

Casebase Number: G0115

**Thematic Note of SWAO Case
Studies: Domiciliary Care
Allowance**



Community Law and Mediation

Northside Civic Centre

Bunratty

Road

Coolock

Dublin 17

Period of Analysis: 2009-2020

Theme: Domiciliary Care Allowance

Period of Analysis: SWAO Annual Reports 2009-2020

Keywords: Domiciliary Care Allowance; Qualified Child; Section 318 Review

Casebase No. Case G0115

Summary of the relevant law:

Domiciliary Care Allowance (DCA) is a monthly payment for a child under the age of 16 with a severe disability, who requires ongoing care and attention, substantially over and above the care and attention usually required by a child of the same age.

The provision of Domiciliary Care Allowance is governed by Sections 15-17 of the *Social Welfare and Pensions Act 2008*.

A person who is under the age of 16 years is a qualified child for the purposes of payment of domiciliary care allowance if:

- (a) a medical practitioner has certified, in such manner as is prescribed, that –
 - a. the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, and
 - b. the disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months,
- (b) the child
 - a. is ordinarily resident in the State, or
 - b. satisfied the requirements of section 219(2), and
- (c) the child is not detained in a children detention school.

A person is a qualified person for the purpose of receiving domiciliary care allowance in respect of a qualified child if –

- (a) the child normally resides with that person,
- (b) that person provides for the care of the child, and
- (c) at the date of the making of the application for domiciliary care allowance
 - a. that person is habitually resident in the State, or
 - b. the requirements of section 219(2) are satisfied in relation to that person.

Key grounds of appeals by appellants:

The majority of the appeals are made on the basis that the deciding officer / appeals officer erred in finding that the criteria for a qualified child had not been met.

Observations on appeal outcomes:

As the majority of the appeals are made on the basis that the deciding officer / appeals officer erred in finding that the criteria for a qualified child had not been met, the appeals reported below focus principally on the criteria for a ‘*qualified child*’. In particular the requirement for ‘*continual or continuous care and attention*’ and the requirement that the care and attention required must be ‘*substantially in excess of the care and attention normally required by a child of the same age*’.

The reports below suggest that appellants are usually unsuccessful where they cannot establish that

the care required is continual or continuous. For example, a number of the reports below note that favourable decisions for appellants were reached where the appellants demonstrated that the condition of the child in question meant that they required constant supervision and could not be left unattended for any length of time, in particular where supervision at night was required. In contrast, where the level of care and attention could be said to be more intermittent, or there was periods of time where supervision was not required it was often found that the ‘*continual or continuous*’ requirement has not been satisfied.

Similarly, in many of the reports below, the appeals officer considered carefully whether the care and attention required could be said to be ‘*substantially in excess*’ of the care and attention normally required by a child of the same age, noting that ‘substantially’ is a relatively high bar.

Finally, a number of the reports below indicate that where continual or continuous care and attention is required in order to ensure that there is no risk of physical harm either to the child in respect of whom the application for Domiciliary Care Allowance is made or another individual in the household, that child will often be considered a qualified child.

Relevant Case Studies of the SWAO Annual Reports 2009-2020

A.	2009	
	N/A	
B.	2010	
1.	2010/02 Domiciliary Care Allowance – Summary Decision	Question at issue: whether the medical condition for receipt of Domiciliary Care Allowance had been met
2.	2010/03 Domiciliary Care Allowance – Oral Hearing	Question at issue: whether the requirement as to the provision of substantial extra continuous care is met
3.	2010/04 Domiciliary Care Allowance – Oral Hearing	Question at issue: whether the requirement for continual or continuous care and attention is met
4.	2010/05 Domiciliary Care Allowance – Oral Hearing	Question at issue: whether the appellant is entitled to continue to receive Domiciliary Care Allowance in light of a decision to terminate payment in respect of two of the children
5.	2010/06 Domiciliary Care Allowance – Oral Hearing	Question at issue: whether the appellant is entitled to continue to receive Domiciliary Care Allowance in light of a decision to terminate payment in respect of two of the children
C.	2011	
1.	2011 Domiciliary Care Allowance – Summary Decision	Question at issue: whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for the purposes of her claim to Domiciliary Care Allowance
D.	2012	
1.	2012/06 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
2.	2012/07 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
3.	2012/08 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
4.	2012/09 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)

E.	2013	
1.	2013/01 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
2.	2013/02 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
3.	2013/03 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
4.	2013/04 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
5.	2013/05 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
6.	2013/06 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
7.	2013/07 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
8.	2013/08 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
9.	2013/09 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
10.	2013/10 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
11.	2013/11 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
12.	2013/12 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
13.	2013/13 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
14.	2013/14 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
15.	2013/15 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
16.	2013/16 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
17.	2013/17 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
18.	2013/18 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
19.	2013/19 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
20.	2013/20 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
21.	2013/21 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
22.	2013/22 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
23.	2013/23 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
24.	2013/24 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
F.	2014	

	N/A	
G.	2015	
1.	2015/02 Domiciliary Care Allowance	Question at issue: Eligibility criteria
2.	2015/03 Domiciliary Care Allowance	Question at issue: Date of award
H.	2016	
1.	2016/03 Domiciliary Care Allowance	Question at issue: Eligibility (on review)
2.	2016/04 Domiciliary Care Allowance	Question at issue: Eligibility at an earlier date (Section 317 review)
3.	2016/05 Domiciliary Care Allowance	Question at issue: Eligibility
I.	2017	
1.	2017/05 Domiciliary Care Allowance	Question at issue: Backdating of claim
2.	2017/06 Domiciliary Care Allowance	Question at issue: Whether the eligibility criteria were met at an earlier date
3.	2017/318/57 Domiciliary Care Allowance	Question at issue: Whether the eligibility criteria are met
4.	2017/318/61 Domiciliary Care Allowance	Question at issue: Whether a payment should be backdated more than 6 months
J.	2018	
1.	2018/03 Domiciliary Care Allowance	Question at issue: Whether the child is a qualified child
2.	2018/04 Domiciliary Care Allowance	Question at issue: Eligibility
3.	2018/05 Domiciliary Care Allowance	Question at issue: Eligibility
4.	2018/318/69 Domiciliary Care Allowance	Question at Issue: Whether the eligibility criteria had been met
K.	2019	
1.	2019/04 Domiciliary Care Allowance	Question at issue: Qualified Child (level of care required)
2.	2019/05 Domiciliary Care Allowance	Question at issue: Backdating
3.	2019/06 Domiciliary Care Allowance	Question at issue: Qualified Child (level of care required)
4.	2019/318/69 Domiciliary Care Allowance	Question at issue: Whether the child was a qualified child
L.	2020	
1.	2020/03 Domiciliary Care Allowance	Question at issue: Qualified Child (level of care required)
2.	2020/04 Domiciliary Care Allowance	Question at issue: Qualified Child (level of care required)
3.	2020/318/58 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)
4.	2020/318/59 Domiciliary Care Allowance	Question at issue: Eligibility (qualified child)

A. 2009 – N/A

B. 2010

1. 2010/02 Domiciliary Care Allowance – summary decision

Question at issue: whether the medical condition for receipt of Domiciliary Care Allowance has been met in this case.

Background: The appellant's claim in respect of her son, aged five years, was disallowed as the Deciding Officer determined that the medical criteria had not been satisfied. The child had been diagnosed with autism and absence seizures.

Consideration of the Appeals Officer: The Appeals Officer noted details of the medical evidence submitted in this case, including:

- medical report completed by the family doctor
- psychological assessment report
- report by a consultant paediatrician
- letter from a second consultant paediatrician
- occupational therapist's report
- further letter from the family doctor
- opinion of the Medical Assessor for the Department of Social Protection

The Appeals Officer noted the appellant's grounds of appeal and the level of care which she described in her application form and subsequent correspondence. The Appeals Officer noted also the more recent medical evidence which indicated that the child had a history of absence seizures and was being treated with medication, with regular specialist follow-up. Based on the evidence before her, the Appeals Officer concluded that the child satisfied the medical (and resulting care requirement) criteria of the scheme.

Outcome: Appeal allowed.

2. 2021/03 Domiciliary Care Allowance – oral hearing

Question at issue: whether the requirement as to the provision of substantial extra continuous care, in excess of that required by a child of the same age without a disability, is met in this case.

Background: The appellant made a claim for Domiciliary Care Allowance in respect of her son N, aged 13 years. He suffers from severe Eczema and Asthma, and has had both conditions since birth.

Oral hearing: The appellant was accompanied at the hearing by her mother. Having outlined the decision under appeal and the purpose and format of the oral hearing, the Appeals Officer invited her to outline the circumstances which she felt he should consider in relation to her appeal.

The appellant advised that her N's problems had been present since birth and that both conditions are prevalent in the family. She reported that he has to have a bath and have prescribed creams put on every morning and that he must then take inhalers. She went on to say that the inhalers have to be taken at least four times per day.

The appellant said that N has had constant colds and, in the previous couple of months, had also suffered nose bleeds. He attends Our Lady's Hospital for Sick Children, and sees a consultant there every eight weeks in relation to his asthma and a second consultant on an annual basis for his eczema. She advised that he was on steroids at the time of the hearing. She said that she tried to discourage him from playing sports as she was concerned he might collapse and that he had, in fact, collapsed in the playground a few weeks earlier. She reported that he likes drawing and computer games and that he plays sports with his friends in spite of her misgivings. In conclusion, the appellant reported that N suffers from allergies and is currently awaiting the result of allergy tests.

Consideration of the Appeals Officer: The Appeals Officer noted the opinion of the appellant's family doctor, who completed the medical assessment section of the Domiciliary Care Allowance claim form. He described N as having mild difficulties in two areas: climbing stairs and walking. In all of the other categories, he had assessed N as being in the normal range.

From the evidence provided by the appellant at the oral hearing, the Appeals Officer accepted that the appellant's son suffered from both severe eczema and asthma and that he required extra care and attention as a result. He took account of the fact that N needed to apply special creams and to use inhalers, as well as having to attend hospital on a regular basis. He concluded, however that N appeared to lead a relatively normal life and, while acknowledging that he required extra continuous care, did not consider that he required substantial extra continuous care. In the circumstances, the appeal did not succeed.

Outcome: Appeal disallowed.

3. **2010/04 Domiciliary Care Allowance – oral hearing**

Question at issue: whether the requirement for continual or continuous care and attention, substantially in excess of the care and attention required by a child of the same age without a disability, is met in this case.

Background: The appellant has two sons, aged 18 and 15 years. Her younger son, P, was diagnosed with Asperger Syndrome (Autism Spectrum Disorder (ASD)) by the local Child and Adolescent Mental Health Service. Oral hearing: The appellant was accompanied by her sister. The Appeals Officer outlined the decision under appeal and requested that the appellant provide him with an account of the circumstances in which her son had been diagnosed and an outline of the care requirement attributable to that assessment.

The appellant said that she had known from about the age of 3 years (pre-school) that her son had 'issues'. He had attended various specialists and was diagnosed with Oppositional Defiant Disorder (ODD) and Dyspraxia; at about age 12 years, P had been diagnosed with ASD. He has a Special Needs Assistant in school.

The appellant advised that P had been suspended from school on a number of occasions because of his behaviour; he can be inclined to get extremely angry and frustrated, and can lash out. He had run away from home on a number of occasions (3 times last year). She reported that he had to be watched at all times and that she tries to prevent problems arising by maintaining a routine for him. She said that P has very low self-esteem, is a compulsive eater, and is overweight. She has to shop on a daily basis or he would eat a week or a fortnight's food in a couple of days. He has been prescribed *Respirol* to calm his anger. He attends a psychiatrist on a three monthly basis and has to have regular blood tests because of the medication.

Consideration of the Appeals Officer: The Appeals Officer noted that the evidence available indicated clearly that the appellant's son had anger and behavioural problems and could be deemed to be a danger to others as a result. He noted also that P had low self-esteem, was volatile and had run away from home. He concluded that he requires continual or continuous care and attention substantially in excess of the care and attention required by a child of the same age without a disability and, accordingly, he allowed the appeal.

Outcome: Appeal allowed.

4. 2010/05 Domiciliary Care Allowance – oral hearing

Question at issue: whether the appellant is entitled to continue to receive Domiciliary Care Allowance in light of a decision to terminate payment in respect of two of her children with effect from a date in 2010. (This is the first of two appeals, and refers to the appellant's son.)

Background: The appellant had been in receipt a Domiciliary Care Allowance in respect of four of her children, all of whom have a diagnosis of Attention Deficit and Hyperactivity Disorder (ADHD) with complications. Following review, it was determined that two of those children no longer needed care at the level envisaged by the scheme and, with effect from a date in 2010, the payment was terminated. The appeal at issue was made in respect of the appellant's son, G, aged 13 years. A Medical Assessor for the Department of Social Protection had examined the medical evidence and found that his condition did not indicate the need for substantial extra continuous care. This opinion was confirmed subsequently by a second Medical Assessor. He has a diagnosis of ADHD, arthritis, asthma and a learning disability. The family doctor assessed G as being affected as follows:

- Mental health, learning/intelligence, balance/co-ordination, manual dexterity – affected to a moderate degree.
- Lifting/carrying, bending/kneeling/squatting – affected to a mild degree.

Oral hearing: The appellant was unaccompanied at the hearing. In her appeal submission, she had stated that her son suffered from asthma and ADHD, and that he requires constant supervision. He attends a consultant child and adolescent psychiatrist, and another consultant in relation to the mobility problems which he encounters due to rheumatoid arthritis.

At the hearing, the appellant advised that she had been in receipt of Domiciliary Care Allowance in respect of G and her daughter, K, for some five years prior to it being withdrawn. She continues to get the allowance for two younger children. She advised that G is in first year in secondary school. He uses the school bus to get there, and he has a Special Needs Assistant (SNA) and resource teacher. He is doing well at school, and achieved 60-70% in his 7 subjects at his Christmas exams. The appellant reported that the school is happy with him and that he is holding his own. His medical problems have, however, resulted in a lot of absences (25 days in the school year at that stage).

In addition to ADHD and a mild learning disability, G suffers from epilepsy, asthma and rheumatoid arthritis. The seizures began last autumn and the appellant said that she had trouble accessing services for a diagnosis; epilepsy was confirmed by MRI scan just two months earlier and he has been prescribed *Lamictal*. This has controlled the seizures but its efficacy will have to be monitored.

The appellant described G's memory as poor, saying that he forgets that he has his school tie on. He is not interested in sport because of his arthritis but he walks and cycles and has a good diet. He enjoys music and video games.

Consideration of the Appeals Officer: The Appeals Officer considered that that, despite the onset of epilepsy, G was described as having a fairly normal life. While he does have medical complications which require a significant amount of care and attention, he took the view that that these did not demand a level of care that was substantially greater than another child of the same age without such complaints. He noted, however, that should the diagnosis of epilepsy lead to further complications, it may be necessary to revise the decision in this case. Having examined the evidence carefully, including that put forward at the oral hearing, the Appeals Officer concluded that while G may require additional supports, it had not been shown that he required substantial additional care, as provided for in social welfare legislation. In the circumstances, the appeal was unsuccessful.

Outcome: Appeal disallowed.

5. **2010/06 Domiciliary Care Allowance – oral hearing**

Question at issue: whether the appellant is entitled to continue to receive Domiciliary Care Allowance in light of a decision to terminate payment in respect of two of her children with effect from a date in 2010. (This is a second appeal and refers to the appellant's daughter.)

Background: The appellant had been in receipt a Domiciliary Care Allowance in respect of four of her children, all of whom have a diagnosis of Attention Deficit and Hyperactivity Disorder (ADHD) with complications. Following review, it was determined that two of those children no longer needed care at the level envisaged by the scheme and, with effect from a date in 2010, the payment was terminated. The appeal at issue was made in respect of the appellant's daughter, K, aged 14 years. A Medical Assessor for the Department of Social Protection had examined the medical evidence and found that her condition did not indicate the need for substantial extra continuous care. This opinion was confirmed subsequently by a second Medical Assessor. K has a diagnosis of ADHD and a learning disability; she also suffers from scoliosis. She is under the care of a consultant in Our Lady's Hospital for Sick Children.

