

Casebase Number: G0067

Title of Payment: Carer's Allowance



Community Law and Mediation Northside
Northside Civic Centre
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Coolock
Dublin 17

Date of Final Decision: 10/04/2015

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

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Case Summary:

This case relates to the Appellant's Carer's Allowance (CA) claim in respect of his daughter for whom he cares.

The Appellant had been in receipt of Carer's Allowance and Domiciliary Care Allowance (DCA) in respect of his daughter until 5 November 2013. At this time, the Appellant's daughter reached aged 16, and therefore, the Appellant could no longer claim DCA in respect of his daughter. She subsequently applied for, and was awarded, Disability Allowance.

When the DCA payment ceased, the Appellant's eligibility for Carer's Allowance was reviewed. A Deciding Officer determined that the Appellant's daughter did not require full time care and attention and consequently the Appellant was found to be no longer entitled to Carer's Allowance. The Appellant appealed this decision. The Appeal was disallowed by an Appeals Officer on 20 June 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 10 April 2015.

Key Conclusions:

[Appeal Allowed]

"...The level of care which the appellant provides satisfies the qualifying conditions for entitlement to Carer's Allowance. Accordingly, having carefully examined all available evidence in this case, I am allowing 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" in accordance with the provisions of section 179 of the Social Welfare Consolidation Act 2005 (as amended).

Full time care and attention is defined with reference to the "relevant person" needing continual 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" avoid being a danger to him/herself or others.

In order to receive Carer's Allowance in respect of a child (under 16), the Carer must also be in receipt of Domiciliary Care Allowance (DCA). DCA is payable until a child reaches 16 years of age providing the effects of the child's disability are substantial so as to require full time care. 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 claims, 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 effect 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.

Section 317 of the Social Welfare (Consolidation) Act 2005, as amended, provides an Appeals Officer with the authority to revise the decision of another Appeals Officer where the decision is found to be erroneous in light of new evidence or new facts.

Section 318 of the Social Welfare (Consolidation) Act 2005 provides the Chief Appeals Officer with the authority to revise 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.

Key Arguments:

- The Appellant contended that the Appeals Officer (AO) had made a mistake as to the facts of the case. The Appellant asserted that the Appeals Officer's reasoning was flawed, that inappropriate evidential weight had been attributed to the opinion of the DSP Medical Assessor and that the Appeals Officer's finding that the caree did not require full time care and attention was demonstrably flawed in view of the evidence submitted by the Appellant.

- The Appellant asserted that the Appeals Officer was not privy to crucial testimony from the Appellant as an oral hearing was not held.
- The Appellant also submitted new medical evidence which reinforced the fact that his daughter requires full-time care and attention in accordance with the relevant legislation.
- The Appellant submitted that the failure to conduct a physical examination of his daughter limited the evidential value of the opinion of the DSP's Medical Assessors, particularly when weighed against the opinion of the professionals who had direct knowledge of his daughter's conditions and needs.
- At appeal in the first instance, the Respondent acknowledged that the medical evidence indicated the need for support for the caree but not for full-time care and attention as per the legislation.

Background:

The Appellant was in receipt of Carer's Allowance from 2005 in respect of his daughter. On reaching 16 years of age in 2013, his daughter ceased to be regarded as a qualified child for the purpose of the Domiciliary Care Allowance scheme and subsequently applied for and was awarded Disability Allowance. At this time the Appellant's Carer's Allowance claim was reviewed and on 5 November 2013 the Deciding Officer revoked his payment for the following reason:

"The Department Medical Assessor, having examined all the relevant evidence, is of the opinion that the person being cared for is not so invalidated or disabled as to require full-time care and attention as laid down in Carer's Allowance legislation. Having considered all the evidence in support of your application, including the opinion of the Department's Medical Assessor, I have decided that you do not satisfy the medical conditions for Carer's Allowance."

The Appellant appealed this decision and submitted a statement of appeal in addition to the evidence that was available in the DSP's Part 10 Medical Report Form (CR1 Form), as well as supplementary medical reports detailing his daughter's conditions and the need for care.

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 one "desk-based" medical assessment had taken place, therefore no physical examination of the Appellant's daughter was carried out.

In the Medical Assessor's report, which comprised a single computer screenshot, he stated:

“While the AME (additional medical evidence) indicates that this Girl needs extra care it does not establish that she needs FTC&A (full-time care and attention).”

