

Casebase Number: G0061

Title of Payment: Carer's Allowance



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

Date of Final Decision(s):

Appeal: 6th August 2014

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Keywords: Carer's Allowance - whether caree required full time care and attention - medical - section 317 - section 318 - appeal - allowed

Organisation who represented the Claimant: Community Law & Mediation (CLM)

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Case Summary:

This case relates to the Appellant's Carer's Allowance (CA) claim in respect of her son for whom she cares.

The Appellant had been in receipt of Carer's Allowance and Domiciliary Care Allowance [DCA] in respect of her son until the 15th May 2013. At this time, the Appellant's son reached aged 16, and therefore, in accordance with the relevant statutory provisions, the Appellant could no longer claim DCA. The Appellant's son subsequently applied for, and was refused, Disability Allowance. Following a successful appeal, Disability Allowance was awarded. The Disability Allowance appeal was allowed on 30th April 2014.

At the time when the DCA payment ceased, the Appellant's eligibility for Carer's Allowance was reviewed. It was decided that the Appellant's son did not require full time care and attention as set out in the relevant legislation. The Appellant appealed the decision. The Appeal was disallowed by the Social Welfare Appeals Office on the 13th January 2014. The decision was made on a summary basis; that is, without an oral hearing.

The Appellant subsequently sought a review of the Appeals Officer's decision under Sections 317 and 318 of the Social Welfare (Consolidation) Act 2005 (as amended). The Appeals Officer revised his decision and the appeal was allowed on the 6th August 2014.

Key Arguments:

- The Deciding Officer contended that that the Appellant was no longer eligible for Carer's Allowance on the grounds that her son did not require full time care and attention.
- The decision of the Deciding Officer was informed by the opinion of the Department's Medical Assessor who found that that there was insufficient medical evidence to demonstrate that the Appellant's son was in need of full time care and attention.
- The Appellant submitted new medical evidence from various independent sources showing that her son requires constant supervision to ensure that he is not harming or putting at risk of danger himself or others.
- The Appellant submitted that the failure to conduct a physical examination of her son represents a significant deficiency in the Department's method of assessing claims.

Key Conclusions:

[Appeal Allowed]

"In light of the new evidence submitted on behalf of the appellant I am satisfied to revise my original decision of 13/01/2014 and allow the appeal."

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 to a "relevant person".

Full time care and attention is defined with reference to the "relevant person" needing continual, or continuous, care and attention. This care and attention should include supervision and frequent assistance throughout the day in connection with normal bodily functions, or, supervision in order that the "relevant person" avoids being a danger to him/herself or others.

In order to receive Carer's Allowance in respect of a child, the Carer must also be in receipt of Domiciliary Care Allowance (DCA). DCA is payable until a child reaches 16 years of age. At age 16, an application can be made for Disability Allowance. To qualify for Disability Allowance a person must, by reason of a specified disability, be substantially restricted in undertaking employment that would otherwise be suitable to their age, experience and qualifications.

In relation to any disability/illness related claim, a Medical Assessor, employed by the Department of Social Protection [DSP], will conduct an assessment of the evidence in order to provide an opinion as to the extent of the relevant person's disability, and in this case, the level of care required by the person with the disability. This assessment may be "desk based" – on the papers or, in person. The Medical Assessor's opinion, together with the applicant's evidence and other relevant information, are then submitted to a Deciding Officer for decision. Additionally, the applicant must pass a means test and be considered habitually resident in the State.

Background:

The Appellant's son was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiance Disorder (ODD). These conditions may, as in this case, substantially affect the behaviour of the sufferer. Common behavioural issues that present in the case of ODD include: frequent and active defiance, low frustration tolerance and loss of temper, non-cooperation and resistance to authority. In the case of ADHD, common issues that present include: severe over-activity, poor concentration, impulsive behaviour and difficulty mixing with peers.

The Appellant had been in receipt of Carer's Allowance until the 15th May 2013. The claim was reviewed following the cessation of DCA which had been payable in respect of her son. The Appellant's son had made a claim for Disability Allowance and this was eventually awarded following a successful appeal in April 2014.

In considering the care needs of the "relevant person" in this case, the DSP's Medical Assessor was of the opinion that the Appellant's son did not require full time care and attention within the

meaning of the relevant legislative provisions. On examination of the evidence, the Deciding Officer determined that the Appellant was no longer eligible for Carer's Allowance. The Appellant appealed the decision without the benefit of legal advice. In evidence, the Appellant submitted a hand written letter and a letter from a Youth Reach service in support of her appeal. The Appeal was disallowed by way of summary decision on the 13th January 2014. The Appeals Officer found that it had not been established that the qualifying conditions for Carer's Allowance had been met, and that the medical evidence did not indicate the need for full time care and attention within the meaning of the legislation.

The Appellant sought assistance from Community Law and Mediation Northside (CLM) and was represented thereafter. By way of a Freedom of Information request, CLM on behalf of the Appellant sought the relevant papers held by the DSP, including any medical records/opinions.