In the medical report which forms part of the Domiciliary Care Allowance claim form, the family doctor assessed the degree to which her condition had affected K's ability across a range of categories, as follows:

- Mental health, learning/intelligence – affected to a moderate degree.
- Balance/co-ordination, lifting/carrying, bending/kneeling/squatting – affected to a mild degree.

Oral hearing: The appellant was unaccompanied at the hearing. In her appeal submission, she had stated that her daughter has a learning disability with a mental age of 10 years and that she also has ADHD, as well as mild congenital scoliosis. At oral hearing, she said that K suffers from chronic anxiety and oversensitivity and she outlined the impact this has had on her life, including the fact that she sleep walks regularly. She reported also that K had suffered severe scalding as a baby which left her with extensive scarring and may have contributed to her feelings of anxiety. K also suffers from chronic asthma. The appellant advised that K attends secondary school, and goes there by school bus. She said that although she has a Special Needs Assistant (SNA) and a resource teacher, she is not doing well at school. She has been assessed with a reading and mathematical age of 8-10 years; she is unable to tell the time and does not understand money. The appellant said that she provides an hour of physiotherapy for her daily in line with the medical advice she has been given. She agreed that K had more medical needs than her son, G, but argued that she was constantly bringing one or other of them to medical appointments.

Consideration of the Appeals Officer: The Appeals Officer, having heard the evidence provided by the appellant, concluded that the level of care being provided for K could be regarded as substantially in excess of that normally required of a child of her age without the various medical complications in addition to the ADHD diagnosed.

Outcome: Appeal allowed.

C. 2011

1. Domiciliary Care Allowance – summary decision

Question at issue: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Domiciliary Care Allowance.

Background: The appellant was resident in Ireland along with her spouse and family prior to her making a claim for Domiciliary Care Allowance. Her husband had been engaged in insurable employment in the State during 2006 and 2007. She came to Ireland in the following year to join him. Her first child is attending school here and her second child was born here in 2009.

Consideration of the Appeals Officer: The Appeals Officer observed that in the determination of a person's habitual residence in the State for social welfare purposes, account is taken of those factors (as outlined above) in accordance with the governing legislation. He took account of the fact that the appellant's husband had been resident in the State during 2006 and 2007 and that he had registered 60 weeks of insurable employment. He noted that the appellant and their daughter had come to reside with him in Ireland and that, since then, the household unit had resided together in the State. He noted also that the appellant's husband had claimed and received payment of Jobseeker's Benefit from December 2008 to December 2009, at which point he had made a claim for Jobseeker's Allowance. Since that date, he had been in receipt of Basic Supplementary Welfare Allowance and Rent Supplement payments, while the appellant had been in receipt of Child Benefit since a date in 2008.

Having considered the available facts and evidence in the case, the Appeals Officer considered that at the time of her claim for Domiciliary Care Allowance in November 2010, the appellant had already established Ireland as her place of habitual residence along with her husband and family. Accordingly, he concluded that the appeal should succeed and that her entitlement to Domiciliary Care Allowance fell to be re-examined with effect from the date of claim, having regard to the other qualifying conditions under the scheme.

Outcome: Appeal allowed.

D. 2012

1. Case 2012/06 - Domiciliary Care Allowance

Decision under appeal: claim rejected – reason(s) stated:- [J] is not regarded as a qualified child:

It is clear from your application that your child requires additional support; however, while the diagnosis of your child's disability is not in question, the medical evidence provided does not indicate that the extra care and attention required is substantially in excess of that required for a child of the same age who does not suffer from your child's condition. As a result your child is not considered eligible for Domiciliary Care Allowance.

Diagnosis: Attention Deficit Hyperactivity Disorder (ADHD)

Background: The appellant's son is ten years of age and is the youngest of three children.

At oral hearing: a discussion ensued where the appellant made the following points in support of her assertion that her son meets the medical qualifying condition for Domiciliary Care Allowance, as follows:

- She had known from an early age that there was something wrong with [J]
- It came to light in playschool, where he had little or no interaction with the other children and was prone to doing things like biting
- Problems persisted in primary school and he was referred for assessment
- He was diagnosed by a consultant child and adolescent psychiatrist
- The consultant referred him to the local Child Consultation Services approximately two years ago but he is still waiting to be seen
- This clinic is to consider whether medication would be helpful
- His teacher has suggested medication
- He has 3 ½ resource hours per week but no Special Needs Assistant (SNA) support
- He continues to experience problems in school and was suspended recently for two days when he pushed another child and then cursed at the principal
- He plays football but the appellant has to be there as he has difficulty with the concept of sharing
- He does not keep friends
- He reads comics if he cannot settle
- There are rows at home constantly
- He has good days but one of the problems is that he lacks confidence
- Homework is a problem as he is constantly moving and finds it difficult to concentrate so it takes a lot longer than it should
- He sleeps fairly well at night but this is largely due to the fact that he wears himself out during the day

Comment/Conclusion: The Appeals Officer noted that the psychiatric assessment report for [J] had been completed in March 2010. He read and studied this along with the other evidence available. He observed that one of the problems in the case was that the appellant's son appeared to be in a kind of 'limbo' at present while waiting to be dealt with by the local Child Consultant Services. He noted that the medical evidence was not up-to-date and, in coming to his decision, he concluded that he had to have regard to that evidence as well as the account presented by the appellant at the oral hearing. Overall, and based on a careful assessment of the evidence, including that adduced at the oral hearing, he was of the view that while it was clear that [J] requires extra care and supports, he was not satisfied that it had been shown that he required continual or continuous care and attention substantially in excess of that required by a child of the same age without a disability.

Decision of the Appeals Officer: The appeal is disallowed.

Note on reason(s) for decision: Based on the evidence, including that adduced at the oral hearing, I am of the view that while it is clear that [J] requires extra care and supports, I am not satisfied that it has been shown that he requires continual or continuous care and attention substantially in excess of that required by a child of the same age without a disability and regrettably appeal must fall to be disallowed.

2. Case 2012/07 - Domiciliary Care Allowance

Two decisions under appeal: both claims rejected – reason(s) stated:-[S] is not regarded as a qualified child, nor is [L]:

It is clear from your application that your child requires additional support; however, while the diagnosis of your child's disability is not in question, the medical evidence provided does not indicate that the extra care and attention required is substantially in excess of that required for a child of the same age who does not suffer from your child's condition. As a result your child is not considered eligible for Domiciliary Care Allowance.

Diagnosis [S]: ADHD, screening for Asperger syndrome

Diagnosis [L]: ADD, sensory and motor skill problems

Background: The appellant has twin sons, aged eight and a half years. She made a claim for Domiciliary Care Allowance in respect of each of them, and both claims were disallowed.

At oral hearing: the appellant submitted that both of her sons require continual care and attention substantially in excess of that required by other children of the same age without a disability. She said that she first noticed problems when the children were approximately two and a half. At that stage, the GP said they were just lively and she put it down to herself as she had bad post-natal depression. Eventually, however, when the children were in school she took them to see a paediatrician. The paediatrician referred them to the local Child and Adolescent Mental Health Service (CAMHS) Clinic and a diagnosis was made. The appellant advised that she works 20 hours per week.

A discussion ensued where the following points were made:

- [S] has been diagnosed with ADHD and is being screened for Asperger Syndrome
- [L] has been diagnosed with ADD and with sensory and motor skill problems
- Both children are currently on *Ritalin*
- The medication is not effective
- The appellant attends the CAMHS Clinic with the children 3 times per week
- The children both struggle in school
- Neither of them has social skills and they are not growing up like other children; they are very immature for their age
- They cannot be allowed out to play with other children as they are likely to get frustrated and lash out either at each other or other children and can hurt them unintentionally
- In the house, all windows upstairs have to be kept locked as they have no sense of danger
- They have to be watched at all times

- [S] sleeps a maximum of 4 hours per night and if he is awake either herself or her husband have to be awake too
- The only sport they do is football and even then someone has to stay and supervise
- [S] makes animal noises while [L] lives in a world of his own
- They cannot go out for meals or there will be havoc
- [S] is obsessed with Lego but it has to be new pieces every few days

Comment/Conclusion: The Appeals Officer noted that the appellant came across as genuine and gave her evidence in a credible manner. From the evidence provided, he considered that it was clear that the twins were a danger both to themselves and possibly others and he was satisfied that they require care and attention substantially in excess of that required by children of the same age and that it was appropriate to allow the appeal.

Decision of the Appeals Officer: The appeal is allowed.

3. Case 2012/08 - Domiciliary Care Allowance

Decision under appeal: claim rejected – reason(s) stated:- [N] is not regarded as a qualified child as provided for under Chapter 8A, Social Welfare Consolidation Act 2005 because:

It is clear from your application that your child requires additional support; however, while the diagnosis of your child's disability is not in question, the medical evidence provided does not indicate that the extra care and attention required is substantially in excess of that required for a child of the same age who does not suffer from your child's condition. As a result your child is not considered eligible for Domiciliary Care Allowance.

Diagnosis: learning disability

Background: The appellant's son [N] is 14 years old. He has been attending a school providing specialist post-primary education. He receives Speech and Language support in the school as part of the curriculum there. Previously, he had been attending speech and language therapy sessions from the age of 4 or 5 years. In connection with the application for Domiciliary Care Allowance, his GP completed the ability/disability profile, assessing both categories mental health/behaviour and learning/intelligence as being in the moderate to severe range. In support of her appeal, the GP submitted a letter, stating that [N] needs to have special care 24 hours a day.

At oral hearing: the appellant confirmed that [N] had been assessed by a psychologist in about 2008. She described a typical day as follows: she calls [N] for about 7 a.m. He does not like showering, so the appellant gives him a wash. He is collected by bus outside the door at 8.30 a.m. and is brought directly to school. He has breakfast and lunch at school and arrives home by bus at about 3 p.m. The appellant gives him his dinner when he gets home, as this is very important to him. She then works with him on some homework. He does not go out to play as some of the other children jeer at him. He may be brought to his sister's home by the appellant or to the library.

The appellant said that [N] gets distracted very easily. He spends a lot of time walking around the house; his concentration is very bad so he does not engage in any activity for any length of time; for example, he does not play computer games and does not watch television programmes for long. The appellant said that it is very hard for her to keep him entertained. She said that she helps him to undress at bedtime and helps him with personal hygiene. She

went on to say that while he goes to bed, he keeps getting up and walking up and down the stairs but forgets why he is doing this. In addition, [N] has a very bad speech impediment.

The appellant maintained that her son is a danger to himself due to his inability to cope with day to day life, his lack of concentration and his forgetfulness. When the Appeals Officer reviewed the documentary evidence, the appellant said she would seek a copy of the full psychological report on [N] and contact the school with a view to getting an up-to-date report on his progress.

Comment/Conclusion: Following the oral hearing, the Appeals Officer received a letter from the school and a copy of a psychological report in respect of [N]. In determining the appeal, he took into consideration the testimony of appellant at the hearing and the documentary evidence, including that submitted by the appellant following hearing.

Decision of the Appeals Officer: The appeal is allowed.

4. 2012/09 - Domiciliary Care Allowance

Decision under appeal: claim rejected – reason(s) stated:- [R] is not regarded as a qualified child as provided for under Chapter 8A, Social Welfare Consolidation Act 2005 because:

It is clear from your application that your child requires additional support; however, while the diagnosis of your child's disability is not in question, the medical evidence provided does not indicate that the extra care and attention required is substantially in excess of that required for a child of the same age who does not suffer from your child's condition. As a result your child is not considered eligible for Domiciliary Care Allowance.

Diagnosis: Attention Deficit Hyperactivity Disorder, Developmental Co-ordination Disorder, Dyslexia, Insomnia.

Background: The appellant has two children and the claim was made in respect of her elder child, aged 13 years. A report from the National Educational Psychological Service stated that the child had been referred for assessment because he was due to begin secondary school and there were concerns as to his progress and his behaviour. A further report indicated that he was attending the local Child and Adolescent Mental Health Service (CAMHS) clinic for counselling, following the trauma of his father's suicide.

At oral hearing: the appellant was accompanied by the child's aunt. She began by saying that [R] had experienced huge emotional upheaval following his father's death by suicide. In line with her appeal submission, she said that the extent of his problem went unchecked for some time as she attributed his difficulties to that trauma. He attended the local CAMHS clinic for counselling at the time and continues to attend the clinic. She said that he had on-going difficulties in school and, ultimately, was referred for assessment before starting secondary school.

The appellant reported that [R] is struggling hugely in secondary school: he is unable to cope with the academic work and an exemption from Irish is being sought for him; he has resource teaching hours and has difficulty in completing homework or being organised. She went on to say that she has to tie his laces in the morning and do his tie as his co-ordination is very poor, she makes his sandwiches, clears up after him and packs his bag. She asserted that his 6 year old brother is more competent.

The appellant reported that [R] continues to experience insomnia and has great difficulty sleeping. She said that he leaves the television on all night for background noise. She spoke

of his increasing frustration and anger, and was supported in this account by the child's aunt, who opined that he appears to be getting worse. She said that when he is angry, he can bang the wall, kick, shout and scream. She reported that he is very rough with his little brother and that he has hit her on occasion. She said that there is no time at which she could leave the boys on their own as [R] could not take care of his younger brother and she would be concerned for the younger child. The appellant described him as being morose and said he does not make eye contact and goes around with his hands in his pockets.

The appellant said that she has a niece and nephew whose ages correspond to her own children. She compared her niece to [R] and said she can take her out to play and that she is capable of all sorts of tasks around the house that [R] could not attempt.

In conclusion, the appellant reported that she and her two sons attend family counselling at the CAMHS clinic because of concerns as to the relationship between the boys. [R] is due to attend an appointment at the clinic in the next few weeks with a view to reviewing the question as to medication.

Comment/Conclusion: The Appeals Officer referred to the governing legislation which provides that a qualified child for purposes of Domiciliary Care Allowance has not attained the age of 16 years and has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age. In addition, the level of disability at issue must be such that the child is likely to require full-time care and attention for at least twelve consecutive months. In this case, the Appeals Officer noted that child was thirteen years of age and that there was no question as to the disability at issue, in terms either of severity or likely duration. She considered that the only question to be resolved in determining whether [R] could be deemed to be a qualified child for purposes of the legislation involved an evaluation of the level of care and attention he requires and an assessment as to how that compares with the care and attention normally required by his peers. Having carefully examined all the evidence in the case, including that presented at oral hearing and having regard to the medical evidence submitted, she concluded that it had been established that the appellant's son requires continuous care and attention which she deemed to be substantially in excess of that normally required by his peers and accordingly that the qualifying criteria were met.

Decision of the Appeals Officer: The appeal is allowed.

Note on reason(s) for decision: Having carefully examined all the evidence in the case, including that presented at oral hearing and having regard to the medical evidence submitted, I have concluded that it has been established that the appellant's son, [R], requires continuous care and attention which may be deemed to be substantially in excess of that normally required by his peers and accordingly that the qualifying criteria are met in this case. In the circumstances, the appeal succeeds.

E. 2013

1. 2013/01 – Child's age: 4 months – Summary decision

Diagnosis: Lactose Intolerance, Reflux

Background: The application for Domiciliary Care Allowance (DCA) was made when the appellant's son, [A], was four months old. The family GP had referred to a diagnosis of Lactose Intolerance and Reflux, which he indicated was expected to last less than 12 months. In completing the ability/disability profile on the DCA claim form, the GP assessed Consciousness/Seizures as normal. No assessment was made in relation to any of the other

categories as they were deemed not to apply in view of the child's age. The appellant submitted a report from the paediatric hospital where her son had attended at age one month. It outlined those procedures which had been carried out and reported that the Neonatal Clinic was happy to discharge [A]. In her letter of appeal, the appellant described the reflux condition which her son experiences.

Comments/Conclusions: In examining the appeal, the Appeals Officer noted that [A] continues to have a degree of difficulty with his lactose intolerance and reflux. He concluded, however, that this condition did not give rise to a level of disability and consequent substantial additional care requirement as set out in social welfare legislation.

Decision of the Appeals Officer: The appeal is disallowed.

