

Casebase Number: G0086

Title of Payment: Carer's Allowance



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

Date of Final Decision: 29 September 2016

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Keywords: Carer's Allowance – Investigation- Role of Social Welfare Inspector- appeal allowed

Organisation who represented the Claimant: Kerry Area MABS (MABS)

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Case Summary:

This case relates to the decision by a Deciding Officer in November 2015 to stop payment of the Appellant's Carer's Allowance for the reason that he was no longer providing full time care for his wife, 'the Caree'. The Deciding Officer's decision was grounded in a report submitted by the Social Welfare Inspector (SWI), and a written statement submitted by the Appellant in which he advised that he was unable to care for his wife. The Appellant had been in receipt of Carers Allowance from April 2010 – November 2015. There was no dispute with respect to the Caree's on-going need for full time care; she was in receipt of Invalidity Pension, and suffered from multiple sclerosis and was prone to epileptic seizures.

The events that led to stopping the Appellant's Carers Allowance claim commenced following his application for Invalidity Pension and Disability Allowance. The Appellant had been advised that due to his own health conditions he might be eligible to receive a disability/illness payment and half rate Carers Allowance at the same time. As the extent to which the Appellant met the statutory conditions of either scheme was uncertain, it was considered prudent to apply for both in order to allow the DSP to make a determination in the first instance. The Appellant had a number of medical complaints including a cancer diagnosis, but the most significant in their effect at the time of his claims related to the injuries incurred as a consequence of an accident that took place in 2013. The Appellant fell off a roof resulting in multiple fractures and a bilateral pulmonary embolism. Rehab and surgeries were required, and in October 2015 the Appellant was in hospital for a few days for follow up surgery. On his release he was in a cast and on crutches.

An official of the DSP when referring the Appellant's Carers Allowance for investigation advised:

Client has recently applied for Invalidity Pension and D.A. please advise if client is able to provide full-time care

On 29 October 2015, a SWI made an un-notified call to the Appellant's home. According to the Appellant's account of the interview it was put to him that he was in no position to provide full time care for his wife, and that he had to make a written statement to this effect if he wished to claim Disability Allowance. In her report for submission to the Deciding Officer, the SWI referred:

I put it to X that he was in no position to look after his wife and he stated that was not currently

The Appellant made a statement as advised, and by letter, dated 10th November 2015, he was notified that he was no longer entitled to Carers Allowance.

The Appellant sought the assistance of Kerry MABS, and in November 2015, the Appellant submitted Notice of Appeal to the Social Welfare Appeals Office. He asserted that he was substantially restricted from undertaking employment, but continued to meet the requirements for Carer's Allowance as he was providing full time care for his wife. On 16th March 2016, Kerry MABS made a more detailed submission to the Social Welfare Appeals Office on the Appellant's behalf. The submission included an Affidavit from the Appellant attesting to the facts of the care he provides. In the Affidavit the Appellant also provided his account of the interview that took place with the SWI in October 2015.

It was asserted that the Appellant continued to provide full-time care to his wife following his surgery. By way of example, the Appellant pointed to a seizure suffered by his wife on 24 October 2015, describing himself as being 'quite able to manage his wife's care' despite his own physical limitations at the time. It was further asserted that while the Deciding Officer's decision to withdraw the Appellant's Carer's Allowance presented as entirely rational given the client's written statement, it was nevertheless unsafe as it was grounded in an investigation that was fatally flawed from the outset. It was submitted that the report of the SWI revealed demonstrable bias when interviewing the Appellant. The SWI did not question the Appellant as to how he was managing to care for his wife given his injuries; rather, she focused in some detail on the Appellant's surgeries and restricted mobility as 'evidence' of his inability to provide care. In failing to actually question the Appellant in order to establish the facts pertaining to the care provision for the Caree, the SWI narrowed her enquiries to the point that the interview had little, if any, investigative value.

Following submission of his Carers Allowance appeal, the Appellant also submitted appeals with respect to his application for Disability Allowance and Invalidity Pension. Both of these applications had been refused on the grounds that Appellant had not established that he was substantially restricted or incapable of work. Revised decisions in the Appellant's favour were subsequently issued by the DSP with respect to both these claims, Disability Allowance in or around December 2016, and Invalidity Pension in July 2016. As Invalidity Pension was payable at a higher rate, the Appellant transferred on this payment.

