Casebase Number: G0114

Thematic Note on SWAO Case Studies: Backdating Claims

Community Law and Mediation

Northside Civic Centre

Bunratty Road

Coolock Dublin

17

Period of Analysis**:** 2009-2020

Theme: Backdating

Period of Analysis: SWAO Annual Reports 2009-2020

Keywords: Backdating; entitlements; late claims;

Casebase No. Case G0114

Summary of the relevant law:

The primary legislative provisions governing claims and late claims are set out in Sections 241, 342 and 342A of the Social Welfare Consolidation Act 2005, as amended. See also Part 9, Chapter 1 of Social Welfare Consolidation Act 2005 (as amended).

The main regulatory provisions with regard to claims are contained in Chapter 1 of Part 7 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations (S.I. No. 142 of 2007) as amended – Articles 179 to 191 and SI 102 of 2007 (for the purposes of the Occupational Injury scheme).

Certain provisions override or reduce the period of disqualification for a late claim. All decisions with regard to entitlement under these provisions are made by deciding officers, and can therefore be appealed to the Social Welfare Appeals Office (SWAO).

Helpful guidance is contained in the Department of Social Protection Operational Guidelines on Claims and Late Claims and in the separate departmental guidelines dealing with the individual schemes.

Generally social welfare legislation provides for backdating of claims (for up to 6 months) where it is accepted that there was good cause for the delay and where entitlement throughout the period in question is established (Section 241(3) of the 2005 Act as amended). The deciding officer may consider backdating the claim where there is a good cause for the delay in making the application. What constitutes "good cause" is not clearly set out; however being ill or delay in establishing that the applicant qualifies for the relevant scheme may be considered good cause. Generally, not knowing that you were entitled to a payment is not considered to be good cause for not making your claim on time.

The circumstances in which a claim may be backdated further are more onerous to establish and are specified in legislation as an incapacity to make a claim and where incorrect information was given by the Department**.**

Normally payments will be made from the date of the application.

Key grounds of appeals by appellants:

Key grounds for appeal included:

- applicants not being aware of the entitlement;
- applicant having difficulties in completing the application on time due to personal circumstances;
- the date of qualification for the relevant scheme being in doubt;

Observations on appeal outcomes:

The appeals were generally successful in backdating the claim by six months where the deciding officer was satisfied that the applicant had a good cause for the delay, these included personal circumstances, not being informed of entitlements by the department and delay in establishing that the applicant qualified for the relevant scheme.

Where the applicant applied for the wrong scheme but this should have alerted the department of entitlement for another scheme, the date of initial application for the wrong scheme can be used for backdating.

While generally, not knowing that you were entitled to a payment is not considered to be a good reason for not making your claim on time, the cases are to be considered on a case by case basis and in specific circumstances it may constitute a good cause.

Good examples are **2017/08 Guardian's Payment (Contributory), 2017/54 State Pension (Non-Contributory) and 2018/23 Disability Allowance**

Applicants were rarely successful in requests to back date for a longer period than the 6 months as the circumstances where this is permissible are clearly set out in the legislation and are limited to incapacity to make a claim and where incorrect information was given by the Department.

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C.	**2011**	
1.	2011	Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) before August 2008 for purposes of her claim to Child Benefit.
D.	**2012**	
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E.	**2013**	
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H.	**2016**	
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2.	2016/04 Domiciliary Care Allowance Oral hearing (Section 317)	Question at issue: Whether eligibility criteria met at an earlier date
3.	2016/29 State Pension (Contributory) Oral hearing	Question at issue: Date of award
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I.	**2017**	
1.	2017/02 Child Benefit - Summary decision	Question at issue: Backdating of payment
2.	2017/05 Domiciliary Care Allowance -Summary Decision	Question at issue: Backdating of claim
3.	2017/06 Domiciliary Care Allowance - Oral hearing	Question at issue: Whether the eligibility criteria were met at an earlier date
4.	2017/08 Guardian's Payment (Contributory) - Summary decision	Question at issue: The eligibility criteria were met at an earlier date
5.	2017/28 Carer's Allowance - Summary Decision	Question at issue: Means and overlap of entitlement between schemes
6.	2017/54 State Pension (Non-Contributory) - Oral hearing	Question at issue: Backdating
7.	2017/318/60 Child Benefit	Question at issue: Right to reside in the State
8.	2017/318/61 Domiciliary Care Allowance (DCA)	Question at issue: Whether a payment should be backdated more than 6 months
J.	**2018**	
1.	2018/05 Domiciliary Care Allowance Summary Decision	Question at issue: Eligibility
2.	2018/23 Disability Allowance	Question at issue: Backdating
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2.	2019/02 Child Benefit	Question at issue: Backdating (habitual residence condition)
3.	2019/05 Domiciliary Care Allowance	Question at issue: Backdating
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L.	**2020**	
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2.	2020/44 Supplementary Welfare Allowance	Question at issue: Backdating
3.	2020/50 State Pension (Contributory)	Question at issue: Backdating
4.	2020/51 State Pension (Contributory)	Question at issue: Backdating (increase for qualified adult)

A. 2009

1. **2009/06 Invalidity Pension**

Question at issue: Whether a late claim may be backdated on the basis of information given to the appellant.

Background: The appellant was awarded an Invalidity Pension from the date she applied in November 2006. Subsequently, she sought to have the claim backdated to August 2002 as she had been in receipt of Illness Benefit at that time and considered that she had been misinformed by the Department regarding her options. In November 2002, following a review of her Illness Benefit claim, the appellant was found to be capable of work and payment of Illness Benefit ceased. She appealed this decision and was informed by the Deciding Officer that she could make a claim for Jobseeker's Benefit while her appeal was being processed. In the event, she won her appeal and payment of Illness Benefit was restored. In relation to the decision to refuse her request for backdating the claim for Invalidity Pension, the appellant argued that the Deciding Officer's advice was misleading in that it led her to conclude that she could not claim Invalidity Pension at that time. Having identified no dispute as to the facts of the case, the Appeals Officer determined the appeal on a summary basis.

Consideration of the Appeals Officer: The Appeals Officer noted the appellant's contention that the advice given to her was misleading and that she should have been advised to apply for Invalidity Pension. He noted also the Deciding Officer's statement that it is standard practice to inform persons found capable of work to claim Jobseeker's Benefit and that it would be inappropriate in such circumstances to advise someone to claim Invalidity Pension. The Appeals Officer concluded that the advice given to the appellant was not such as to mislead or prejudice her in any way and that it was reasonable advice in the circumstances. He accepted

that it would be inappropriate to advise a person who has been assessed as being capable of work to claim a pension which requires that person to be incapable of work. He noted also that it was open to the appellant to claim Invalidity Pension when payment of Illness Benefit was restored in 2003 or at any intervening stage before the claim of November 2006.

Outcome: Appeal disallowed

B. 2010

1. 2010/18 Widow's (Contributory) Pension – summary decision

Question at issue: whether it was correct to award a (pro-rata) Widow's Pension in connection with a claim made in 2006; the appellant held that an earlier claim made in 1992 had not been determined.

Background: The appellant, who is living in the USA, made a claim for Widow's Pension in 2006, indicating that she had been widowed in 1992 and re-married in 2003. She referred to an earlier claim made in 1992 and sought to have pension paid to her from the date of that claim. However, the claim made in 2006 was treated as a retrospective claim, with the provisions which refer to late claims being applied. The Deciding Officer determined that the appellant did not qualify for pension based on her Irish social insurance record alone. On the basis of a combined Irish/USA record, however, she was awarded a pro-rate pension at a rate of 42%. She would have been eligible for State Pension from a date in 2005 (at age 66 years) so that date was treated as her date of claim and the proportionate backdating provisions were applied. (These are outlined in the Social Welfare (Consolidated Claims, Payments and Control) regulations, 2007 (S.I. 142 of 2007). The appellant was then awarded arrears of pension from a date in 2002 to the date when she re-married.

Consideration of the Appeals Officer: Over an extended period, the appellant sought to have the earlier claim recognised. Ultimately, a review of the case was carried out by the Department of Social Protection. The earlier claim papers were retrieved, establishing that the date of application was 1992, as asserted by the appellant, but the decision in the case was confirmed. The appellant then made an appeal to this Office. In the context of her appeal, the Department pointed out that at the time of her claim in 1992, there was no legislative basis for assessing entitlement to a pro-rata pension as it pre-dated the introduction of the Irish/USA Bilateral Agreement. That Agreement came into effect on 1 September 1993 and provided the basis for determining pension entitlement by combining the social insurance records held in both countries. The appellant's grounds of appeal were that she had made a claim to Widow's Pension in 1992 and that her entitlement to pension should be assessed from that date, with arrears of pension awarded. The Department located the original claim form and confirmed the date of application stated by the appellant. The Department also outlined the procedures which had applied to claim processing at that time. Briefly, as the appellant was not entitled to a contributory pension, her claim was referred for assessment of entitlement to a non-contributory pension and a Social Welfare Inspector was asked to interview her. It transpired that the Inspector had been unable to contact her and, on that basis, a Deciding Officer determined that her Widow's Pension claim was withdrawn. The appellant argued that no formal decision had been made in relation to her claim of 1992. In a detailed appeal submission, she drew attention to the statement outlined in the decision notice issued to her in 1992, as follows: 'If you wish to continue your claim at a later stage please contact this office.' On this basis, she asserted that her claim should be treated as having been made in 1992. Having carefully considered the evidence in the case, including the appellant's detailed submissions

and correspondence over a lengthy period, as well as copies of papers from 1992 and details of the review carried out by the Department, the Appeals Officer concluded that there was no basis in legislation for the decision made in 1992 to withdraw the claim. She considered that the decision at issue was administrative only and that the question as to the appellant's statutory entitlement to a contributory pension had not been determined. In the circumstances, she concluded that the claim must be assessed with effect from 1 September 1993, when the Irish/USA Bilateral Agreement came into effect, to the date in 2003 when the appellant re-married. Accordingly, the appeal was successful.

Outcome: Appeal allowed.

C. 2011

1. Child Benefit – oral hearing

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) before August 2008 for purposes of her claim to Child Benefit.

Background: The appellant, a Somali national, came to Ireland in April 2006 and sought asylum. She was assigned direct provision accommodation while her application was being processed. When she fled Somalia, she left her daughter in the care of a family member. Her son was born in Ireland in August 2006, and she made a claim for Child Benefit. That claim was refused on grounds that she was deemed not to meet the habitual residence condition. Ultimately, the appellant was granted refugee status in August 2008, on appeal to Refugee Appeals Tribunal. She applied again for Child Benefit in respect of her son, which was awarded with effect from August 2008.

Parties attending oral hearing: The appellant, a friend who acted as interpreter and a solicitor representing the appellant.

