

Casebase Number: G0091

Title of Payment: Carer's Allowance



Community Law and Mediation Northside
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Date of Final Decision: 29 June 2017

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

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Case Summary:

The Appellant had been in receipt of One Parent Family Payment and half rate Carer's Allowance (CA) in respect of her son, for whom Domiciliary Care Allowance (DCA) was in payment.

On 7 January 2016, the Department of Social Protection (the **Department**) commenced a review of the Appellant's entitlement to Carer's Allowance in respect of the full time care needs of her son, the Caree. The Appellant submitted, as requested, a completed Medical Report (CR1) on which the Caree's GP certified that he was moderately affected in relation to his mental health and behaviour. The Appellant also submitted a school report and further medical evidence, including a medical report from a Consultant Child and Adolescent Consultant.

Following receipt of the papers the Department issued multiple decisions whereby it was asserted that the Caree did not require full time care and attention within the meaning of section 179(4) of the Social Welfare Consolidation Act 2005 (as amended) (the 2005 Act). Despite decisions having been made that the Caree did not require full time care and attention the Department did not revoke the Appellant's claim.

In April 2016, the Appellant's son reached age 16 and therefore entitlement to DCA ceased. By letter, dated 15 June 2016, the Deciding Officer stopped the Appellant's Carer's Allowance with effect from 30 June 2016 for the following reason:

Following a review, a Deciding Officer, having considered all the documents submitted in support of your claim and having weighed up all the evidence, has decided that you are no longer entitled to CA as the relevant person being cared for in this case, no longer meets the full time care and attention requirements as set out in section 197(4) of the Social Welfare (Consolidation) Act 2005, as amended.

The Appellant appealed this decision on 5 July 2016 on the basis that her son has significant difficulties and had been diagnosed as having clinically significant scores in the areas of opposition, cognitive problems, Hyperactivity, inattention and restlessness.

The Appellant sought the assistance of Community Law & Mediation Northside (**CLM**), who requested the release of documents under the Freedom of Information Acts 2014.

The medical opinion of the Department's Medical Assessor, dated 15 February 2016, referred:

while the AME [available medical evidence] indicates a level of care need it does not establish that this chap needs FTC&A [full time care and attention].

CLM sought additional medical evidence and evidence from the Caree's school showing the need for full time care and attention. The medical evidence highlighted the fact that the Caree's diagnosis was more complex than when reviewed by the Department as, in addition to various learning difficulties, he had also been diagnosed with depression and was threatening self-harm. Due to the risk of self-harm, the Caree required continual supervision.

CLM lodged a written submission with the Social Welfare Appeals Office on 3 April 2017. The submission included various key arguments in addition to evidence demonstrating the need for full-time continual care and attention. This evidence included the following reports:-

- Medical Report for Carer's Allowance dated 21.01.2016
- Open Letter Family Therapist dated 20.01.2016
- Minutes of Family Welfare Conference dated 08.11.2011
- Minutes of Case conference dated 18.08.2011
- Psychiatric Report dated 25.07.2011
- Psychological Assessment undated
- Psychological Report dated 23.06.2006
- Letter from Appellant's GP dated 31.08.2016
- Report from Family Therapist and Principal of school where Appellant's son attended dated 26.06.2016
- Report from Family Therapist dated March 2017
- Diary Entry from Appellant dated 18-20 January 2017

On 10 April 2017 an oral hearing was held and a solicitor from CLM represented the Appellant. The Department was not represented at the oral hearing.

At the oral hearing the Appellant gave an account of her son's daily life and confirmed that he was no longer attending school. She explained that he attends a high support special needs school. The Appellant described her son's behaviour as abusive and threatening to her and recounted the fact that he has threatened self-harm. She stated that she was required to supervise her son at all times and that he rarely leaves the house. She further stated that she is reluctant to leave her son alone in the house due to the risk of self-harm. When she does leave she asks a family member to be present.

The Solicitor representing the Appellant referred to the Caree's diagnosis of learning difficulties and highlighted both the written and oral testimony of the Appellant which set out the daily life of the Appellant and her son in terms of his needs in light of his various conditions and in particular it was highlighted that due to his mental health difficulties he required continual supervision by the Appellant. It was submitted that the medical evidence coupled with the oral testimony of the Appellant in relation to the extent of the Caree's needs show that the Caree does meet the requirement to provide full time care and attention as set out under the legislation.

On 29 June 2017 the Appeals Officer issued a decision allowing the appeal on the grounds that the new medical evidence confirmed that the Appellant's son required full time care and attention as set out in the 2005 Act. The Appellant was also awarded arrears of payment backdated to the date her Carer's Allowance was first terminated.

Key Conclusions:

[Appeal allowed]

"It is noted that the appellant was in receipt of a Carer's Allowance to his age 16 in respect of her son...Her son was the recipient of Domiciliary Care Allowance to age 16. I note from the GP report of 31.8.2016 from ... that the care recipient suffers from cognitive problems, hyperactivity, inattention and restlessness. The GP Report further certifies that the care recipient's mental health has recently worsened with depression and threatening of self harm. I have considered very carefully this medical evidence and the evidence adduced at oral hearing including the written submission by the Community Law & Mediation service. I conclude from this evidence that the care recipient's care requirements meet the requirements as set out in legislation. In the circumstances this appeal is allowed."