Note on reason(s) for decision: Social welfare legislation provides that Domiciliary Care Allowance may be paid where a child has a severe disability and requires continuous care and attention, at a level which is substantially in excess of that normally required by a child of the same age. Having examined the evidence carefully, including that outlined in the letter of appeal, I have concluded that while additional supports may be required in the context of [A]'s diagnosis of Lactose Intolerance Reflux, it has not been shown that he requires the very substantial additional care, as provided for in social welfare legislation. In the circumstances, I regret that the appeal cannot succeed.

2. 2013/02 – Child's age: 18 months

Diagnosis: Developmental Delay

Report of hearing: The appellant was accompanied by an assistant to her local political representative. She submitted a portfolio which contained an account of her daughter's daily routine, an outline of developmental milestones for a child of 18 months, a letter from the Consultant Neurologist, a letter from the relevant HSE Speech and Language Therapy Department, a letter from the Paediatric Department at the hospital where [B] attends, a letter from the Consultant Neurologist at that hospital, a report from the HSE Community Paediatric Physiotherapy Service, and a letter from the family GP.

The appellant said her daughter was now aged 18 months but was functioning at the level of an 8 month old. She said that [B] had to have a very strict regime of physiotherapy every day to develop her muscles. As a result of this regime, her upper body strength had shown some improvement but she still had no power in her legs. She said that [B] had also had psychological assessments done and that she may also have an intellectual disability. She went on to say that she is unable to talk except for the word 'nana' and, while she babbles a lot, this only commenced following an ear operation when she had grommets inserted.

The appellant said that [B] has to be monitored day and night, far more than a child of a similar age, and that she has to be monitored during nap time as she suffers from Apnoea and regularly stops breathing. She advised that [B] is unable to eat solid foods and that all of her food has to be puréed. It can take up to 40 minutes to spoon feed her. She described how she has to be lying on her tummy during mealtimes, on a wedge, and that feeding her involves a great deal of care as she does not have gag reflexes and chokes very easily. She provided a photograph. She said that [B] has to have some sensory distraction to enable her to be fed. This could include showing her a favourite toy or having the family dog sit in front of her.

The appellant advised that [B] is overweight as she is unable to run around and, as a result, she is prone to sores on her neck and groin. She also gets sores on her elbows as these joints

get to bear most of her weight during the day. She said that the child is unable to crawl and drags herself forward using her elbows. She is unable to sit properly, and is unable to use a walker or activity centre that children of a similar age enjoy.

Comments/Conclusions: Having considered all of the evidence in this case, including that adduced at oral hearing, the Appeals Officer concluded that [B] requires substantially more care and attention than a child of a similar age who does not have a disability. She noted, in particular, that the child is developmentally at the level of an 8 month old, is unable to walk, is unable to sit unaided, is unable to speak, is subject to sores due to her condition, and must follow a strict physiotherapy regime to try and develop her muscles. She noted also that her prognosis was unsure.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation. Having examined the evidence available in this case, including that presented at oral hearing, I have concluded that with regard to [B] who has a diagnosis of Developmental Delay, it has been established that she needs substantial additional care on a continuous basis, as provided for in the legislation.

3. 2013/03 – Child’s age: 2 years and 7 months

Diagnosis: Autism Spectrum Disorder

Report of hearing: The appellant attended with her husband and advised that they have five children, ranging in ages from 12 to 5 years. Their daughter, [C], in respect of whom the claim was made, is their youngest child. She said that, until she was about 18 months old, they felt that [C] was a normal baby and was reaching age appropriate milestones and she had started to use some words. However, at about 18 months, she seemed to start to regress and they became worried about her. After various assessments and tests, they received a formal diagnosis of Autism when she was 2 years old.

The appellant said that [C] had been seen by the Consultant Community Paediatrician on a number of occasions. A range of tests, including an MRI scan, bloods and EEG, had been done to rule out other medical conditions such as brain tumour. She went on to say that the EEG report was due the following week and that the test was intended to rule out conditions such as Epilepsy.

The appellant reported that while [C] had some words at 18 months, she had regressed and lost the words she did have. She has only a few single words now. She has had a Speech and Language Therapy (SLT) assessment and is attending SLT therapy weekly on a private basis. She is given follow-up exercises to do at home.

The appellant advised that [C] has been assessed and is deemed to meet the criteria for access to the Early Intervention Team. She submitted a copy of the report completed by the multi-disciplinary team. She advised that [C] currently receives 10 hours home tuition per week, provided through the Department of Education and Skills, where the teacher does Montessori type work with her, using peg boards and ‘Playdoh’. Home tuition will continue until she starts in preschool. The appellant said that [C] was enrolled in the local autism pre-school for September 2013 and that, if she does not get a place, she will go there in September 2014. Following pre-school, the plan is for her to go to the autism unit in her

local national school. She is not due to go to the mainstream part of school.

Her parents reported that [C] is making little progress in a number of areas. They have to hold a bottle for her, and they have to feed her as she does not want to hold a spoon. She hates water and bath time is a two-person job. She is fixated on the television and has habits and mannerisms. She pulls and stares at things. Things have to be done in a certain order for her. Her fine motor skills are not well developed and have to be investigated further. She is not toilet trained but, in view of her age, this is not a problem as yet.

In conclusion, the appellant said that she has to do a lot of play therapy with [C] every day and she referred to the weekly timetable which she had submitted, outlining the extent of the floor and play-time activities and the extra work involved with [C].

Comments/Conclusions: The Appeals Officer noted the medical evidence submitted in connection with her claim, and the additional evidence submitted at oral hearing. Having carefully considered all of the facts of the case, including those adduced at oral hearing, she was satisfied that the appellant's child required continual or continuous care and attention which is substantially in excess of that required by a child of the same age, as required under the legislation governing Domiciliary Care Allowance.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): In line with the provisions of social welfare legislation, Domiciliary Care Allowance may be paid in circumstances where a child has a severe disability and needs continuous care, at a level which is substantially greater than that required by another child of the same age. Having carefully considered all of the facts of this case, including those adduced at the oral hearing, I am satisfied that appellant's child requires the continual or continuous care and attention which is substantially in excess of that required by a child of the same age as required under the legislation governing Domiciliary Care Allowance.

4. 2013/04 – Child's age: 3 years – Summary decision

Diagnosis: Speech and Language Delay, Developmental Delay, Hearing Impairment, Myopia, Behavioural Issues, Eczema

Comments/Conclusions: The Appeals Officer noted the range of issues which had been diagnosed and the fact that, as a result, [D] does not have any discernable speech –he is only attempting to make sounds, cannot understand simple tasks, has poor coordination, has no sense of danger, is not toilet-trained, and has to be fed. She noted that he requires one-to-one support and supervision with everything he does. In addition, the medical evidence indicates that [D] is prone to chest infections, and that he had been admitted to hospital twice in the previous year with pneumonia. He also has eczema.

The Appeals Officer noted that the appellant's son was receiving input and treatment from a number of services on an ongoing basis (as follows) and, as a result, that he required a lot of continuous assistance at home:

- Speech and Language therapy
- Occupational therapy
- Physiotherapy for left hand neglect
- Early childhood educator

- Psychology
- Ophthalmology
- Audiology
- Consultant Paediatrician

[D] is also under the care of the local Early Intervention Team (EIT) and is monitored and reviewed by them on a regular basis. The EIT report indicated that he had commenced the process of Autism Spectrum Disorder assessment, and strongly supported the DCA application in this case.

The Appeals Officer concluded that in light of the myriad and severity of the complaints [D] presents with, and the necessary ongoing continuous care and attention he requires daily, the eligibility criteria for DCA were met.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): In line with the provisions of social welfare legislation, Domiciliary Care Allowance may be paid in circumstances where a child has a severe disability and needs continual or continuous care and attention substantially in excess of that normally required by another child of the same age. Having examined the evidence carefully in this case including that presented on appeal, I have concluded that it has been established that [D] needs substantial additional care on a continuous basis, as provided for in the qualifying conditions of the legislation. On that basis, the appeal succeeds.

5. 2013/05 – Child’s age: 4 years

Diagnosis: Autism Spectrum Disorder, Pervasive Developmental Disorder

Report of oral hearing: The appellant attended, accompanied by his wife, and a local representative acting as advocate on their behalf. He said that he and his wife were not familiar with the diagnosis of Autism although they had recognised that [E]’s development had been quite different to that of his older brother. The appellant said that they were helping their son to develop as any other parents would do with their children.

They had arranged to have him referred to the Early Intervention Team for multidisciplinary assessment which included psychological assessment and speech and language therapy. It was accepted that he was in need of support but considered that he fell short of a diagnosis of Autism as the appellant and his wife had reported that he appeared to be improving. The appellant reported that further assessments were carried out and the results confirmed a diagnosis of Autism. At that stage, he applied for Domiciliary Care Allowance.

The appellant said that he and his wife were recommended to attend various programmes in order to assist them in the on-going care of [E]. They were advised that he would need to be placed in a pre-school catering for children with Autism. They were told that communication with [E] would have to be close-up and not from a distance and out of sight. He would require much support in developing his skills and would need the assistance of an Occupational Therapist.

The appellant’s wife stated that since her husband had become unemployed, she had reassessed her own situation and did not know how she had managed on her own. She said that she fears that he may get employment and she would be at a total loss if he were not around. They have received speech and language therapy for [E] and more is required but she said that, having availed of the service for a specified time, they were required to re-join

the queue to obtain further support. She said that [E] has to be washed, dressed and fed and while he is toilet trained, he needs help to take his trousers down and up and also requires help in cleaning himself. He still wears a nappy at bedtime and will not go to bed unless his father stays with him until he falls asleep. He does not like his routine to be disturbed. He likes to play with his iPad or watch television and he has a disco-type light to relax him.

The appellant said that if his routine is interrupted, he has to go back to the beginning.

His parents said that [E] cannot be left with anyone to look after him. He is not a very social character and is not socially interactive. He has a friend and he can become obsessed with that individual. As a result, other children do not want to be continually in his company. They said that, generally, he is a lone player. He is particular about his food and it has to be cut up in sections and spoon fed to him. The appellant said that his communication is poor and he cannot tell what is wrong with him.

On behalf of the appellant, their local representative confirmed that the situation was very stressful for the family. He said that while they are hopeful of the success of the various interventions, there is quite a long way to go and their main concern was to provide as best they can and to give their son every opportunity to lead an independent life.

Comments/Conclusions: The Appeals Officer noted that additional evidence had been submitted by the appellant and, in particular, that it was the opinion of the Senior Psychologist that [E] requires full-time care and attention in excess of a child of the same age without the condition. Having carefully considered all the evidence on file and that adduced at oral hearing, he was of the opinion that the appellant had provided evidence that [E] is in need of full-time care and attention as provided for within the legislation.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation. Having examined the evidence available in this case including that presented at oral hearing, I have concluded that [E] has a diagnosis of Autism, it has been established he needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, I decide that the appeal can succeed.

6. 2013/06 – Child’s age: 5 years – Summary decision

Diagnosis: Autism Spectrum Disorder, Heart Tumour, Asthma

Background: The appellant’s son, [F], was diagnosed with Autistic Spectrum Disorder and she made a claim for Domiciliary Care Allowance when he was 4 years old. The claim was refused on grounds that the medical qualifying criteria were not met. In her appeal submission, the appellant stated that [F] is constantly falling and bumps into things; he is still in nappies and needs help with the activities of daily living; food must be prepared in a particular way for him and he eats with his hands. She referred to the Heart Tumour and Asthma and said that it is a struggle to give him his medication and to get a mask inhaler on his face. The medical evidence submitted confirmed that [F] has tantrums and that his behaviour is difficult to manage. It states that he demonstrates hand flapping, vocalises loudly and goes around in circles repeatedly. The appellant advised that there is a family history of children with special needs and [F]’s sibling attends an autism school.

Comments/Conclusions: The Appeals Officer noted that, in completing the

ability/disability profile on the medical report, the family GP assessed [F] as follows:

- Hearing, Sitting, Standing: Profound
- Mental Health/Behaviour, Learning/Intelligence, Contenance: Severe

Having considered all the evidence in the case, including the details of the appellant's written submission and supporting medical evidence, the Appeals Officer concluded that the qualifying criteria for Domiciliary Care Allowance were met.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation. Having examined the evidence available in this case, I have concluded that it has been established that [F] needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, the appeal succeeds.

7. 2013/07 – Child's age: 5 years

Diagnosis: Behavioural Problems

Report of oral hearing: The appellant was accompanied by a Social Worker from the HSE Children and Family Services. She confirmed that her son was attending the childcare services. The Social Worker said it was suspected that he has Autism Spectrum Disorder but his assessment had been delayed as the service was without a Psychologist in 2013. She advised that an appointment was due to be made early in 2014 and that, because of the extremes of [G]'s behaviour, he is placed very high on the list to be seen.

The appellant advised there was a history of Autism in her family, and that she has a brother who is severely disabled, to the extent that he is in residential care from Monday to Friday. She said her mother was the first to notice that [G] was demonstrating similar traits to her brother at a comparable age.

The appellant said [G] has no sense of danger and has to be monitored continuously. He is constantly climbing onto high walls and he even likes to climb onto the top of the fridge or the kitchen units. She said windows have to be tied shut as he is constantly trying to jump out, regardless of the height. He cannot cope with any change in routine or with loud noise and is obsessive with his toys, having a favourite toy in each hand at all times. The Social Worker said that his obsessive nature really stood out when he was observed by their service.

The appellant went on to say that [G] can be quite aggressive towards his siblings, and he pinches them and pulls their hair. He has taken to biting himself, just to see the teeth marks. He is not fully toilet trained. He will use the toilet to urinate but he will not defecate unless he is wearing a nappy. He is attending pre-school, where he has a Special Needs Assistant. He was assessed for Primary School but it was considered that he was not ready. She said that while he will be assessed again for September 2014, it is looking likely that he will need to attend a special school.

The appellant advised that [G] does not mix or play with friends and has to follow a rigid routine. He has a very short attention span and he also repeats what is said to him instead of engaging in a conversation. He babbles a lot and he will screech and hand flap if interrupted. He still drinks from a bottle. He has to be assisted with all activities of daily living and he is very sensitive about certain fabrics touching him and he will refuse to wear clothes made

from such fabric. In conclusion, the appellant said that he requires constant supervision to prevent him being a danger to himself or others.

Comments/Conclusions: The Appeals Officer noted that his GP had assessed [G] as follows on the ability/disability profile:

Severely Affected - Learning/Intelligence, Speech

Moderately Affected – Mental Health/Behaviour

Mildly Affected – Balance/Co-ordination

Having considered all of the evidence in this case, including that adduced at oral hearing, she concluded that the appellant's son, [G], meets the criteria for Domiciliary Care Allowance as laid down in the relevant legislation. In reaching this conclusion, the Appeals Officer noted: he insists in rigidity of routine and if this is broken he will become distraught and can get aggressive; he can be aggressive towards his siblings and he bites himself as if oblivious to the hurt he is causing; he has to be constantly monitored to prevent him being a danger to himself and others; he is still attending pre-school as he is not considered capable of attending primary school; he has a very short attention span, and he is obsessive.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation. Having examined the evidence available in this case, including that presented at oral hearing, I have concluded that with regard to [G] who has a diagnosis of Behavioural Problems, it has been established he currently needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, the appeal is allowed.

8. 2013/08 – Child's age: 5 years

Diagnosis: Asperger's Syndrome

Report of oral hearing: The appellant stated that her daughter, [H], is normally woken in the mornings between 6.30 a.m. and 7.00 a.m. She needs regular enzyme supplements as she suffers from severe acid reflux, and has to be spoon fed her breakfast and reminded to swallow her food. It is difficult to dress her and that she is unable to manage buttons, zips or laces. She likes only certain types of clothing because of her sensory issues.

The appellant confirmed that [H] is in Junior Infants at school. She said that she has resource hours and access to a Special Needs Assistant (SNA), and that these are helping her a lot. She does not know the names of her class mates and the resource teacher is working on this, using a class picture. The appellant said that she collects her daughter from school at 1.00 p.m. and they return home. She said that [H] is difficult to feed and also that she has to have oral supplements, is on a gluten and casein-free diet and that she is very uncooperative. Eating lunch can take about an hour. She has to take a probiotic supplement at 5.30 p.m. which she also resists.

The appellant said that she tries to plan an activity for the afternoon, that they have dinner at 6.30 p.m., when [H] has more enzyme medication. She has to spoon feed her and prompt her to swallow. The bed time routine starts at about 7.30 p.m., when [H] again needs to take probiotics and folic acid.

