

Casebase Number: G0042

Title of Payment: Disablement Benefit



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

Date of Final Decision: 28/02/2012

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Keywords: Disablement Benefit application—degree of disablement—medical—new evidence—section 317

Organisation who assisted claimant: Northside Community Law and Mediation Centre (NCL&MC)

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Case Summary:

This case relates to an application for Disablement Benefit. The Appellant's level of disablement was initially assessed at 7%. In 2009, it was reassessed at 1%. This decision was appealed. On appeal, the Appeals Officer (AO) found the degree of disablement to be 3%. In 2011, NCLC requested a revision of this decision under section 317 of the *Social Welfare Consolidation Act 2005* submitting that the decision of the AO was erroneous in light of new evidence. In 2012, the AO revised his decision, and the Appellant's level of disablement was found to be 6%.

Summary of Benefit(s) received:

Disablement Benefit is a benefit under the Occupational Injuries Scheme. It can be paid to you if you suffer a loss of physical or mental faculty because of an accident at work, an accident travelling directly to or from work or a prescribed disease contracted at work. A Medical Assessor who is employed by the Department of Social Protection assesses an applicant's level of disablement. The MA will provide an opinion as to the extent of your loss of faculty as a result of your occupational injury. Decisions regarding the degree of a person's disablement may be made on a provisional or, 'for life' basis. Where the level of disablement is less than 20%, the benefit is paid as a lump sum known as a "gratuity". Where the degree of disablement is greater than 20% a person will receive a weekly pension.

Background:

On the 20th June 2007, the Appellant, a general operative, was injured at work when two boxes fell on her left foot and hit her left knee. As a result she was left with constant pain in her knee. She continued to attend with her GP who prescribed medication and she attended on-going physiotherapy sessions.

The Appellant applied for Disablement Benefit on 4th March 2008 and was assessed by a MA. The MA formed the opinion that the Appellant had a 7% disablement and Deciding Officer (DO) issued a decision reflecting the findings of the MA. The decision was made on a provisional rather than 'for life' basis. In this case the Appellant's level of disablement was found to be 7% for a period of 17 months from the 7th December 2007. In October 2009, the claim was reassessed and the Appellant's disablement was assessed at 1%. She was also informed that this would be the final assessment. She appealed this decision.

Date of oral hearing: 14 April 2011

Date of Appeal Officer's decision: 28th April 2011

Date of revised Appeal Officer's decision: 28th February 2012

At Hearing:

The Appellant submitted that she is still under the care of her GP as a result of her injury and is on medication. The Appellant described the effect of her injury on her daily life. Specifically, she referred to problems sleeping, only being able to walk for short periods (10 minutes); numbness and stiffness in her leg and difficulty lifting even light items. The Appellant submitted a letter from a Physiotherapist, dated May 2010, confirming that the Appellant had been attending the Physiotherapy department since 2009 as a result of foot and knee problems. The letter also confirmed that these affects were on going. It was noted by the Appeals Officer that the Appellant had had a separate occupational injury in October 2007 and in his view it was difficult to get a clear picture as to the effects of the first injury (June 2007) separate to the level of disablement resulting from the second (October 2007). The Appellant had already been assessed as having a 20% disablement resulting from the second injury. The AO noted that he had some reservations as to the loss of faculty relating solely to the injury as a result of the occupational accident in June 2007. Nevertheless, he decided that on balance the Appellant's degree of disablement should be increased from 1% to 3% for life, with effect from 7th October 2009.

The Appellant sought advices from Northside Community Law and Mediation Centre and was represented thereafter.

Request for review under s. 317 of the Social Welfare Consolidation Act 2005:

On the 11th October 2011, Northside Community Law and Mediation Centre on behalf of the Appellant requested a revised decision under Section 317 of the Social Welfare Consolidation Act 2005 which allows for such a revision, "*where it appears to the appeals officer that the decision was erroneous in the light of new evidence or of new facts...*" Northside Community Law and Mediation Centre submitted that 3% did not adequately reflect the severity of the disablement suffered by the Appellant. It was submitted that the decision should be revised based on a medical report from the Appellant's Consultant doctor dated 20th September 2011. Northside Community Law and Mediation Centre also challenged the findings as set out in the MA's report of 11th September 2009. In this report the MA noted;

"[The Appellant] does not appear to be in any discomfort after sitting 15 minutes today, walked out with no apparent foot pain."

It was submitted that such a comment appears to be based on a layman's observation rather than an objective clinical finding. For this reason little evidential weight should be attributed to the report.

Appeals Officer's reasoning and conclusions:

In a letter dated 28th February 2012, the Appellant was informed that her Disablement Benefit had been increased to 6%.

The AO, in revising his decision, noted the representations made by Northside Community Law and Mediation Centre on behalf of the Appellant and the new medical evidence submitted by the Appellant.

Our observations:

In claims involving applications for disablement benefit, Medical Assessors play a crucial role in determining the level of seriousness of the injury. The Deciding Officer relies on the report of the Medical Assessor in examining an applicant's claim. Medical Assessors will rely on a short physical examination and information on file in order to form their opinions. A Medical Assessor will not dispute the existence of a condition/disability; rather they assess the affect on the person's daily life – the degree of disablement.

In order to ensure that a fair, just and reasonable decision is made, it is crucial that applicants submit their own independent medical evidence. Such evidence will need to address specifically the degree of disablement experienced by the applicant.

For more information on Disablement Benefit, useful links are;

- **Citizens Information:**

http://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/disability_and_illness/disablement_benefit.html

- **Department of Social Protection;**

<http://www.welfare.ie/en/Pages/oib.aspx>

- **Social Welfare Consolidation Act 2005:**

<http://www.irishstatutebook.ie/2005/en/act/pub/006/index.html>

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

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