Report of oral hearing: The appellant's solicitor presented a written submission on her behalf. He confirmed that the appellant's status had been decided by the Refugee Appeals Tribunal. He reported that the appellant's daughter remained in the care of a family member but that she was now living in Kenya, as were the other members of the appellant's family. He advised that the appellant had applied for family reunification in respect of her daughter. He confirmed that the appellant had lived in direct provision accommodation since coming to the State in 2006 until granted refugee status, and said that she had not left the State since coming here. He reported that the appellant's son had a chronic medical condition and submitted that, in view of the child's consequent needs and the political situation in Somalia, Ireland had to be her centre of interest as she could not be sent back to Somalia. The appellant's solicitor made reference to the earlier claim, made in 2006, and stated that it would have been futile for the appellant to appeal the decision at the time as it would have been refused again because she was not at that stage present in the State or the Common Travel Area for a continuous period of two years ending on the date of application. He submitted, however, that as the appellant had since been recognised as a refugee, the award of Child Benefit should be backdated to the original application, with arrears paid to the appellant.

Consideration of the Appeals Officer: The Appeals Officer considered the contention advanced by the appellant's solicitor, that the letter from the Minister for Justice, Equality and Law Reform did not actually confer refugee status on the appellant but recognised that she was

a refugee. He noted that her solicitor had quoted from the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees published by the Office of the UNHCR, as follows: A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognised because he is a refugee. The Appeals Officer noted also that the letter of notification of its decision sent by the Refugee Appeals Tribunal did not specify an effective date for the recognition of the appellant's status as a refugee. In the absence of that date, he considered it reasonable to conclude that the Refugee Appeals tribunal was, in fact, recognising the appellant's refugee status from the date of her application for that status. In this regard, he took account also of the recent judgment of Cooke J in the High Court, IEHC 33, delivered on 9 February 2001, stating that 'the determination of an asylum application does not have as its purpose or outcome the discretionary grant or refusal of refugee status by the Minister. It is not, for example, analogous to the exercise of his discretion on an application for a certificate of naturalisation under the Irish Nationality and Citizenship Act, 1956. An asylum seeker is a refugee as and when the circumstances defined in the Geneva Convention arise and apply. The determination of the asylum application is purely declaratory of a pre-existing status.' Accordingly, the Appeals Officer accepted that recognition of a person's status as a refugee is declaratory of a pre-existing status, although he considered that this did not necessarily mean that the person must also be regarded as being habitually resident in the State from the date of his or her arrival or application for refugee status. In the appellant's case, however, and having regard to all five factors to be considered when determining habitual residence insofar as they may be applicable, he was satisfied that she was habitually resident in the State when her son was born in 2006 The Appeals Officer noted the Deciding Officer's contention that the appellant did not appeal the HRC decision made on her earlier claim of 2006, as well as her solicitor's assertion that it would have been futile for her to have done so. He noted also that the appellant did not delay in making another application as soon as she had new facts to present, in terms of the determination of her refugee status. He concluded that it would be unreasonable not to review the decision on the appellant's earlier claim in the light of those new facts. As he was satisfied that the appellant was habitually resident in the State at the date of her son's birth, he considered also that entitlement to Child Benefit should apply from that date.

Outcome: Appeal allowed

CLM NOTE – The outcome of this appeal appears to be at odds with the subsequent treatment of applications of asylum seekers for child benefit. See 2016/02 below and also Supreme Court decision in *Agha & Osinuga* / Casebase Report G0108.

D. 2012

1. Case 2012/03 - Child Benefit

Decision under appeal: refusal of request to award payment from an earlier date - reason(s) stated:- On the basis of the additional information received, I regret to inform you that I am unable to revise the original decision to award Child Benefit for [C] from [specified date] 2010.

Issue: Date of Award.

Background: A claim for Child Benefit was made by the appellant in respect of his son, who came to reside with him. He sought to have the claim backdated to an earlier date, at which point he had been awarded sole care and custody of his son. He submitted copies of Court Orders (from another jurisdiction) in support of this claim. He pointed out that an earlier Order had removed from his estranged wife her legal rights to their son's care and custody, vesting them in her parents instead. He advised that as the child's grandparents had not assumed their legal responsibilities, a second Order was issued, overriding the original one and giving the appellant sole custody. The appellant travelled to take custody of his son pending finalization of court proceedings. He continued, on approval, to be entitled to Supplementary Welfare Allowance (Rent Supplement) throughout the period at issue.

At oral hearing: the appellant's main contention related to the status of his son during the period where he stated the child had been unlawfully abducted from his country of ordinary and habitual residence to another State. The appellant advised that his marriage had ended in 2006, while the family lived in Ireland, and that his son lived initially with his former wife. He sought, and was granted, access rights in 2007. He stated that the child's mother thereafter unlawfully abducted him to another state. He reported that he pursued a process (through the Hague Convention) to establish sole legal guardianship of his son and to return him to this State.

Comment/Conclusion: The Appeals Officer referred to the Social Welfare (Consolidation) Act, 2005, Section 219 (c), which provides that a child shall be a qualified child for the purposes of Child Benefit where he or she is ordinarily resident in the State. Section 220 of the Act provides that a person with whom a qualified child normally resides shall be entitled to Child Benefit in respect of that child. The Appeals Officer noted that the primary intention of the Hague Convention is to preserve whatever child custody arrangement existed immediately before an alleged wrongful removal or retention of a child. The Convention mandates return of any child who was habitually resident in a contracting nation immediately before an action that constitutes a breach of custody or access rights. Its purpose is to discourage unilateral removal of a child from that place in which the child lived when removed or retained, which should generally be understood as the child's ordinary residence. He concluded that the evidence established that the child was wrongfully removed from this State and that, until the time of abduction, he was ordinarily resident here. He considered that the evidence indicated that the appellant was not a 'qualified person' for the purposes of Child Benefit in the period leading up to the Court Order which had allowed for the handing over of his son into his care. He noted that the appellant, whilst pursuing finalization of court proceedings in another State, was treated as continuing to be habitually resident in Ireland for social welfare purposes. A Court Order of [specified date] brought into effect the appellant's sole entitlement to parental rights and the Appeals Officer determined that to be the effective date from which the appellant was a 'qualified person' for the purposes of Child Benefit. He considered that the child was not at any stage 'ordinarily' resident in the other State and observed that court proceedings, pursued under the Hague Convention, had subsequently established fact in this matter. Accordingly, he concluded that the child could be considered as having re-established his ordinary residence in the State from at least the [specified date] in 2010, following the Order of the Court. He concluded that, with effect from that same date, the appellant was a qualified person for the purposes of Child Benefit.

Decision of the Appeals Officer: The appeal is allowed.

Note on reason(s) for decision: In order that Child Benefit may be paid, the child in question must be ordinarily resident in the State. Having examined the evidence carefully in this case, I

have concluded that the child [C] may be considered to have resumed his ordinary residence in the State at least from [specified date] 2010.

On this basis the appeal succeeds.

E. 2013

No cases

F. 2014

1. 2014/08 Congenital Bilateral Hip Dislocation

Background: The appellant, aged 29 years, had applied for Disability Allowance in 2009. Her G.P. certified her incapacity and referred to multiple operations. He confirmed that the most recent operation at that time had taken place two years previously and that she was awaiting further surgery. The claim was disallowed and she made an appeal. Following an oral hearing in 2011, the Appeals Officer concluded that the appellant continued to have some impairment but not such that it could be regarded as significant and he held that the qualifying criteria were not met. The appellant re-applied in 2013 and Disability Allowance was awarded. Her G.P. reported that she had undergone a total hip replacement in 2012, and that she suffered chronic pain and depression. Appellant's contentions: The appellant sought to have Disability Allowance awarded with effect from the date of her initial application and she submitted a detailed account of her medical history in support of that request. This referred to her diagnosis, surgery and pain management. In addition, she submitted that her extensive medical issues had led to a diagnosis of Depression for which she had been referred to a Psychiatrist. Having been awarded Disability Allowance in 2013 and having regard to the appellant's request to have payment backdated to her initial application in 2009, the question at issue was whether the Appeals Officer's 35 decision in 2011 was erroneous in the light of new evidence or new facts, as provided for under Section 317. This question was examined by a second Appeals Officer. The Social Welfare (Consolidation) Act, 2005, Section 317, as amended, provides that: 1. An appeals officer may at any time revise any decision of an appeals officer— (a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given, or (b) where— (i) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and (ii) it appears to the appeals officer that there has been any relevant change of circumstances which has come to notice since that decision was given. 2. In subsection (1)(b)(ii), the reference to any relevant change of circumstances means any relevant change of circumstances that occurred before, or occurs on or after, the coming into operation of the Social Welfare and Pensions (No. 2) Act 2013.

Comment/Conclusion: In examining the case, the Appeals Officer noted the following: 1. The initial application was refused on grounds that the appellant did not meet the qualifying condition, a decision which was based on the opinion of the Medical Assessors that her existing restriction was not expected to last for more than one year – implying an acceptance that she was substantially restricted at the time, albeit that the condition was expected to be of short duration. 2. Subsequent events made clear that the appellant's medical condition, and consequent restriction, had been continuous since the period from her first application. In

particular, she had provided evidence of ongoing problems following surgery in 2009 and the requirement for a revision of that surgery in 2012. 3. Since her initial claim in 2009, the appellant had experienced significant pain management issues which would have substantially restricted her ability to engage in employment. 4. The appellant's medical condition at the time of her second application included Depression, which had not been certified in the original application. However, the medical evidence confirmed that this was something she had been dealing with since at least 2011, although no reference had been made to the fact in the report of the oral hearing in 2011. 5. The report of the Consultant Psychiatrist stated that the impact of the appellant's physical condition had been significant and had reduced her confidence and her ability to work. 36 The Appeals Officer considered that it was clear that the appellant had been suffering to a significant degree with the effects of Depression prior to her referral to the Consultant Psychiatrist in 2011. He noted that, when considering the issues in the case, it was particularly relevant that this did not appear to have been taken into account in relation to her initial application or in the context of her appeal. Having examined all of the evidence available, and acknowledging that he had the benefit of hindsight in relation to the long-standing restrictions imposed on the appellant as a result of her medical conditions, the Appeals Officer revised the earlier appeal decision, with reference to the provisions of the Social Welfare (Consolidation) Act, 2005, Section 317 (1) (a). Accordingly, he held that with effect from a specified date in 2009, the appellant could be held to meet the qualifying criteria for receipt of Disability Allowance.

REVISED DECISION: The appeal is allowed.