She is very anxious and is a poor sleeper. She takes Melatonin to help her sleep, and the appellant stays with her until she falls asleep. [H] wakes in the night and also wets the bed. She will not wear nappies and has recently started to soil herself. The appellant stated that [H] is unable to follow simple instructions as she has no sequencing ability. She has sensory issues and hates having her hair washed, and screams. She reacts to the noise of the vacuum cleaner and the hair dryer, and is also sensitive to light. She suffers from very bad constipation and takes *Movicol* every day. She has a lot of pain as a result and is given pain killers most days, and attends the local paediatric unit. The wrong diet can aggravate the problem.

The appellant stated that [H] cannot regulate her emotions and regularly becomes inconsolable, and that it can take up to an hour to get her to stop crying. She cannot read social cues and while she has a good vocabulary, she has no understanding. She is obsessed with 'Thomas the Tank Engine' and 'My Little Pony'. In conclusion, the appellant said that [H] has no road sense and no sense of self-preservation. She will wander off if her hand is not being held.

Comments/Conclusions: Having considered all of the evidence in this case including that adduced at oral hearing, the Appeals Officer was satisfied that the appellant's daughter, [H], satisfies the criteria for Domiciliary Care Allowance. She concluded that it had been demonstrated that [H] requires substantially more care than a child of the same age who does not have a disability.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation. Having examined the evidence available in this case including that presented at oral hearing, I have concluded that it has been established that [H] who has a diagnosis of Asperger's Syndrome needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, the appeal succeeds.

9. 2013/9 – Child's age: 6 years

Diagnosis: Emotional and behavioural problems

Report of oral hearing: The appellant, who was accompanied by her daughter, submitted further reports, as follows:

- Occupational Therapist's report
- School reports
- HSE assessment report

The appellant stated that she had an older son with Oppositional Defiant Disorder (ODD), Attention Deficit Disorder (ADD) and Dyspraxia and that she had noticed that [J] displayed many of the same characteristics as his older brother, and was interested in the same activities. She said that she had applied to have him assessed, as he is giving them a hard time at home although he appears to be a placid and loving child at school, with no identified problems, apart from slight learning issues.

The appellant said that [J] is the youngest of four children, and that he gets on well with his siblings. He is hyperactive, and is constantly fidgeting. He is headstrong and has a temper,

if he doesn't get his own way. He is constantly annoying the family at home, though he does not behave in the same way at school. He has speech and language delays and finds it hard to pronounce some words and as a result, he gets frustrated if he is not understood. [J] is in first class and doing well at school, despite some areas where he is behind. The appellant said that he has a new teacher this year and she feels he may not be fully aware of his needs. She hoped to meet with him and discuss [J]'s progress. The appellant's daughter advised that they had applied for a Special Needs Assistant (SNA) for him but had been refused and were allocated some additional resource hours. The appellant described homework as a nightmare, and said it can take up to four hours. [J] refuses to do his homework and he sometimes writes down the wrong homework or finds it hard to concentrate on precise instructions as to what day he should do a particular subject. He is constantly topping his pencil rather than concentrating on homework and always has to be fiddling with something.

The appellant said that [J] mixes well, has one or two friends and tends to mix with younger children. At home, he plays with other children on the estate and is very keen to go out and play after school. He gets fearful of certain sounds, worries slightly about things and keeps coming back into the house to check in. He likes cars, colouring pencils and books.

The appellant said that [J] struggles to communicate sometimes and then overreacts by shouting - and this can happen at any time but always at home. He finds it hard to express himself to the teacher, in group sessions and cannot cope well when some incident happens. She said that he does not know the difference between right and wrong and will not take correction. She states that he is also aggressive and gets frustrated at not being physically able to make himself understood and becomes fretful, has tantrums, becomes out of control, has copious crying sessions and has to be managed out of them. The appellant said that she must be on guard constantly to manage stressful situations so that they do not give rise to incidents. She said that [J] can perform most activities of daily living but is very uncooperative at home. He has difficulty with washing his hair, going into the shower, and with cleaning himself after using the toilet. He is a fussy eater but will eat a proper meal if someone sits with him at the table.

Comments/Conclusions: The Appeals Officer noted that [J] has difficulties in maintaining attention and normal behaviour at home but appeared to have no such difficulties at school, confirmed by reports from his school and the appellant's oral evidence. She noted that the letter submitted at oral hearing stated that he was a pleasant and kind child at school, with some mild learning issues but no behavioural issues. She noted also that he has some communication difficulties and some learning issues, but nothing which appears significant at this time, though the appellant stated that he seems to be getting worse. She noted that the Occupational Therapist's report indicated that while he had some issues, he had age-appropriate motor skills.

The Appeals Officer observed that, at age 6 years, he is able to partake in normal activities for a child his age, without significant assistance from his mother on a continuous basis. The Appeals Officer had regard to all the relevant documentary evidence and was satisfied that the oral evidence which the appellant provided was reflective of her circumstances. She accepted that there is a level of care and attention required by the appellant's son but not such as may be deemed to be substantially in excess of that required by another child of the same age. Accordingly, she concluded that the medical qualifying condition for Domiciliary Care Allowance was not met.

Decision of the Appeals Officer: The appeal is disallowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is

providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation. Having examined the evidence available in this case including that presented at oral hearing, I have concluded that while [J] has some behavioural issues it has not been established he needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, I regret that the appeal cannot succeed.

10. 2013/10 – Child’s age: 6 years

Diagnosis: Developmental Delay (subsequently, Autistic Spectrum Disorder)

Report of oral hearing: The appellant was accompanied by her partner. She advised that she does not work outside the home and that her partner is in full-time employment. She said that [K], who is the youngest of three children, had been diagnosed initially with Developmental Delay but more recently had been given a diagnosis of Autistic Spectrum Disorder. A discussion ensued where the following points were discussed/established:

- The Public Health Nurse first noticed a delay in his speech and language when [K] was approximately 2 years of age.
- He was referred to speech and language therapy and diagnosed with developmental delay in 2012.
- He has been referred to the Autism team in the area but the appellant has no idea how long it may be before he is seen.
- There is a Special Needs Assistant (SNA) in his class (who is not there for [K] but tries to keep an eye on him).
- They have applied for an SNA and the doctors have indicated that he needs one.
- He is very often oblivious to things going on around him and this can be dangerous where traffic is concerned, for example, or he will leave the front door open and walk out onto road without looking or realising there may be danger.
- Everything connected with [K] takes longer than it should.
- He cannot dress himself properly, takes much longer to eat than his siblings and will only eat certain foods (mainly chicken and fish).
- He is in the lowest percentile in terms of school assessments and his homework has to be done in small tranches and takes a long time – he has no concentration and has to be reminded about everything.
- He has obsessions, particularly about the moon.
- He talks at people and does not converse.
- His disability is becoming more obvious and difficult as he gets older.
- He gets very anxious about everything and has to be reassured constantly.
- Routine is paramount and some routines cannot be changed under any circumstances.
- He has no friends and seems to opt out of everything, both at home and at school.

Comments/Conclusions: The Appeals Officer noted that the appellant and her partner came

across as genuine and gave their evidence in a credible manner. He considered that it had been clearly established that all aspects of their lives are affected by their son's condition and that the level of care accumulates in that regard. This combined with the evidence that [K]'s sense of danger is non-existent, led him to conclude that the criteria for qualification for Domiciliary Care Allowance were met.

Decision of the Appeals Officer: The appeal is allowed.

11. 2013/11 – Child's age: 7 years - Summary decision

Diagnosis: Asperger's Syndrome

Documentary evidence:

- DCA claim form
- Occupational Therapist's (OT) report
- OT home programme outline
- Appellant's daily routine diary
- Psychologist's report

Background: The appellant applied for Domiciliary Care Allowance in respect of her daughter [L]. The medical report completed by her GP indicated an assessment as follows:

Mental Health/Behaviour: Severe

Balance/Co-ordination, Contenance, Manual Dexterity: Moderate

In assessing the medical evidence and the appellant's submission, the Appeals Officer noted that [L] was stated to have no sense of danger and described as a flight risk. He noted that she has problems with mobility and is prone to falling a lot. He noted also that she needs a deep pressure massage every hour at home as part of an occupational therapy programme, and is required to engage in other home programmes, including speech and language exercises.

The Appeals Officer noted that [L] attends the psychology services in her area in relation to her difficulties with social skills, motor skills and behavioural outbursts. In addition, he noted that she has continence and sleeping problems, has problems eating, and sometimes has to be fed.

Having considered all the evidence available in this case, the Appeals Officer concluded that, on balance, it had been established that appellant's child, [L], satisfies the medical criteria for the Domiciliary Care Allowance scheme.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Social welfare legislation provides that Domiciliary Care Allowance may be paid where (a) the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, and (b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months.

Having considered all the available evidence in this case, I have concluded that it has been established that the appellant's child (L) satisfies the medical criteria for the Domiciliary

Care Allowance scheme. In the circumstances, the appeal is allowed.

12. 2013/12 – Child's age: 7 years

Diagnosis: Autistic Spectrum Disorder (ASD), Developmental Co-ordination Disorder (DCD)

Report of oral hearing: The appellant advised that she has three children, and that [M] is the middle child in the family. She said she first noticed problems as [M] appeared to be slow with everything. A discussion ensued where the following points were made:

- [M] comes out of school with no expression whatsoever on his face
- He has no real friends
- The school recommended that he be assessed
- They took him for assessment privately as it would have taken years on the public waiting list
- He was given a diagnosis of ASD and DCD
- He has 4 ½ resource hours at school and they are looking for a SNA
- When he does swimming in school, she has to go as he cannot dress himself
- She has to accompany him on school tours
- Routine is a major factor for him and change causes significant difficulties
- Where change occurs, he can have a meltdown – kicking, biting and screaming
- Homework takes ages
- He wakes about 4 or 5 times every night
- He eats constantly and he is obsessed by the colour orange
- If anyone touches his toys he goes 'ballistic'
- If the baby cries he rolls the buggy outside the door as the noise annoys him
- He has a fascination with fire and, despite a fire guard, will poke at it and cannot be left on his own
- He is waiting for sensory therapy but unless he goes privately, it will take years

Comments/Conclusions: From the evidence available, the Appeals Officer considered it clear that the appellant's son has major difficulties with any deviation from routine. He noted her account of the child's social difficulties, his obsession with fire and the fact that he is a danger to himself and to his family in this regard. In addition, he noted that [M] does not sleep well. Overall, he was satisfied that the criteria for receipt of DCA were met.

Decision of the Appeals Officer: The appeal is allowed.

13. 2013/13 – Child's age: 8 years

Diagnosis: Deafness

Background: The appellant applied for Domiciliary Care Allowance on behalf of her

daughter, aged 8 years, who has been diagnosed with profound deafness. Recent medical evidence confirmed that she also suffers from Tinnitus in her left ear and Hyperacusis. The appeal was originally disallowed summarily but an Appeals Officer set that decision aside subsequently, in light of additional medical evidence and a request for an oral hearing.

Report of oral hearing: The appellant was accompanied by a Social Worker. She said that as well as Deafness, Tinnitus and Hyperacusis, she was awaiting a Psychologist's report on whether [N] is dyslexic. She then gave an account of her daughter's care needs. She said she has to wash her because of her sensitivity – she doesn't like anything near her ears. She has to give her some help dressing and while she can use the toilet, the appellant helps with wiping and has to put cream on her regularly.

She can eat her meals but with difficulty as she cannot use cutlery. She has problems with her balance and falls a lot. She is waiting for an appointment with an Occupational Therapist. She attends mainstream school and, while she does not have a Special Needs Assistant (SNA), she has a resource teacher for 3¼ hours per week. The appellant said she has to spend an hour and a half with [N] on homework every day, and that this should normally take about forty minutes. She said that [N] sleep walks most nights and that she has to be up for a considerable time every night to watch her as she never sleeps a full night. She explained that because of the Hyperacusis, she cannot tolerate loud noises and screams continually with pain in her ears. She said she had to give up full-time work to care for her daughter and now works part-time at home. The Appeals Officer put it to her that the medical profile completed by her GP did not appear to support the account she had given. Thus, for example, while she said that [N] had a problem with balance, the ability/disability profile indicated her balance was normal. The appellant said the profile was not correct and that she would get up-to-date evidence from her GP.

Further evidence: Following the oral hearing, the appellant provided evidence from her GP, stating that [N] has a problem with her balance, as well as letters from two consultant ENT surgeons, expressing the opinion that she needs extra care and attention. She also provided a letter from the school principal, stating that [N] cries and complains of sore ears. In addition, the appellant provided a psycho-educational assessment report that strongly recommends the retention of resource teaching as well as an Occupational Therapist's report stating that [N] is presenting with Sensory Processing Disorder and setting out her requirements arising from that diagnosis.

Comments/Conclusions: The Appeals Officer noted that the appellant was a credible witness. He noted that she had to help [N] dressing and also help her after using the toilet, and that this should not be necessary for an eight year old child. He noted that [N] has balance problems, is sensitive to noise and wakes during the night.

He considered that these factors, when taken together with her poor hearing, mean that she has to be watched constantly – including night time. He noted also that the appellant has to spend extra time with [N] on home work and that she will have to spend time with her in future on occupational therapy. In addition, he noted that she had given up fulltime work to care for her daughter. In conclusion, he was satisfied from the evidence available that [N] needs substantially more care and attention than a child of the same age who does not have a disability.

Decision of the Appeals Officer: The appeal is allowed.

14. 2013/14 – Child's age: 9 years – Summary decision

Diagnosis: Asperger's Syndrome

Background: The appellant's son, [O], was diagnosed with Asperger's Syndrome. In her appeal, she described how he gets very frustrated, slamming doors, kicking furniture and becoming verbally aggressive. She outlined the assistance he needs with bathing and dressing at all times and advised as to how he gets upset if there is any change to his daily routine. The evidence submitted also indicated that [O] attends occupational therapy on a weekly basis, and has to do a home programme of 40 minutes per day. In addition, he attends a Clinical Psychologist on a weekly basis to help him with social skills/behaviour management and emotional support.

Comments/Conclusions: The Appeals Officer noted that evidence from the Clinical Psychologist stated that [O] presents with extremely challenging and sometimes aggressive behaviours. This evidence indicated that he also poses a threat to others due to his aggressive and unpredictable outbursts.

The Appeals Officer noted evidence from the Occupational Therapist which indicated that, in addition to therapeutic input, his parents are working extremely hard to provide [O] with support at home in terms of carrying out recommended activities to implement his occupational therapy programme and to provide additional sensory input.

The Appeals Officer noted evidence from the Carer's Association which indicated that [O] has poor co-ordination and has difficulty running without tripping. It indicated also that he is not properly toilet trained and needs help every time he has to go the bathroom.

In addition, reference was made to the fact that he has a Special Needs Assistant (SNA) to assist him in school, and it was suggested that he has no concept of danger and is a flight risk.

Having examined all the evidence available, the Appeals Officer dealt with this case by way of summary decision. He concluded that the appellant's statement of appeal was self-explanatory and that it had been established that [O] requires substantial additional care, as provided for in social welfare legislation.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Social welfare legislation provides that Domiciliary Care Allowance may be paid where a child has a severe disability and requires continuous care and attention, at a level which is substantially in excess of that normally required by a child of the same age.

Having examined all the available evidence in this case, including that outlined in the letter of appeal, I have concluded that it has been shown that [O], who has been diagnosed with Asperger's Syndrome, requires substantial additional care, as provided for in social welfare legislation. In the circumstances, the appeal succeeds.

15. 2013/15 – Child's age: 10 years

Diagnosis: Dyspraxia, Language Disorder/Delay and Learning Difficulty

Report of oral hearing: Having made reference to the documentary evidence submitted, a general discussion took place around [P] and in particular his daily routine and extra needs and care. The appellant outlined instances where he has particular difficulty as follows:

School: He has just completed fourth class. Following assessment by an Educational Psychological, he was given an Independent Educational Plan (IEP) to follow and his work load/curriculum was reduced compared to his peers. The appellant stated that he struggles with handwriting and homework. He did an occupational therapy course in handwriting

during the summer but he is very slow at writing, and struggles to copy from the board and tires of it easily. He receives 3 hours per week resource teaching in maths. He does not have a Special Needs Assistant (SNA). He can take between one and three hours to complete his homework and needs assistance and encouragement. He is to be introduced to keyboard skills at school and the appellant reported that he is below average at school.