The Appellant's Carers Allowance Appeal was referred for oral hearing on 15th September 2016. The hearing addressed the matters raised in written submissions made by the DSP and the Appellant. There was some disagreement with respect to the circumstances under which the Appellant signed the statement in which he claimed that he was no longer caring for his wife. According to the record of the hearing, the SWI asserted that her objective was to ensure that the Appellant was on the correct payment.

Key Conclusions:

Appeal

Allowed:

"Having considered the evidence, which includes the appellant's statement and written submission, I have concluded that the department has not shown that the appellant is no longer providing full-time care and attention to the caree.

In the circumstances, the appeal is allowed."

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". 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.

At the time of the Appellant's application and award of Carers Allowance, s. 179 (4) ¹ of the Social Welfare Consolidation Act 2005 (as amended) - "the Act" - defined a relevant person as:

(4) For the purposes of subsection (1), a relevant person shall be regarded as requiring full-time care and attention where—

(a) the person has such a disability that he or she 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,

(b) the person has such a disability that he or she is likely to require full-time care and attention for at least 12 consecutive months, and

(c) the nature and extent of the person's disability has been certified in the prescribed manner by a medical registered medical practitioner

The definition of "carer" is also provided at s. 179 of the Act:

(1) Subject to this Act, in this Chapter— "carer" means—

(a) a person who resides with and provides full-time care and attention to a relevant person, or

(b) a person who, subject to the conditions and in the circumstances that may be prescribed, does not reside with but who provides full-time care and attention to a relevant person.

(2) The Minister may make regulations specifying the circumstances and conditions under which a person is to be regarded as providing full-time care and attention to a relevant person.

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 to which the relevant person – the Caree - requires full time care by reason of their disability/illness. A SWI may also be assigned to investigate the care arrangements in place in order to determine if the Carer is in fact available to, and providing, full time care in respect of the Caree. 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.

¹ S. 179 (4) was as amended by s. 4 of the Social Welfare (Miscellaneous Provisions Act 2015), which 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— ...

Key Arguments:

On behalf of the Appellant

- In his Affidavit the Appellant asserted that the written statement he made on 29 September 2015, to the effect that he was unable to provide full time care to his wife, was dictated to him by the Social Welfare Inspector (SWI). The Appellant further asserted that he understood from his meeting with the SWI that he had to sign a statement to this effect if he wished to claim Invalidity Pension or Disability Allowance.
- In his Affidavit, the appellant further asserted that following his release from hospital on 21 October 2015 he continued to provide the same level of care and attention to his wife as he had been since first receiving Carer's Allowance. The fact that he was not fully mobile did not prevent him from providing full-time care.
- MABS submitted that the report of the SWI dated 02/11/2015 revealed a bias when interviewing the Appellant. The SWI did not question the appellant as to how he was managing to care for his wife given his injuries; rather, she focused on the Appellant's surgeries and restricted mobility as "evidence" of his inability to care for his wife. It was submitted that in failing to actually question the Appellant, to establish the facts regarding the level of care given to the Caree, the Inspector effectively narrowed her enquiry to the point that the interview had little, if any, investigative value.
- In considering the evidence on record, and the Appellant's account of his interview with the SWI, MABS asserted that the Inspector used coercion for the purpose of obtaining a statement to suit her findings, findings that were made on the basis of assumption rather than enquiry. Accordingly, it was submitted that Appellant's statement should be disregarded, and contents of the SWI report considered as having little, if any, evidential value given that the report was the product of an investigation that was fatally flawed from the outset
- MABS further asserted that the SWI exceeded her authority when asserting that the Appellant was "currently not able to care for his wife", and directing the Deciding Officer to "cease payment". It was submitted that the SWI's statutory function was to establish extent to which the Appellant was providing full time care for his wife, and report her observations and evidence for decision by the Deciding Officer. It was not within the scope of the SWI statutory function to assess the Appellant's fitness to care, or make any decision with respect to his entitlement to payment.
- It was contended that the Appellant has provided and continues to provide full time care for his wife. It was further contended that if the Appellant was not in a position to provide full time care given the extent of his wife's care needs in light of her various disabilities it is likely that she would require full time institutional care in order to meet her needs.