Decision reason(s): I find that, with effect from [specified date] 2009, the appellant was suffering from a medical condition which was reasonably expected to last for at least one year and as a result of this condition, was substantially restricted in undertaking work which would otherwise be suitable having regard to the her age, experience and qualifications. Having examined all of the evidence in this case (and with the benefit of hindsight in relation to the long-standing restrictions imposed on the appellant as a result of her medical conditions), I am revising the appeal decision in this case under Section 317 (1) (a), Social Welfare Consolidation Act 2005

G. 2015

No cases

H. 2016

1. 2016/02 Child Benefit Summary decision

Question at issue: Habitual residence

Background: The appellant came to Ireland in 2009 and had been living in 'direct provision' accommodation while awaiting the outcome of an application she made to the Office of the Refugee Applications Commissioner for a declaration as a refugee in accordance with the Refugee Act, 1996. Ultimately, the Minister for Justice and Equality declared her to be a refugee with effect from a date in 2016. The Deciding Officer determined that she was habitually resident in the State with effect from that date and her entitlement to Child Benefit

was determined accordingly. In her appeal against that decision, the appellant referred to the considerable time it had taken to receive a declaration of refugee status, and she sought to have her claim backdated to the date on which she had applied for asylum.

Consideration: The Appeals Officer, having considered the evidence in accordance with the governing legislative provisions, noted that it is a primary condition of entitlement to Child Benefit that a person must establish that he or she is habitually resident in the State. He made reference to the legislation on habitual residence and, in particular, to Section 246(5) of the Social Welfare Consolidation Act 2005, noting that it provides that a person who does not have a right to reside in the State may not be regarded as being habitually resident. He noted that the governing legislation provides that persons who have made application for a declaration of refugee status may not be regarded as habitually resident while awaiting the outcome of such an application, as provided for in Section 246(7) of the Act and, where granted permission to remain, that they may not be regarded as being habitually resident in 48 the State for any period prior to that date. The relevant provision is cited as Section 246(8) of the Social Welfare Consolidation Act 2005. The Appeals Officer concluded that the appellant had not established that she met the habitual residence condition prior to the date in 2016 when she was declared a refugee, and determined that her claim to Child Benefit was awarded appropriately from a date in 2016.

Outcome: Appeal disallowed

2. 2016/04 Domiciliary Care Allowance Oral hearing (Section 317)

Question at issue: Whether eligibility criteria met at an earlier date

Background: The appellant's son has a diagnosis of ADHD, global delay and primary encopresis. He is one of twins, who were born prematurely. In 2011, the appellant made a claim for Domiciliary Care Allowance (DCA), submitting detailed medical evidence. The claim was refused, however, and an appeal against that decision was disallowed on a summary basis. In 2014, the appellant made a second claim in respect of her son and this was awarded. Subsequently, she requested a review by the Deciding Officer under Section 301 of the Social Welfare Consolidation Act 2005, seeking to have the claim awarded with effect from the date of the initial claim in 2011. The Deciding Officer held that the qualifying criteria were not met at the earlier date and the request was refused. A subsequent appeal was disallowed as the Appeals Officer held that good cause had not been established for the delay in making the claim and that there was no basis for backdating for a period of up to six months, as provided for in the governing legislation. The appellant then made a request for a review by the Chief Appeals Officer under Section 318 of the Act, submitting that the Appeals Officer's decision was erroneous in relation to the facts of the case and asserting that the medical criteria had been met in 2011. In addition, she stated that she had not been offered an oral hearing in 2011 and that she had not been made aware at the time that she could have requested one. The Chief Appeals Officer directed that the appeal be reopened by way of oral hearing. An appeal on the same question was also reopened in relation to the appellant's other twin son. Oral hearing: The question at issue was outlined and the Appeals Officer made reference to the considerable amount of documentary evidence which had been submitted by the appellant in support of the initial claim in 2011. This included hospital patient data referring to: Ophthalmology, Audiology, ENT, Nutrition and Dietetics; letters of referral, assessment and consultants' reports; a letter from the Community After Schools Project, advising that the child had a 'one-

to-one worker'; a letter from a Consultant in Developmental Paediatrics supporting the appellant's claim; a letter from Home School Liaison, supporting the claim and advising that the child had a Special Needs Assistant (SNA), and a letter from the local Child and Adolescent Mental Health Services (CAMHS) supporting the claim. The appellant outlined the background to her son's difficulties. She reported on a range of issues, including speech difficulties, developmental delay, behavioural issues and bowel problems. She referred to the process of assessment and diagnosis and his ongoing struggle with everyday activities, like dressing, eating, toileting, remembering simple instructions and doing homework. She reported that she has a Home Help on Monday and Friday to assist with laundry as a consequence of his bowel problems and advised that he has been referred to a specialist to be assessed for a colostomy. The appellant reported that her son struggles in school and that he has always had an SNA; he also has resource teaching hours; she attends a meeting with his teacher every week to discuss issues and progress, and he is taking prescribed medication, including a dose which is administered at school. She advised that his developmental skills are not appropriate to his age and that he is likely to continue to need the support of an SNA in secondary school. On the question as to his care needs in 2011 when the initial DCA claim was made, the appellant stated that things had not changed and she spoke of the demands of meeting his needs from day one. She said that following assessment and diagnosis by the local CAMHS, she had been advised to apply for DCA and a range of services and supports had been put in place. She said that, at the time, she had been unaware that she could have requested an oral hearing of her appeal and said that there had been too much going on in her life at the time in terms of caring for both boys. She advised that her local Citizens Information Centre (CIC) had put her in touch with a Disability Advocate who had offered advice and assistance, including the option of requesting reviews under Sections 301 and 318.

Consideration: Social welfare legislation provides that an Appeals Officer may revise a decision in light of new evidence or new facts, having regard to the provisions of Section 317 of the Social Welfare Consolidation Act 2005. The Appeals Officer examined the appeal with reference to those provisions. The Appeals Officer noted that the original appeal had been determined on a summary basis, whereas she had the benefit of an oral hearing, at which the appellant clarified the nature of her son's problems and the extent of the additional care he requires as a consequence. She noted that the documentary evidence served to support the appellant's contention that a range of supports had been provided at the time she applied first for Domiciliary Care Allowance in 2011, an application which had been supported by a number of the specialists who had been involved with her son. Having particular regard to the evidence adduced at oral hearing, she concluded that the appellant's son required continuous care and attention at a level which was substantially in excess of that normally required by his peers and that the qualifying criteria were met in connection with the appellant's claim of 2011. Accordingly, the earlier decision was revised. (The Appeals Officer also revised the decision in relation to the appellant's other son.)

Outcome: Appeal allowed

3. 2016/29 State Pension (Contributory) Oral hearing

Question at issue: Date of award

Background: The appellant, who attained pension age in 2013, made a claim for State Pension in 2012. She was deemed eligible for pension at a reduced rate but remained in receipt of the

higher rate of Increase for a Qualified Adult paid with her husband's State Pension (Contributory). Subsequently, she applied successfully to have her business partnership with her husband recognised as a joint enterprise under the Commercial Partnership Scheme. As a consequence, outstanding Pay Related Social Insurance (PRSI) contributions at the PRSI Class S rate were deemed to have been payable for the period from 1988 (when social insurance was extended to the self-employed) to the date when she reached pension age. Pension was awarded at the maximum rate, with effect from the date in 2015 when the PRSI liability was discharged. An appeal was made, seeking to have payment backdated to her 66th birthday in 2013, and an oral hearing was requested.

Oral hearing: The appellant was accompanied by a local political representative. The Deciding Officer, who attended at the request of the Appeals Officer, outlined the decision and confirmed that it had been made with reference to Section 110 of the Social Welfare Consolidation Act 2005. This provides that a pension may not be paid until all PRSI contributions at the Class S rate have been returned. Her local representative sought to point out that the appellant's PRSI liability arose only after the insurability decision which had resulted in a determination that PRSI contributions were due at the Class S rate for the period at issue. He queried the interpretation of Section 110 and contended that it was a technicality that there was a payment of PRSI outstanding. He asserted that had the correct rate been applied from the outset, there would not have been an issue. He submitted that the appellant was entitled to pension with effect from the date of attaining age 66 years and that arrears of pension were due. In addition, he stated that there was provision in social welfare legislation for backdating claims in certain circumstances and submitted that this should also be examined in the context of the appeal.

Consideration: The Appeals Officer noted that the evidence served to establish that the Department of Social Protection had not known that the appellant was in a business partnership with her husband as this had not been brought to attention until her accountant requested a decision regarding insurability in 2015. He considered that it was open to the appellant to have asserted her status as a self-employed contributor at any time from 1988, when social insurance was extended to the self-employed. He noted that there was no evidence to indicate that the appellant had ever sought to have this matter clarified prior to the request made by her accountant and, had she done so, that the matter could have been resolved well in advance of her 66th birthday. He noted that the Department of Social Protection had initiated an investigation as to her insurability status as soon as it had been requested. The Appeals Officer noted the legislation outlining the manner in which social insurance contributions are to be assessed for purposes of determining entitlement to State Pension, and the particular provisions which apply in assessing contributions which are made in respect of self-employment. Section 110(2) of the Social Welfare Consolidation Act 2005 provides that where a claim for State Pension is made on or after 6 April 1995, the contribution conditions are not regarded as having been satisfied unless all contributions payable in respect of self-employment have been paid, as follows: 'a State Pension (Contributory) shall not be payable in respect of any period preceding the date on which all self-employment contributions have been paid'. On the question of backdating the claim, the Appeals Officer noted that the relevant legislation refers to circumstances in which a person fails to make a claim within the prescribed time. It was noted that in the appellant's case there had been no delay in making the claim and the Officer was satisfied that the question of backdating did not arise. The Appeals Officer observed that the provisions of Section 110(2) are very clear and do not allow for discretion in their implementation, providing as they do that pension may not be awarded on any date earlier than that on which contributions due in respect of self-employment are deemed to have been paid.

Outcome: Appeal disallowed.

4. 2016/318/38 Child Benefit Section 318 review

Question at issue: Claim made under EC Regulations

Grounds for Review: A review was requested on the following grounds: • the Department failed to consider their obligation to pay Child Benefit under Regulation (EC) No. 883/2004, and • in relation to backdating, the provisions of Article 60(1) of Regulation (EC) No. 987/2009 should have been applied.

Background: In 2010, the appellant made a claim for Child Benefit in respect of his daughter who lives with her mother in another EU country. In 2011, he was advised that his claim under EU Regulations was disallowed as his ex-wife had not replied to correspondence. His appeal against that decision was disallowed as he was deemed not to be the qualified person to receive Child Benefit.

