

**Casebase Number: G0082**

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



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Dublin 17**

**Date of Final Decision: 6 July 2016**

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**Keywords:** Carer's Allowance – medical - full-time care - section 318 - appeal - allowed

**Organisation who represented the Claimant:** Dublin 12 Area MABS (**MABS**)

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**Case Summary:**

This case relates to an application by the Appellant for Carer's Allowance (half rate) in order to care for his wife. The Appellant's wife was 57 years of age and had a diagnosis of Recurrent Psychotic Depression.

The Appellant applied for Carer's Allowance in 2015. The Appellant's application was refused. On Part 10 of the application form, the Doctor certified that the Appellant's wife was moderately affected by her condition. The Deciding Officer (**DO**) considered that the Appellant's wife was not so invalidated or disabled as to require full time care and attention. The Appellant appealed the DO's decision to the Social Welfare Appeals Office (**SWAO**). The Appeals Officer denied the appeal, following an oral hearing; on the basis that it had not been shown that the Appellant's wife required full-time care and attention.

The Appellant sought assistance from MABS. In May/June 2016 MABS requested a review of the Appeal Officer's decision pursuant to section 318 of the Social Welfare Consolidation Act 2005 (the **2005 Act**). In submitting grounds for review, MABS asserted that the Appeals Officer had not demonstrated that appropriate evidential weight had been attributed to the Appellant's written and oral testimony as to facts of his wife's care needs. As a consequence it was asserted that the Appeals Officer's reasoning was flawed to the extent that he had erred in fact and law.

**Key Conclusions**

Appeal allowed

*"Having reviewed the evidence in the case, I am of the view that the Appeals Officer did not give sufficient consideration or weight to the question as to the level of supervision required by [the Appellant's wife] in order to avoid danger to herself, in the context of her diagnosis and having due regard to [the Appellant's] account of the difficulties she encounters in relation to the activities of daily living. I consider that the evidence presented, which is summarised above, supports the contention that [the Appellant's wife] requires continual supervision in order to avoid danger to herself in accordance with Section 179(4)(a)(ii) and the extent of the care which [the Appellant] has outlined is, therefore, consistent with full-time care and attention as defined in the legislation.*

*For this reason I have decided to revise the Appeals Officer's decision under Section 318 and allow [the Appellant's] appeal."*

Chief Appeals Officer  
6 July 2016

### Summary of Benefit(s) Received:

Carer's Allowance is a means-tested payment awarded to a person who is providing full time care and attention to a "relevant person". With respect to the definition of "relevant person", s. 179 (4) of the Social Welfare Consolidation Act 2005 (as amended by s. 4 of the Social Welfare (Miscellaneous Provisions) Act 2015) provides:

*(4) For the purposes of the definition of 'relevant person' in this Chapter, a person shall not be regarded as requiring full-time care and attention unless the person has such a disability that he or she—*

*(a) requires 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, and*

*(b) is likely to require such full-time care and attention for at least 12 consecutive months*

In relation to 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.

A person may receive Carers Allowance in addition to certain other social welfare payments providing they meet the contingency requirements for both schemes. In these circumstances Carers Allowance is paid at half the personal rate of payment. You cannot receive Carers Allowance at the same time as claiming Jobseekers Allowance/Benefit, Supplementary Welfare Allowance or when signing for unemployment credits.

Section 318 of the 2005 Act 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:

*318. - The Chief Appeals Officer may, at any time, revise any decision of an appeals officer, where it appears to the Chief Appeals Officer that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts.*

### Key Arguments:

- The medical evidence provided by the Appellant was limited in that it did not directly address the extent to which the Appellant's wife requires full time care; however, it did confirm that the Appellant's wife suffers from a mental health condition that is characterised by significant debilitating affects which if present would necessitate a high level of supervision. The Psychiatrist confirmed that the Appellant's wife suffers

from Recurrent Psychotic Depression which impacts on her mental health/behaviour moderately, and that the condition and its affects are expected to last indefinitely.