Hobbies/Socialisation/Friends: The appellant stated that [P] has no issues in making friends and gets on reasonably well in the school yard. He goes out to play with friends on the green after school but complains a lot as he is not able to keep up with them when they are playing games. He likes playing on the computer and reading but his concentration and focus are poor.

Physical issues: He cannot do up zips, buttons, laces and he has trouble lifting things as his hands are weak due to poor muscle tone as a result of his Dyspraxia. He can manage toileting for the most part but does on occasion soil himself due to poor cleaning. He cannot wash or dry himself and can only manage to put on his underwear. All his clothes must be loose fitting without zips or buttons. He can only feed himself for short periods as he tires easily and cannot use a knife and fork properly. The appellant must cut his food up for him. He can manage foods he can pick up, like toast.

In conclusion, the appellant said that she feels as [P] is getting older, his Dyspraxia is getting worse. He gets easily frustrated as a result and is very easily upset. She stated that he likes to get attention and has pretended to be sick at school occasionally. She reported that he is not attending any specialists at present but is on a waiting list for speech and language therapy. She referred also to an appointment he had attended with the Child and Adolescent Mental Health Services (CAMHS) but stated that she had not received a report.

Comments/Conclusions: Having examined all of the information/evidence on file and taking cognisance of evidence given at the oral hearing, the Appeals Officer considered it was apparent that [P] requires a certain level of extra care and attention on a daily basis. She concluded, however, that it related mainly to his educational deficits which were being addressed. Having carefully considered all of the available evidence, including the appellant's letter of appeal, that adduced at the oral hearing and the additional supporting evidence, she was of the opinion that the child in this case did not meet the criteria for DCA in accordance with the legislation.

Decision of the Appeals Officer: The appeal is disallowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continual or continuous care and attention which is substantially in excess of that normally required by a child of the same age. The qualifying conditions are outlined in social welfare legislation.

Having examined the evidence available in this case including that presented at oral hearing, I have concluded that while [P] has a diagnosis of Dyspraxia and expressive language difficulty, it has not been established he needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, I regret that the appeal cannot succeed.

16. 2013/16 – Child's age: 11 years

Diagnosis: Tourette's, Asperger's Syndrome and ADHD

Report of oral hearing: The appellant said that her daughter, [Q], has poor communication skills, and she finds it difficult to understand and follow instructions. She is in fifth class in

her local national school, and has access to three resource teachers. The appellant advised that she had recently attended a case conference to discuss the possibility of [Q] going to a special needs school but that it had been decided to defer a decision on this for another few months.

The appellant said that [Q] is able feed herself but has to be supervised constantly. If left unsupervised, she will grab food from the table and run away from the kitchen to eat it. She then has to follow her and bring her back to the table. She also has to ensure that [Q] eats her meals as she has a poor appetite due to the side effects of her medication, which suppresses her appetite. The appellant has to check that she takes her medication, and to ensure that she takes it and does not hide it or spit it out. She said that she also has to supervise [Q] in the bathroom as she tends to mess with the taps and toilet bowl.

The appellant spoke about how she has to follow [Q] around the house in order to wash and dress her, as she will not stand still for any length of time. She said that she has to be continuously supervised during the day as she is has poor balance/co-ordination and is prone to falling. In addition, she is constantly trying to climb kitchen furniture, getting out through the windows or trying to scale the garden fence. The appellant recalled an incident where she climbed to the top of a kitchen press and started a fire in the house. The appellant reported that [Q] is a very poor sleeper. She said that there have been occasions where she got out of the house at night and she gave examples of finding her in the family car on one occasion and in the dog's kennel on another. She said that her daughter now sleeps in her bed so that she can keep an eye on her during the night.

In conclusion, the appellant spoke about the outbursts which her daughter has on a daily basis, consisting of screaming, throwing and breaking household items.

Comments/Conclusions: The Appeals Officer noted the range of problems that the appellant's daughter experiences and her outline of the consequences of some of them, particularly the fact that the child appears to need very little sleep. He noted that the difficulties she is experiencing are constant, almost 24 hours per day. Coupled with this, he noted the evidence that [Q] has no concept of danger and has to be supervised closely at all times both indoors and out, leading him to conclude that the qualifying criteria for DCA were met.

Decision of the Appeals Officer: The appeal is allowed.

17. 2013/17 – Child's age: 11 years

Diagnosis: Autism Spectrum Disorder / Asperger's Syndrome

Assessment / reports submitted:

- GP assessment re DCA claim
- Consultant C&A Psychiatrist's report
- Consultant C&A Psychiatrist's letter
- OT Manager (HSE) letter

Background: The appellant made a claim for Domiciliary Care Allowance in respect of her son, [R], who is 11 years of age and has a diagnosis of Autism Spectrum Disorder, Asperger's Syndrome. He is the eldest of three children. In the ability/disability profile, the family GP assessed the categories of Mental Health/Behaviour as Moderate, and Learning/Intelligence as Mild. He advised that [R] was attending the local Child and

Adolescent Mental Health Service (CAMHS).

Documentary evidence as outlined above was submitted. The claim was disallowed, and the appellant made an appeal. The appeal was disallowed initially by way of summary decision. Subsequently, solicitors acting for the appellant sought to have that decision reviewed. The Appeals Officer set aside his decision in favour of oral hearing.

Report of oral hearing: The appellant was accompanied by her husband. The Appeals Officer asked if they would outline those points which they would like to make in support of the appeal. They made reference to the following:

- [R]’s behaviour is unpredictable and it is difficult to know how he will behave from one day to the next
- He is big for his age and very strong physically and he can be hard to manage
- He has had to be physically restrained on occasion, having lashed out and become violent – examples were cited
- He gets ‘massive headaches’ after a stressful day
- All their attention is focussed on [R] and their other two children are losing out
- He cannot cope with change of any kind and ‘loses the head’ in strange environments so they cannot go on outings as a family
- He is still on a waiting list for NEPS assessment and they have been advised by CAMHS that he may not be best served by attending mainstream secondary school
- He cannot make decisions, cannot grasp the environment that he is in, has no sense of danger and cannot pay attention to anything
- He is getting worse as he gets older as he does not understand why he cannot do things that his peers are allowed to do
- He needs constant supervision and cannot play outside or in the homes of other children; on the odd occasion where this has happened, they have been phoned to collect him because of behavioural difficulties
- He does not feel pain, and can bang his head, pull his hair or pinch himself if he becomes agitated and appears to feel nothing
- He has been allocated 4.5 resource hours in school and has access to the class SNA
- In line with the details outlined in the appeal submission, they said that [R]’s mood is always low (even on his birthday or special occasions) and that he has made suicidal statements
- They cannot eat dinner until c. 11 p.m. when he is asleep in bed
- They have both been prescribed antidepressants and they both attend counselling, in an effort to cope

In conclusion, they spoke about the need to be constantly alert to cope with [R]’s behaviour and to protect their other two children from his outbursts.

Comments/Conclusions: The Appeals Officer noted that the appellant and her husband presented an account of a family trying to cope in a situation which they find extremely

stressful. They referred to the need to be watchful constantly, during the day and at night. She noted that they had both suffered in terms of depression and that it was clear that [R]'s low moods and suicidal statements were a source of some considerable concern to them – in terms of the distress which it suggests he is experiencing and also the extent to which it heightens the need for their vigilance. She noted also their concern at the disproportionate amount of time and attention he commands, to the detriment of his younger siblings. In her view, they provided a compelling account of a situation where the child at issue requires continuous care and attention which may be held to be substantially in excess of that required by his peers, and in line with the qualifying criteria provided for in social welfare legislation.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Having carefully examined all the evidence available, including that presented at the oral hearing, I have concluded that it has been established that the appellant's son, [R], requires continuous care and attention which may be deemed to be substantially in excess of that normally required by his peers and accordingly that the qualifying criteria are met in this case. In the circumstances, the appeal succeeds.

18. 2013/18 – Child's age: 11 years

Diagnosis: Asperger's Syndrome, Dyslexia, Dyspraxia, ADD, secondary ADHD, Dyscalculia

Report of oral hearing: The appellant advised that her son, [S] is the middle child in the family. She said that he has an older brother who also has a diagnosis of Asperger's Syndrome but that he is calmer and she has not made a claim for DCA for him. She went on to say that problems first arose at school, when he was about 7 years old. His teacher suggested an assessment as she felt he was not doing as well as he should be. The appellant took him to an Educational Psychologist who suggested that he might have Asperger's Syndrome. He was assessed subsequently by a Consultant Child and Adolescent Psychiatrist who made the diagnosis.

A discussion ensued where the following points were made:

- [S] is a very anxious child who suffers 'night terrors' and still wets the bed
- He is afraid of going upstairs on his own and is anxious all the time
- He was being bullied at school but that appears to have abated
- While he has one or two boys who play with him in the school yard, neither he nor his brother are ever invited to other houses
- He has 5 resource hours and there is a SNA in the class but not exclusively for him
- He is obsessed with World War 2 history
- He does not take part in sports, except for swimming
- He gets regular meltdowns – generally at least one a week and he can throw things (he has broken the TV screen with a remote)
- He attends an Occupational Therapist and the appellant is trying to get him to see a Psychiatrist/Psychologist

Comments/Conclusions: The Appeals Officer noted that the appellant has another son who also has Asperger's Syndrome. He noted that [S] has multiple difficulties with Dyslexia,

Dyspraxia and secondary ADHD, to add to the diagnosis of Asperger's Syndrome and that he appears to have particular difficulties with anxiety as well as social difficulties and violent outbursts during fairly regular 'meltdowns'. He noted also that he continued to have bedwetting issues. He was persuaded by the range of difficulties that continual or continuous care substantially in excess of that relating to a child without a disability was required.

Decision of the Appeals Officer: The appeal is allowed.

19. 2013/19 – Child's age: 12 years

Diagnosis: Asperger's Syndrome, ADD

Background: The appellant's son, [T], was stated to be affected as follows with regard to the ability/disability profile completed by his GP:

- Mental Health/Behaviour: Severe
- Learning/Intelligence: Severe
- Balance/Co-ordination: Mild

Report of oral hearing: The appellant was accompanied by a Social Worker from the local Children's Services Centre. In the course of discussion, the following points were made:

- [T] has no concept of time. Most mornings he wakes at 5 a.m. and will wake the household thinking it is time to get up. When he is told that it is too early, he will return to sleep but he is then very groggy when it is 8 a.m. and is reluctant to get up.
- He has to be monitored in the bathroom. He will spend ages at the toilet. He has dermatitis in his scalp and ears and has to have creams applied. He has to be helped to dress. He also likes his clothes to be buttoned tight to his neck.
- He is a messy eater and he will spill cereal and milk if left to put them into a bowl unaided. At dinner time his food has to be cut up for him. He does not appear to know when he is full and is constantly snacking.
- He has no awareness of traffic and has to be brought to and collected from school.
- In school he has difficulty relation to his peers. He does not play in the boys' yard and spends playtime on his own or playing with the girls. He has a fear of balls and this makes him the butt of bad teasing.
- He is struggling academically and has difficulty with both his schoolwork and homework. There is a strong possibility that he will not be ready to transition to secondary school and may have to be kept back.
- He prefers watching TV programmes which are designed for pre-school children.
- He cries easily but music calms him. He has a hearing problem but unless he is wearing earphones he plays his music at a level which is too loud for others.

The Social Worker said that [T] is causing their service some concern, in terms of his behaviour, his own safety and the safety of others. He identified serious concerns around socialisation and said that, while he can be very quiet and introverted, he is subject to aggressive outbursts. He is also inclined to wander and has gone missing, to the extent he is not trusted to be let out alone.

He pointed out that [T] has been violent with other children and, on one occasion, knocked

a younger sibling unconscious. He said that there are huge issues around his phobic behaviour in relation to ball play. He has been prescribed medication for his ADD condition which brightens him up for a while but once this begins to wear off, he gets distracted easily and becomes sad and down and cries a lot.

Comments/Conclusions: Having considered all of the evidence in this case, including that adduced at the oral hearing, the Appeals Officer concluded that the qualifying criteria for Domiciliary Care Allowance were met. In reaching this conclusion, she noted in particular that [T] has difficulty with activities of daily living such as toileting, dressing and feeding, that he has issues around relating to his peers, that he can be violent to others, and that he exhibits both obsessive and phobic behaviours.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Domiciliary Care Allowance may be paid where a person is providing care at home for a child who has a severe disability, and requires continuous care which is substantially in excess of that normally required by a child of the same age.

The qualifying conditions are outlined in social welfare legislation. Having examined the evidence available in this case including that presented at oral hearing, I have concluded that with regard to [T] has a diagnosis of Asperger's Syndrome and ADD, it has been established he currently needs substantial additional care on a continuous basis, as provided for in the legislation. In the circumstances, the appeal is allowed.

20. 2013/20 – Child's age: 13 years

Diagnosis: ADHD, Intellectual Disability, Night Terrors, Receptive/Expressive Disorder and Hyperkinetic Disorder

Report of oral hearing: In line with his appeal statement, the appellant referred to the fact that his son [U] was adopted as an infant. He said that he had been easily frightened as a baby and had not walked until he was 19-20 months. He advised that he was currently attending the local Child and Adolescent Mental Health Service (CAMHS) in relation to mental health and behavioural issues.

The appellant reported that [U] had commenced secondary school in September, and that he has 5 resource hours per week and the support of a Special Needs Assistant (SNA). He said that he has had major problems since starting secondary school –the Psychologist has expressed concern regarding his grades in the school exams, as they are in line with a child who has a moderate to severe level of disability. He referred to issues in school with bullying, where other children call him names and he takes out his frustration at home. He said that his wife feels that he should be in a special needs school but that they are trying to keep him in mainstream education.

The appellant reported difficulties in relation to [U]'s personal hygiene and said that he is socially unaware of its importance. He said that he has to insist on him taking a shower, resulting in major rows. He also has to help him to wash properly. In addition, after using the toilet, [U] cannot clean himself and has often destroyed his tracksuit, underwear and trousers. When using the toilet, he has often used a full toilet roll and blocked the toilet.

The appellant said he uses wet wipes to clean him before he goes to school or before he goes out. He has no problems wearing dirty clothes and getting him to change leads to conflict. He said that he has gone through three sets of uniforms in school this year. He has also lost lunch boxes, school equipment and books.

The appellant said that [U] is messy at mealtimes and leaves food residue around his mouth. He needs his food to be chopped or else he will throw everything off the plate or eat the food with his hands. He is clumsy when walking and is prone to falling and he has to be supervised in group games as he may hurt someone. He said that [U] likes to play with younger children but can say inappropriate things to them.

The appellant reported that his son has regular nightmares, and urinates when he is in this state of anxiety and fear. He and his wife are restricted socially as they cannot get anyone to mind him. When they had babysitters, they were afraid of [U]. He can be physically aggressive and lashes out at others including his parents and sibling. During tantrums, he has broken items of furniture. The appellant said that he spends a lot of time at week-ends repairing items that have been broken.

A home therapy exercise programme was devised but the appellant said that [U] often refuses to do it. When he is agreeable to doing the exercises, it takes him about 40 minutes to complete, although it should only take about 10 minutes.

Comment/Conclusion: In arriving at a decision in this case, the Appeals Officer noted the details that the appellant had outlined at the hearing. He considered him to have provided a credible account. Having carefully considered all of the available evidence on file and that adduced at oral hearing, he concluded that the child in this case meets the criteria for DCA in accordance with the legislation.

Decision of the Appeals Officer: The appeal is allowed.

21. 2013/21 – Child’s age: 14 years

Diagnosis: Nervous Debility, Learning Difficulties

Background: The appellant applied for DCA for her son [V], who is 14 years of age. She advised that she had been unaware of the allowance until recently. His GP assessed the extent to which he was affected by his diagnosis as follows:

Mental Health/Behaviour: Moderate

Learning/Intelligence: Moderate

The appeal was disallowed initially on a summary basis. However, in light of further evidence indicating that [V] was no longer attending mainstream education but had transferred to a special school, and additional medical evidence stating that he was due to commence medication and had been diagnosed with ADHD and ODD and was attending his local CAHMS, the appeal was re-opened by way of oral hearing.

