



Community Law & Mediation submission on the Make Work Pay Recommendations 9A, 9B and 10

6th April 2018

Introduction

The Department of Employment Affairs and Social Protection (“the Department”) has invited written submissions from stakeholders in relation to Recommendations 9A, 9B and 10 of the *Make Work Pay for People with Disabilities Report 2017* (“the Report”). The Report represents the findings and recommendations of the Make Work Pay Interdepartmental Group, which was established to address Strategic Priority 3 - “Make Work Pay”. The relevant recommendations are as follows:

9. Reconfigure the Disability Allowance scheme for new entrants to give effect to the principle of early intervention, as follows:

- a) Support for 16-18 year olds with significant support needs, which is currently paid by means of Disability Allowance, to be paid via Domiciliary Care Allowance up to 18 years of age;*
- b) Explore possibilities for the reform of the structure of the Disability Allowance for those between the ages of 18-22 to focus on participation in education, training and/or social inclusion according to individual capacity.*

10. Apply the principle of early intervention across all illness and disability schemes, adapting existing schemes where necessary to give effect to this principle.

Community Law & Mediation welcomes the opportunity to attend the Consultation event and to make a written submission in relation to the above recommendations, based on our experience in representing and advocating for people with disabilities.

CLM's work with stakeholders

Community Law & Mediation (CLM) is an independent community law centre, established in 1975, that works to empower individuals experiencing disadvantage by providing free legal information, free legal advice, education and mediation services. CLM has been granted Independent Law Centre status by the Law Society of Ireland and provides free legal advice on all areas of law through legal advice clinics, which operate on a drop-in basis. In 2016, CLM provided legal, mediation and education services to 3,233 individuals. In 2016, CLM Northside alone dealt with 1701 requests for legal information, advice and representation and assisted 838 people at 49 free legal advice clinics held at our Coolock office. We also operate outreach clinics in Blanchardstown CIC, Clondalkin Traveller Development Group and O'Connell Street CIC, as well as outreach clinics in the Limerick regeneration areas.

CLM offers legal representation and advocacy, including Court and Tribunal representation, in areas of law not covered by the State funded civil legal aid scheme. CLM makes referrals, as appropriate, to its mediation service and on a more strategic and feeds the issues it comes across in its casework into its policy, education and resource work. At a national level, CLM seeks to have a wider impact through its campaigns for law reform and by acting as a resource for other advocacy organisations. The main areas of law CLM represent in are social welfare, employment & equality, housing, debt and access to services such as health and education.

CLM also operates the Casebase project, an online searchable database of decisions on social welfare appeals, which aims to promote greater transparency in the social welfare appeals system. By providing and developing a database of decisions, CLM aims to provide greater clarity on the reasons for a decision, encourage the social welfare appeals office to take a consistent approach to cases, and assist members of the public and advocates in voluntary organisations/NGOs in deciding to appeal decisions and in the preparation of appeal submissions. Citizens Information Centres have contributed cases to Casebase and individual officers report that they have used the resource in the preparation of appeal hearings.

CLM advises and represents individuals in the areas of social welfare, employment equality and discrimination. Many of our clients have been treated unfairly by employers on the basis of their disabilities. Some of the difficulties our clients have faced include employers not making appropriate adjustments for their needs or returning them to different departments or work on their return from sick leave. Many of these situations can be resolved by way of clarifying the legal protections available to the individual with his/her employer. Some proceed to adjudication before the Workplace Relations Commission, thereby clarifying principles both for the individual and for the wider community of people with disabilities. For example, CLM was successful in a Labour Court case on behalf of a client with disabilities who wanted to return to work but was retired on health grounds. The Court said that our client was not consulted in any way regarding his disability and his capacity. It found that the person who made the decision did not personally engage with our client and that the employer's procedure was fundamentally flawed, stating that *"it excludes the Complainant from any involvement in the assessment of his capacity to undertake his duties, it deprives the Complainant of an opportunity to influence either the medical and or management decision that affects his livelihood, it fails to separate the role of the CMO from that of the employment decision maker and it fails to notify the Complainant of the grave threat to his employment and alert him to the need to be properly advised and represented before a decision to end his employment is taken."* The client was awarded compensation and through pursuing the matter, strengthened and clarified the rights of all people with disabilities in the workplace to transparent and consultative procedures when the employer seeks to terminate employment on health grounds.