Review: I examined each of the two contentions separately. Failure to consider the obligation to pay Child Benefit under Regulation (EC) No. 883/2004: Social security arrangements for migrant workers and their families are coordinated across the EU in accordance with Regulation (EC) No. 883/2004 and its implementing Regulation (EC) No. 987/2009. For purposes of these Regulations, Child Benefit is classified as a 'family benefit' and the rules for the coordination of family benefits are provided in Title III, Chapter 7, Articles 67-69(a) of Regulation No. 883/2004 and Title III, Chapter VI, Articles 58-61 of the implementing Regulation. Article 67 provides that 'a person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they were residing in the former Member State. However, a pensioner shall be entitled to family benefits in accordance with the legislation of the Member State competent for his/her pension.' Article 68 goes on to set out priority rules in the event of overlapping entitlements from more than one Member State. Residence in a Member State other than the competent State (Article 67 of 883/2004): When a person is insured under the legislation of one Member State while members of their family reside in another Member State, benefits are to be provided by the competent institution according to the legislation that the former State applies as if the family members were residing in its territory. In addition, a pensioner is entitled to family benefits in accordance with the legislation of the Member State competent for their pension. Priority rules (Article 68 of No. 883/2004): When rights are established under the same period for the same family members under several legislations, the following priority rules apply. Rights available on the basis of an activity as an employed or self-employed person are given the first priority, followed by rights available on the basis of receipt of a pension, and rights obtained on the basis of residence are given the third priority. In the case of benefits payable by more than one Member State on the same basis, the order of the priority of rights is established by the following subsidiary criteria: a) In the case of rights available on the basis of activity as an employed or self employed person, the place of residence of the children takes precedence, provided that there is such activity. Additionally, the highest amount of the benefits provided for by the conflicting legislations may also take precedence where appropriate; b) In the case of rights available on the basis of a pension, the place of residence of the children takes precedence provided that a pension is payable under its legislation. Additionally, the longest period of insurance or residence under the conflicting legislations may also take precedence where appropriate; c) In the case of rights available on the basis of residence: the place of residence of the children takes precedence. In the appellant's case, it was established that he was employed in Ireland and that his exwife was

employed in another EU country, where the child resided. In those circumstances, and in line with the priority rules set out in Article 68 of Regulation No. 883/2004, the country where his ex-wife was living was responsible for paying family benefits by priority and Ireland was liable to pay any additional amount under its legislation such that the highest amount of the benefits under the national legislations are provided – commonly referred to as a differential supplement or top-up. From my review of the evidence, I noted that the Department had followed the procedures in place to establish any entitlement to Child Benefit in Ireland and in doing so applied the rules contained in Regulation 883/2004 on the coordination of family benefits. Having established, based on the appellant's employment in Ireland, that there was a possible entitlement to Child Benefit from Ireland, the Department applied national rules, as it is entitled to do, relating to the payment of Child Benefit. The legislation governing Child Benefit is contained in Part 4 of the Social Welfare Consolidation Act 2005 and Regulations made thereunder. Under Section 219 of the Act, a child is a qualified child for Child Benefit if s/he is under 16 years or aged 16, 17 or 18 years and either in full-time education or incapable of self-support by reason of long-term physical or mental incapacity. With the exception of the child being required to be ordinarily resident in the State, this section applied to the appellant's claim. Section 220 of the Act goes on to define a qualified person and provides as follows: (1) Subject to subsection (3), a person with whom a qualified child normally resides shall be qualified for child benefit in respect of that child and is in this Part referred to as "a qualified person. (2) For the purpose of subsection (1)— (a) the Minister may make rules for determining with whom a qualified child shall be regarded as normally residing, 115 (b) a qualified child shall not be regarded as normally residing with more than one person, and (c) where a qualified child is resident in an institution and contributions are made towards the cost of his or her maintenance in that institution, that child shall be regarded as normally residing with the person with whom in accordance with the rules made under paragraph (a) he or she would be determined to be normally residing if he or she were not resident in an institution but, where the person with whom the child would thus be regarded as normally residing has abandoned or deserted the child, the child shall be regarded as normally residing with the head of the household of which he or she would normally be a member if he or she were not resident in an institution. (3) A qualified person, other than a person to whom section 219(2)(a), (b) or (c) applies, shall not be qualified for child benefit under this section unless he or she is habitually resident in the State. The provisions which apply in determining with whom a qualified child shall be regarded as normally residing are set out in the Social Welfare (Consolidated Claims, Payments and Control Regulations) 2007 (S.I. No. 142 of 2007). Article 159 provides as follows: Normal residence 159. For the purposes of Part 4, the person with whom a qualified child shall be regarded as normally residing shall be determined in accordance with the following Rules: 1. Subject to Rule 2, a qualified child, who is resident with more than one of the following persons, his or her – mother, step-mother, father, step-father, shall be regarded as normally residing with the person first so mentioned and with no other person. 2. Where the persons referred to in Rule 1 are resident in separate households, the qualified child shall be regarded as normally residing with the person with whom he or she resides for the majority of the time. 3. A qualified child who is resident with one only of the persons mentioned in Rule 1, shall be regarded as normally residing with that person and with no other person provided that, where that person is the father and he is cohabiting with a woman as husband and wife, this Rule shall not apply in respect of the child where the father so elects and, on such an election, the child shall be regarded as normally residing with the woman with whom the father is cohabiting. 4. Subject to Rule 8, a qualified child, who is resident elsewhere than with a parent or a step-parent and whose mother is alive, shall, where his or her mother is entitled to his or her custody whether solely or jointly with any other person, be regarded as normally residing with his or her mother and with no other person. 5. Subject to Rule 8, a qualified child,

who is resident elsewhere than with a parent or step-parent and whose father is alive, shall, where his or her father is entitled to his or her custody whether solely or jointly with any person other than his or her mother, be regarded as normally residing with his or her father and with no other person. 6. A qualified child, to whom none of the foregoing Rules apply, shall be regarded as normally residing with the woman who has care and charge of him or her in the household of which he or she is normally a member and with no other person provided that where there is no such woman in that household he or she shall be regarded as normally residing with the head of that household and with no other person. 7. Where the normal residence of a qualified child falls to be determined under Rule 4 or 5 and the person with whom he or she would thus be regarded as normally residing has abandoned or deserted him or her or has failed to contribute to his or her support, the relevant Rule shall cease to apply in respect of that child and the person with whom the child shall be regarded as normally residing shall be determined in accordance with Rule 6. 8. Where normal residence would fall to be decided under Rule 4 or 5 above and where a qualified child has been placed in foster care, or with a relative by the Health Service Executive under section 36 of the Child Care Act 1991 (No. 17 of 1991), and has been in such care for a continuous period of 6 months he or she shall, on the 1st day of the following month or the 1st day of the 6th month following the first day of October 2007, whichever is the later, be regarded as normally residing with the woman who has care and charge of him or her in the household of which he or she is normally a member and with no other person provided that where there is no such woman in that household he or she shall be regarded as normally residing with the head of that household and with no other person. Based on the information available, I considered that it was clear that for the purposes of these rules, the appellant's daughter was normally residing with her mother and, in those circumstances, any differential supplement or top-up was payable to her in accordance with the legislation outlined above. It was for this reason that the Department wrote to her in December 2010 and again in March 2011, advising that a claim for Child Benefit had been received from her ex-husband in respect of their daughter. The correspondence also outlined that Child Benefit is normally paid to the parent who is residing with the child and invited her to complete a form in order to enable the Department to process and pay the claim. She was invited to opt for payment of Child Benefit to be made directly to her or to authorise payment be made to another person. In reply, she stated that as she was bringing up the child in a country where the authorities were paying family allowances, she did not see why she should authorise payment be made to the child's father. She did not address the option of having Child Benefit paid directly to her. This was the position when the matter came before an Appeals Officer in September 2012. The fact is that in the absence of information from the child's mother, it was not open to the Appeals Officer to allow the appeal and the Department had indicated that it had not been possible for that reason to process and pay the claim.

Backdating and the application of Article 60(1) of Regulation (EC) 987 of 2009: Article 60 of Regulation (EC) No. 987/2009 lays down the procedure for applying Articles 67 and 68 of Regulation (EC) No. 883/2004. Article 60(1) provides that: The application for family benefits shall be addressed to the competent institution. For the purposes of applying Articles 67and 68 of the basic Regulation, the situation of the whole family shall be taken into account as if all the persons involved were subject to the legislation of the Member State concerned and residing there, in particular as regards a person's entitlement to claim such benefits. Where a person entitled to claim the benefits does not exercise his right, an application for family benefits submitted by the other parent, a person treated as a parent, or a person or institution acting as guardian of the child or children, shall be taken into account by the competent institution of the Member State whose legislation is applicable. In the request for a review, it was submitted that the appellant had failed to make a claim for Child Benefit within 12 months of date of first

entitlement, that being when he first took up employment in Ireland in 2007. It was contended that as his ex-wife had submitted a claim in the EU country where she lived, this earlier claim should be taken as a claim made by him in line with Article 60(1). However, there is no evidence that his ex-wife submitted a claim in November 2007. Article 60(1) would cover a situation where, for example, either parent submitted a claim in error in 2007 to the authorities of the other EU country when the appellant had taken up employment in Ireland. It seemed to me, however, that there was no such application for family benefits that comes within the ambit of Article 60(1) and consequently there is no basis for backdating his claim to 2007 based on this contention. For the reasons outlined, I did not find that the Appeals Officer erred in fact or law and in the circumstances I declined to revise the decision of the Appeals Officer.

Outcome: Request for revision denied.

Further comment: It is clear that where the legislation of a number of EU Member States must be coordinated to allow for payment, a high level of cooperation is required between the institutions of the Member States involved and the persons who make application for benefits. In this case, it appears that the appellant may not have fully understood the situation. For that reason, and in light of the request for a review, I asked that the Department re-examine its correspondence with the child's mother to ascertain whether the claim can be processed

I. 2017

1. 2017/02 Child Benefit Summary decision

Question at issue: Backdating of payment

Background: The appellant had been in receipt of Child Benefit up to 2013 when she temporarily moved to Australia. She returned to Ireland in June 2014 but only submitted an application for Child Benefit in February 2017. She was awarded Child Benefit from March 2017 and requested that her payment be back-dated to cover the period June 2014 to February 2017.