- In written and oral testimony the Appellant outlined the extent to which his wife requires continual supervision in order to avoid endangering herself. The Appellant described needing to be in attendance when his wife carries out ordinary practical daily activities such as ironing or cooking in order that she avoid the risk of harm. He attested to being unable to leave his wife alone, that in circumstances where he did need to leave his wife unattended, a member of the family would have to stay with her to ensure that she did not come to harm.
- It was asserted that the opinion of the Department's medical assessor lacked any probative evidential value as it comprised a single computer screenshot that merely confirmed the carer's diagnosis as it appeared on the Appellant's application form. In examining the paper evidence, the Medical Assessor accepted that "a level" of care was needed but offered no further insight. It was further submitted that the Medical Assessor was arguably not in a position to offer an authoritative opinion as his assessment was desk based and therefore made without any direct medical knowledge of the caree.
- It was submitted that the evidence with respect the facts in the case, in particular the Appellant's testimony as to the effects of his wife's condition, present as entirely consistent with a finding that [the Appellant's wife] requires full time care and attention within the meaning of s. 179 (4) (a) (ii) and (b) of the Social Welfare Consolidation Act 2005 (as amended).
- The Appeals Officer did not express doubt as to the credibility of the Appellant's testimony, testimony which revealed circumstances consistent with the statutory meaning of full time care. Accordingly, the Appeals Officer's decision to reject the Appellant's appeal presented as contrary to the facts insofar as the Appeals Officer had not demonstrated that the Appellant's testimony (written and oral) had been given appropriate evidential weight when making his findings.

**Background:**

The Appellant applied for Carer's Allowance in October 2015 in respect of providing care to his wife who was 57 years old and diagnosed with Recurrent Psychotic Depression. His wife was in receipt of Disability Allowance since March 2015 and the Appellant himself was in receipt of Disability Allowance since 2009.

The Appellant's wife first presented to her psychiatrist in 2009, and it was her psychiatrist who completed the medical section of the Appellant's application form. At Question 10 of the form, the doctor was requested to tick a box with respect to the extent to which [the Appellant's wife's] condition affects her ability in different categories. In the mental health/behaviour category, the psychiatrist ticked the "moderate" box and referred to her condition as likely to last indefinitely. All other aspects of her functioning ability presented as normal.

The application for Carer's Allowance was accompanied with a letter from the Appellant describing the ways in which his wife's behaviour had been impacted; for example, she could not cope with phone calls or appointments and was attending a mental health clinic regularly.

The Appellant's application was denied in November 2015. The Deciding Officer did not consider that the Appellant's wife was so invalided or disabled so as to require full-time care and attention and therefore did not satisfy the medical conditions for Carer's Allowance.

For the purposes of appealing the DO's decision [the Appellant's wife's] psychiatrist provided a letter detailing her mental health history and medications; including the prescribing of anti-depressant, anti-psychotic and an anti-anxiety drugs. The psychiatrist confirmed that the Appellant's wife had presented with a severe depressive episode with associated psychotic symptoms and severe anxiety in 2009 and had had two relapses since. The psychiatrist advised that even with her prescriptions she suffered from low mood and anxiety intermittently, and needs to remain on her medications on an on-going basis.

At the oral hearing the Appellant described how he cared for his wife and how she struggled with day-to-day tasks such as doing the shopping or applying for her travel pass. The Appellant described his wife's inability to do household chores unsupervised and the ease at which she could become distressed. The Appellant would not let his wife cook unsupervised because she would forget to watch the cooker or turn off switches, and similarly needed to be supervised when ironing. The Appellant would not leave his wife alone and described how he would organise care for his wife whenever he could not be at home such as at the time of the hearing.

The Appeals Officer denied the appeal.

**Decision of Appeals Officer:** 1 April 2016

Appeal DISALLOWED

**Appeals Officer's reasoning and conclusions:**

*Having carefully considered the evidence in the case, including that adduced at the oral hearing, I am satisfied that it has been shown that (the Caree) requires support, but it has not been shown that she requires full time care and attention as defined in social welfare legislation. I have decided that the appellant is not entitled to Carers Allowance as it has not been established that (the Caree) requires full time care and attention.*

**Date of final Decision:** 6 July 2016

**Decision of Chief Appeals Officer:**

Appeal ALLOWED

**Chief Appeals Officer's reasoning and conclusions:**

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The question to be determined by the Chief Appeals Officer was the extent to which the Appeals Officer's reasoning and findings were compatible with the facts, evidence and the law. The Chief Appeals Officer examined the same evidence that was before the Appeals Officer, the medical evidence and written and oral submissions from the Appellant.

