the means test for Disability Allowance in the same way as Disablement Benefit is excluded.

In order to achieve equal treatment of benefits as provided for in Article 5 of Regulation 883/2004, I concluded that an amount equivalent to that payable in the same circumstances if the payment was Disablement Benefit should be excluded in assessing the appellant's means.

Outcome: Decision revised

2020/318/63 Carer's Allowance

Question at issue: Eligibility (care required)

Grounds for Review: The appellant requested a review of the Appeals Officer's decision on the basis that he considered that the evidence submitted supported a conclusion that the qualifying conditions for the receipt of Carer's Allowance were met.

Background: The appellant's claim for Carer's Allowance in respect of the care of his wife was refused on the basis that the Deciding Officer considered that the person being cared for did not meet the care requirements set out in Section 179(4) of the 2005 Act. The subsequent appeal was disallowed and the position remained unchanged following a review by the Appeals Officer under the provisions of Section 317 of the 2005 Act in light of additional evidence provided by the appellant. The appellant provided further correspondence stating that his wife's condition had deteriorated and provided details of modifications being undertaken to the family home in recognition of his wife's difficulties climbing stairs.

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 full-time care. It was the second of these conditions that was at issue in this appeal.

The circumstances in which a person is to be regarded as requiring full-time care and attention are set out in Section 179 (4) 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:

(a) 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 the course of my review I considered all of the evidence which was before the Appeals Officer including the medical evidence. In considering this matter I examined each aspect of the 'care test' set out in Section 179(4) of the 2005 Act separately.

The first question to be considered was whether the caree required continual supervision and frequent assistance throughout the day in connection with normal bodily functions.

The evidence before the Appeals Officer clearly established that the caree required considerable assistance throughout the day with cooking, cleaning, washing and dressing. It was also clear that the caree was primarily housebound and needed assistance with other household work, shopping and caring for the couple's children. The Appeals Officer also noted that the caree tried to do some light housework but was only able to sustain this for short periods of time. The caree's GP outlined that the caree had suffered from low back pain with sciatica for a number of years, which had gradually got worse. The GP outlined that the pain affected the caree's sleep, she had trouble dressing, was on long-term pain relief and was attending a pain clinic. The GP also stated that he advised the caree regarding her safety in climbing stairs and also getting in/out of a bath as she was at risk of falling.

In light of the appellant's written and oral testimony and the evidence from the caree's treating doctor, it was clear that the caree required considerable assistance with all activities of daily living. I concluded that the evidence established that the caree required *continual supervision and frequent assistance throughout the day in connection with normal bodily functions* as required in the governing legislation and I considered that the Appeals Officer gave disproportionate weight to the evidence that the caree tried to do some light chores.

In light of the above conclusion and while it was not then necessary to examine if the caree met the requirements of Section 179(4)(a)(ii), I also examined this aspect of the care test.

The medical evidence which was before the Appeals Officer regarding this aspect of the legislative care test certified that the caree was at risk of falling when using stairs and also getting in/out of a bath. Evidence was also provided that work was underway to install a stair lift and construct a bedroom and shower downstairs as the caree could no longer use the stairs.

While I formed the view that the evidence may not have supported a conclusion that the caree required continual supervision in order to avoid danger to herself the evidence strongly supported the conclusion that the caree required *continual supervision and frequent assistance throughout the day in connection with normal bodily functions*.

Outcome: Decision revised

2020/318/64 Carer's Allowance

Question at issue: Eligibility (care required)

Grounds for Review: The appellant in this case requested a review of the Appeals Officer's decision on the basis that she considered that the decision was unfair and that the evidence submitted supported a conclusion that the qualifying conditions were met. The appellant also asserted that she and her husband were discriminated against on grounds of ethnic origin.

Background: The appellant's claim for Carer's Allowance in respect of the care of her husband 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 two further reviews by the Appeals Officer under the provisions of Section 317 of the 2005 Act in light of further correspondence from the appellant which included additional medical evidence.

Review: The appellant asserted that the Appeals Officer had failed in his duty by not taking account of the caree's health problems and the evidence provided. It was also asserted that the Appeals Officer failed to take into consideration the caree's mental health conditions.