On behalf of the Department of Social Protection (DSP)

- The DSP sought to rely on the written statement made by the Appellant on 29 September 2015, in which he stated that he was “currently not able to take care of (his) wife”, along with the report of the SWI. The SWI’s report referred:

...He has a cast and cover on his leg and was on crutches. X...fell from a 17ft high roof on the ... 2013 and broke his leg; pelvis etc. He has undergone multiple surgeries on his leg and the most recent and severe surgery happened last Monday week when surgeons had to put in a fresh bone (which was a remnant from a hip replacement) into the base of his leg to support the ankle as his ankle and leg did not attach.

I put it to Mr. X that he was in no position to look after his wife and he stated that he was not currently.

I asked Mr X to make a statement to that effect and I attach same here.

Decision of Appeals Officer: 29 September 2016
 Appeal ALLOWED.

Appeals Officer’s reasoning and conclusions:

The Appeals Officer noted and gave evidential weight to all the key points made by both sides, including the disagreement with respect to the circumstances under which the Appellant made a statement declaring that he was no longer able to provide full time care for his wife.

In making the decision, the Appeals Officer concluded:

The appellant was in payment of Carer’s Allowance since 2010 so there is a stronger burden of proof on the Department to show that the appellant is no longer entitled to Carer’s Allowance. In this case the Department are required to show that the appellant is no longer providing full-time care and attention. While I note that the appellant signed a statement on the 29/10/2015 stating that he is “currently not able to take care of my wife”, the appellant has stated that this statement was dictated to him and that he felt compelled to sign it. I note there is disagreement between the appellant and his wife on the one hand and the Social Welfare Inspector on the other as to how the statement came about. I also note that X (the SWI) requested that the Deciding Officer cease the Carer’s Allowance payment. The role of the Social Welfare Inspector is to investigate and report. A Deciding Officer is required to make an independent judgement on the application of the law, and is not subject to directions when making a decision.

Having considered the evidence in this case which includes [the Social Welfare Inspector’s] report, the appellant’s statement and the appellant’s written submission, I have concluded that the Department has not shown that the appellant is no longer providing full-time care and attention to the caree. In the circumstances the appeal is allowed.”

Observations:

The Appeals Officer succinctly summarised the critical issue in this case; namely, the proper execution of the respective statutory roles of the Deciding Officer and the Social Welfare Inspector. In addition,

the Appeals Officer referenced the shift in the burden of proof in cases where a claimant has an established entitlement. In summary, the Deciding Officer's statutory function is to make a decision on the basis of the whole of the evidence and the law, independent of the direction of the SWI. The SWI investigates, presents evidence, and might make observations; but the decision rests with the Deciding Officer alone. As the Appellant in this case had established an entitlement to Carers Allowance, the burden fell to the Department to establish that he was no longer providing full time care.

While accepting that it appeared as though there was a prima facie case for disallowance given the Appellant's statement, the tone and content of the SWI's report should in our opinion have given the Deciding Officer pause. Arguably, the matter should have been referred to another SWI for investigation as the information provided to the Deciding Officer did not include any detail with respect to the care that was being provided for the Caree. Without this information, an objective finding could not be made.

This case highlights an apparent peculiarity in the social welfare system; that is, you can be unfit/or substantially restricted from undertaking employment, while at the same time be sufficiently well to provide full time care. These two contingencies appear at face value to be incompatible; however, the statute says otherwise. Accordingly, while it is reasonable for the Department to refer a matter for investigation in circumstances where a carer declares that they are unfit for work at the same time, a SWI will surely need to be mindful that the focus of any enquiries should be on the extent to which care is in fact being provided.

For further information:

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

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

<http://www.welfare.ie/en/Pages/Social-Welfare-Inspectors.aspx>

For **more information**, contact us at:

Community Law and Mediation Centre, Northside

Northside Civic Centre, Bunratty Road, Coolock, Dublin 17

E: info@communitylawandmediation.ie | W: www.communitylawandmediation.ie

T: 01 847 7804