Report of oral hearing: The Appeals Officer outlined the relevant information on the appeal file, and made reference to the additional evidence which had been submitted.

The appellant advised that her son has been diagnosed with ADHD, ODD, General Learning Difficulty and Speech and Language Delay. He attends a school specifically aimed at the needs of children at risk. He is in a class with 4 others, due to the high dependency needs and the level of attention that the children require. He was transferred to the school to help support his multiple needs. The appellant reported that he has difficulty coping with his emotional and behavioural issues, and that he can be violent. This was confirmed in a letter from the school principal. The appellant takes him to and from school, and said that [V] is young for his age, and he normally plays with younger children. She reported that his daily medication includes *Ritalin* and *Concerta*.

The appellant reported that [V] has disturbed sleep most nights; he would wake at 3.00 or 4.00 a.m. with panic attacks and then spend the rest of the night in her bed. She said that he has a fixation with showering and is constantly washing. He strives for perfection in all that he does and can become aggressive if his needs are not met with precision.

Comments/Conclusions: Taking account of all of the facts and evidence in the case, the Appeals Officer was satisfied that [V] has substantial needs. She noted that he suffers from multiple medical conditions which impact on his ability to attend to his own daily needs. She noted also that he is dependent on the appellant to support him in many areas of his life and that he has been provided with specialised supports at school.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Having examined the evidence available in this case, including that presented at oral hearing, I am satisfied that [V] requires continual care and attention which is substantially in excess of that required by a child of the same age as provided for in the legislation.

22. 2013/22 – Child’s age: 15 years

Diagnosis: Developmental Co-ordination Disorder (DCD)/Dyspraxia, Epilepsy

Background: The appellant’s son, [W], is 15 years old. He has been prescribed *Epilim* for his Epilepsy as well as *Risperdal* and *Melatonin*. In completing the ability/disability profile, his GP assessed the extent to which his condition affects him as follows:

- Mental Health/Behaviour: Severe
- Learning/Intelligence: Moderate
- Consciousness/Seizures: Moderate
- Balance/Co-ordination: Moderate
- Manual Dexterity: Moderate
- Lifting/Carrying: Moderate

Report of oral hearing: The appellant referred to her son’s diagnosis, stating that in addition to Dyspraxia, Epilepsy (Complex Partial Seizures), DCD, ADHD, and a Social Communication Disorder, he had been recently diagnosed as having Autism Spectrum Disorder. She spoke about her son’s height and weight, and said as he gets older he is proving more difficult to cope with. She made particular reference to the following points:

- [W] is in mainstream school but his hours have been cut to 9.30 a.m. to lunchtime as he was unable to cope with a full school day. Despite this, she is regularly called to collect him and take him home as he is not coping.
- He managed better in primary school as he had one teacher and one classroom, where as now he has to be brought to different rooms and has different teachers, and he is finding it difficult to cope.
- He has 16 hours resource teaching per week and there is a possibility of referring him to a special school in September and arranging for him sit for the Applied Leaving Certificate as he is just not coping.
- He gets a lot of one to one supervision in school.

- The appellant accompanies him to school and hands him into the care of a Special Needs Assistant. If she leaves him to his own devices, he will get lost and he has done so.
- He has a younger sibling who is far more advanced than he is. He has no idea of personal hygiene and is still unable to dress himself properly without assistance. He is unable to do buttons and cannot tie laces.
- He is very inflexible and has to follow a routine. He has no concept of delay or deferring anything until tomorrow, everything has to happen now.
- The appellant still has to read him a bedtime story to try and calm him and settle him for sleep.
- He is prone to seizures, which he cannot recall, and at times these can be explosive and destructive.
- He cannot be left out on his own. He has no concept of danger and no awareness of appropriate behaviour towards others. He is inclined to say and do the wrong thing especially when it comes to dealing with girls and women. He has no concept of innuendo and he does not understand facial gestures.
- He has attended a Psychologist and the local CAMHS but despite this, he only received a diagnosis in the past couple of years.
- He lives in a fantasy world, pretending he has lots of friends, when in fact he has none.

The appellant said she is very worried for her son in school as he is the butt of teasing and goading by other children which he doesn't understand and this regularly causes him to lash out. She said he had also threatened self-harm and that she had been called to the school more than once because of this. In conclusion she said he is emotionally dependent on her which is not good for a 15 year old boy.

Comments/Conclusions: Having considered the evidence in this case, including that adduced at the oral hearing, the Appeals Officer concluded that the appellant's son met the criteria for Domiciliary Care Allowance. In reaching this conclusion she noted that his school hours had been reduced and that the appellant has to be on stand-by to collect him in case he cannot cope; that, at age 15, is unable to dress himself fully or look after his personal hygiene without supervision; that he is on medication as detailed; that he leads an isolated existence as he is unable to relate to people; that he is not safe to be left out alone as he can engage in inappropriate behaviour or get violent, and that he is subject to regular seizures and may become violent.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): In line with the provisions of social welfare legislation,

Domiciliary Care Allowance may be paid in circumstances where a child has a severe disability and needs continuous care, at a level which is substantially greater than that required by another child of the same age. Having examined the evidence carefully in this case, including that presented at oral hearing, I have concluded that, in respect of [W], who has been certified as having Dyspraxia/Epilepsy/DCD/ ADHD/Social Communication Disorder and Autism Spectrum Disorder, it has been established he needs substantial additional care on a continuous basis, as provided for in the qualifying conditions of the legislation. On that basis, the appeal is allowed in this case.

23. 2013/23 – Child's age: 15 years – Summary Decision

Diagnosis: Learning Difficulty

Background: Domiciliary Care Allowance had been in payment to the mother of the child in this case. Subsequently, the child was placed in the care of her aunt and the payment of DCA to her mother ceased. Her aunt made a claim for DCA and submitted evidence to confirm that the child [X] had been assessed as having a moderate level of intellectual disability and was attending a special school. In connection with the claim, her GP assessed her as having a moderate to severe degree of difficulty in the areas of Mental Health/Behaviour and Learning/Intelligence, and a mild degree of difficulty in the areas of Balance/Coordination and Speech. However, the claim was refused. In her appeal against that decision, the appellant argued that the child's care needs had not changed and she stated that she was finding it difficult to continue to pay for the special needs social and sports clubs that her niece was attending. She referred also to the extent of the supervision her niece required and the level of support and assistance she needed in carrying out everyday activities. She advised that her niece was attending the local CAMHS and that she suffers night terrors. She submitted a report from the Social Worker involved in the case, describing her niece as a very vulnerable child who was known to the local social work department. The report made reference to the child's behavioural problems and emotional needs, and indicated support for the award of DCA to the appellant. The family GP also provided a statement as to the child's additional care requirements.

Comments/Conclusions: The Appeals Officer noted that the child's mother had been in receipt of DCA immediately prior to the appellant's claim. He concluded that no evidence had been put forward to indicate that the child's condition had improved from the time that payment had been awarded initially to her mother and determined that the appellant was entitled to receive DCA in respect of her niece.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): The appellant's mother was in receipt of Domiciliary Care Allowance immediately prior to the application that was made by the appellant for that payment. The child moved homes as her initial carer was not in a position to continue to give care. There is no evidence put forward that the child's condition has improved from the time that the payment was first awarded to her mother. Having examined the evidence available in this case I have concluded that the appellant is entitled to receive the Domiciliary Care Allowance for[X]. In the circumstances the appeal succeeds.

24. 2013/24 – Child's age: 15 years – Summary Decision

Diagnosis: Asperger's Syndrome, Dyspraxia

Background: In this case, a Domiciliary Care Allowance had been in payment prior to the scheme being transferred from the HSE to the Department of Social Protection in 2009.

As part of a review by the Department, the appellant was asked to complete a review form and given an opportunity to provide further medical evidence in support of the claim. The child, who has a diagnosis of Asperger's Syndrome, is living with the appellant as part of a permanent foster care placement.

The appellant outlined the background to [Y] having been placed in foster care, and the fact that she was now happy in a secure family environment. She outlined the range of difficulties and challenges being encountered. She submitted a copy of the assessment report completed by the Consultant Child and Adolescent Psychiatrist at the local CAMHS. That report outlined the child's family background and turbulent early history. It referred to a range of

issues, including social isolation, anxiety, restrictive stereotyped interests, clumsy ill-coordinated movements and odd postures, as well as difficulties with communication. Details of the treatment plan recommended for [Y] were also outlined and it was noted that her diagnosis, and the needs identified, occurred against a background of a very disruptive early environment with a number of foster care placements.

Comments/Conclusions: The Appeals Officer dealt with the appeal on a summary basis. He noted that the child's foster parents had been in receipt of DCA as approved by the HSE. He considered that the combined historical nature and circumstances of the child's upbringing, coupled with the diagnosis, made a more compelling case for particular care and attention by her foster parents. He regarded the appellant's correspondence as convincing and observed that there was no reason to doubt what she said in relation to the care and attention being provided. In conclusion, he determined that the circumstances of the child's history and the obvious care and attention that she requires were such as to indicate that the payment of DCA should continue in this case.

Decision of the Appeals Officer: The appeal is allowed.

Note on decision reason(s): Social welfare legislation provides that Domiciliary Care Allowance may be paid where a child has a severe disability and requires continuous care and attention, at a level which is substantially in excess of that normally required by a child of the same age. Having examined the evidence carefully, I have concluded that it has been shown that [Y] requires substantial additional care, as provided for in social welfare legislation. In the circumstances, the appeal succeeds.

F. 2014 – N/A

G. 2015

1. 2015/02 – Domiciliary Care Allowance - Oral hearing

Question at issue: Whether the eligibility criteria are met

Background: The appellant's daughter (aged 6 years) underwent surgery when she was 2 years old. However, she reacted adversely and sustained cardiac damage. She has been diagnosed as suffering from Heart Block, Plaque (Guttate) Psoriasis, and has had a pacemaker surgically implanted. In her appeal, the appellant stated that both the cardiac problem and the Psoriasis are life-long conditions which require constant monitoring and frequent attention both during the day and at night.

Oral hearing: The appellant attended, accompanied by a relative. The Appeals Officer asked if she had been advised as to the cause of the conditions which her daughter now suffers and she responded that she had never received a satisfactory explanation. She said that the child had been monitored and examined extensively prior to heart surgery in 2013, having had a heart monitor fitted regularly from 2011 up to the time of the operation in 2013. She had attended a number of consultants, and had been admitted to hospital for tests and observation in the week prior to the operation. She had not been on medication before the pacemaker was fitted.

The Appeals Officer asked the appellant to outline the additional care and attention that her daughter now requires. She advised that she cannot be allowed near generators or microwave cookers, that she cannot use mobile phones or tablets, and must avoid loud beat music as all these situations have the potential to interfere with the pacemaker. She recalled an incident where the pacemaker had activated a security alarm as she was leaving a shop, and said that it had been very embarrassing. She is required to attend an outpatients' clinic for treatment

of Psoriasis and she finds this very distressing and cries every time she has to travel for the appointments.

The appellant stated that her daughter is additionally very restricted in the activities she can engage in and is not allowed, for example, to attend the circus, or go to a disco, or take part in sports. She said that she is very isolated from other children. Her food is also restricted; she can eat meat and vegetables but cannot be allowed white bread, pasta or cheese, as she must avoid wheat and dairy products. She can dress herself adequately other than the problems that arise from the cream that is applied for the Psoriasis. The appellant said that the medication prescribed is normally restricted to adult use. Her sleeping pattern is regularly disturbed and interrupted due to her skin problem, as she may scratch in her sleep and aggravate the condition, causing a flare-up which wakes her. This can require a full application of cream to assist in bringing the flare-up under control. On a daily basis, she must be washed and have three applications of cream.

The appellant stated that her daughter is not on any medication other than the topical application of cream for Psoriasis and that she attends outpatient appointments on a quarterly basis. She attends her local primary school, where there is a defibrillator on site in the event that she should require it.

The appellant submitted that heating and electricity bills for the family are usually very high as her daughter must be bathed frequently. She referred also the travelling costs for attending appointments in Dublin, and advised that her daughter's clothing must be replaced regularly because of the difficulty in washing clothes that have been in contact with the cream applied for Psoriasis.

Conclusion: The Appeals Officer noted that there were two specific medical conditions referred to, and that the appellant's daughter required specific care for each. He noted that medical evidence, in the form of the ability/disability profile, indicated that she was affected to a mild degree in one area only as a result of these conditions – that of reaching/lifting/carrying. In all other areas, she had been assessed as having a normal ability level. Having considered all the medical evidence and the evidence adduced at oral hearing, he concluded that it had not been established that the appellant's daughter requires additional care and attention which is substantially in excess of that required by a child of the same age without the conditions diagnosed, as set out in social welfare legislation for the purposes of Domiciliary Care Allowance.

Outcome: Appeal disallowed.

2. 2015/03 – Domiciliary Care Allowance - Oral hearing

Question at issue: Date of award

Background: The appellant made a claim for Domiciliary Care Allowance in 2010, in respect of her son who was 6 years old at the time. Her claim was disallowed and she made an appeal against the decision. The appeal was disallowed summarily in 2011. She reapplied in 2014 and the second claim was also disallowed. She made an appeal and, in reviewing the claim in connection with the appeal, the Deciding Officer revised the decision and awarded the allowance. The appellant wrote to the Department subsequently, requesting a review of the date of award. The Deciding Officer indicated that he considered a revision of his decision was not warranted.

Oral hearing: The appellant attended alone. She confirmed that her son had a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). She referred to evidence submitted as

part of her claim in 2010 and said that the family doctor, in completing the ability/disability profile, had assessed mental health/behaviour as being affected to a severe degree and learning/intelligence to a moderate degree. She went on to say that at the time of her application in 2014, mental health/behaviour was still assessed as being affected to a severe degree, while learning/intelligence was similarly assessed. She said that her son had been taking psycho-stimulant medication since 2010 and that the prescribed dose had not changed.

The appellant submitted that the level of care required by her son in 2010 was the same as that required in 2014. She provided an outline of his particular care requirements. She said that, since 2010, he could not be left alone at any time; he has to be spoon-fed at all meals, he must still be bathed and dressed or undressed, and accompanied to the bathroom in case he floods it. She reiterated that this level of care had not changed since 2010. In reply to the Appeals Officer's question as to why she had not claimed Domiciliary Care Allowance again until 2014, she said that her son was attending a psychiatrist who had told her to apply as he believed that the child was eligible.

Consideration: The Appeals Officer noted that the question as to entitlement had been determined by an Appeals Officer in 2011 so that the question now fell to be considered with reference to the provisions of Section 317 of the Social Welfare (Consolidation) Act, 2005. This provides that an Appeals Officer may at any time revise a decision of an Appeals Officer 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 notice since the date on which it was given.

The Appeals Officer noted that the appeal had been disallowed in 2011 without the benefit of an oral hearing. He considered that there was new evidence in the form of additional medical evidence presented in support of the appellant's claim in 2014, as well as her oral evidence which had not been available to the Appeals Officer in making a summary decision in 2011. He noted, in particular, the appellant's assertion that the impact of her child's disability and the level of care he required had not changed between the date of her original application in 2010 and 2014 when she was awarded the allowance. He concluded that the level of care required by and being provided to the appellant's son subsisted in 2010 and, in the circumstances, revised the appeal decision of 2011 under Section 317 of the Social Welfare Consolidation Act, 2005, allowing the appeal from the date of the original application in 2010.

Outcome: Appeal allowed.

H. 2016

1. 2016/03 Domiciliary Care Allowance (Oral hearing)

Question at issue: Whether eligibility criteria continue to be met (review)

Background: The appellant had been in receipt of Domiciliary Care Allowance in respect of her daughter, aged 14 years, who has a diagnosis of epilepsy and recurrent seizures with a background history of brain tumour. In the context of a review, the claim had been referred to a Medical Assessor of the Department of Social Protection and he had opined that the child was no longer eligible on medical grounds. Accordingly, the appellant was given an opportunity to forward additional information before a final decision was made. No further evidence was submitted, however, and the claim was disallowed. In an appeal against that decision, the appellant stated that her daughter suffers from severe headaches, requires constant attention, and that she had been called to school on many occasions as staff

members were anxious to ensure that she would not have a seizure.