It was clear the Appeals Officer accepted that the appellant's husband suffered from a number of medical conditions including mental health conditions and required a level of care that was provided by the appellant. However, the question before the Appeals Officer was whether the evidence supported a conclusion that the caree had a disability that required *continual supervision and frequent assistance throughout the day in connection with normal bodily functions*. In this respect the Appeals Officer outlined that the caree's GP certified that the caree's incapacities included diaphragmatic hernia, depression, sleep apnea, knee and lower back pain. The GP also certified the caree as being normal in cognition and consciousness /seizures and as being independent in speech, hearing, vision, feeding, bathing/showering, dressing, continence and toileting. The GP also certified that the caree was dependent with regards to mobility and that knee and back pain were having an impact. The GP outlined that the caree's mental health was affected.

From my review of the decision I was satisfied that the Appeals Officer had considered all of the medical evidence. I was satisfied from my review that the evidence provided by the appellant and the evidence from the caree's GP and consultant psychiatrist did not support a conclusion that the caree required full-time care and attention within the meaning of Section 179(4) of the 2005 Act.

In addition, I found no evidence or reference in the Appeals Officer's decision or in his consideration of the appellant's requests to review his decision that he discriminated against the couple on grounds of ethnic origin.

Outcome: Decision not revised

2020/318/65 Jobseeker's Allowance

Question at issue: Entitlement (penalty rate)

Grounds for Review: The appellant submitted a number of grounds, including some which were outside the remit of the appeals process, in support of her request for a review of the Appeals Officer's decision but the substantive issue was whether the appellant's refusal to engage with a provider under the JobPath Employment Activation Programme constituted good cause for her failure to attend activation meetings. In this respect the appellant also asserted that the governing legislation was unconstitutional.

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 employment support. A penalty rate was applied to her claim on the grounds that she had failed without good cause to attend activation meetings resulting in a reduction of €44 to her weekly payment. The appellant was subsequently disqualified from receiving Jobseeker's Allowance as she failed to avail of a further opportunity to comply with the activation process. The appellant refused to engage with the JobPath programme as she believed that this would entail entering into a contract with a third party agency. Maintaining a position that her contract was directly with the Department, the appellant stated that the correspondence she received from the provider under the JobPath programme was unsolicited and she didn't engage with any such correspondence received.

Review: As the appellant's grounds for review included issues outside the remit of the appeal process, I outlined in the first instance 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. The Appeals Officer's role in this case 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 2007 Regulations.

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 references 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), or, as the case may be, section 142A(1A).

It was clear that the appellant was of the view that her engagement in relation to activation should be directly with the Department and she refused to engage with the JobPath provider. It was also clear that the governing legislation provides that a person may be required to attend activation meetings and that for this purpose notice may be given *by or behalf of the Minister* to any person receiving Jobseeker's Allowance requesting the person to comply with the requirement to (a) attend a meeting arranged by or on behalf of the Minister, or (b) attend for or submit to an assessment of that person's education, training or development needs. It is also clear that where a person refuses or fails, *without good cause*, to comply with this requirement a penalty may be applied. I was satisfied that the words *by or behalf of the Minister* included providers under the JobPath programme.

The central issue before the Appeals Officer was whether, in accordance with the legislation governing Jobseeker's Allowance, the appellant had demonstrated 'good cause' for the failure or refusal to engage with the activation measures put in place to assist her in her job search.

I was satisfied that the Appeals Officer had not erred in fact or law in concluding that the appellant had not demonstrated 'good cause' for her failure to attend meetings arranged by or on behalf of the Minister for the purpose of providing information intended to improve her knowledge of the employment, work experience and other opportunities available to her as provided for in governing legislation.

In relation to the constitutionality of the law applied, I outlined that a law passed by the Oireachtas is presumed to be constitutional until it is proven not to be and in applying the legislation in the appellant's appeal the Appeals Officer was obliged to act on the presumption that the legislation was constitutional.