We also work with clients who have not been granted social welfare benefits due their status and who wish to appeal this decision. This may be relevant to the means-tested Disability Allowance scheme as it is unclear in the proposals whether requirements will be changed. CLM would welcome clarity in that regard. The proposed changes may also be relevant for our service-users with disabilities who wish to return to work but who may be deprived of necessary access to public transport and medical cards.

CLM holds regular roundtables on matters concerning social welfare law and policy. Our most recent took place at the end of 2017, on the topic of mental health and the social welfare system. Participants examined the challenges faced by applicants who have mental health difficulties in the context of accessing social welfare payments and by recipients who are subject to a medical review process. The roundtable also explored the differences in treatment experienced by applicants who

have mental health difficulties in comparison to applicants who have physical disabilities. The information gathered at this roundtable is of particular relevance to this submission.

For more information on the work of CLM, please read our most recent [Annual Report](#). Further information on our work in law reform and policy in the area is available [here](#).

The Proposals

Recommendation 9A

Recommendation 9A is about proposed changes to the age at which one disability income support payment (the Domiciliary Care Allowance) ends and another (Disability Allowance) starts. The Domiciliary Care Allowance (DCA) is currently paid to parents of children with severe disabilities until they turn 16. The proposals recommend paying this until the child turns 18. It will remain at €309.50 per month. The Disability Allowance is currently granted to people between the ages of 16 and 66 with severe disabilities on a means tested basis. The proposal is to change this so it is granted to those people once they turn 18, still on a means tested basis. It will remain at €198 per week.

According to the Report, this recommendation has come from a feeling that those who begin receiving Disability Allowance at 16 lose motivation or are not encouraged to continue with necessary education in order to enter the workforce and contributes to lifelong unemployment.

CLM is in agreement with this recommendation. In our experience advising clients on social welfare law and equality law, maximising an individual's educational opportunities and occupational supports is hugely beneficial. CLM shares concerns that transferring a 16 year old to a Disability Allowance payment sends out a concerning message that that individual's opportunities are automatically curtailed and expectations defined at a very young age.

Recommendations 9B and 10

Recommendation 9B is about proposed changes to the Disability Allowance payment.

Recommendation 10 is about the idea of 'early engagement' in income support schemes. Early engagement means that if a recipient of Disability Allowance is able to work and wants to work, they

should be offered every possible support, at the earliest possible opportunity, to help them get a job.

The proposal is that once people begin receiving Disability Allowance at 18 they will be encouraged to partake in voluntary early engagement programmes to discuss their work ambitions. This will also include education programmes and training to assist people with disabilities gain the skills needed to enter employment. Those receiving DA will be encouraged to use courses provided by Intreo centres.

These recommendations are welcomed by CLM. It is important that the voluntary nature of early engagement be strictly preserved. The necessity for a holistic and subjective approach to the requirements of each individual must also be emphasised here. The complex and differing needs of each individual must be carefully considered and in this regard, CLM would welcome the training of highly specialised staff.

Case studies

The following case studies illustrate the difficulties experienced by some of our clients in accessing payments.

Case Study 1

CLM represented a client in relation to his Carer's Allowance (CA) claim in respect of his daughter for whom he cares. The Appellant had been in receipt of Carer's Allowance and Domiciliary Care Allowance (DCA) in respect of his daughter until she reached aged 16, at which point he could no longer claim DCA in respect of her. She subsequently applied for and was granted Disability Allowance. When the DCA payment ceased, the Appellant's eligibility for CA was reviewed. A Deciding Officer decided that the daughter no longer required full time care and attention and therefore the Appellant was no longer entitled to CA. The Appellant appealed the decision but the appeal was disallowed.

The Appellant subsequently sought to review the Appeals Officer's decision under Sections 317 and 318 of the Social Welfare (Consolidation) Act 2005 (as amended). The Appeals Officer revised the

decision and the Appeal was allowed on the basis that the level of care which the Appellant provides satisfies the qualifying conditions for entitlement to Carer's Allowance.

In relation to any disability/illness related claims, a Medical Assessor employed by the Department will conduct an assessment of the evidence in order to provide an opinion as to the extent of the person's disability and the level of care required by the person with the disability. In this case, the Appellant asserted that inappropriate weight had been attributed to the opinion of the DSP Medical Assessor and that the Appeals Officer's finding that the caree did not require full time care and attention was demonstrably flawed in view of the evidence submitted by the Appellant.