In the medical report completed by her G.P., it was stated that the child had been seizure free for the last two years; that she complains of frequent headache and remains under the care of Neurology. The degree to which her diagnosis affects her in the area of consciousness/seizures was assessed as severe. A letter was submitted from the children's hospital which she attends, indicating a need for educational support to maximise learning potential and stating that from a disease point of view, she remains remarkably well and has no demonstrable neurological deficits or toxicities as a result of the treatment.

Oral hearing: The appellant and her husband attended. They said that they understood the qualifying criteria and asserted that they continued to be met. They reported that their daughter must take medication at the same time every day to ensure that she does not have a seizure and that they have to oversee this. The appellant made reference to the shunt which had been fitted in infancy, in line with her daughter's initial diagnosis of primitive neuroectodermal tumour, predominantly right cerebral hemisphere with associated Hydrocephalus. She said that a second shunt had been fitted in the previous year. She went on to say that the brain tumour is still there and that it causes her daughter to have headaches. She reported that a teacher brought her home from school one day last week, and called to the house to advise that she had been feeling unwell, had been unable to walk, and that it had been feared that she might have a seizure.

The appellant reported that the child's siblings are doing well at school but that she is not. She said that it has been suggested that she needs special educational supports and that it may be more appropriate for her to attend another school, where her needs might be met more effectively. She said that the headaches that the child experiences are quite severe and that she is experiencing difficulty in a number of areas. She reported that she had attended for a scheduled appointment and MRI scan last month but that her own specialist had been away and she would have to return for a consultation.

The Appeals Officer reviewed the medical evidence on file, referring to the G.P. statement that the child had been seizure free for the last two years. The appellant asserted that this did not reflect the nature of her current difficulties. She referred again to reports from school and the concerns expressed and the Appeals Officer suggested that she might like to submit evidence in that regard.

Further evidence: Following the hearing, a letter from the child's teacher was submitted, stating that she is in a class with 9 pupils with a full-time Special Needs Assistant (SNA) and that, although she is assigned to help the entire class, the SNA spends almost all of her time helping the appellant's daughter. It was stated that, despite a lot of extra resource classes and assistance, the child cannot read, write or count, and cannot identify basic terms. An outline was provided of the additional difficulties which her medical condition presents, including severe headaches and seizure episodes where she needs to be taken home. The child was described as being socially unaware and engaging in age inappropriate behaviour, unaware of the consequences of her actions. It was stated that an application had been made to the local HSE Disability Services team with a view to arranging further assessment for the child and the allocation of a place in a special school.

Consideration: The Appeals Officer noted that the question at issue was whether the appellant's daughter continued to meet the definition of 'qualified child' for purposes of Domiciliary Care Allowance with effect from the date from which the claim had been disallowed. She noted that while some of the medical evidence appeared to indicate an improvement in the child's condition, the additional evidence provided in the context of the

appeal had been compelling. Taking note of the evidence adduced at oral hearing and having had particular regard to the additional evidence submitted subsequently, she concluded that the qualifying condition continued to be met.

Outcome: Appeal succeeds.

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. 2016/05 Domiciliary Care Allowance (Oral hearing)

Question at issue: Whether the eligibility criteria are met

Background: The appellant made a claim for Domiciliary Care Allowance in respect of her daughter, who was aged 15 years. The stated diagnosis was Grade III Urinary Reflux and the medical report indicated that this was expected to continue indefinitely. In completing the ability/disability profile, the G.P. assessed the degree to which her disability affected the child's mental health and behaviour as mild and continence as moderate; all other categories were assessed as normal.

In completing the claim form, the appellant stated that her daughter requires assistance in and out of bed; has problems with balance/co-ordination; has to be careful of her diet; requires access to the bathroom during class; must get up during the night to go to the bathroom; is anxious about incontinence and finds difficulty in participating in physical education, going on long walks or staying over with friends. In terms of additional needs, she referred to the preparation and administration of medication. She enclosed a letter from the Consultant Urological Surgeon her daughter attends.

Oral hearing: The appellant reported that her daughter was getting on well at school. She said that she can cope independently with the normal activities of daily living and does not exhibit any behavioural problems. She said that the main issue is her lack of bladder control. She advised that her daughter attends a consultant three times per year and that her kidney function is being monitored. She was unaware if surgical intervention would be required.

She outlined the difficulties her daughter experiences, in that she can urinate unconsciously both when awake and asleep. She is on a fluid intake regime and her teachers have been alerted that when she requests permission to go to the bathroom, she needs to be excused immediately.

The appellant reported that her daughter's diagnosis has affected her social life, that she does not go out much with her friends because of it, and that she never hosts or goes on 'sleepovers'. She said that the condition causes her great distress. She referred to the issues associated with bed-wetting, including the cost of replacing mattresses and bed linen.

Consideration: The Appeals Officer noted that the qualifying criteria for Domiciliary Care Allowance, as outlined in social welfare legislation, specify that a child must have:

- a severe disability requiring continual or continuous care and attention substantially in excess of that normally required by a child of the same age, and that
- the level of that disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months.

He concluded that although the appellant's daughter suffers from a chronic kidney condition, she could not be deemed to require continual or continuous care and attention on a full-time basis, in line with the provisions of the governing legislation. He noted in particular that, apart from her bladder problems, the child had been described as being normal in all other respects; she does not suffer from any intellectual, behavioural or physical disability and is independent in the usual activities of daily living.

Outcome: Appeal disallowed

I. 2017

1. 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.

2. 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.

3. 2017/318/57 Domiciliary Care Allowance (DCA)

Question at issue: Whether the eligibility criteria are met

Grounds for review: It was asserted that the Appeals Officer's consideration of the medical evidence was inaccurate and incomplete and that the decision was not compatible with the facts and evidence submitted in support of the claim. It was submitted that the evidence pointed to a finding that the appellant's son met the legislative condition of requiring substantially more care and attention on a continual or continuous basis in excess of that required by a child of the same age without the condition.

Background: The appellant's son, who was 9 years of age, had a diagnosis of ADHD and dyslexia. In 2016 the appellant made a claim for Domiciliary Care Allowance (DCA). Documentary evidence submitted with the claim and subsequent appeal included medical evidence, a psychological and educational report and a report from the Principal of the school attended by the child.

The appellant's claim for DCA was disallowed as the Deciding Officer of the Department considered that, although accepting that the child had a disability, the qualifying criteria as regards substantial care and attention had not been met in line with the provisions of the relevant legislation.

The Appeals Officer held an oral hearing and concluded that while additional care was required it had not been established that the requirement for substantial additional care on a continuous basis, as provided for in the legislation, had been met.

Review: A qualified child for the purposes of the payment of domiciliary care allowance is set out in Section 186C of the Social Welfare Consolidation Act 2005 which provides as follows: "186C.—(1) A person who has not attained the age of 16 years (in this section referred to as the 'child') is a qualified child for the purposes of the payment of domiciliary care allowance where—

- a. the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age,
- b. the level of disability caused by that severe disability is such that the child is likely to require fulltime care and attention for at least 12 consecutive months,
- c. the child—
 - i. is ordinarily resident in the State, or
 - ii. satisfies the requirements of section 219(2),
- d. the child is not detained in a children detention school."

In the course of my review, I considered all of the evidence which was before the Appeals Officer and the additional evidence submitted in the context of the request for a review. The medical evidence was not in dispute and it was clear that the child met the criteria for a diagnosis of ADHD & dyslexia. There was also a diagnosis of asthma. The additional evidence submitted reported on observations made of the child in his school based on a checklist from the Autism Ireland website and indicated difficulties in areas of language and communication, social interaction with peers, hyperactive behaviour and sensory issues.

The parents' daily diary outlined a degree of intervention with the child in all aspects of their

daily activities from dressing, washing, meal times, playing, doing home-work, that could not be regarded as insignificant. While the child attended main stream school and was generally doing well in class, the criteria for a special needs assistant in school was met and the child had a shared SNA and access to extra resource hours. In addition, the child attended a home-work club after school to help with additional reading and writing activities, social skills and home-work which he refused to do at home.

From my review of the file I was satisfied that the Appeals Officer gave careful consideration to all of the evidence and set out the difficulties presenting in this case and this was not in dispute. What was in dispute was the weight the Appeals Officer afforded to that evidence.

Having reviewed the medical reports and the information provided in relation to the child's care requirements and by the child's parents as set out in the daily diary, I was satisfied that the evidence indicated that the care and attention required could be held to be substantially in excess of that normally required by a child of the same age and, as such, met the qualifying criteria outlined in the governing legislation.

Outcome: Decision revised and appeal allowed.

4. 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. 2018/03 Domiciliary Care Allowance Oral Hearing

Question at issue: Whether the child is a qualified child

Background: The appellant applied for Domiciliary Care Allowance in respect of his son.

The application was refused on the grounds that the level of additional support required by his son was not substantially in excess of that required by other children of the same age without the disability. The medical report indicated that the child was diagnosed with language delay. The condition started in 2014 and was expected to last 24-48 months. The medical history showed mild receptive language delay, severe expressive language delay and separation anxiety. A multi-disciplinary assessment report outlined that the child presented with sensory modulation dysfunction, mild receptive language delay and a severe expressive language delay. The report recommended speech and language therapy, occupational therapy, psychology support, a full needs assessment in 18 months including a review of his assessment for autism, pre-school supports under the Access and Inclusion Model (levels 4-7) and the use of visual cues by his parents and teachers.

Oral hearing: At the oral hearing of his appeal the appellant outlined his son's history, his assessments and the recommendations. He stated that his son's daily care was well above a child of his age and above that of his siblings. The appellant outlined that his son's condition had deteriorated and that the child got frustrated trying to speak, he needed help feeding, dressing, washing, toileting, disliked certain textures and activities, had particular items that he must have, was a fussy eater, needed constant re-assurance and disliked when his routine was changed. The child did not cope well with change. Change in routines resulted in the child becoming agitated and could lead to tantrums.

Consideration: The medical evidence showed that the child presented with sensory modulation dysfunction, mild receptive language delay and a severe expressive language delay. The multi-disciplinary report recommended speech and language therapy, occupational therapy, psychology support and a full needs assessment in 18 months including a review of his assessment for autism. His pre-school supports included Access and Inclusion Model level 7 and this had been available to him. The Appeals Officer noted the evidence at the hearing that the child did not recognise danger, had multiple tantrums in a day and had difficulty communicating. The Appeals Officer was satisfied that the child required continual care and attention substantially in excess of the care and attention normally required by a child of the same age without the disability and that he was likely to require full-time care and attention for at least 12 consecutive months.

Outcome: Appeal allowed.

2. 2018/04 Domiciliary Care Allowance Oral Hearing

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 the scheme. The child was 9 years old and had a diagnosis of autism. The medical report completed by the GP stated that the child was availing of speech and language therapy, play therapy and was waiting for an occupational therapist appointment. The ability profile indicated that the child's condition severely affected his behaviour, speech, social skills, sensory issues and continence; moderately affected his mental health, learning, communication, washing, dressing, balance/co-ordination, manual dexterity, fine motor skills and gross motor skills; mildly affected his hearing and remaining abilities were considered normal.

Oral Hearing: At oral hearing, the appellant outlined that her son had access to a Special Needs Assistant on a full-time basis and used the multisensory room on occasions throughout the day. He also attended play therapy twice weekly and was awaiting an appointment with an occupational therapist and further assessment for dyspraxia. The

appellant submitted additional medical evidence confirming the child's recent diagnosis of autism and that the child also had significant sensory issues. The appellant outlined that the child did not communicate well and did not get on with his sibling who was in the same class and also had a diagnosis of autism.

Consideration: In examining this case, the Appeals Officer, relying on Section 186C (1) of the Social Welfare Consolidation Act 2005, noted the medical evidence on file and the additional medical evidence submitted at oral hearing including the appellant's testimony. The Appeals Officer noted that the child's GP indicated in the medical report that the child's condition severely impacted on his behaviour and that he was awaiting appointments and further assessment. The Appeals Officer concluded that the evidence established that the appellant's son was a 'qualified child' as provided for in the legislation governing entitlement to Domiciliary Care Allowance

Outcome: Appeal allowed.

3. 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.

4. 2018/318/69 Domiciliary Care Allowance

Question at issue: Whether the eligibility criteria had been met

Grounds for Review: The Department in its request for a review of the Appeals Officer's decision alleged that the Appeals Officer erred in law in concluding that because a child met the qualifying condition for Domiciliary Care Allowance at age 13 then the child must also have satisfied the conditions 7 years earlier. In its submission, the Department asserted that the available evidence did not support the decision that the child was qualified for Domiciliary Care Allowance in 2011.

Background: The appellant's son had a diagnosis of delayed speech. In 2011 the appellant submitted a claim for Domiciliary Care Allowance at which point the child was 6.5 years old. The appellant's claim was disallowed as the Deciding Officer considered that, although accepting that the child had a disability, the qualifying criteria as regards substantial care and attention had not been met in line with the provisions of the relevant legislation. This decision was upheld by an Appeals Officer who at that time also stated that the child would benefit from further assessments by the HSE team.

A further application was submitted in 2017 and the claim was approved by a Deciding Officer who was satisfied that the child was a qualified child from July 2017. Arising from that positive decision by the Department, the appellant sought to have Domiciliary Care Allowance awarded from 2011. This request was not allowed and an appeal was lodged. The question at issue on appeal was whether, at the time of the claim in 2011, the child had a disability resulting in him requiring substantially more care and attention than would normally be required by a child of the same age without a disability.

The Appeals Officer allowed the appeal, the effect of which was to award Domiciliary Care Allowance from the date of application in 2011.

Review: A qualified child for the purposes of the payment of Domiciliary Care Allowance is defined in Section 186C of the Act of 2005 as:

"186C.—(1) A person who has not attained the age of 16 years (in this section referred to as the 'child') is a qualified child for the purposes of the payment of domiciliary care allowance where—

(a) the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age,

(b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months,

(c) the child—

(i) is ordinarily resident in the State, or

(ii) satisfies the requirements of section 219(2), and

(d) the child is not detained in a children detention school."

In its request for a review of the Appeals Officer's decision, the Department made specific

reference to 5 medical reports submitted in support of the application for Domiciliary Care Allowance. For the purposes of this review of the Appeals Officer's decision, I reviewed these medical reports and all of the evidence that was submitted in the context of the application and throughout the period up to and including the date of the award of Domiciliary Care Allowance by a Deciding Officer of the Department from July 2017.

From my review of the medical reports, I noted that in completing the medical report as part of the application process in December 2010, the child's GP noted that his condition affected him: to a severe degree in relation to his mental health/behaviour, learning/intelligence and speech and to a normal degree in all other areas. In the context of the application process in June 2017, the medical report completed by the child's GP noted that his condition affected him to a moderate degree in relation to intelligence, learning, speech, communication, social skills, sleeping, washing, dressing; to a mild degree in relation to mental health, behaviour, sensory issues, feeding/diet, mobility, balance/co-ordination, manual dexterity, sitting/standing, and fine motor skills and normal in all other categories.

From my review of the medical reports, on file which were completed on various dates between 2010 and 2017, I was satisfied that the evidence indicated that the child required additional supports/resources in the school environment and at home and, in my view, the evidence as deduced from the various reports supported a conclusion that the child required continual or continuous care and attention both at home and at school which was not insubstantial and that this requirement subsisted at the date of application in 2011. I noted in particular that an Occupational Therapy Assessment carried out in 2010/2011 and which included a school visit in January 2011, outlined that the child was at risk of bumping/crashing with moving objects (cars, swings, peers running, balls, etc.) or tripping when carrying objects.

A Speech and Language Therapy Report completed in March 2011 confirmed 'severe language impairment.' I noted that the 2011 Report also recalled that the child first presented to the speech and language services in 2007 where he was identified as a 3 year old child with significant delayed language, communication and play skills. In summarising the impact on the child's educational progress & social and emotional development it was outlined that the child presented as a 6 year old boy with a severe language impairment impacting significantly on his participation at school, home and community. Socially the child had difficulty interacting with peers. Emotionally it was reported that he became anxious and had difficulty solving arguments, educationally he had difficulty participating in class room activities.

