

Casebase Number: G0003

Title of Payment: Carer's Allowance



Northside Community Law and Mediation Centre
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Date of Final Decision: 21/07/2005

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Keywords: Claim backdate—statutory limit—whether claim should be backdated beyond the statutory limit—whether statutory exception of 'force majeure' applicable—fair procedures—appeal partially allowed.

Organisation who assisted claimant: Northside Community Law and Mediation Centre (NCL&MC)

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Case summary:

The applicant appealed a Deciding Officer's decision in relation to the award of a 50% increase in her Carer's Allowance in respect of her care for her autistic child backdated to 6 months prior to the receipt of the application. Appellant would like to have the claim backdated to at least 11 or 13 years ago on the basis that her son had been misdiagnosed at that time; Arrears were granted back to the date on which the child reached 16 years of age; consideration to further backdating was brought before the HSE.

Summary of Benefit(s) Received:

Carer's Allowance (CA) is a Social Welfare payment which may be paid if the carer is caring full-time for a person who needs full time care and attention. If the carer's child is under age of 16 she/he may qualify only if she/he qualifies for Domiciliary Care Allowance. If the carer is providing care to more than one person she/he may be entitled to an additional 50% of the maximum rate of Carer's Allowance each week.

Domiciliary Care Allowance (DCA) is a Health Service Allowance, it is a monthly means tested payment made in Ireland to the carer of a child with a disability who lives at home.

Appellant has received Domiciliary Care Allowance (DCA) for one child from 1998 and Carer's Allowance (CA) for that same child from 1999, but not for the dependant child, the subject of this Appeal. Appellant applied for Domiciliary Care Allowance for the second child in January 1999. She unsuccessfully appealed the refusal to this claim. In 2004, Appellant applied for Carer's Allowance for this child. Appellant then was granted Carer's Allowance for the second child pursuant to a decision dated November 2, 2004, which backdated payment of the Allowance from six-months prior to the date of appeal. A successful appeal of this decision in July of 2005 resulted in further backdating to July 26, 2001, the date on which the child reached 16 years of age. The Appeals Officer indicated he would further review the case in light of a successful appeal for retrospective Domiciliary Care Allowance prior to the child's 16th birthday.

Background:

The Appellant has two children, namely A and B. The older child, B is the subject of this appeal. He was misdiagnosed for much of his life. As of 2005 he was diagnosed with Asperger's Syndrome, ADHD, Depression, and Epilepsy. After years of misdiagnoses, the Appellant brought her son for a private assessment and his Asperger's Syndrome was finally

properly diagnosed in July of 2004 when he was 19 years old. The younger child, A, has been diagnosed with Asperger's Syndrome, RAS (Reflex Anoxic Seizures) and ADHD.

In 1998 the Appellant was awarded Domiciliary Care Allowance for her youngest child, A, but not her eldest child, B. She was awarded Carer's Allowance, also only for the younger child, A, in 1999. In August of 1999, Appellant's appeal for Domiciliary Care Allowance in respect of her older child B was also denied.

In February of 2004, Appellant applied for Carer's Allowance for her older child, B. She was awarded this allowance in November of 2004. However, this allowance was only backdated six months prior to the date of application. This is the earliest date the legislation allows for, unless the delay was due to misinformation from the Department, sickness/incapacity, or 'force majeure' (an event or circumstance making it impossible to make the claim at the time). Appellant immediately appealed the decision to only backdate payments by six months for reason of force majeure. She referred to her previous claims for Domiciliary Care Allowance in January 1999 and her appeal in May of that year. She believed Domiciliary Care Allowance to be a pre-requisite to receiving Carer's Allowance for a child under 16. Had she been awarded Domiciliary Care Allowance for this child, B, she would have applied for Carer's Allowance at that time. However, due to no fault of her own, the child's misdiagnosis resulted in a refusal to award the Domiciliary Care Allowance.

To support her appeal, Appellant offered medical reports outlining her son's condition, diagnoses, and the stress his needs put on her time and family. She provided a letter from a Consultant Paediatric Neurologist outlining her son's epilepsy, depression, and behaviour problems and the strain these place on her family; a second letter from a neurologist outlining his history of seizures and their likeliness to cause him to fall and suffer injuries; and a letter from a leading Professor of Child and Adolescent Psychiatry laying out his diagnoses for Asperger's and ADHD, suggesting the hardships these carry, and suggesting treatment. She also included a letter of support from the Irish Council of People with Disabilities.