On behalf of the Appellant, CLM contended that the medical evidence showed that, due to the caree's medical condition, the Appellant must provide full-time care, manifesting in practical assistance and supervision on a daily basis to the caree.

This case raises questions with respect to the claim process itself. For example, Part 10 of the Carer's Allowance form is to be completed by the "relevant person's" Doctor. The form requests specific medical information but does not invite the Doctor to provide an opinion with respect to the care needs of the relevant person, nor does it invite detail as to the effects of a particular condition or disability, other than at Question 10 which comprises a 'tick box' section that requests a doctor to grade the effects of a condition from "normal" to "profound". We submit that the failure to seek the opinion of the caree's own doctor with respect to the care needs of the individual is a fundamental flaw in the Carer's Allowance application process.

Case study 2

In 2017, Community Law and Mediation represented a client who was in receipt of Carer's Allowance (CA) as she was caring for her son who was in receipt of DCA. In January 2016, the Department requested a review of the client's circumstances which she complied with. The client completed the requested CR1 medical report and also provided medical reports and school reports indicating her sons care needs. At this time, the Department determined that the client's son (who was under the age of 16) did not require full-time care and attention but did not revoke the client's claim. When the client's son reached the age of 16 in April of 2016, he was no longer eligible for DCA and in June the payment was revoked on the basis that "the relevant person being cared for in this case, no longer meets the full time care and attention requirements..."

The client appealed the decision and sought the assistance of CLM. A Freedom of Information request established the Department's Medical Assessor had determined that a level of care was required but it did not meet the level of "full time care and attention" as required. CLM sought additional medical evidence which established that the son's diagnosis was much more complicated as he had also been diagnosed with depression and had been threatening self-harm. It was clear that the client's son required continual supervision.

CLM lodged a written submission and represented the client at an oral hearing. The appeal was allowed on the grounds that new medical evidence confirmed that the Appellant's son required full time care and attention. This case demonstrates the need for a face to face, holistic and complete medical review of an individual's circumstances before a vital payment such as CA is revoked. Under the current circumstances, children with severe disabilities under the age of 18 but over the age of 16 are not entitled to DCA but must apply for Disability Allowance. Therefore the Carer may lose their entitlement to CA and must make their case to the Department. CLM welcomes the recommendations that the maximum age of DCA be extended to 18.

CLM observations

CLM broadly welcomes the proposed Recommendations 9A, 9B and 10. Under the proposed recommendations, people may still be denied access to medical cards and free travel if they enter employment. Access to transport supports is a particular issue for people with disabilities seeking to fulfil their employment ambitions. In particular, it would be useful if the Department could clarify whether, under the new proposals, people on long-term disability payments lose their entitlement to free travel immediately if they move into employment.

While there are several transport supports available for persons with disabilities, responsibility for administering these supports is spread across a number of government departments and agencies with differing qualification criteria. As a result, some people who have significant transport needs could, if they were to take up employment, fall between different schemes of supports. Others may find their entitlement difficult to understand or navigate. These features of the present system can act as a barrier to taking up employment.

CLM would welcome concrete initiatives to introduce more disability friendly training courses or make current training courses more accessible to persons with disabilities. CLM would further

welcome an acknowledgement that for many people with disabilities, returning to the workforce may be less affordable than for their comparators.

In relation to the desk-based assessments described in our case studies, CLM urges the Department, when assessing an entitlement to Disability Allowance on the expiry of the Domiciliary Care Allowance, to consider the importance of face-to-face holistic assessments by medical professionals, in order to avoid the type of procedural flaws that occurred in that particular matter. As discussed, the needs of people with disabilities can be complex and highly subjective. Needs may not always be complex but may be individual or differing needs depending on the disability concerned

The voluntary nature of early engagement is fundamental. CLM supports this early engagement to ascertain what supports can be provided to people with a disability who are able to work and interested in getting a job, to assist them in fulfilling their employment goals. The importance of a joined-up inter-departmental approach to assisting people with disabilities to gain and retain employment cannot be overstated. CLM would welcome the simplification of a sometimes labyrinthine system which is difficult for people to navigate. Finally, CLM would urge the Department to prioritise raising awareness of the initiatives that will be made available to people with disabilities.

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