

Casebase Number: G0051

Title of Payment: Illness Benefit



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Date of Final Decision: 12/09/2011

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Keywords: Medical - GP Report - capable of work - request for oral hearing - summary decision

Organisation who assisted the Claimant: Roscommon CIC

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Case Summary:

The Appellant was in receipt of Illness Benefit from October 2007 until December 2010. Her on-going entitlement to Illness Benefit was examined on foot of an application by her for Invalidity Pension. Following a medical examination by a Departmental Medical Assessor the Deciding Officer (DO) deemed that the Appellant was fit for work. Her Illness benefit was subsequently withdrawn with effect from the 1st of December 2010. This decision was appealed. The appellant was assisted by Roscommon CIC.

Before proceeding to Appeal, the Appellant sought a review of DO's decision. In the course of this review a second opinion from a different Department Medical Assessor was sought. Based on the opinion of this Medical Assessor, that the Appellant was capable of work (if her difficulty was taken into account), the original disallowance was upheld on the 5th of July 2011. The appeal was disallowed by way of summary decision on 12th September 2011. Further representations were made including a request for an oral hearing of her case. A letter was issued to the Appellant stating that the original decision should stand. (This appeal was eventually allowed upon review by the Chief Appeals Officer under Section 318 of the Social Welfare Consolidation Act 2005 [as amended]. Please see Casebase report G0052 for an overview of that decision.)

Key Arguments:

- Appellant submitted that she maintained her efforts to work until she was no longer capable as a result of debilitating Lymphoedema. Her incapacity was duly certified and Illness Benefit was awarded from October 2007 until December 2010.
- Appellant submitted that during this time she did not regain her capacity and therefore could not resume employment in the work categories that the Medical Assessors now consider her capable of.
- Appellant submitted medical evidence to support her case in the form of a letter from her GP stating that she was incapable of work as a result of her condition.
- Appellant also submitted a witness statement, testimony from the Appellant herself and two letters from previous employers.

Key Conclusions:

- DO found that the Appellant was not incapable of work within the meaning of Social Welfare Legislation from the 1st December 2010 and therefore not entitled to be paid illness benefit from that date.
- DO was not satisfied that the Appellant had rebutted the findings of two Medical Assessors that she is capable of work and so the Appeal was disallowed.

Summary of Benefit(s) Received:

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 .*

Article 20 of the Social Welfare [Consolidated Claims, Payment and Control] Regulations 2007 provides that a person may be found incapable of work in circumstances where a medical practitioner certifies the need for the applicant to “abstain” from work.

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:

The Appellant received Illness Benefit from October 2007- December 2010. She became unfit for work in 2007 due to the effects of secondary Lymphoedema following surgery and treatment for breast cancer. Her condition deteriorated to such a degree that she had to cease employment in 2007. The Appellant was suffering from back pain, sciatica, numbness, paraesthesia and worsening episodes of migraine in addition to the severe swelling and pain in her left arm. In August 2010 the Appellant applied for Invalidity Pension. On foot of this application her capacity was examined for the purpose of her on-going entitlement to Illness Benefit at the same time as assessing her eligibility for Invalidity Pension. On receipt of the opinion of the Medical Assessor, the DO disallowed the Appellant’s Illness Benefit claim with effect from the 1st December 2010 (her Invalidity Pension claim was later rejected on 7th of May 2011 and again on 12th of September 2011). The Appellants Illness Benefit was stopped on the grounds that she was found to be no longer incapable of work. The Appellant

appealed the decision of the DO and was assisted by Roscommon CIC. An Appeals Officer (AO) rejected her appeal by way of a summary decision on the 12th September 2011. Further representations were made by TDs and the case was re-examined. By way of letter from the Appeals Office, dated 29th June 2012, the original decision was upheld.