In a decision dated July of 2005, Appellant's claim for Carer's Allowance was further backdated and granted to July 26, 2001, the date of her son's 16th birthday, as the Appeals Officer found Appellant sufficiently proved "force majeure" in delaying her claim. The Appeals Officer agreed to further revise the decision if Appellant was successful in applying for retrospective Domiciliary Care Allowance prior to that date.

Date Appeal Taken:

5 November 2004

Date Appeal Heard:

21 July 2005 (date of decision not oral hearing)

At Hearing:

Appellant explained she applied for DCA for her son B in January 1999 and was refused by the Health Board. She appealed the refusal and, again, was turned down. Appellant claimed her son would have been awarded DCA if he had been properly diagnosed as having Autism/Asperger's at the time of application. Appellant then introduced the report of her son's Psychiatrist/psychoanalyst diagnosing her son with these conditions.

Appellant explained she applied for retrospective DCA following this medical report in July of 2004, but was still awaiting a decision from the Health Board. Appellant stated she was

never informed she could make a fresh application for Carer's Allowance without relying on DCA once her son reached 16 years of age.

Appellant's solicitor claimed the primary issue of the case to be one of misdiagnosis. Misdiagnosis, it was claimed, of the Appellant's son created an impossible situation—force majeure—whereby Appellant couldn't have made the claim at the appropriate time as she didn't qualify for DCA.

Decision:

Appeal ALLOWED (partially)

Relevant Evidence put Forth by Social Welfare Services:

Report based on 20-minute exam with a Health Board Doctor in 1998; when the decision was first appealed in 1999, her son B was not medically re-examined. On her re-application in 2005 no new medical evidence was put forward as all details were already on file.

Relevant Evidence put Forth by Appellant:

- Medical Report Consultant Paediatric Neurologist at the Children's Hospital 12/01/2000; Medical Report Neurologist 27/5/1999;
- Medical Report Psychiatrist/psychoanalyst, Professor of Child and Adolescent Psychiatry 28/7/2004; and
- Letter of Support Irish Council of People with Disabilities.

Appeal Officer's reasoning and Conclusion:

The Appeal Officer found the Appellant to have made a strong case showing her son B to be misdiagnosed for years. This, he found, rendered it reasonable to allow the appeal to backdate payment on the grounds of "force majeure". He noted all the evidence presented previous to and during oral hearing, in particular, that dealing with Appellant's son's diagnostic history and the Appellant's previous attempts at receiving payment. He also found it necessary for the Appellant to have secured DCA for her son prior to age 16 before Carer's Allowance could be backdated past her son's 16th birthday.

Appeal for Carer's Allowance allowed from 26/07/01- date dependant attained 16 years of age. The Appeals officer indicated that he was prepared to review his decision again in the light of the outcome of the Appellant's claim for retrospective Domiciliary Care Allowance. It was open to the Appellant to bring this matter to attention when the outcome was known.

Our Observations:

The relevant issues in this appeal are whether misdiagnosis of a condition can be considered "force majeure" under Carer's Allowance legislation, allowing for an exception to the rule which only allows payments to date from up to 6 months before the date of application; and, if so, whether the facts of this case warrant such an interpretation.

Based on the Appeal Officer's reasoning, it appears that while misdiagnosis can lead to a finding of force majeure, or impossibility of applying at an earlier date, misdiagnosis alone is not dispositive of the issue. Relevant to this case were Appellant's prior attempts at applying for DCA and possible misinformation from the Department. Even though her son's misdiagnosis rendered her ineligible for DCA, and, thus, also ineligible for Carer's Allowance until her son's 16th birthday, it appeared important to the decision that the Appellant had at least attempted a claim. The Appeals Officer also considered that Appellant was not

informed by the Department that she could make a separate Carer's Allowance application after her son reached age 16. The failure of the Department in this regard may have been a breach of fair procedures and certainly such an argument could be made now, premised upon the decision of the Supreme Court in *Maier v Minister for Social Welfare* [2008] IESC 15, where (in relation to the appeals process) an 'insufficiency of information rendered the process unfair.' Essentially, if a claim which was previously denied is later allowed under new diagnosis/medical evidence, to backdate payments beyond the statutory limit of 6 months from the date of application it appears helpful for the Applicant to supplement a claim of "force majeure" due to misdiagnosis with additional circumstances enforcing the impossibility of making a more timely claim.

The difficulty for the Appeals Officer was that he was not dealing with the Domiciliary Care Allowance appeal, this was dealt with by the Health Board. Arguably, the Appeal Officer acted correctly in that he suspended his decision on the back-dating beyond the appellant's son's 16th birthday, pending a decision on the appeal to the Health Board.

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