Consideration: Social Welfare legislation provides that a person who fails to make a claim for Child Benefit within the prescribed time shall be disqualified for payment in respect of any day before the date on which the claim is made. This legislation, however, does allow for the backdating of a Child Benefit claim where it is accepted that there was good cause for the delay in making the claim and where entitlement throughout the period in question is established. The appellant stated that the reasons for the delay in submission of her claim was the volume of information and paperwork requested for both the Child Benefit form and the habitual residency questionnaire she had to complete. She stated that she experienced difficulty in gathering specific information and documents which were both valid and up to date. She also stated that she and her husband had a number of significant life events that contributed to the difficulty in obtaining all of the requested information for the application including: settling into new jobs, transitioning their child into school, renewing passports, renewing immigration stamps and negotiating the terms of her husband's uncertain short term employment contracts. She said that the application required some form of document for each of these events and it was difficult to have these ready and up to date at the same time. The Appeals Officer concluded that, while noting these reasons, he must also take into account the fact that the form for application Child Benefit itself includes an information page and guidance on how to complete the form. It clearly informs all potential claimants that they could lose out on the benefit unless they complete and return the application within 12 months of the month in which the family either came to live in Ireland or the date either a claimant or a claimant's spouse commenced

employment in Ireland. The appellant became a qualified person for the receipt of Child Benefit in June 2014, the date she returned to live in Ireland. She would have seen the guidance on the application form and this would have given her sufficient time to source the documentation required to support her application. She had previously been in receipt of Child Benefit up to the date she temporarily moved to live in Australia in 2013, so she was therefore aware of the existence of the payment and her potential entitlement. Although she stated that she experienced difficulty in gathering supporting documentation, there is no evidence that she contacted the Child Benefit section of the Department to discuss this difficulty as a cause of delay and sought any advice/guidance prior to the date she formally submitted her application in February 2017. The Appeals Officer concluded that the appellant's explanation of her reasons for the delay in applying for Child Benefit did not amount to good cause, as provided for in legislation.

Outcome: Appeal disallowed.

2. 2017/05 Domiciliary Care Allowance Summary Decision

Question at issue: Backdating of claim

Background: The appellant applied for Domiciliary Care Allowance (DCA) in October 2016 in respect of the care of her son and was awarded the payment with effect from 1 November. On her application form the appellant indicated that she had not applied for the payment earlier as they had only recently been made aware of DCA by their friends. She appealed the decision, seeking to have it backdated. She stated that at the time of the child's diagnosis in October 2015 they were not made aware of the allowance. She also referred to both herself and her husband experiencing health issues around this time. The Department disallowed the application for backdating stating lack of awareness was not considered good cause to backdate a claim. The Department stated that information relating to the DCA scheme is widely available and applicants are expected to make themselves aware of their rights and entitlements.

Consideration: Section 241(4A) of the Social Welfare Consolidation Act 2005 provides that a claim for Domiciliary Care Allowance may be back-dated for a maximum of six months where it has been shown that there was good cause for the delay in making the claim. Based on the specific circumstances of this particular case, the Appeals Officer found that there was a "good cause" to explain the delay in claiming DCA at an earlier date. While the Department contended that lack of knowledge does not constitute a "good cause", the legislation is not prescriptive in that regard. While lack of knowledge in relation to failure to apply for other social protection schemes may not reasonably constitute good cause, the Appeals Officer found that DCA should be regarded on a case by case basis as its reach was beyond the contingencies normally associated with recourse to the Department. The Appeals Officer found the failure to apply was due to an assumption on the appellant's behalf that there was nothing to apply for. He found this assumption to be reasonable and understandable due to the dearth of information provided by all service providers at the time of her son's diagnosis. He found that it was reasonable that the appellant would not have realised that, in the circumstances of the child's diagnosis, there may have been recourse to a payment from the Department. He concluded that this constituted "good cause" for the delay in applying for the payment and the appeal was allowed for a period of six months, the maximum period allowable for backdating under the legislation.

Outcome: Appeal allowed

3. 2017/06 Domiciliary Care Allowance Oral hearing

Question at issue: Whether the eligibility criteria were met at an earlier date

Background: The appellant had applied for Domiciliary Care Allowance (DCA) for her son, aged 7, who had a diagnosis of severe autism. The appeal in this instance initially appeared to be the backdating of a DCA application made in February 2016. However on review of the file it was noted that the appellant had originally applied for DCA in 2014 and was disallowed in February 2015. There was a letter on the file dated August 2015 addressed to the DCA section of the Department requesting that the letter be accepted as a late appeal. There was no evidence as to whether this letter had ever been forwarded to the Social Welfare Appeals Office for consideration as a late appeal. Having reviewed all the evidence the Appeals Officer treated the case as an appeal of the February 2015 decision to refuse DCA. Oral hearing: The appellant and her former husband attended the hearing. The appellant described significant turmoil in her life at the time she was refused DCA in February 2015, including bereavement, illness and marital and home difficulties. She was out of work on sick leave for stress and her focus was on having the HSE assessments completed on her son so that he could avail of the necessary supports and services. She was unable to return to work full-time because of her son's care needs and worked part-time hours from home, which had since finished. Her son had a full-time SNA in mainstream school but still could not cope and from January 2015 he started in a specialist ASD Unit. The appellant confirmed that her child's condition had not changed since her application in 2014 and that the results of the medical assessment submitted at that time had not changed. Given the available reports and evidence on file including the Department's awarding of DCA in 2016, the Appeals Officer did not consider it necessary to explore any further the issue of the appellant's son being a 'qualified child' for the purposes of DCA.

Consideration: The Appeals Officer dealt with the appeal as a late appeal of the initial decision of February 2015, based on the personal circumstances outlined by the appellant at the oral hearing. She concluded that the evidence presented with the 2014 application was very similar to the evidence presented with the 2016 application which was allowed by the Department. She concluded that it had been established that the appellant's son met the definition of 'qualified child' for Domiciliary Care Allowance with effect from November 2014, when she first applied. Outcome: Appeal allowed.

4. 2017/08 Guardian's Payment (Contributory) Summary decision

Question at issue: The eligibility criteria were met at an earlier date

Background: The appellant applied for Guardian's Payment (Contributory) in respect of her sibling who had been living with her for many years. This payment was awarded, and was backdated for 6 months in line with the provisions of the governing legislation. The appellant requested that her claim be backdated for a further period to 2013. The Department refused to backdate the claim to 2013 on the grounds that there was no basis for backdating in excess of the 6 month period. The appellant stated that she did not claim for Guardian's Payment at the prescribed time due to lack of knowledge.

Consideration: The Appeals Officer referred to the Department's "Guidelines on Claims and Late Claims" which provide that: "In the case of Guardian's payment (Contributory) and Guardian's payment (Non-Contributory), a previous claim for the orphan as a qualified child on another social welfare payment may be accepted where the scheme conditions are fully satisfied". The Appeals Officer noted that the appellant brought the above Guidelines to the attention of the Department and that the Department did not respond to this. The Appeals

Officer also noted that the Guidelines provide that: "Where information was supplied on a claim form for a particular scheme that should have alerted the Department to the fact that the person was entitled to another DSP scheme which is refused, the date of the earlier claim may be accepted as the date of claim for the appropriate entitlement". The Appeals Officer noted that the appellant was in receipt of a child dependent increase for her sibling on her Jobseeker's Allowance claim since June 2013. He also noted that when the appellant approached the Department for information regarding her entitlements for her sibling, she was only told about the child dependent increase and was never informed about the Guardian's Payment. The Appeals Officer, having considered all the available evidence, and giving particular weighting to the Department's own Guidelines on late claims, concluded that the appellant's claim for Guardian's Payment should be backdated to the date of her Jobseeker's claim in 2013, provided all the other conditions for the scheme have been met.

Outcome: Appeal allowed

5. 2017/28 Carer's Allowance Summary

Decision Question at issue: Means and overlap of entitlement between schemes

Background: The appellant's entitlement to Carer's Allowance was reviewed based on her means from her husband's insurable employment. She was informed her payment would cease from 14 April 2017 as she was assessed with means of €261.23 per week which exceeded the statutory limit appropriate to her family circumstances. This assessment was based on her husband's income details for the full year of 2016. She appealed this decision and provided recent pay slips for her husband's income. The Department reviewed her entitlement on the basis of these new income details for her husband and decided that she should be assessed with means of €181.26 per week. These means were assessed from a backdated date of 5 January 2017.

Consideration: The Appeals Officer reviewed the means calculation and was satisfied that the revised means were correct and calculated in accordance with the legislation. However, he also noted that the appellant was in receipt of Illness Benefit until 31 March 2017 which meant that she was getting half rate Carer's Allowance. He pointed out that while she was receiving Illness Benefit payment, she had not been entitled to an increase in her Carer's Allowance in respect of her children. However, when the Illness Benefit ended on 31 March 2017, and she was entitled to Carer's Allowance at the full rate appropriate to the means assessable, she would also be entitled to an increase for her two dependent children and would therefore be on a higher rate of payment from 1 April 2017. The Appeals Officer also noted that, as with all means tested payments, the appellant was entitled to seek a review of her entitlement at any time if her means decreased. Equally, she was required to inform the Department if her means increased.

Outcome: Appeal partially allowed

6. 2017/54 State Pension (Non-Contributory) Oral hearing

Question at issue: Backdating

Background: The appellant had been in receipt of Carer's Allowance in respect of care provided to her husband since January 2006. At the time of application the appellant was

advised that she could only apply for Carer's Allowance or State Pension (Non-Contributory). Legislation changed in 2007 and the appellant may have been entitled to the State Pension (Non- Contributory) and half-rate Carer's Allowance, but was unaware that the legislation had changed.

Oral hearing: The appellant attended the hearing with her daughter. It was stated that the situation was unfair and that she never had any communication from the Department that she may have had an entitlement to State Pension (Non-Contributory) and half-rate Carer's Allowance. The appellant stated that she would have applied immediately if she had received any correspondence from the Department. The appellant had the original letters in relation to her Carer's Allowance application and the relevant booklet that indicated a person could claim for Carer's Allowance or the State Pension (Non-Contributory), but not both.

Consideration: The Department's submission stated that a media campaign commenced in July 2007, which advised those on Carer's Allowance about the new half-rate scheme. It further stated that as the appellant was in receipt of Carer's Allowance at the time, she would have been notified about the introduction of half-rate Carer's Allowance, however, there was no evidence on file regarding this notification. On the other hand, the Appeals Officer had direct credible evidence from the appellant that she never received any notification of the changes to the scheme and that she would have applied immediately for State Pension (Non-Contributory) if she had been made aware of it. The appellant had an information booklet/correspondence from the time she made her original application for Carer's Allowance, which indicated that the appellant dealt with her affairs in an organised manner. The Appeals Officer found that it was not unreasonable for the appellant to expect that the Department should inform a person in receipt of Carer's Allowance of a possible entitlement to State Pension (Non-Contributory) and half-rate Carer's Allowance when the legislation was introduced in 2007. There was no evidence that the Department had notified the appellant of the change in legislation. The circumstances in which a claim may be backdated for more than six months are set out in Article 186 of S.I . No.142 of 2007 (Social Welfare (Consolidated Claims, Payments and Control Regulations) 2007), which provide for further back-dating, but only in circumstances where the delay in claiming was due to information given by an Officer of the Minister or where the person was incapacitated and could not make a claim. The Appeals Officer concluded that the appellant had shown grounds that the delay in making her claim was as a result of no information having been given by an Officer of the Department when there was a legitimate and reasonable expectation that this information would be provided as she was a customer of the Department at the relevant time.