Documents submitted by Appellant in support of his appeal:

- Part 10 Medical Report (CR1) completed by Consultant Paediatric Cardiologist
- Letter to G.P from Cardiology Department detailing the diagnosis of the Appellant’s daughter and listing her medications;
- Letter from Consultant Paediatric Cardiologist detailing the diagnosis of the Appellant’s daughter and listing current medications as well as stating that the Appellant’s daughter requires ongoing follow up with cardiology and numerous other specialities;
- Letter to G.P from Nephrology Department detailing diagnosis and listing medications;
- Report of Senior Social Worker describing emotional and behavioural difficulties of the Appellant’s daughter as well as her “significant and complex” medical history;
- Letter from Senior Social Worker with a printout of hospital attendances
- Letter from G.P outlining the medical conditions, providing a list of current medications and stating that the Appellant’s daughter needs a lot of care and attention;
- A statement of appeal submitted by the Appellant describing the extent of the care that he provides for his daughter. He stated that he must constantly monitor her medication and her eating as well as being available to bring his daughter to medical appointments.

On 20 June 2014 the Appeals Officer upheld the decision of the Deciding Officer, rejecting the Appellant’s appeal on the basis that:

“the medical evidence indicates the need for support for ..., but not for full time care and attention within the meaning of social welfare legislation.”

Submission seeking a review of Appeals Officer’s decision in accordance with Sections 317 and 318 of the Social Welfare Consolidation Act 2005, as amended; 16/02/2015

On 16 February 2015 CLM, on behalf of the Appellant, requested a review of the decision of the Appeals Officer, dated 20/06/2014. This request was made in accordance with Sections 317 and 318 of the Social Welfare Consolidation Act 2005 (as amended).

New medical evidence submitted by Appellant with written submission on 16/02/2015:

- Part 10 Medical Report (CR1) completed by Consultant Paediatric Cardiologist and supplementary report;
- Part 10 Medical Report (CR1) completed by Consultant Nephrologist and supplementary report;

- Letter from Paediatric Gastroenterologist describing the condition of the Appellant's daughter;
- Letter from GP outlining the medical conditions of the Appellant's daughter and her attendant care requirements;
- Printout detailing medications prescribed for the Appellant's daughter.

Other new evidence submitted by the Appellant with written submission on 16/02/2015:

- Letter from School Principal dated 01.09.2014 outlining the level of care needed throughout the school day by the Appellant's daughter and the fact that the Appellant needs to be available to collect her early when necessary;
- Statement from Appellant providing a contemporaneous account of week during 2014.

It was submitted by CLM that the decision of the Appeals Officer was at odds with the Appellant's testimony and that of the professionals charged with the care of his daughter. CLM asserted the Appeals Officer's decision presented as demonstrably flawed in its reasoning as the only evidence to support his finding was the opinion of the DSP's Medical Assessor, an opinion which was of questionable authority as it was confined to a "desk based" assessment only and, the Medical Assessor was not privy to the entirety of the medical evidence that was before the Appeals Officer. In these circumstances, it was submitted that the Appeals Officer erred by failing to properly consider the extent to which the Medical Assessor's opinion could be relied on for the purpose of determining the care needs of the Appellant's daughter. Furthermore, the Appeals Officer was not privy to the testimony of the Appellant, evidence that could have provided an account of the practical reality of the care required by his daughter.

The Medical Assessor's opinion was recorded on the 23/10/2013, and comprised as single sentence:

"While the AME (additional medical evidence) indicates that this Girl needs extra care it does not establish that she needs FTC&A (full-time care and attention)."

The date the opinion was recorded, the 23/10/2013, pre dated much of the medical evidence submitted by the Appellant on Appeal, evidence that included letters from doctors and a Senior Social Worker. Furthermore, the CR1 Form available to the Medical Assessor was completed in such a way that on a cursory examination it appeared that the Doctor was indicating that the caree presents as normal in all respects.

The cardiac specialist who had completed the CR1 form, struck through the "normal" tick box with respect to the effects on the caree's ability in specified areas. CLM asserted that clearly it was not in fact the case that the caree's ability is normal in these areas; rather, the Doctor when completing the form was dismissing this category as not applicable. The cardiac specialist provided a supplementary report in which he stated that the caree requires care and attention in excess of that required of a child of the same age thus

corroborating this interpretation. In considering the Appeals Officer's findings it was not evident that he had noted this anomalous form filling when considering the whole of the evidence before him.

The Appellant's daughter had been diagnosed and treated for cancer as a child and the medical evidence indicated that this contributed to her ongoing secondary complaints, in particular, those relating to eating and digestion and her general frailty. She also has a heart condition that led to the amputation of her lower left leg at age 7. Due to her heart condition and other medical issues, including a significant kidney condition, the Appellant's daughter experiences episodes of acute fatigue and she must be constantly monitored in order that the effects of any change in her health are treated promptly.

The evidence also indicated that the caree presents with emotional and mental health issues, described as "severe" by her doctors. In this regard CLM cited the report of the caree's social worker and also referred to the fact that although the caree is 17 years old, she presents both physically and behaviourally as far younger than her years and this has a bearing on her ability to manage her condition.