Outcome: Decision not revised

2020/318/66 Jobseeker's Allowance

Question at issue: Entitlement (penalty rate)

Grounds for Review: The appellant submitted a number of grounds, some of which related to the administration of the JobPath Employment Activation Programme and his engagement with the Department under its complaints procedure. As these issues do not come within the remit of the appeal process as provided for in the governing legislation they were not addressed in this review. The appellant asserted that the Appeals Officer by relying on the 2005 Act had erred in law and should instead have relied on the Social Welfare and Pensions Act 2013. The appellant outlined concerns in relation to the impartiality of findings of the Appeals Officer and asserted that the non-attendance of the case officer of the Department at the oral hearing of his appeal was not in keeping with a fair process. In addition, the appellant asserted that selection for participation in the JobPath programme was random and as such constituted 'good grounds' for not attending activation meetings.

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 employment support. The appellant turned up for an initial information session but refused to complete that session. The appellant failed to attend four subsequent sessions arranged by the Department. The evidence before the Appeals Officer also showed that the Intreo Centre concerned had contacted the appellant who was advised of the requirement to attend meetings and of the potential outcomes for failure to engage, including the application of a penalty rate. A penalty rate was ultimately applied on the grounds that the appellant had failed without good cause to attend activation meetings resulting in a reduction of €44 to his weekly payment.

The subsequent appeal was disallowed as the Appeals Officer considered that the appellant had not shown good cause for his failure to attend the scheduled meetings.

Review: Insofar as it was contended that the Appeals Officer erred in law by relying on the incorrect legislative provisions, I outlined that the legislation governing social welfare payments and related matters is contained in the 2005 Act - generally referred to as the Principal Act. That Act has been amended since its enactment in 2005 and one such amendment was made by Section 13 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013. Section 13(2) of the 2013 Act provides, inter alia, for an amendment to the Principal Act by the substitution for Section 141A of Section 141A, 141B and 141C. Consequently the 2005 Act must be read as including the amendments introduced by the 2013 Act. I found no error of law in the Appeals Officer's decision or reliance on the provisions of the 2005 Act as set out in the decision.

Insofar as it was asserted that the non-attendance of the case officer at the oral hearing of the appellant's appeal resulted in a lack of fair process, I outlined that Article 15 of the Social Welfare (Appeals) Regulations, 1998 (S.I. No. 108 of 1998) provides that in circumstances where an appeal is being determined by means of an oral hearing the Deciding Officer or the Designated Person, as the case may be, may appear at the hearing in person or be represented by another officer of the Minister. It is also open to the Appeals Officer to ask any other person to attend at the hearing. However, these provisions are not mandatory and it is a matter for the Appeals Officer to determine whose attendance is required in order to determine the appeal.

From my review of the material that was before the Appeals Officer I was satisfied that the attendance of the case officer was not necessary in order to ensure fair process.

I outlined that the role of the Appeals Officer was confined to the decision of the Deciding Officer which advised the appellant that his rate of Jobseeker's Allowance would be reduced by €44 per week. The decision of the Deciding Officer outlined that the appellant had, without good cause, failed to attend meetings arranged by or on behalf of the Minister for the purpose of providing information which was intended to improve knowledge of the employment, work experience, education, training or development opportunities available to him.

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 2007 Regulations.

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 contains 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), or, as the case may be, section 142A(1A).

It was clear that the appellant was requested to attend meetings for the purpose of assisting him in his search for employment. Once invoked and in circumstances where the appellant refused/failed without good cause to comply with these requirements he could not be regarded as being compliant with the provisions of Section 141A. The central question therefore before the Appeals Officer was whether the appellant had demonstrated good cause for his failure to engage and/or comply with the requirements of Section 141A.

The appellant's reasons for not attending scheduled meetings were to the effect that he saw no value in attending the programme and considered that the JobPath programme was a waste of money and considered it more useful if he conducted his own job search. In this respect I outlined that the requirement to attend such meetings is not optional and once a person is notified to attend s/he must engage, unless there is 'good cause' for non-engagement.

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 the reasons advanced by the appellant did not, in my view, constitute good cause for failure to attend such meetings.

Outcome: Decision not revised

2020/318/67 Jobseeker's Allowance

Question at issue: Eligibility (right to reside in the State)

Grounds for Review: The Department in its request for a review of the Appeals Officer's decision submitted that the Appeals Officer erred in law in that the appellant's status in the State was that of an asylum seeker who has applied to the International Protection Office for recognition as a refugee in accordance with the Refugee Act 1996 or the International Protection Act 2015 and whose application had yet to be determined.