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" avoids being a danger to him/herself or others.

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 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.

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

Key arguments made on behalf of the Appellant:

- CLM submitted that due to various medical conditions including cognitive problems, hyperactivity, inattention and restlessness as well as a learning disability and behavioural difficulties, the extent of supervision required by the Appellant's son as a result of such difficulties, combined with a more recent diagnosis of depression, meant that the Appellant did in fact fulfil the statutory criteria for Carer's Allowance. CLM submitted new medical evidence to show the complexity of the Caree's various medical conditions including a report regarding the Caree's mental health difficulties and that he was threatening self-harm.
- CLM argued that the Department had made a mistake on the facts of the case in that the Deciding Officer could not demonstrate that s/he had made a properly reasoned finding that justified the termination of the Appellant's claim. It was

submitted that the evidence before the Deciding Officer clearly established that the Caree presents with multiple health issues, specifically in relation to his mental health as well as having severe learning and behavioural difficulties. CLM referred to the evidence previously submitted by the Appellant including a psychiatric report from 2011 which confirmed that the Caree had been suffering from behavioural issues since 2006 and in 2011 showed symptoms of anxiety, oppositional behaviour and Attention Deficit Hyperactivity Disorder.

- CLM acknowledged that the 2011 reports showed the Caree as displaying symptoms of the above illnesses as opposed to having a diagnosis of same, however it was contended that the effects of this are exactly the same in terms of care need.
- CLM also referred to a psychological assessment that was carried out on 10 May 2011 by the Caree's psychologist whereby it was stated that the Caree's cognitive abilities are well below the average. The report further noted an elevated clinical risk in the areas of aggression, bullying, conduct problems and ADHD type behaviours. This report further stated that due to the various conditions which impacted upon the Caree's self care skills *"everyday skills required for functioning and meeting environmental demands, including effectively and independently taking care of oneself and interacting with other people."*
- In addition to the medical evidence, CLM also cited the report of Family Therapist of the Appellant's son dated 20 January 2016 which confirmed that he had been expelled from a previous school and that his current school was struggling to cope with his present difficulties. The report further stated that the Appellant's son would require "ongoing support in life". In this regard the Appellant gave evidence that her son had dis-engaged from school and had not attended school for several months.
- It was submitted that the report of the DSP's Medical Assessor was of limited evidential value as the opinion was formed on the basis of a desk based assessment only.
- It was further submitted that this medical report was flawed in that it did not take account of the mental health difficulties of the Appellant's son and therefore the decision of the Deciding Officer was flawed on the basis that an incomplete picture was provided of the various medical conditions of the Caree and therefore the extent of his care needs.
- CLM argued that the format of the CR1 form, the medical form used to assess applications for Carer's Allowance, is insufficient and inadequate in that it does not allow for a full description of mental health and behavioural difficulties of the caree.
- CLM also sought to rely on the submission of new medical evidence and the testimony of the Appellant to show that the condition of the Caree had significantly

deteriorated and that the ability of the Appellant's son to care for himself remained extremely low and that the Appellant is therefore required to provide him with full time care and attention.

- CLM pointed to new medical evidence outlining the deterioration of the Appellant's son in terms of his mental health and the impact this had on the Appellant's requirement to provide full time care and attention.
- CLM contended that the testimony of the Appellant clearly outlined the need for her to constantly monitor her son due to his threats to hurt himself.

Key arguments on behalf of the Department of Social Protection

- Whilst the Department accepted that the Caree required a certain amount of care and attention, it contended that there was insufficient evidence to show that the Caree required full time care and attention.
- The Department concluded that, following a review, the Caree no longer met the requirements as set out under section 179(4) of the Social Welfare (Consolidation) 2005 Act as amended.

Oral hearing: 10 April 2017

Date of final Decision: 29 June 2017

Appeals Officer's reasoning and conclusions:

The Appeals Officer's reasons for allowing the appeal were partly based on the new medical evidence submitted by the Appellant's GP regarding the mental health issues of the Appellant's son and therefore overall he concluded that the care requirements of the Appellant's son did meet the care requirements set out in the legislation. The Appeal's Officer noted that:

...It is noted that the Client was in receipt of a Carer's Allowance to his age 16 in respect of her son...Her son was the recipient of Domiciliary Care Allowance to age 16. I note from the GP report of 31/8/16 from Dr ... that the care recipient suffers from cognitive problems, hyperactivity, inattention and restlessness. The GP report further certifies that the care recipients mental health has recently worsened with depression and threatening of self harm. I have considered very carefully this medical evidence and the evidence adduced at the oral hearing including the written submission by Community Law & Mediation service. I conclude from this evidence that the care recipients care requirements meet the requirements set out in legislation. In the circumstances this appeal is allowed."

The Appellant's entitlement to Carer's Allowance in respect of her son was upheld thus entitling her to a half rate Carer's Allowance and she was awarded arrears in the amount of approximately €10,000.

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>

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