Outcome: Appeal allowed.

7. 2017/318/60 Child Benefit

Question at issue: Right to reside in the State

Grounds for review: The Department in its request for a review of the Appeals Officer's decision contended that the Appeals Officer erred in law in finding that the appellant had a right to reside in the State.

Background: The appellant in this case came to Ireland in 2003 with her mother and siblings to join her father who had been living and working in Ireland since 2001. At the time her child was born in 2006 the appellant's residence was based on a student visa and she claimed and

received Child Benefit up to October 2008. Her claim was suspended at that time when she failed to reply to a Residency Certificate issued by the Department in August 2008. The claim was finally disallowed in December 2008 when the appellant failed to make contact with the Department. By November 2015 the appellant had regularised her residence in the State and her claim for Child Benefit was awarded from that date. The appellant sought to have payment of Child Benefit backdated to 2008. The Appeals Officer while noting that the appellant did not have a right of residence from about 2008 when her student visa expired allowed the appeal based on the difficulties the appellant faced in seeking to have her residency status regularised. The Department requested a review of that decision on the grounds that the Appeals Officer erred in law in allowing the appeal.

Review: In order to qualify for Child Benefit a person must, amongst other conditions, satisfy the condition of being habitually resident in the State. This is a two stage process involving establishing a right of residence and assessing the person's situation under the factors outlined in Section 246 (4) of the Social Welfare Consolidation Act 2005. Section 246 (5) provides that a person who does not have a right to reside in the State shall not, for the purposes of this Act, be regarded as being habitually resident in the State. The various categories of people who shall be regarded as having a right of residence for the purposes of Section 246 (5) are set out in Section 246 (6) of the Social Welfare Consolidation Act 2005. Section 246 (8) provides that where a person is granted a right of residence under the Immigration Acts "he or she shall not be regarded as being habitually resident in the State for any period before the date on which the declaration or permission concerned was given or granted as the case may be and, in the case of a declaration or permission deemed to be given, for any period before the date on which the declaration or permission concerned was originally given." The Courts have confirmed that this provision has the effect of removing any discretion when considering the back-dating of a claim. Having reviewed the Department's request for a review of the Appeals Officer's decision and having regard to the legislative provisions I concluded that the appellant did not have a confirmed legal right of residence in the State. Her right of residence was only established when she was granted leave to remain by the Irish Naturalisation and Immigration Service (INIS). The legislation is clear and provides that a person without a right of residence cannot be regarded as being habitually resident in this State. Furthermore, Section 246(8) of the Social Welfare Consolidation Act 2005 precludes the payment of benefit for any period before the granting of a right of residence under the Immigration Acts. In those circumstances I concluded that in back-dating the appellant's application the Appeals Officer erred in law.

Outcome: Decision revised and appeal disallowed.

8. 2017/318/61 Domiciliary Care Allowance (DCA)

Question at issue: Whether a payment should be backdated more than 6 months

Grounds for review: That the Appeals Officer erred in not backdating a payment of Domiciliary Care Allowance to a date several years prior to the claim being made. The date in question was the date upon which the appellant had been granted a permanent residential status under an international protection programme. The grounds for backdating centred around the absence of a full and proper medical diagnosis of the appellant's son's condition while they were living in special accommodation and were receiving legal and other advice and assistance from various State or State-funded bodies. The argument, in essence, was that the "system" had

failed them and if a proper medical examination had been carried out at an earlier point, an application for the appropriate payment would likely have been triggered without undue delay.

Background: A claim for Domiciliary Care Allowance was received in the Department in relation to the appellant's son and was duly awarded. The appellant requested that the Department backdate the allowance to the date she had come to Ireland several years earlier on the basis that she was not aware of her entitlement to this payment until shortly before the application was made. On review, the Department found that there was no 'good cause' for backdating the payment. On appeal, an Appeals Officer allowed backdating of six months.

Review: The general provisions relating to claims and payments are contained in Part 9, Chapter 1 of the Social Welfare Consolidation Act 2005. Section 241 provides that it shall be a condition of any person's right to any benefit that he or she makes a claim for that benefit in the prescribed manner. Section 241(4A) goes on to provide that: "(a) A person who fails to make a claim for domiciliary care allowance within the prescribed time shall be disqualified for payment in respect of any day before the first day of the month following the day on which the claim is made. (b) Notwithstanding paragraph (a), where a deciding officer or an appeals officer is satisfied that – i. on a date earlier than the first day of the month following the day on which the claim was made, apart from satisfying the condition of making a claim, the person became a qualified person within the meaning of section 186D(1) (inserted by section 15 of the Social Welfare and Pensions Act 2008), and (ii) throughout the period between the earlier date and the date on which the claim was made there was good cause for the delay in making the claim, the person shall not be disqualified for receiving payment of domiciliary care allowance in respect of any such period referred to in subparagraph (i) which does not exceed 6 months before the first day of the month following the date on which the claim is made." In summary, Section 241(4A) provides that a Deciding Officer or an Appeals Officer, in circumstances where a person fails to make a claim within the prescribed time, may backdate a claim where there was 'good cause' for the delay and the period of backdating is limited to 6 months. The Appeals Officer was satisfied that 'good cause' was established in this case and accordingly allowed backdating for the 6 month period permitted under the legislation. I noted that social welfare legislation makes provision in certain specific circumstances to backdate other benefit and assistance payments for a period longer than 6 months but there is no such provision for further backdating of Domiciliary Care Allowance. Of relevance is Article 186 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) which provides that: (1) Where a claim in respect of any benefit is made in respect of any period which is greater than that allowed under section 241(2)[of the Social Welfare Consolidation Act 2005], the period in respect of which payment may be made before the date on which the claim is made shall be extended to a period calculated in accordance with this article, where it is shown to the satisfaction of a deciding officer or an appeals officer that the person was entitled to the benefit. However, the benefits specified in Section 241(2) do not include Domiciliary Care Allowance. While a request was made that discretion be exercised by me in reaching a decision in recognition of the very specific and difficult circumstances of the appellant, it is the case that the governing legislation does not give such discretionary power to the Chief Appeals Officer. Section 318 of the Social Welfare Consolidation Act 2005 provides only that the Chief Appeals Officer may revise a decision of an Appeals Officer where it appears to her that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts. Such error on the part of the Appeals Officer was clearly absent in this case.

Outcome: Decision not revised.

J. 2018

1. 2018/05 Domiciliary Care Allowance Summary Decision

Question at issue: Eligibility

Background: The appellant's application for Domiciliary Care Allowance in respect of her son was disallowed by the Department on the grounds that the child did not satisfy the medical conditions for receipt of Domiciliary Care Allowance. The appellant provided a detailed account of the extra care required by her son. The medical report was completed by a Consultant Child Psychiatrist who had treated the child since 2014 and gave a diagnosis of autism and that the child had a high level of symptoms. Further evidence on file included multiple psychological assessments, speech & language assessments, and occupational therapy assessments. A letter from the Consultant Child Psychiatrist to the Principal of the child's school highlighted his diagnosis of autism and the child's particular difficulties with routine and dealing with change. The appellant submitted a further detailed letter to the Social Welfare Appeals Office in which she disputed the decision that the level of additional support required by her son was not substantially in excess of that required by children of the same age without the disability. She provided further examples of the additional care required. The appellant outlined that she and the child's father spent 30-60 minutes per day doing additional speech and language therapy and working on social behaviour with him. The appellant also pointed out that she couldn't work, even part time in the morning, as she couldn't be sure how long her son would be able to stay in school each day.

Consideration: The child had a diagnosis of autism/asperger's and the Appeals Officer noted the medical and specialist reports. The Appeals Officer reviewed and considered all the other evidence submitted by the appellant including a substantial number of reports and assessments from psychology, speech & language and occupational therapy. The detailed information provided by the appellant herself had also been noted. Taking all of this into account, as well as the extensive evidence on file, the Appeals Officer was satisfied that the level of additional care required by the appellant's child was substantially in excess of the care and attention normally required by a child of the same age without the disability. The appellant requested that the payment be backdated to when her son was 2 years old. The legislation allows for Domiciliary Care Allowance to be backdated by a maximum of 6 months prior to the date of application when it has been established that there was 'good cause' for the delay in applying. The appellant stated that she was not aware of the availability of the allowance. The Appeals Officer was not satisfied that good cause for delay in making the application had been established and determined that the allowance should be paid from the first month after the appellant applied.

Outcome: Appeal allowed

2. 2018/23 Disability Allowance Summary Decision

Question at issue: Backdating

Background: The appellant's claim for Disability Allowance was awarded following a revised decision by the Department with effect from a date in March 2015. Following that decision a request was made to have the date of the award made effective from May 2014. The appellant submitted that the basis for that date coincided with an application submitted by him for Illness Benefit. The request to backdate the effective date of the award of Disability Allowance was refused by the Department and an appeal was submitted. In its decision the Department stated

that lack of knowledge does not constitute good cause for the delay in making a claim. The appellant submitted that there was a precedent for backdating his claim in that his wife's claim for Carer's Allowance was backdated to the time he acquired his disability in May 2014. In relation to the Department's reason for not backdating the appellant submitted that this assumed that everyone was computer literate and fully conversant with information technology, whereas the appellant stated he was not and was solely dependent on assistance and information provided verbally by the Department. The appellant was adamant that a Department official did not give him the information he required when he sought advice initially.

Consideration: The question at issue was whether the appellant had an entitlement to receive Disability Allowance from a date earlier than March 2015, with reference to the legislative provisions governing late claims. The Appeals Officer noted the appellant's assertion that a Department official did not provide him with the information he required and which would, presumably, have allowed him to submit a claim at an earlier date. It was submitted that his wife's claim for Carer's Allowance was backdated and that this might serve as a precedent for backdating his Disability Allowance claim. However, the evidence suggested that the appellant's wife's claim was made in October 2014 and following a successful appeal was allowed from date of application. The question of backdating the claim was not examined. On the question as to information, the Appeals Officer noted that the appellant did not indicate when he made the enquiries to which he referred and that, for its part, the Department had advised the appellant in a letter issued in August 2014 that he could apply for Disability Allowance. The Appeals Officer did not find the appellant's contention that he lacked computer skills and was solely dependent on assistance and information provided verbally by the Department to be compelling but proceeded to examine the question of good cause. The Appeals Officer noted that the medical evidence submitted in support of his claim indicated that the appellant was in severe unremitting pain, using crutches and reliant on others for transport, his diagnosis was uncertain and he was attending a number of consultants and undergoing a range of diagnostic assessments in the period from August 2014. In the circumstances of the appellant's uncertain diagnosis and the severity of the pain he was experiencing, the Appeals Officer considered that there was a case for considering that the appellant might not have been well placed to take note of the information outlined in the Department's letter of August 2014 or to have clarified sufficiently any potential entitlement prior to the date of his claim. In the circumstances, the Appeals Officer concluded that Disability Allowance may be backdated for a period of six months, in line with the provisions of social welfare legislation.