The Department, while acknowledging that the Deciding Officer erred in carrying out a full habitual residence test rather than finding the appellant did not satisfy the habitual residence condition under Section 246(7) of the 2005 Act, submitted that under Section 311 (3) of the 2005 Act the Appeals Officer was obliged to use the correct legislation in making his decision. In those circumstances it was submitted that the Appeals Officer erred in law in arriving at his decision as it was contrary to Section 246 (7) of the 2005 Act which provides that such a person cannot be regarded as habitually resident and as such may not access standard social assistance payments.

Background: The appellant resided in Ireland and was the holder of an international protection card which was valid for six months. Her claim for Jobseeker's Allowance was disallowed by a Deciding Officer on the grounds that the appellant did not meet the habitual residence conditions set out in Section 246(4) of the 2005 Act i.e. the five factors. The appellant submitted that she resided in the State under the protection of the Minister for Justice and had a right to access the same social welfare benefits under the same conditions as applied to Irish citizens. Relying solely on Section 246(4) of the 2005 Act the Appeals Officer found that the habitual residence condition was satisfied and allowed the appeal.

Review: In accordance with Section 246 of the 2005 Act establishing habitual residence is a two stage process which firstly requires that the person has a right to reside in the State. If it is established that the person has a right to reside, an assessment of their situation under 5 factors applies to determine their centre of interest and future intentions.

From my review of the material that was before the Appeals Officer it was clear that the appellant resided in the State as the holder of an international protection card. The reverse side of that card outlined, *inter alia*, that *this temporary card indicates that an individual claiming to be the person named on the card has applied for international protection in the State.*

I was satisfied that the Appeals Officer accepted at face value an extract from a Department of Justice document which was submitted by the appellant in support of her appeal and which outlined a person's rights *if* granted international protection. The relevant section which was submitted outlined that *when* a person receives a refugee declaration or a subsidiary protection declaration under the provisions of the International Protection Act, 2015 various entitlements arise, including access to medical care and social welfare benefits subject to the same conditions applicable to Irish citizens.

However, the appellant had not received a refugee declaration or a subsidiary protection from the Minister for Justice and her status in the State was that of an asylum seeker who had applied for recognition as a refugee in accordance with the Refugee Act 1996 or the International Protection Act 2015. In those circumstances and in accordance with the provisions of Section 246(7) of the 2005 Act she could not be regarded as being habitually resident in the State.

In those circumstances I considered that the Appeals Officer had erred in law.

Outcome: Decision revised

2020/318/68 Jobseeker's Benefit

Question at issue: Disqualification in the context of a redundancy payment

Grounds for Review: The Department in its request for review submitted that the Appeals Officer erred in law in allowing the appellant's appeal in circumstances where the appellant was entitled to a redundancy payment but had not yet received that payment.

Background: The appellant applied for Jobseeker's Benefit and was disqualified from receiving payment for a period of seven weeks on the grounds that the legislation provides for a disqualification of up to nine weeks in the case of a person under the age of 55 years who receives or is entitled to receive a redundancy payment greater than €50,000.

The appellant appealed the decision on the grounds that the Department stated that she received her redundancy payment which was not the case as there was a discussion ongoing between the appellant and the employer.

The Appeals Officer considered that the disqualification was incorrectly applied. The Appeals Officer outlined that at the time of the application of the disqualification the appellant, while out of work, was in discussion with her employer regarding the redundancy and one of the potential outcomes was a return to work. At this point in time the appellant was not actually in receipt of the redundancy payment. The Appeals Officer considered that the Jobseeker's Benefit claim could have been awarded pending the outcome of the discussions with the employer and if redundancy was awarded then the claim could have been reviewed and if necessary the relevant period of disqualification applied.

Review: Section 68 of the 2005 Act contains the provisions relating to disqualifications for receiving Jobseeker's Benefit. Section 68 (6)(e) provides that a person shall be disqualified from receiving Jobseeker's Benefit for any period not exceeding 9 weeks as may be determined under the Act where he or she-

(e) being a person under the age of 55 years who, in accordance with the Redundancy Payments Acts 1967 to 2003, has been dismissed by his or her employer by reason of redundancy, has received or is entitled to receive any moneys, in excess of a prescribed amount, in respect of that redundancy under those Acts or under an agreement with his or her employer,

.....

