

**Casebase Number: G0028**

**Title of Payment: Illness Benefit**



Northside Community Law and Mediation Centre  
Northside Civic Centre  
Bunratty Road  
Coolock  
Dublin 17

Date of Final Decision: 04/04/2011

**Title of Payment:** Illness Benefit

**Date of Final Decision:** 4<sup>th</sup> April, 2011

**Keywords:** Medical - oral hearing - fit for work - section 317

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

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**Case Summary:**

This case concerns a claim for Illness Benefit which was withdrawn as the Deciding Officer deemed that the Appellant was fit for work. This decision was appealed but the appeal was refused following a medical examination by Department Medical Assessors. The Appellant then, made a further application under Section 317 of the Social Welfare Consolidation Act 2005 which led to the case being reopened and an oral hearing was granted. Following this hearing the appeal was allowed as the submissions of the Appellant and the medical evidence produced were held to be sufficient evidence of his inability to work. The Appeals Officer recommended periodic reviews in view of the Appellant's improving condition.

**Summary of Benefit(s):**

Illness Benefit is a social insurance payment governed by Chapter 8 of the Social Welfare Consolidation Act 2005 (as amended). It is a payment payable to individuals who are incapable of work (in the Act referred to as "a day of incapacity for work") which forms part of a period of interruption of employment, where in accordance with Section 40(1):  
*(a) the person is under pensionable age on the day for which the benefit is claimed, and  
(b) he or she satisfies the contribution conditions in section 41 .*

An applicant for Illness Benefit must be certified as being unfit for work by a registered medical practitioner. This is usually the applicant's General Practitioner. A Department of Social Protection Medical Assessor will also consider the applicant's medical condition and capacity for work, either at the initial claim stage and/or through periodic review

**Background:**

Following certified sick leave from his job as a plumber due to problems with his knee, the Appellant received Illness Benefit for the period 16 October 2008 until 19 August 2009. In August 2009 the Appellant was informed by way of a decision by a Deciding Officer (DO) that he [the Appellant] was no longer entitled to Illness Benefit. Based on the evidence available, the DO determined that the Appellant was fit for work. The medical review of the claim was by way of an 'in person' medical assessment. At the time, the Appellant's GP submitted a letter, advising that it would be at least another three months before the Appellant would be capable of returning to work. The Appellant appealed this decision in August 2009 and submitted medical evidence, including a letter from his GP, to demonstrate that he was still receiving medical treatment for his knee and was unable to return to work.

As part of the appeals process, the Appellant was called for a medical assessment with a second Departmental Medical Assessor. This assessment was in person, not desk-based. The

second medical assessor concurred with the initial findings and found the appellant to be fit for "other" types of work. The Appellant was notified of the outcome of the second medical assessment in November 2009 and given an opportunity to rebut the findings to the Social Welfare Appeals Office. The Appellant wrote to the Social Welfare Appeals Office submitting further medical evidence including letters from his GP advising of his upcoming knee replacement surgery. His appeal was disallowed by way of a summary decision on the grounds that he had failed to provide sufficient evidence to rebut the findings of the departmental medical assessors.

The claimant underwent knee replacement surgery in February 2010 and continued to send letters to the Department of Social Protection informing them of his medical circumstances. On 10th August 2010 the Department of Social Protection informed him that his Illness Benefit claim was closed and to cease sending in medical certificates to the department. In response to this, the Appellant, on the advice of his solicitor, initiated proceedings under Section 317 of the Social Welfare Consolidation Act 2005. This provision permits a claimant to request another Appeals Officer review the decision of an Appeal's Officer where it appears the Appeals Officer's decision was erroneous in light of new evidence or of new facts brought to his or her notice since the date the previous decision was given.

Following this application, the appeal was reopened on February 15th 2011 and an oral hearing granted for 29th March 2011. The Appellant presented medical evidence from his GP, the consultant orthopaedic surgeon, and gave oral testimony. NCL&MC also made a submission on his behalf. The appeal was allowed by way of a decision on 4th April 2011. The Appeals Officer recommended periodic reviews in view of the Appellant's improving condition following surgery.

**Relevant Evidence put forward by the Appellant:**

The Appellant produced important evidence at the appeal including;

- A Chronology of Appeal giving details of all the medical treatment he had received and each stage of his Illness Benefit application.
- A letter from his GP detailing that in his medical opinion the Appellant was unfit to return to work at the present time,
- A letter from the Orthopaedic surgeon providing an approximate period for rehabilitation and recover,
- A submission from the NCL&MC, and
- The Appellant's own testimony outlining his desire to return to work as soon as possible.

The Appeals Officer regarded the Appellant's testimony as genuine and noted the Appellant's work history and the fact that his job remained open to him.

**Outcome of Appeal:** Appeal Allowed

**Our Observations:**

It appears that the personal statement delivered by the Appellant at the hearing contributed significantly to his appeal being allowed. The Appellant was able to clearly demonstrate his desire to return to work, referring to the fact that his position at work had been left open for him, and also gave a detailed account of his medical history, the treatment he was receiving to date, and his rehabilitation progress. The Appeals Officer in his decision referred to the Appellant as genuine and this, coupled with the medical advice produced by the Appellant from his GP and consultant, provided sufficient evidence for the Appeals Officer to allow the

Appeal in this case. The Appeals Officer also noted that in light of the Appellants improvements that the case was to be subject to periodic review. With reference to the statutory criteria governing the award of Illness Benefit, it is important to note that the legislation requires a person to prove that they are "incapable of work". The statute is silent on the question of whether this refers to the applicant's normal work, or any work. It follows, that a claim may be reviewed and disallowed by a Deciding Officer if the available evidence indicates that a person is capable of work, "other" than their normal occupation. This can in turn lead to a claimant effectively being in a scheme lacuna, whereby they will not satisfy the criteria for Jobseekers Benefit/Allowance and equally may be found not to be sufficiently incapacitated to qualify for Illness Benefit.

Please refer to the Medical Assessment guidelines available on welfare.ie: *When conducting an assessment the Medical Assessor does not dispute the existence of the certified cause of incapacity but rather s/he assesses the degree to which the loss of function in work-related activities resulting from the disease or injury affects the person's ability to perform either their own job or alternative types of work.*

<http://www.welfare.ie/EN/OperationalGuidelines/Pages/medassess.aspx#theAsses>  
Accessed 05/12/2012

**For more information on Illness benefit, useful links are:**

- Citizen Information:

[http://www.citizensinformation.ie/en/social\\_welfare/social\\_welfare\\_payments/disability\\_and\\_illness/disability\\_benefit.html](http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/disability_and_illness/disability_benefit.html)

- Department of Social Protection:

<http://www.welfare.ie/EN/Schemes/IllnessDisabilityAndCaring/Illness/IllnessBenefit/Pages/ib.aspx>

Please also refer to the operational guidelines section of the Department of Social Protection website. Within the index refer to items under "M" for medical assessment information

- Social Welfare (Consolidation) Act 2005:
- <http://www.irishstatutebook.ie/2005/en/act/pub/0026/index.html>

For *more information*, contact us at:

Northside Community Law and Mediation Centre,  
Northside Civic Centre, Bunratty Road, Coolock, Dublin 17  
T: 01 847 7804 | E: [info@nclc.ie](mailto:info@nclc.ie) | W: [www.nclc.ie](http://www.nclc.ie)