The Chief Appeals Officer considered a number of points to be important to the question at issue. The factors to which the CAO referred were submitted by the Appellant in written and oral testimony on appeal, and may be summarised as follows;

- [The Appellant's wife] is unable to do any cooking as she forgets she is cooking and lets food burn
- [The Appellant's wife] falls asleep on the couch most days and has fallen on to the floor on a number of occasions
- [The Appellant's wife] puts items away around the house and then thinks they are lost and becomes distressed
- [The Appellant's wife] will not go anywhere unaccompanied other than the 5 minute walk to her mother's house.
- If out in a family group, [the Appellant's wife] thinks other people are talking about her and can get distressed.
- [The Appellant's wife] will not answer the phone or open post.
- [The Appellant's wife] does not really manage any tasks independently. When applying for a bus pass she got very distressed when asked her name.
- When surgery is scheduled [for the Appellant] the Appellant must arrange for one of their adult children to stay with his wife while he is in hospital.

The Chief Appeals Officer also noted the points made by MABS in their submission;

- That while the medical evidence before the Appeals Officer does not provide definitive proof that [The Appellant's wife] requires full-time care and attention, it does provide sufficient information to indicate that the need for full-time care is quite probable,
- That when the medical evidence is examined together with the Appellant's testimony, it establishes the likelihood that [The Appellant's wife] could not function safely without the continual supervision of the Appellant.

Having reviewed the evidence that was before the Appeals Officer, and the law, the Chief Appeals Officer concluded:

*"Having reviewed the evidence in the case, I am of the view that the Appeals Officer did not give sufficient consideration or weight to the question as to the level of supervision required by [the Appellant's wife] in order to avoid danger to herself, in the context of her diagnosis and having due regard to [the Appellant's] account of the difficulties she encounters in relation to the activities of daily living. I consider that the evidence presented, which is summarised above, supports the contention that [the Appellant's wife] requires continual supervision in order to avoid danger to herself in accordance with Section 179(4)(a)(ii) and the extent of the care which [the Appellant] has outlined is, therefore, consistent with full-time care and attention as defined in the legislation.*

*For this reason I have decided to revise the Appeals Officer's decision under Section 318 and allow [the Appellant's] appeal."*

**Observations:**

The difficulty for decision makers in cases such as this is the need to establish the extent to which the "relevant person" - the caree, is affected by their condition or disability. The question at issue could be framed as follows:

To what extent do the effects of the condition/illness necessitate the provision of care from another person, and if that care is necessary, does that care have the characteristics of continual supervision?

We suggest that the answer to this question is fundamentally not a medical matter, as if it were, the matter would be determined by Doctors. Rather, medical opinion informs the decision maker but cannot be relied on as the sole source of evidence.

A doctor can certify that the person has a particular condition, and he or she can certify the presenting affects of that condition from a medical perspective, based on their knowledge of the patient. However, there are obvious limitations to this evidence; that is, to what extent can the doctor speak to the facts with regard to the day to day impact of an illness or disability as lived by the claimant or relevant person in the case of Carers Allowance. Rationally, the source of that direct evidence must come from the person who witnesses the effects of a condition – the carer, and/or the person with the disability or illness. Therefore, to adjudicate on a particular case, a decision maker requires more than medical evidence if they are to make a decision that is grounded in the facts. Furthermore, a decision maker must afford appropriate evidential weight to each source of evidence.

In this case, it was the medical evidence taken together with the direct evidence from the carer that established the extent to which the facts were consistent with a finding that the relevant person required full time care. The medical evidence in and of itself did not establish the need for full time care. What was at issue was the extent to which the Appeals Officer attributed sufficient evidential weight to the testimony of the Carer when making his decision.

Finally, with respect to the burden of proof that falls to claimant, it should be noted that an amendment to the legislation in 2015<sup>1</sup> provides that a person shall be presumed "not" to require full time care and attention unless it can be shown that they do. While this amendment does not fundamentally change the legal definition, it does place a greater burden of proof on the claimant as the legislation directs a decision maker to consider the matter from a negative as opposed to neutral standpoint at claim stage.

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<sup>1</sup> s. 4 of the Social Welfare (Miscellaneous Provisions) Act 2015

**For further information:**

[http://www.citizensinformation.ie/en/social\\_welfare/social\\_welfare\\_payments/carers/carers\\_allowance.html](http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/carers/carers_allowance.html)

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

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