In allowing the appeal the Appeals Officer relied on the fact, which was not disputed, that the appellant was not actually in receipt of any moneys. On the other hand the Department relied on the fact that the appellant was entitled to receive moneys in respect of redundancy and that the Appeals Officer erred in law in not having regard to this aspect of the governing legislation. From my review of the papers that were before the Appeals Officer it was clear that discussions were ongoing between the appellant and the employer in relation to the redundancy but as the matter stood when the appeal was determined the appellant was *entitled to receive moneys* in respect of a redundancy.

In those circumstances I considered that the Appeals Officer had erred in law.

Outcome: Decision revised

2020/318/69 Supplementary Welfare Allowance

Question at issue: Genuine and Effective Employment

Grounds for Review: The appellant submitted a number of grounds in support of his request for a review of the Appeals Officer's decision but the central issue was whether the employment the appellant had been engaged in could be said to be genuine and effective and as a consequence if he was a worker for the purposes of EU legislation. It was submitted that the criteria used by the Appeals Officer in assessing whether the appellant's work was genuine and effective were not defined in legislation and were not in keeping with guidance available or the jurisprudence of the Courts.

Reliance was based on a number of judgments delivered by the Court of Justice of the European Union (CJEU), including *Teixeira* (C-480/08), *Di-Paola* (C-76/76), *Tarola* (C-483/17), *Raulin* (C-357/89) *Kempf* (C-139/85) and *Levin* (C-53/81).

Background: The appellant's application for Supplementary Welfare Allowance was made some three months after his arrival in Ireland. He commenced work immediately on his arrival in Ireland and accepted work as and when it was offered to him. However, the work was not regular, involved shift work, was often outside of normal working hours and was on an immediate call basis. As the appellant was living in emergency accommodation, he missed some work opportunities that the employer had on offer and the employer gave that work to others as they were immediately available. However, the appellant had worked for a number of weeks prior to his application for Supplementary Welfare Allowance but the question was whether it could be said to be genuine and effective employment.

Review: In accordance with Article 7 of Regulation EU 492/2011 migrant workers are entitled to the same tax and social advantages as workers in the host State. In the case of Ireland, Supplementary Welfare Allowance is regarded as a "social advantage".

For the purposes of any claim to Supplementary Welfare Allowance an EU national who is engaged in genuine and effective employment and has involuntarily lost some or all of their work is regarded as a migrant worker under EC law and in those circumstances is not required to satisfy the habitual residence condition contained in Section 246 of the 2005 Act.

'Genuine and effective employment' is not clearly defined in national or EU law. In general, it is contrasted with employment which is 'marginal and ancillary'. The question therefore falls to be determined according to the circumstances of each case.

The first question before the Appeals Officer in the appellant's appeal was whether at the date of claim for Supplementary Welfare Allowance he could be regarded as a migrant worker under EC law and was engaged in genuine and effective employment and had involuntarily lost some or all work such that he was entitled to Supplementary Welfare Allowance.

From my review of the papers before the Appeals Officer it seemed that both decision makers were satisfied that the appellant became involuntarily unemployed. While certain principles of relevance emerge from the case law of CJEU there is little by way of guidance as to what constitutes genuine and effective employment. It is however clear from the case law that the terms 'worker' and 'activity as an employed person' *define the sphere of application of one of the fundamental freedoms guaranteed by the Treaty and for that reason must be given a broad interpretation*. The CJEU has ruled that part-time employment may constitute genuine and effective employment even if the income is so low as to allow a successful claim to income support such as Supplementary Welfare Allowance. However, the Court has also ruled that in order to be regarded as a worker, a person must perform effective and genuine activities to the exclusion of activities on such a small scale as to be purely marginal and ancillary.

In *Raulin* (C- 357/89) the Court provided the following guidance:

12 By its second question, the national court wishes to know whether the fact that a person has exercised an economic activity for only a short period means that such activity is purely marginal and ancillary, with the result that the person exercising that activity cannot be regarded as a worker.