It was ascertained that two medical assessments had taken place, both "desk-based". In considering the first assessment it was evident that the Medical Assessor had formed his opinion on the basis of the limited information supplied by the child's G.P. The report submitted by the G.P. [Part 10 of the CR1 Form] did not include the diagnosis of Oppositional Defiance Disorder and did not provide any detail with respect to the effects of the child's condition. The second assessment conducted by the DSP, also desk-based, was carried out on 10th September 2013 following the Appellant's submission of an appeal disputing the decision to cease payment of Carer's Allowance. In this assessment the Medical Assessor stated that the medical evidence did not establish the need for full time care and attention.

On 14th July 2014 the Appellant sought a review of the Appeals Officer's decision under sections 317 and 318 of the Social Welfare (Consolidation) Act 2005 (as amended). Section 317 allows an Appellant to submit new evidence relevant to the question at issue. Section 318 provides the Chief Appeals Officer with the authority to change the decision of an Appeals Officer if the Appeals Officer is found to have made a mistake in the law or the facts of the case.

Relevant Evidence put forth by Appellant:

- Submission setting forth grounds for appeal;
- Letter from Registrar regarding diagnosis of ADHD and ODD, consequences of conditions; and level of assistance required with daily living;
- Letter from Registrar regarding diagnosis, symptoms and impact of the conditions on others;
- Letter from Psychologist setting out diagnosis, symptoms and recommendations for increased support for the Appellant's son;
- Letter from Senior Systemic Psychotherapist regarding diagnosis and the level of care required at school;
- Letter from Consultant Psychiatrist regarding diagnosis, description of dangerous behaviour and level of assistance required for school attendance;
- Medical Report for Carer's Allowance (CR1 Form);
- Letter from Youth reach Centre regarding Appellant's son's behaviour and description of incident where he cut a live electric wire;
- Letter from Youth reach Centre describing the dangerous and disruptive behaviour of Appellant's son;

- Letter from school principal regarding difficulties encountered by school in dealing with the behaviour of Appellant's son and stating that he considered exclusion;
- Letter from Appellant regarding the level of care and attention required by her son;
- Previous correspondence between Appellant and DSP.

The Appellant asserted that her son requires constant supervision to ensure that he does not harm or put at risk himself or others, including his five siblings. In evidence the Appellant provided examples of the risk of harm to others including a situation where her son set fire to his bed sheets and mattress, and another incident where he attempted to cut a live electric cable at a Youth reach centre. The Appellant contended that her son's behaviour requires her to constantly supervise him, thus requiring her to provide full time care and attention within the meaning of the legislation. The Appellant also requested that she be granted an oral hearing.

Date of Appeals Officer's Revised Decision: 6th August 2014

On the 6th August 2014 the appeal was allowed on the basis of the new evidence submitted by the Appellant.

Observations:

This case highlights the importance of submitting as much evidence as possible to support a claim. This is essential in view of the limited nature of the Department's medical assessment process, a process that is dependant on "desk based" paper assessments rather than in person consultations. Also relevant is the design of Part 10 of the Carer's Allowance form, to be completed by the "relevant person's" Doctor. Specifically, the Doctor is not asked to provide an opinion with respect to the care needs of the relevant person, nor does the form invite detail as to the effects of a particular condition or disability. The only direct reference to the effects of the condition/disability is a 'tick box' section that requests a doctor grade the effect of a condition from "normal" to "profound". This is of limited value unless a Doctor is to certify that a person is profoundly affected in which case their care needs are arguably self evident. The limitations of the form are particularly evident in the case of mental health issues or intellectual disability. In these cases, when completing the medical report it will not be immediately apparent as to what the care needs are. In order for an applicant to make a successful claim, a Doctor will need to certify that there is a tangible link between the condition and its effects, and the corresponding intervention in terms of care.

We suggest that as the matter to be determined is the degree to which a person requires care, it is therefore information in respect of the effects of the condition/disability that is required. For this reason it would be useful if the DSP considered making amendments to the medical report section of the application form in order that relevant information can be supplied by an applicant in a more routine manner.

Arguably, the evidence available to the Deciding Officer in this case did not support a claim that the Appellant's son required full time care. That is, the claim was bound to fail because the form sought limited information and the DSP's medical assessment process did not provide for a medical consultation. Another aspect to this claim and appeal is the matter of the client's reasonable expectation that having previously established her son's need for full time care, she should have continued to receive a payment unless there had been a material change in the level of her son's care needs. While the DSP legally have the authority to review a claim at any time, a more

considered approach might be taken whereby the DSP seek to verify the continuing need for care rather than commencing an assessment as if there had been no previous claim award.

For further information:

<http://www.welfare.ie/en/Pages/Carers-Allowance.aspx>

http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/carers/carers_allowance.html

<http://www.welfare.ie/en/Pages/Carers-Allowance---SW-41.aspx>

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