In relation to the new medical evidence, CLM submitted that it was notable that two CR1 forms independently referred to the caree as being "severely" affected in the category of mental health and as presenting as normal in only a few areas. CLM stated that this diagnosis was crucial in respect of a core aspect of her care, namely supervision, support and monitoring. The practical manifestation of this monitoring and support was evidenced by the Appellant's written contemporaneous account of the care he must provide for his daughter. This account was further corroborated by the report of his daughter's G.P., which referred to the need for continual "vigilance by the carer".

CLM contended that the totality of the caree's medical conditions require constant monitoring as any change may require hospital admission and adjustment in her complex medication regime. In short, CLM asserted that the medical evidence shows that the Appellant's daughter will need multi-disciplinary medical care indefinitely. The effects of these conditions mean that the Appellant must provide continual full-time care, manifesting in practical assistance and supervision on a daily basis so that his daughter's health is maintained. CLM submitted that the supporting documentation as provided by the Appellant, as well as the new evidence submitted under Section 317 of the Act, demonstrated that the Appellant's daughter is in fact in need of full time care and attention as per the statutory provisions.

On 10 April 2015 the Appeals Officer issued a revised decision allowing the appeal.

Date of Appeals Officer's Revised Decision: 10/04/2015

Appeal Officer's Reasoning and conclusions:

“New medical and other evidence now available in this case has identified specific conditions the care recipient suffers from, and arising from these conditions her need for full-time care and attention within the meaning of social welfare legislation has been established. The level of care which the appellant provides satisfies the qualifying conditions for entitlement to Carer’s Allowance. Accordingly, having carefully examined all available evidence in this case, I am allowing the appeal.”

Observations:

This case highlights the importance of examining the evidential weight attributed to the opinion of the DSP Medical Assessor when determining the facts as to the level of care required by a person. While not questioning the medical competence of a Medical Assessor, the probative value of his or her opinion should be scrutinised, particularly when formed on the basis of a desk based assessment only, and where there is little detail as to the assessor’s reasoning. Arguably, in this case the opinion of the Medical Assessor could not be regarded as a useful authority as much of the evidence available to the Appeals Officer post-dated the opinion of the Medical Assessor.

The difficulty for decision makers in cases such as this, is the need to establish the extent to which an Appellant or "relevant person" - the caree, is affected by their condition or disability. As is often the case, Doctors will submit evidence listing conditions and various medications but fail to adequately attest to the effects of these conditions. In order to qualify for a disability/illness related payment, a person must show the extent to which their condition/s affects their ability to work, engage in various activities, and/or care for themselves. Unfortunately, in circumstances where there is no physical consultation with a Medical Assessor, or where a person cannot attest to the effects of their condition at an oral hearing, evidence is often limited to what is contained in the application form.

Given the extent of medical evidence submitted by the Appellant at appeal stage and the limited value of the Medical Assessor’s opinion, CLM is of the view that an oral hearing should have been held in order to assist the Appeals Officer in making a reasoned finding of fact. Direct testimony from the Appellant would have clarified any inconsistencies in the evidence and informed the Appeals Officer as to the practical day-to-day care requirements of his daughter.

Another aspect to this claim and appeal is the matter of the client’s reasonable expectation that having previously established his daughter’s need for full time care, he should have continued to receive a payment unless there had been a material change in the level of his daughter’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.

This raises questions with respect to the claim process itself. In this we refer to Part 10 of the Carer’s Allowance form, to be completed by the “relevant person’s” Doctor. The Form

requests specific medical information but does not invite the Doctor 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, other than at Question 10 which comprises a 'tick box' section that requests a doctor to grade the effects of a condition from "normal" to "profound". We suggest that this is overly simplistic and of limited evidential value when trying to establish the extent of a person's care needs and disability.

In order for an applicant to make a successful claim, evidence must be provided to demonstrate a tangible link between the condition and its effects, and the corresponding intervention in terms of care. 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 detailed relevant information can be supplied by an applicant in a more routine manner. Furthermore, the evidence sought should not be confined to medical opinion, as a Doctor's insights into the practical effects of a person's disability and attendant care needs will in many cases be limited to their professional knowledge and insight. In order to make a truly informed decision with regard to the extent to which a person is affected by their condition it is necessary to consider the evidence of witnesses, the carer and others involved in a person's life, together with the medical opinion.

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/Medical-Assessments.aspx>

<http://www.welfare.ie/en/Pages/Medical-Review.aspx>

See also: Medical Assessment Protocols @

<http://www.welfare.ie/en/Pages/search/results.aspx?k=medical%20assessment&cs=This%20Site&u=http%3A%2F%2Fwww.welfare.ie%2Fen>

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