13 It should be recalled that whilst part-time work is not excluded from the field of application of the rules on freedom of movement for workers, those cover only the pursuit of effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary (judgment in Case 53/81 Levin v Staatssecretaris van Justitie [1982] ECR 1035, paragraph 17). It is up to the national courts to make the necessary findings of fact in order to establish whether the person concerned can be considered to be a worker within the meaning of that case-law.

14 The national court may, however, when assessing the effective and genuine nature of the activity in question, take account of the irregular nature and limited duration of the services actually performed under a contract for occasional employment. The fact that the person concerned worked only a very limited number of hours in a labour relationship may be an indication that the activities exercised are purely marginal and ancillary. The national court may also take account, if appropriate, of the fact that the person must remain available to work if called upon to do so by the employer.

15 The answer to the second question must therefore be that the duration of the activities pursued by the person concerned is a factor which may be taken into account by the national court when assessing whether those activities are effective and genuine or whether, on the contrary, they are on such a small scale as to be regarded as purely marginal and ancillary.

From my review of the papers before the Appeals Officer in this case and having regard to the totality of the evidence I considered that the Appeals Officer in deciding that the appellant's work was not genuine and effective applied a restrictive meaning to the concept of 'worker' that I considered was not in keeping with the principles that have emerged from the case law of CJEU in relation to this concept. The effect of the revised decision was that at the date of claim for Supplementary Welfare Allowance the appellant could be regarded as a migrant worker under EC law having been engaged in genuine and effective employment.

Outcome: Decision revised

2020/318/70 Guardian's Payment (Non-Contributory)

Question at issue: Whether the eligibility criteria had been met

Grounds for Review: An advocate acting on behalf of the appellant, the child's grandmother, requested a review of the Appeals Officer's decision on the basis of mixed error in fact and law.

The following is a summarised account of the grounds submitted:

- That the Appeals Officer applied the wrong test and relied on a dictionary definition of the word 'abandon' and was not entitled to do so in circumstances where the Supreme Court has scrutinised the word 'abandon' in three named decisions;
- That the Appeals Officer erred by relying on foreign jurisprudence when there is settled Irish Supreme Court authorities on the issue;
- That the Appeals Officer erred by failing to act in accordance with the Department's guidelines when making his decision and it was asserted that he was bound to take these into account;
- That the Appeals Officer erred in law and fettered his discretion in seeking to distinguish the case from a precedent case which the appellant sought to rely on and which is reported in the Social Welfare Appeals Office Annual Report 2015 – Reference 2015/04;

- Under the heading 'duty to give reasons', while not stating on what basis it was considered that the Appeals Officer had erred, requested that the Appeals Officer's decision be set aside on this ground;
- It was asserted that there were important matters of fact, in particular in relation to financial support and parental visits that necessitated resolution at oral hearing.

Background: The claim for Guardian's Payment was disallowed by a Deciding Officer on the basis that the care arrangements in place could not be considered to constitute parental abandonment and that the child could not therefore be considered to be orphaned. The care arrangements referenced were fortnightly contact with both parents and financial support from both parents towards the child's care. The Appeals Officer also considered that the child could not be deemed to be an "orphan" within the meaning of the 2005 Act and in those circumstances the appeal was disallowed.

Review: By way of context, the award and payment of a guardian's payment is governed by Social Welfare legislation and in the case of Guardian's Payment (Non-Contributory) the legislation is contained in Chapter 6 of Part 3 of the 2005 Act and certain provisions of the 2007 Regulations.

Section 168 of the 2005 Act contains provisions governing entitlement to Guardian's Payment (Non-Contributory) and provides *inter alia* that it shall be payable in respect of an orphan.

"Orphan" as defined in Section 2(1) of the 2005 Act means a qualified child—

(a) both of whose parents are dead, or

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

(i) is unknown, or

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

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

Insofar as it was asserted that the Appeals Officer applied the wrong test in considering if the child was an orphan I outlined that in deciding whether a child can be considered an "orphan" for the purpose of this payment under Social Welfare legislation, the decision maker must, in cases where the child has one or more parent still living, be satisfied that the child has been abandoned and that their parent or parents have "failed to provide" for the child.