Outcome: Appeal allowed.

3. 2018/318/67 State Pension (Non-Contributory)

Question at issue: Absence from the State

Grounds for Review: The appellant, supported by an advocacy organisation, contended that the Appeals Officer incorrectly disallowed the appeal and took an overly narrow legislative interpretation of the Department's guidelines in relation to absence from the State. It was also submitted that an Appeals Officer must consider whether or not the Department's actions were reasonable when trying to recoup an overpayment. It was submitted that the Department's guidelines clearly stated that 13 weeks payment while absent from the State was permitted. It was contended that the Department's argument that this is a lifetime entitlement, did not stand

up to scrutiny as, if so, then this would be the only social welfare payment that has a lifetime limit on periods of absence from the State. It was contended that it is nonsensical in that, by the Department's logic, once a claimant has used up their lifetime entitlement then they are never entitled to payment while absent from the State, regardless of the brevity of the absence or the reason for it. In relation, to the requirement for prior notification of any absence from the State, it was submitted that it is a long-standing practice across a range of social welfare schemes to accept notifications of absences at any point (even after return to the State) and apply the rules for payment while absent from the State regardless. It was also contended that in initial dealings with the Department following the appellant's return to the State in late August 2016 the appellant was advised that arrears would issue for the period of absence from the State once payment of the pension was reinstated. As this did not happen, it was contended that the Department shifted the goalposts while the review of the appellant's claim was ongoing and for those reasons it was contended that it was unreasonable to raise an overpayment for the periods concerned and that the pension should be backdated to the date of suspension in July 2016.

Background: The appellant was awarded maximum rate State Pension (Non-Contributory) for himself and his family from January 2013. On review in July 2016, the Department found that the appellant and his family were abroad during certain periods. Following interview upon his return, the appellant provided various dates from 2013 to 2016 when he was abroad with his family. He advised that he thought he could go abroad for up to 13 weeks per year and retain his pension, which was submitted on his behalf by his advocate, who stated this was in the original Departmental Guidelines, which were amended in February 2017 and that the appellant did not know he was required to notify the Department in advance. In November 2016, a letter issued to the appellant from the Department outlining the dates of absence and querying reasons for the absences and requesting information in relation to bank transactions. The appellant supplied a list of dates to the Department, stating that he went to visit his wife's mother and to meet with other family. The Department issued a revised decision under Section 302(b) of the 2005 Act, retrospectively disallowing the appellant's entitlement to pension for a number of weeks in August 2015, January 2016, April 2016 and July 2016 on the grounds that the appellant was absent from the State. The effect of the revised decision was the raising of an overpayment. On appeal, the appellant contended that there is nothing in social welfare guidelines that states that 13 weeks is a lifetime limit for allowable absences from the State. He contended that the only reasonable position is that the rule should operate on the same administrative principles as other permitted absences from the State, such as two weeks for Jobseekers Allowance and that he was accordingly allowed 13 weeks absence per annum. A further supporting letter contended that the appellant's pension was disallowed for all periods of absence from the State since awarded, apart from 13 weeks. On behalf of the appellant, it was contended that the Departmental Guidelines were updated for State Pension in February 2017 and now stated "You can go abroad in exceptional circumstances for a limited period and the Department will review your entitlement when you return. You must notify the Department in advance of leaving the State." It was submitted that the previous Departmental Guidelines stated that a person could go abroad for 13 weeks, and that a reasonable interpretation would be that the same administrative procedure should apply to those in similar schemes with similar provisions, for example Widows Non-Contributory pension which allows 13 weeks per calendar year. It was argued that while the Departmental Guidelines may have been changed during the relevant period at issue the Guidelines stated 13 weeks and did not specifically state that the 13 weeks was per lifetime of the claim and thus the appellant did not incur an overpayment and his claim should be backdated to the date of suspension in July 2016. The appeal was disallowed.

Review: The primary legislative provisions governing entitlement to State Pension NonContributory are contained in Chapter 4 of Part 3 of the Social Welfare Consolidation Act 2005. Part 9 of the Social Welfare Consolidation Act 2005 contains general provisions relating to social insurance, social assistance and insurability. For the purposes of this review, I outlined that Chapter 2 of Part 9 sets out certain provisions relating to entitlement, including at Section 249 absence from the State provisions. I noted, as was identified by the Appeals Officer, in so far as State Pension Non-Contributory is concerned, Section 249 (7) provides that 'Subject to subsection (8), a sum shall not be paid on account of State pension (noncontributory) or blind pension to any person while absent from the State.' Unlike other provisions in Section 249 where power is given to the Minister to vary the provisions of the primary legislation by way of regulations, subsection (7) of Section 249 makes no provision for any concession to this prohibition to payment of State Pension Non-Contributory while absent from the State. That the Department makes some provision for the relaxation of the rule to the advantage of recipients of the pension as set out in its' Guidelines, is a matter that comes within the remit of the Department's discretion, but, it is outside the remit of the Welfare Appeals Office to adjudicate on the reasonableness or otherwise of the content or operation of the Guidelines vis a vis other social welfare payments. From my review of the Appeals Officer's decision, I noted that the Appeals Officer was satisfied that the Department had acted fairly and reasonably in deciding on the period of disallowance in the appellant's case and I did not consider that the Appeals Officer had erred in fact and/or law.

Outcome: Decision not revised.

K. 2019

1. 2019/01 Child Benefit Summary Decision

Question at issue: Backdating

Background: The appellant, a non-EU national, made a claim for Child Benefit in May 2018. Her claim was awarded from June 2018 a month after her claim was received. The appellant in her application form informed the Department that she came to Ireland in December 2016. She then travelled home and was absent from the State from February 2017 to June 2017 and again from October 2017 to January 2018. The appellant requested that her claim be considered from January 2017 the month after she had first arrived in Ireland. However, backdating for the period January 2017 to May 2018 was disallowed by the Department on the grounds that the appellant was held not to have shown 'good cause' for the delay in making the claim. The Department contended that it publishes information leaflets as widely as possible, advertises changes of legislation in the national press and information is available on the Department's website regarding entitlement to payments.

Consideration: Section 241 of the 2005 Act provides that a claim for Child Benefit must be made within twelve months of a person becoming a qualified person within the meaning of section 220 of the 2005 Act. Where the claim is not made within the prescribed time, a person is disqualified for payment in respect of any day before the date on which the claim is made. The Appeals Officer concluded that the appellant could not be considered a qualified person for receipt of Child Benefit for the periods that she was absent from the State and that she became a qualified person when she returned to the State in January 2018. The appellant made her claim in May 2018 which was within 12 months of becoming a qualified person. Therefore

the Appeals Officer concluded that her claim should be awarded from February 2018 the month after she became a qualified person as laid down in the 2005 Act.

Outcome: Partially allowed

2. 2019/02 Child Benefit Summary Decision

Question at issue: Backdating (Habitual Residence Condition)

Background: The appellant applied for Child Benefit in May 2018 and was awarded from March 2018. The appellant requested backdating of her claim to March 2014 the date on which she applied for approval of her immigration status. As the appellant did not have leave to remain in the State prior to March 2018 she could not be regarded as habitually resident under Social Welfare legislation.

Consideration: Section 220 (3) of the 2005 Act provides that a person must be habitually resident in the State for the purposes of establishing entitlement to Child Benefit. Section 246 of the 2005 Act outlines the provisions with respect to habitual residence, including that a person who does not have a right to reside in the State shall not be regarded as being habitually resident in the State. Section 246(8) of the 2005 Act also provides that where a person is granted permission to remain in the State he or she shall not be regarded as being habitually resident for any period before the date on which the declaration or permission concerned was granted. The Appeals Officer noted that the appellant was granted permission to remain in the State from March 2018 but had no such permission prior to this date. While the Appeals Officer noted the contentions put forward on behalf of the appellant that there was an inordinate delay by the Department of Justice and Equality in processing her application for immigration status, the Appeals Officer concluded that she was bound by Social Welfare legislation. The legislation requires that the person making the application for Child Benefit is habitually resident in the State. The evidence confirmed that the appellant did not have permission to remain in the State prior to March 2018. The provisions of the governing legislation precluded the award of Child Benefit from an earlier date in those circumstances.

Outcome: Appeal disallowed

3. 2019/05 Domiciliary Care Allowance

Question at issue: Backdating

Background: The appellant made a claim for Domiciliary Care Allowance in January 2018 in respect of her son. The claim was awarded with effect from February 2018. In addition the Deciding Officer concluded that there was good cause for the delay in making the claim and payment was backdated to August 2017. The appellant appealed the date of award. She made reference to her son's medical history, the delay which occurred in obtaining a diagnosis, his ongoing care and attention needs and associated costs. The appellant submitted a copy of a Speech and Language Therapy report dated 2014 and a copy of the costs of taking her son to a specialist.

Considerations: The question before the Appeals Officer concerned the date of award of Domiciliary Care Allowance and the appellant's request that payment be made from an earlier,

unspecified date. Social welfare legislation allows for backdating of Domiciliary Care Allowance claims for up to a maximum period of 6 months where good cause has been shown for the delay in making a claim. Having examined the evidence the Appeals Officer noted that the Deciding Officer had backdated the appellant's claim for 6 months which is the maximum period allowed under Social Welfare legislation. The Appeals Officer also noted that there was no basis in legislation for backdating payment beyond 6 months.

Outcome: Appeal disallowed

4. 2019/07 One-Parent Family Payment Oral Hearing

Question at issue: Back-dating

Background: The appellant applied for One-Parent Family Payment in October 2018 in respect of her son who was born in January 2018 and payment was awarded from the date of application. In her application the appellant requested payment to be backdated to February 2018 the month after her son was born. The Department refused the application to back date the claim to February 2018 on the grounds that the appellant did not make the claim in the manner prescribed in the governing legislation and she did not demonstrate that there was a good reason for the delay in making her claim.

Oral Hearing: The appellant stated that she was overwhelmed when her son was born as he did not sleep and that she was up most days for 18-20 hours. She had to change accommodation at short notice and was exhausted much of the time. The appellant's GP stated in a letter that the appellant struggled with the reality of single motherhood. The appellant stated that at the time her child was born she was not aware of the One-Parent Family Payment and had not been informed by anyone of her entitlement to the payment. The Appeals Officer noted that on the application form the appellant stated in response to the relevant questions that she and her partner separated in August 2018. The appellant could not explain her response other than to state that she had made a mistake and was not good with dates.

