

**Casebase Number: G0008**

**Title of Payment: Carer's Allowance**



Northside Community Law and Mediation Centre  
Northside Civic Centre  
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Date of Final Decision: 20/09/2006

**Title of Payment:** Carer's Allowance

**Date of Final Decision:** 20<sup>th</sup> September, 2006

**Keywords:** Carer's Allowance entitlement— evidence of full time care and continual supervision— whether Appellant provided full time care— whether caree required continual supervision— appeal disallowed.

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

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**Case Summary:**

Carer's Allowance claim. The Appellant (the carer) cares for his wife who is in receipt of Disability Allowance.

The Appellant applied for Carer's Allowance in September 2005 and was refused on the grounds that the evidence did not support his claim that his wife required "continual supervision" to meet her needs. The Appellant appealed the decision. The Appeal was disallowed.

**Summary of Benefit(s) Received:**

Carer's Allowance (CA) is a means-tested payment awarded to a person who is providing full time care and attention for a "relevant person".

Full time care and attention is defined with reference to the "relevant person" needing continual supervision and frequent assistance throughout the day in connection with normal bodily functions or continual supervision to avoid being a danger to him or herself.

The Appellant applied for Carer's Allowance in September of 2005 due to his wife's condition. The Appellant's wife was in receipt of Disability Allowance which is awarded to those who suffer from a condition which substantially restricts them from undertaking employment suitable to their age, experience and qualifications.

**Background:**

The Appellant's wife was diagnosed with a rare genetic disorder that causes extreme fatigue and painful, thinning bones. Her mother and two of her sisters died from the disease.

The Appellant asserted that his wife required a substantial amount of assistance throughout the day. Assistance was described as including the following: help to complete routine household tasks such as cooking or cleaning, lifting anything due to the risk that his wife might break a bone, and bathing. The Appellant's wife can bathe herself but needs to be lifted in and out of the bath. The need for assistance with daily activities was corroborated by the GP. It was further asserted that the Appellant's wife suffers from severe pain in her legs and occasional numbness in her hands, she can go for short walks but this may leave her fatigued and in pain. The consequences of this condition are such that the Appellant's wife spends most of the day on the couch or in bed. In addition, the Appellant's wife takes medication for her condition and has been prescribed anti-depressants.

According to the Appellant he is required to complete all household tasks by himself, such as shopping, cooking and cleaning, as well as helping his wife with routine tasks such as bathing

and dressing. He is also the sole emotional support for his wife, who has been diagnosed with depression. They rarely leave the house, as the Appellant's wife can complete almost no routine household tasks on her own and therefore cannot be left alone for long periods of time and she is unable to walk for more than short distances.

**Date Appeal Taken:**

25th August 2005

**Date Appeal Heard:**

13th July 2006

**At Hearing:**

The Appellant attended the hearing with his wife and was represented by a legal representative from Northside Community Law and Mediation Centre. The Appellant's wife gave the Appeals Officer a first-hand account of the difficulties she experiences on a daily basis. The Appeals Officer questioned the Appellant and his wife regarding how often they went out, if they went to the cinema and how often, if they went to weddings, if they went to funerals, and other similar questions. The Appellant's solicitor stated that such questions were irrelevant as they were hardly able to leave the house at all.

**Decision:**

Appeal DISALLOWED

**Relevant Evidence put forth by Social Welfare Services:**

There was no evidence put forth by Social Welfare Officer. The opinion was based on documents filed on the case and evidence given by the appellant at the oral hearing.

**Relevant Evidence put forth by Appellant:**

- Letter setting forth grounds for appeal;
- Information regarding symptoms and effects of Appellant's wife's illness;
- Letter from endocrinologist regarding diagnosis, family history of disease, and symptoms;
- Letter from General Practitioner regarding diagnosis and level of assistance required with daily living;

**Appeal Officer's reasoning and Conclusion:**

The Appeals Officer referred to the statutory requirement that the Caree must be in need of "continual supervision and frequent assistance throughout the day". The Appeals Officer referred specifically to the need for assistance with activities such as dressing, going to the toilet, bathing, housework, preparing meals, and shopping.

On examination of the evidence the Appeals Officer acknowledged that due to her condition the Appellant's wife is "restricted in the range of tasks she can now do". However, he did not accept that the evidence was "sufficiently strong" to support the claim that the Appellant's wife required full time care. Specifically, the Appeals Officer was satisfied that the Appellant's wife could look after her own personal needs, dress, bathe, go to the toilet, take her meals and go for short walks.

**Our Observations:**

The findings of the Appeals Officer present two distinct issues:

1. The question of how to interpret the statutory meaning under s. 179 (4) (a) of the Social Welfare Consolidation Act 2005 of full-time care and attention, specifically, that a person should require 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...”

2. The question of what constitutes adequate evidence to corroborate the claims of the Appellant and the Caree.

The Appeals Officer concluded that the Caree could bathe herself. This conclusion was reached despite the assertion that in order to bathe, the Caree requires assistance getting in and out of the bath. Arguably the need for such assistance negates the Caree's ability to perform a “normal bodily function”.

In referring to the Caree’s ability to “take meals”, the Appeals Officer did not accept the assertion that the preparation of meals and basic household duties is dependant on the Appellant. Arguably, such dependence should reasonably fall within the statutory requirements in respect of “continual supervision and frequent assistance”.

Overall the interpretation of what is meant by full-time care and attention appears unduly restrictive in this case.

The Appeals Officer referred to the evidence as not being “sufficiently strong to show that a need to care exists in this case”. This conclusion was drawn despite the account of the Appellant, his wife and a supporting letter from the GP. It is difficult to know what alternative evidence could be submitted in this case as those with first-hand knowledge of the care needs, namely the Appellant and his wife, presented their account of the situation.

It is also notable that a medical professional will often only submit cursory information regarding the existence of a condition and relevant treatment without necessarily providing any detailed account as to how this condition affects a person’s daily life. It must be stated that a medical professional may quite reasonably only be able to provide an opinion as to a person’s care needs but not be in a position to adequately corroborate the facts of a particular situation as they will not have the necessary first hand knowledge in a given case.

Section 179(4) of the Social Welfare Consolidation Act 2005 requires that “*the nature and extent of the person’s disability has been certified in the prescribed manner by a medical practitioner.*” This appears to place the onus on the Appellant to furnish the necessary medical evidence. The practice requires the medical doctor to fill out a medical report. Then, under the *Carer’s Allowance Operational Guidelines*:

“The Medical Evidence is passed to the Department’s Chief Medical Adviser. The Adviser will advise the Deciding Officer on whether the care recipient is in need of full time care/attention, as defined by Social Welfare legislation. Where the details are not the satisfaction of the Deciding Officer (...) further enquiries are made, either by correspondence with the claimant or by referring the file containing the claim form and supporting documentation to a Social Welfare Inspector for the area where the claimant lives.”

In the absence of sufficient third party corroboration of the circumstances of a particular case, proving the Appellant’s assertions is problematic.

In this case the Appeals Officer did not accept the assertions of the Appellant and the Caree.

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