Summary Appeal

The evidence before the AO comprised of Medical Assessors' reports, reports from the Appellant's GP, a witness statement, testimony from the Appellant and letters from the Appellant's previous employers. Two Medical Assessors' reports were available to the Appeals Officer. Both Medical Assessments were conducted in person (in some instances a desk review or desk assessment of medical evidence is conducted instead). The first Medical Assessment was conducted for the dual purpose of assessing the Appellant's on-going entitlement to Illness Benefit as well as her possible eligibility for Invalidity Pension. The second assessment examined the Appellant's functional ability and determined that the Appellant was capable of certain categories of work. The relevant work categories include office workers, cleaners, shop assistants, tradespeople and factory workers. The Appellant was assessed *as functionally capable of the work categories "B, C, and D" and the Medical Assessor noted that while the claimant may have some difficulty.....she could do work if this difficulty was taken into consideration.* The categories referred to (B, C, and D) include the type of work which the Appellant had previously engaged in. Prior to 2007 the Appellant had worked in an office, a dry cleaning business and as a shop assistant, but had to cease this activity due to the deterioration in her arm function. This deterioration included swelling and pain as well as loss of function. Two letters were submitted from previous employers stipulating that the Appellant was unable to adequately perform her duties and could not sustain employment.

The AO had available to him, two reports from the Appellant's GP. The first of these reports provided a factual background to the Appellant's incapacity as well as an opinion with regard to the degree of the affect on her ability to work. Reference was made to the 'global' effects of "debilitating Lymphoedema" that is, the Appellant tires easily as a consequence of the constant discomfort and pain caused by diminished function in her arm. Reference to the Appellant's back pain, sciatica, numbness, paraesthesia and worsening episodes of migraine were made. The report stated that the Appellant required assistance with everyday tasks. *"I believe that she is unfit for work there is no doubt that the Lymphoedema is unlikely to improve-even in the long term. It has not improved appreciably since she got it".* The practical effects of the Appellant's condition were corroborated in the form of witness testimony from a neighbour and the Appellant herself. Both statements confirmed that the Appellant needed assistance to complete ordinary everyday tasks. An oral hearing was requested on her behalf by the TDs but a decision was made by summary decision.

The medical evidence available to the AO presented conflicting opinions, and in his decision he referred:

Having carefully considered all of the evidence, I am not satisfied that the appellant has rebutted the findings of the two Medical Assessors that she is capable of work.

Date Appeal Lodged: 29th March 2011
Decision of the Appeals Officer: 12th September 2011 [Disallowed by way of summary decision]

Appeal Officer's Reasoning and Conclusions:

- The appeal was disallowed by way of summary decision on the 12th September 2011 on the grounds that the Appellant was not incapable of work within the meaning of Social Welfare Legislation from 1st December 2010 and was not entitled to be paid Illness Benefit from that date.
- AO was not satisfied that the Appellant had rebutted the findings of two Medical Assessors that she is capable of work and so the Appeal was disallowed.

Our Observations:

Any decision in relation to Illness Benefit will be influenced principally by medical opinion, in particular the opinion of the Department of Social Protection's Medical Assessors. The opinion of an Appellant's doctor will also be taken into account in order to establish the Appellant's incapacity to the satisfaction of a Deciding Officer or an Appeals Officer. This particular appeal demonstrated the limitation which can present regarding the medical opinion of an Appellant's GP when a conflicting opinion is held by the Department's Medical Assessor(s) and also how this limitation is exacerbated when an Appellant does not have the opportunity to present their case at an oral hearing.

Of interest in this case is the fact that the Medical Assessor's opinion effectively presumes that the Appellant's condition had improved. We make this observation on the grounds that the Medical Assessor found the Appellant capable of the very work categories that she has previously been proven to be incapable of carrying out. The Medical Assessor's opinion was contradicted by the opinion of the Appellant's GP.

Where there is a conflict of opinion, as in this case between the Medical Assessors and the Appellant's GP, an oral hearing should be granted. We make this assertion on the grounds that an oral hearing affords an opportunity for a more detailed analysis and demonstration of the impact of an illness on an Appellant's ability to complete everyday tasks and their capacity to work.

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. In summary, the applicant may have an onerous burden trying to prove that they are incapable of any work. We suggest that while the legislation is silent this does not preclude a decision maker from having regard to the applicant's age, education, skills and relevant work experience when making a finding that an applicant is capable of other categories of work.

Such an approach would be reasoned and provide the opportunity to consider all evidence relevant to a person's work capacity.

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
- **Department of Social Protection:**
http://www.welfare.ie/en/Pages/345_Illness-Benefit.aspx
- **Social Welfare (Consolidation) Act 2005:**
<http://www.irishstatutebook.ie/2005/en/act/pub/0026/index.html>
- **Medical Assessment Guidelines**
<http://www.welfare.ie/EN/OperationalGuidelines/Pages/medassess.aspx#theAsses>

For *more information*, contact us at:

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