Consideration: The relevant legislation in relation to the prescribed time for making a claim for One-Parent Family Payment is contained in Section 241(2) of the 2005 Act. Section 241(3) of the Act also provides for the backdating of a claim for up to 6 months where a person can show that there was good cause which precluded the submission of an application at an earlier date. The legislation does not provide for claims to be backdated for periods in excess of six months unless it can be shown that the delay in making a claim was due to incorrect information being supplied to a person by the Department or where the person can show that he or she was incapable of submitting a claim from the date when entitlement arose up to the date of application, by virtue of illness or incapacity. While the appellant's GP stated that she struggled with the reality of single motherhood it did not indicate any illness or incapacity which would have prevented the appellant from submitting a claim at an earlier date. The Appeals Officer noted the appellant's evidence that she was not aware of One-Parent Family Payment when her son was born. The Appeals Officer concluded that the primary responsibility in making a claim rests with the claimant. The Department raises awareness of potential entitlements to its schemes through appropriate advertising of the existence of its schemes. The Appeals Officer found no evidence of incorrect information being supplied to the appellant by the Department or any other service. In those circumstances the Appeals Officer concluded that the appellant had not established there was good cause for the delay in making her claim.

Outcome: Appeal disallowed

5. 2019/43 Jobseeker's Benefit Oral Hearing

Question at issue: Backdating

Background: The appellant applied for Jobseeker's Benefit in October 2018 and stated on his application that he had been unemployed since his dismissal in July 2018. He indicated that he delayed submitting an application for Jobseeker's Benefit as he had a case for unfair dismissal pending before the Workplace Relations Commission (WRC). The appellant stated that he was confident that this case would be successful. The appellant applied for Jobseeker's Benefit on learning that any arrears of wages arising from a successful WRC hearing would be less any amount of Jobseeker's Benefit to which he would have been entitled. The appellant sought the backdating of his Jobseeker's Benefit claim to the date of his dismissal in July 2018. His application to have his Jobseeker's Benefit claim backdated for the period from July 2018 to October 2018 was disallowed on the grounds that he had not demonstrated good reason for the delay in making his claim. In his notice of appeal the appellant referred to the circumstances of his dismissal from the civil service, which he was contesting as unfair, he submitted that the unusual circumstances of his dismissal would constitute a good reason for the delay in making his claim. Consideration: Section 241 of the 2005 Act and Article 186 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) set out the conditions for backdating applications, which in the case of Jobseeker's Benefit is limited to six months. Having considered the appellant's evidence the Appeals Officer considered that it was not unreasonable for a person to delay making an application for Jobseeker's Benefit in the immediate aftermath of an unexpected dismissal from work where the person was confident of a quick resolution and restoration of his employment. The Appeals Officer concluded that the circumstances leading to the appellant's delay in making his application for Jobseekers Benefit constituted good cause.

Outcome: Appeal Allowed

6. 2019/52 State Pension Contributory Summary Decision

Question at Issue: Back-dating of Increase for Qualified Adult

Background: The appellant applied for State Pension Contributory in January 2008 and was awarded from May 2008. He was also awarded a reduced weekly rate of increase for a qualified adult from the same date on the basis of information supplied by him that his spouse was self-employed as a farmer. When his claim was awarded he was advised of the obligation to notify the Department immediately about any change in his or his wife's circumstances. The Department contacted the appellant in 2014 regarding the rate of State Pension Contributory payable. He was advised that a reduced rate of increase for a qualified adult was being paid based on his wife's weekly means. He was also advised that in order for a review to be carried out additional information including details of any change in his financial circumstances would be required. The appellant contacted the Department in May 2018 and requested a review of the weekly rate of increase for a qualified adult. Following an investigation and review, the appellant was awarded maximum rate of increase for a qualified adult from May 2018 which was the date of receipt of the request for review as his wife was assessed as having nil means.

The appellant requested further back dating and a revised decision was made allowing for an increase for a qualified adult from November 2017 (i.e. 6 months prior to the date of receipt of his request for review). The appellant requested that the increase for his spouse be backdated for 8 years as she had no income during that time. The appellant submitted that he had not become aware of his entitlement until he changed accountants.

Consideration: Social Welfare legislation provides for backdating of claims (for up to 6 months) where it is accepted that there was good cause for the delay and where entitlement throughout the period in question is established. The circumstances in which a claim may be backdated further are more onerous to establish and are specified in legislation as an incapacity to make a claim and where incorrect information was given by the Department. The Department had already backdated the weekly rate of increase for qualified adult by 6 months and having considered all the circumstances, the Appeals Officer did not consider that the appellant had established good cause for further backdating of this increase as provided for in the legislation. He was advised to notify the Department of changes in his circumstances at the time his claim was awarded. He was also advised in 2014 why he had been awarded a reduced rate of increase for a qualified adult. He did not make any further enquires in this regard until his accountants contacted the Department in May 2018. The appellant did not contend that he received incorrect information from the Department or that he was suffering from incapacity to make a claim.

Outcome: Appeal disallowed

L. 2020

2. 2020/05 One-Parent Family Payment Summary Decision

Question at issue: Backdating

Background: A claim form for additional children on the appellant's One-Parent Family Payment claim was received in the local Intreo Centre in April 2020. The claim was in respect of the appellant's twin children who were born in December 2019. The increase for the two additional qualified children was awarded from April 2020. The increase was not awarded from December 2019 as the appellant did not submit her claim within three months of the birth of her children. The appellant sought backdating of the increase on the grounds that she was hospitalised for a period of time after her children were born. She stated that she called to the Intreo Centre a number of times and the One-Parent Family Payment section was closed. She stated that it is difficult to get out and about with three young children. The Deciding Officer stated the appellant could have requested to have an application form sent to her in the post. The appellant stated that she did not realise this.

Consideration: Section 241(3) of the 2005 Act provides for backdating of a claim for an increase for up to six months where a person can show that there was good cause for the delay in making the claim. The Appeals Officer having considered the circumstances of the case, in particular the appellant's health issues and that she was caring for two infant children, was satisfied that the appellant had shown good cause for the delay in making her claim for an increase in respect of her additional children and allowed backdating to December 2019.

Outcome: Appeal allowed

3. 2020/44 Supplementary Welfare Allowance (Rent Supplement) Summary Decision

Question at issue: Backdating

Background: The appellant's application for Supplementary Welfare Allowance was approved by the Department from a specified date in 2019. The appellant sought backdating to the date she applied for Illness Benefit. She stated in her letter of appeal that she had been involved in a road traffic accident and as a consequence was physically unable to apply at an earlier date.

Consideration: The Appeals Officer outlined that in accordance with Article 20 of the Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S.I. No. 412 of 2007) the prescribed time for making a claim for Supplementary Welfare Allowance is the day in respect of which the claim is made. Those Regulations also provide that where a person fails to make a claim within the prescribed time, the person shall be disqualified from receiving payment in respect of any period before the date on which the claim is made. An exception to this latter provision is provided for in Article 22 of the Regulations to the effect that where the person can show that, in addition to being entitled to the allowance, there was good cause for the delay in making the claim. The Appeals Officer noted that the appellant's reason for the failure to make the claim at an earlier date and was satisfied that the appellant had shown good cause.

Outcome: Appeal allowed

4. 2020/50 State Pension (Contributory) Summary Decision

Question at Issue: Backdating

Background: The appellant appealed the decision to disallow an application for State Pension (Contributory) for a period during which the appellant did not satisfy the contribution conditions contained in Section 110 (2) of the 2005 Act. Section 110 (1) of the 2005 Act provides that the contribution conditions for State Pension (Contributory) shall not be regarded as being satisfied unless all self-employment contributions payable by a person have been paid. Subsection (2) goes on to provide that a State Pension (Contributory) shall not be payable in respect of any period preceding the date on which all self-employment contributions payable by a claimant have been paid. The appellant submitted an application for State Pension (Contributory) prior to reaching her 66th birthday which was refused on the grounds that she had outstanding unpaid self-employment contributions. The appellant paid the outstanding contributions in July 2019 and her application for State Pension (Contributory) was awarded from July 2019. The appellant requested that her entitlement be back-dated to the date of her 66th birthday, in May 2019, on the grounds that she paid the outstanding liability as soon as the Department notified her that she had unpaid contributions. She contended that, had she received notification prior to reaching the age of 66, she would have paid the outstanding monies in advance of reaching pension age.

Consideration: The Appeals Officer noted that the appellant had paid the outstanding self-employment contributions as soon as she was made aware of the amount outstanding. However, the Appeals Officer outlined that Section 110(2) of the 2005 Act does not allow for any discretion to award payment of State Pension (Contributory) for any time prior to the date on which all self-employment contributions had been paid.

Outcome: Appeal disallowed

2020/51 State Pension (Contributory) Summary Decision

Question at Issue: Backdating (increase for qualified adult)

Background: The appellant was awarded State Pension (Contributory) from a specified date in 2014. He was also awarded an increase in respect of a qualified adult at a reduced rate with effect from a date in 2015. The reduced rate was based on weekly means from letting income of €210. In his application the appellant had indicated that his spouse had no income from self-employment or otherwise. During a review of his pension entitlement the appellant queried the reduced rate awarded in respect of a qualified adult and stated that his spouse had no separate source of income, savings or any independent source of income. In March 2020 the appellant requested backdating of the increase in respect of a qualified adult to March 2015 as he had stated in Part 8 of his original application that his spouse had no source of income. The appellant was awarded the maximum increase from February 2019, the date coinciding with his request for a review. Further backdating of six months was allowed to August 2018, that being the maximum period of backdating permitted under legislation. The appellant appealed the decision and submitted he had supplied the correct information at the time of his original application but that due to Departmental error his spouse was mistakenly treated as having independent means.

Consideration: The Appeals Officer outlined that legislation provides that a person is disqualified from receiving payment, including any increase in that payment, where the claim is not made within the prescribed time. Notwithstanding these provisions, a payment may be backdated for up to six months where it is established that throughout the period between the earlier date and the date on which the claim was made, there was good cause for the delay. The circumstances in which a claim may be backdated for more than six months are limited to incapacity to make a claim or where incorrect information is given by an officer of the Minister. The Appeals Officer was satisfied that the appellant had provided the correct information at the time of his original application but that the officer handling his claim had mistakenly assessed his wife as having independent means. The mistake arose in the completion of the qualified adult means questionnaire by the appellant's spouse. In the questionnaire she was mistakenly listed as the claimant and the appellant as the spouse/partner. The means from self-employment were incorrectly attributed by the Department to the qualified adult rather than to the appellant.