I noted that there is no legal definition of “abandonment” or “failure to provide” for the purposes of the definition of “orphan” as defined in Section 2(1) of the 2005 Act and in those circumstances the decision maker must make a judgement based on the individual circumstances of the case before him/her. In the absence of a legal definition and in keeping with general rules on statutory interpretation I formed the view that it was open to the Appeals Officer to have regard to the ordinary meaning of the word and, if necessary, to consult a dictionary definition of the word.

The Supreme Court decisions I was referred to were concerned with the legal interpretation of “abandonment” in the context of the Adoption Acts. I outlined that the fact that one Act uses the same or similar terminology to another may be helpful but it is not necessarily determinative of the matter in the context of different legislation. The question before the Appeals Officer had to be answered by reference to the terms of the statute governing the payment of the guardian’s payment – that being the 2005 Act.

In any event I noted that the Appeals Officer did not rely exclusively on any one source to guide his consideration of the issue of abandonment. I therefore found no reason to revise the Appeals Officer’s decision on this ground.

It was asserted that the Appeals Officer erred by his failure to follow the Department’s guidelines in this respect. It was submitted that the jurisprudence from the courts establishes that:

- (i) where a scheme is established, even if informal; and
- (ii) where a public body has promised to follow a certain procedure

the administrative body in question must enforce the procedure or implement its promise, as the case may be.

I considered that the implication of the assertion in this regard is that the guidelines constitute the establishment of a scheme and/or a promise to follow a certain procedure and as such are legally binding.

I understood that the guidelines being referred to are the operational guidelines published by the Department. Having reviewed the guidelines in question it was clear that they aim to provide some guidance or points of reference to decision makers but do not purport to set out in a formulaic way or create any obligation on decision makers to take any or all the points into consideration in their decision making. I noted that there is no legislative requirement on the decision makers to have regard to the guidelines and within the guidelines themselves it is noted that the list of things that can be considered is *not exhaustive and other evidence may be requested or considered*. Therefore, the guidelines contain an indicative list of things that can be considered.

I formed the view that the guidelines do not establish a scheme in that the payment in question is clearly provided for in legislation and do not constitute a promise by the Department to follow a certain procedure.

Therefore, while it was open to the Appeals Officer to have regard to the guidelines there was no legal obligation on him to do so. In any event from my review of the Appeals Officer's decision I found that the Appeals Officer while not specifically saying which guideline he was taking into account had in fact regard to the spirit of the guidelines. I therefore found no reason to revise the Appeals Officer's decision on this ground.

Insofar as it was asserted that the Appeals Officer had fettered his discretion by not following a previous decision, I did not find any reason to revise the Appeals Officer's decision on this ground. I outlined that while the Social Welfare Appeals Office endeavours to be consistent in its decision making and strives to ensure that the same conclusion is reached in cases that are based on the same or similar factual circumstances, all appeals are determined on a case by case basis and on the particular facts of each appeal. In those circumstances appeal decisions do not themselves create precedents.

I also found no reason to revise the decision based on the assertion that the decision of the Appeals Officer should be set aside for failure to provide reasons. Having regard to the standard to be achieved, as recognised by the Courts, that a party can understand the reasons for the decision and which enables a person to ascertain whether or not they have grounds on which to appeal the decision where possible or seek to have it judicially reviewed, I was satisfied that there could be no doubt as to why the Appeals Officer disallowed the appeal and that the reasoning process could be clearly understood.

Insofar as it was asserted that the Appeals Officer had erred by not holding an oral hearing I did not find any reason to revise the Appeals Officer's decision on this ground. I was referred to the Supreme Court decision in *Kiely v Minister for Social Welfare*.

While the legislation may not be specific as to when an oral hearing is required it is not entirely silent and Article 13 of the Social Welfare (Appeals) Regulations 1998 (S.I. No. 108 of 1998) provides:

Where, in the opinion of the appeals officer, a case is of such a nature that it can properly be determined without a hearing it may be determined on a summary basis.

The position therefore is that there is no absolute right to an oral hearing and an Appeals Officer has discretion as to whether to grant an oral hearing or not. The basic rule is that an appeal can be disposed of on a summary basis unless it cannot be properly determined without an oral hearing.

The Supreme Court in *Kiely v Minister for Social Welfare*, in interpreting these provisions, and which I was referred to, envisages an oral hearing where there are unresolved conflicts of evidence.

The Appeals Officer's consideration of the question before him was based on the documentary evidence submitted by the appellant and there was no other evidence that could be considered to be in conflict with that evidence. In those circumstances I was satisfied that the appeal could have been properly determined without an oral hearing.

Notwithstanding that I found no grounds to revise the decision of the Appeals Officer on the grounds outlined above I reviewed the decision on a more general basis. For this purpose I read the Supreme Court's consideration of the test of "abandonment" to which I was referred and I also consulted the Department's guidelines as a useful guiding framework.

I am setting out below the points from the Department's guidelines I considered of relevance in this case.

- *It is not necessary to be a legally appointed guardian in order to qualify for a guardian's payment;*
- *A payment may be approved for the person with whom the orphan lives and who has responsibility for the child's care and the payment must benefit the child;*
- *In cases where one or more parents are still living the decision maker must be satisfied that the child has been abandoned and that the parent(s) have failed to provide for him/her;*
- *In cases where the child has one or more parent still living the decision maker examines the circumstances which led to the child being looked after by someone other than their parent, assess the relationship between the child and the parents and arrive at a decision as to whether the child is an "orphan" for the purposes of the payment;*
- *When determining whether a child has been abandoned, the following will be considered:*
 - *Likely duration of the existing circumstances*
 - *Level of contact between the parent and the child*
 - *Level of parent's involvement in the welfare of the child*
 - *Willingness of the parent to have the child live with them*
 - *Evidence of conflict between the parent and the child*
 - *Parent's view of their relationship with the child*
 - *Whether the parent has the care of other children*

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

The Guidelines also outline that a parent is considered to have failed to provide for their child where they do not provide financial support for or towards the care of the child.

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

The question to be determined in this case was whether the child's parents may be deemed to have abandoned and failed to provide for him.

The evidence on the appellant's file outlined the circumstances that arose which occasioned her grandson coming into her care. It is clear, and not disputed, that the child had lived with the appellant, his grandmother, since his birth. The appellant outlined that the circumstances that led to her grandson being in her care was 'because social workers contacted [the grandparents] on safety grounds'. The child had been residing with his maternal grandparents since his birth based on a recommendation from Tusla and with the agreement of the child's parents. There was no evidence in relation to the likely duration of the existing circumstances but it appeared that they were not temporary.

While the evidence suggested, as outlined by the Appeals Officer, that the child had contact with his parents on a fortnightly basis the evidence also indicated that the level of contact was sporadic, not consistent and arrangements made for visits were frequently cancelled at short notice. In the appeal contentions it was submitted that the level of contact with the child was not dependable due to the parents' well-being. The Appeals Officer noted that both parents contributed €20 per week towards the child's keep.

There was no evidence that the parents were involved in decisions in relation to the welfare of the child and all major decisions in relation to the child's welfare were taken by his grandparents. There was documentary evidence that decisions relating to medical matters would be taken by the child's grandparents when the parents were not available. Apart from visits and financial contributions, there was no evidence that the child's parents provided for his emotional and physical needs. From the evidence presented I formed the view that due to their health difficulties the parents were not able to look after the needs of the child.

The Department's guidelines outline that the following will also be considered:

- *Willingness of the parent to have the child live with them*
- *Evidence of conflict between the parent and the child*
- *Parent's view of their relationship with the child*
- *Whether the parent has the care of other children*

From my review of the evidence that was before the Appeals Officer there was no specific evidence on file in relation to these issues.

I considered that the evidence in this case supported a conclusion that the parents had abandoned and failed to provide for the child within the meaning of the definition of "orphan" as set out in Section 2 (1) of the 2005 Act. I considered that the Appeals Officer erred in law in the weight afforded to the level of contact with the parents and their financial contribution and did not have sufficient regard to the totality of the evidence including the parents' duty to provide for the emotional and physical necessities of life required by the child.

Outcome: Decision revised

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