A Multidisciplinary Assessment Report dated October 2012, at which point the child was just over 8 years of age, noted that the child had some difficulties in everyday functions and sleep patterns. It was reported that the child at the time of the assessment was experiencing more mood difficulties and somatic symptoms than would be expected for a boy of his age and that he was highly anxious. The outcome of the assessment highlighted that the child had a severe expressive and receptive language delay, significant learning difficulties and related attention difficulties, presented with emotional difficulties with evidence of anxiety and depressive symptoms and that the child's emotional and behavioural presentation was highly variable requiring support and management.

Recommendations in respect of the child included:

- A differential curriculum and extra support to follow classroom routine
- Access to clinical supports including parental involvement

- Joint psychology and speech and language therapy.

In addition, I noted that the child's parents were offered access to a specific programme which I understood was a parenting-based approach to managing anxiety in young children, which includes helping parents learn a new approach to managing their children's fears and worries through cognitive-behavioural techniques.

While noting there was no evidence on file as to whether the parents participated in the programme or not, I formed the view that the fact that the programme was recommended could be regarded as being indicative of the additional care and attention required by the child. A Psycho-Educational Report, dated November 2014, was completed in the context of assessing the child's level of adaptive functioning to inform decisions regarding educational provision. The general recommendations arising from this assessment included additional adult support in the form of an SNA, assessments in the area of speech and language, motor skills and support from a multi-disciplinary team to promote development of his skills in language and communication, independence skills and motor skills. In the home environment, it was recommended that the child should be encouraged to count, handle money, get involved in household activities such as setting the table, dividing up food, sharing equally, measuring and weighing food. It was further recommended that the child be afforded opportunities to develop his communication and social skills, supported by parental guidance and reassurance. The opportunity for increased social activities outside of school was also recommended.

A Psychology Report in May 2017, at which point the child was almost 13 years of age, was completed in the context of a referral for a review of the child's cognitive functioning as a part of multidisciplinary assessment review recommend by the School Age Team. In summary, the medical reports on file showed that the school day needed to be very structured to suit the child's needs. It was reported that that the child mostly worked in a special class as he couldn't cope in a mainstream room. It was reported that the child needed one to one help for most tasks and presented with low self-esteem.

The evidence on file indicated that the child required additional supports/resources in the school environment and at home and, in my view, the evidence as deduced from the various reports supported a conclusion that the child required continual or continuous care and attention both at home and at school, which was not insubstantial and that this requirement subsisted at the date of application in 2011.

It was one of the Department's contentions that when the application was made in 2017, the child's condition had deteriorated in recent years and that he now had care needs substantially greater than other children of the same age. However, I noted that the Clinical Psychologist who completed the Psychology Report in December 2016 recalled that the child was [now] a 12 year old boy who had attended the Assessment and Intervention Team since July 2011.

The Clinical Psychologist recalled that in the past the child has attended speech and language therapy, occupational therapy and psychological assessments. During this period of time [since 2011 to 2016], some of the child's skills have improved more than others and others appear to be stationary. At present [December 2016], the child's needs appear to be impacting emotional health and the child presents with low self-esteem and seeks reassurance. I concluded that the improvement in some of the child's skills referred to by the Clinical Psychologist could be attributed to the recommendations for interventions and supports at school and at home aimed at helping the child achieve his potential.

I was in no doubt that the additional care and attention provided both in school and in the

home environment as recommended in the various reports could be held to be substantially in excess of that required by a child of the same age without the disability. The Department also contended that the AO erred in law in concluding that because the child meets the qualifying condition for the scheme at age 13 then they must have satisfied the conditions 7 years earlier and that the available evidence does not support the decision that the child was qualified for Domiciliary Care Allowance in 2011.

From my review of the medical evidence that was before the Appeals Officer, I was satisfied that the evidence supported a conclusion that the child, having a severe disability, required continual and continuous care and attention substantially in excess of the care and attention normally required by a child of the same age. While it is the case that the care required by a child of 6 is different to the care required by a child at age 13, the important aspect in order to meet the legislative condition of the scheme is whether the care and attention is substantially more than a child of the same age without the condition. I was satisfied that the medical evidence in this case and which I have summarised above supported the conclusion reached by the Appeals Officer.

I noted above that when the Appeals Officer made his decision in 2012, he stated that the child would benefit from further assessments by the HSE team. The specialist reports from further assessments, including the HSE Multi-disciplinary Team Assessment report of October 2012, were available to the Appeals Officer when reviewing the decision in November 2018 but were not available to the Appeals Officer who made a decision in 2012.

Based on the additional medical evidence, outlining the extent of the child's difficulties and the interventions required, the Appeals Officer in November 2018 found that the additional medical evidence reinforced the extent of the child's difficulties which had subsisted in 2011 and she was therefore satisfied that the child met the qualifying conditions of the scheme from January 2011.

In my review, I also noted that the DOM Care1 application completed in 2017 and which is referenced by the Department in its submission, allowed the applicant to provide a much more expansive outline of the extra care required by the child (Part 4 comprising 9 pages) than the Dom Care 1 application completed in 2011 (Part 4 comprising 2 pages).

From my review of the file, in particular the medical reports outlined above and the information provided by the child's parents, I was satisfied that the evidence supported the Appeals Officer's conclusion that the care and attention the child required at the time of the Domiciliary Care Allowance application in 2011 and in the intervening period up to and including the date of award of Domiciliary Care Allowance in 2017 could be held to be substantially in excess of that normally required by a child of the same age and, as such, met the qualifying criteria for Domiciliary Care Allowance as outlined in the governing legislation.

Outcome: Decision not revised.

K. 2019

1. 2019/04 Domiciliary Care Allowance Summary Decision

Question at issue: Qualified Child (level of care required)

Background: The appellant's application for Domiciliary Care Allowance in respect of her child who was a year old was disallowed by the Department on the grounds she did not meet the qualifying conditions as the evidence did not indicate that the level of additional care her child required was substantially in excess of that required by a child of the same age

without a disability.

The medical report completed by the GP confirmed that the child was diagnosed with dysplastic kidney and was attending hospital. The report also showed that the child had been on prescribed medication which had now stopped and the ability profile indicated that all of the child's abilities were normal and he was not affected by his condition. Additional medical evidence submitted included letters from a Consultant that confirmed the child's diagnosis and concluded that he was doing well and had met all his milestones and that he was discharged to the care of his GP. The appellant submitted an updated medical report as grounds of appeal which indicated that the child's condition severely affected his feeding/diet with all other relevant abilities being normal.

Consideration: Section 186C(1) of the 2005 Act provides that a person who has not attained the age of 16 years is a qualified child for the purposes of the payment of Domiciliary Care Allowance where (a) the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, (b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months. The Appeals Officer noted all of the evidence including the medical evidence and having done so concluded that while the appellant's son, who was aged 12 months at the date of claim, had some additional care requirements due to his medical condition, the evidence did not indicate that he had a severe disability or that he was so impacted by that disability as to require continual or continuous care and attention, which was substantially in excess of the care and attention normally required by a child of the same age.

Outcome: Appeal disallowed

2. 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

3. 2019/06 Domiciliary Care Allowance Summary Decision

Question at issue: Qualified Child (level of care required)

Background: The appellant made a claim for Domiciliary Care Allowance in March 2019 in respect of her 8 year old son. Her claim was disallowed on the grounds that her son was not regarded as a qualified child under the governing legislation. Section 186C of the 2005 Act provides that a person who has not attained the age of 16 years is a qualified child for the purposes of the payment of Domiciliary Care Allowance where (a) the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, (b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months.

In her application for Domiciliary Care Allowance the appellant outlined her son's care needs and stated that he had a lot of difficulty walking and climbing stairs. He required regular assistance in school and had access to an SNA to assist him throughout the day. The medical report completed by the GP confirmed that the child was diagnosed with dyspraxia. The Ability Profile which was contained in the GP's report indicated that the appellant's son was severely affected in manual dexterity, reaching/lifting/carrying and climbing stairs and profoundly affected on social skills, sensory issues, fine motor skills and gross motor skills.

Consideration: Domiciliary Care Allowance may be paid in respect of a child who has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, and the level of disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months.

The Appeals Officer noted all of the evidence including the GP's report, a letter from the child's Occupational Therapist and a letter from the child's school. Having examined all of the evidence the Appeals Officer concluded that it had been established that the requirement for substantial additional care on a continuous basis, as provided for in the governing legislation, had been met.

Outcome: Appeal allowed

4. 2019/318/69 Domiciliary Care Allowance

Question at issue: Whether the child was a qualified child

Grounds for Review: The appellant requested a review of the Appeals Officer's decision on the basis that the Appeals Officer gave insufficient weight to the appellant's evidence. It was asserted that as the Department was not represented at the oral hearing there was no evidence provided that contradicted the appellant's evidence. It was also asserted that the Appeals Officer's report of the oral hearing and the evidence given clearly demonstrated that the child's care needs were substantially in excess of that required by other children of the same age without a disability.

Background: The appellant's claim for Domiciliary Care Allowance was disallowed by a Deciding Officer of the Department on the grounds that the child was not regarded as a qualified child under the governing legislation. Neither the Deciding Officer on review nor the Appeals Officer on appeal changed that outcome.

Review: A qualified child for the purposes of the payment of Domiciliary Care Allowance is set out in Section 186C of the 2005 Act which provides as follows:

"186C.—(1) A person who has not attained the age of 16 years (in this section referred to as the 'child') is a qualified child for the purposes of the payment of domiciliary care allowance where—

- (a) the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age,
- (b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months,
- (c) the child—
 - (i) is ordinarily resident in the State, or
 - (ii) satisfies the requirements of section 219(2), and
- (d) the child is not detained in a children detention school.”

From my review of the Appeals Officer’s decision it was clear that the Appeals Officer concluded that while the child required additional care and attention he was not satisfied it had been established that the care and attention required was substantially more than that compared with another child of the same age without the diagnosed condition as outlined in the governing legislation. In those circumstances the appeal was disallowed.

Insofar as it was submitted that the Appeals Officer’s report of the oral hearing demonstrated that the statutory criteria were met, I was satisfied that the report was merely an account of the evidence submitted by the appellant including an account of her oral evidence provided at the hearing. It did not contain any commentary by the Appeals Officer or evaluation of the weight afforded to the evidence and could not be read in isolation from the actual decision of the Appeals Officer which did include an evaluation of the evidence.

Insofar as it was contended that there was no evidence provided by the Department to the contrary as the Department was not represented at the oral hearing, it was the case that the Appeals Officer had the decision of the Deciding Officer and the outcome of the review conducted by a Deciding Officer in the context of the appeal, both of which set out in a comprehensive way the reasons for the decision and the non-revision of that decision. I did not consider that the Appeals Officer had erred in fact or law in this respect – it is a matter for the Appeals Officer to determine whose attendance is required at an oral hearing and there is no mandatory requirement for the Deciding Officer or representative of the Department to attend.

There was no conflict as regards the facts pertaining in the case and the question to be determined by the Appeals Officer was whether he considered that it had been established that the child “has a severe disability and was so impacted by that disability as to require continual or continuous care and attention, substantially in excess of the care and attention normally required by a child of the same age, and would require that level of additional care for at least 12 consecutive months”.

Having regard to the totality of the evidence I did not consider that the Appeals Officer has erred in fact or law and found no reason to revise his decision on any of the grounds submitted by the appellant in support of the request for a review of that decision.

Outcome: Decision not revised

L. 2020

1. 2020/03 Domiciliary Care Allowance Summary Decision

Question at issue: Qualified Child (level of care required)

Background: The appellant's application for Domiciliary Care Allowance in respect of her six-year-old son was disallowed by the Department on the basis that the evidence did not indicate that the level of care required by the child was substantially in excess of that required by a child of the same age without a disability.

The medical report completed by the child's GP confirmed that the child was diagnosed with developmental coordination disorder and had a history of dyspraxia. The report also indicated that many of the child's abilities were affected to a severe degree by his condition and some were moderately affected.

Consideration: Section 186C (1) of the 2005 Act provides that in order to qualify for Domiciliary Care Allowance a child must have a disability so severe that it requires the child needing care and attention substantially in excess of another child of the same age without the disability and that the child is likely to need that level of care and attention for at least 12 months.

The Appeals Officer noted that most of the child's abilities were affected to a severe degree on the ability/disability profile of the medical report and concluded that the child's disability was a severe disability.

The appellant described in detail on her application form how she assisted her son with the activities of daily living on a continual basis. The Appeals Officer noted that while any six-year-old child is likely to require significant amounts of support and assistance, he concluded that the level of care and attention described by the appellant was substantially in excess of that required by a typical six-year-old child.

Two additional medical reports were provided in the appeal documentation from a psychologist with the HSE psychological service and an educational psychologist. These reports in combination supported the appellant's description of the level of care and attention required by her child.

Based on the medical evidence the Appeals Officer concluded that the appellant's son had a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age. There was nothing in the medical evidence to indicate that the condition of the appellant's child was likely to improve within 12 months.

Outcome: Appeal allowed

2. **2020/04 Domiciliary Care Allowance Summary Decision**

Question at issue: Qualified Child (level of care required)

Background: The appellant made a claim for Domiciliary Care Allowance in respect of her 10-year-old son who had a diagnosis of camptodactyly, hammer toes and innocent systolic murmur of the heart. Her claim was disallowed on the grounds that the child was not regarded as a qualified child as provided for in the legislation. The documentary evidence submitted in support of the claim included a medical report completed by the GP, a consultant's letter, a letter from the senior occupational therapist, a letter from the child's social worker and a psychological test report.

In her application the appellant informed that her son had mobility issues following surgery on his leg/feet. He required assistance with washing, dressing and toileting. He attended mainstream school but was diagnosed with dyslexia. He had access to a special needs assistant and attended both resource hours and learning support. He had difficulty crossing

the road as he got confused between his left and right. The appellant stated in her application form that the child needed her help most of the time to pick things up as his hand was constantly closed. He no longer participated in sport as his mobility was limited due to issues he had with his feet.

The appellant stated that he got frustrated when he could not complete his homework and his GP confirmed that he had undergone 10 operations to date. His most recent hospital admission resulted in him being wheelchair bound for a period of 10 weeks. He attended both an orthopaedic and a plastic surgeon and physiotherapy and occupational therapy. The Appeals Officer also noted he would require further surgeries in the future.

Consideration: The Appeals Officer was satisfied that the need for ongoing additional supports, supervision and care with regards to the child's certified medical condition had been established and was substantially in excess of the care and attention normally required by a child of the same age. The Appeals Officer concluded that as the child grew, he may have a deterioration of his presentation and could require more frequent appointments to manage movement in his fingers. He also noted from a letter from his schoolteacher that the child required substantial independent assistance in order for him to progress to his class level.

Outcome: Appeal allowed

3. 2020/318/58 Domiciliary Care Allowance

Question at issue: Eligibility (qualified child)

Grounds for Review: The appellant requested a review of the Appeals Officer's decision on the basis that the Appeals Officer erred in fact and in law by not taking account of all of the medical evidence and supporting documentation outlining the child's severe mental health, learning difficulties and the need for supervision and support in daily activities. It was asserted that the Appeals Officer placed too much emphasis on the child's ability to do certain activities independently and without supervision. These activities were primarily concerned with road usage and road safety. It was submitted that the child met the medical criteria as outlined in the governing legislation and in the Department's guidelines: Medical Eligibility Guidelines for Domiciliary Care Allowance with specific reference to Chapter 5, paragraph 5.6 which states that:

After some consideration, the definition of disability agreed was:- any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a child compared to a child of the same age.

In the review request it was outlined that the child was awarded Disability Allowance from his 16th birthday and Carer's Allowance has been awarded to his mother. It was submitted that this demonstrated the caring needs presently and that these caring needs had not changed since the application was submitted. In this respect it was contended that the caring needs to qualify for Carer's Allowance are similar to the caring needs to qualify for Domiciliary Care Allowance.

Background: The appellant's claim for Domiciliary Care Allowance was disallowed by a Deciding Officer of the Department on the grounds that the child, who at the date of application was 13 years of age, was not regarded as a qualified child under the governing legislation. It was outlined that Domiciliary Care Allowance can only be paid in respect of a child who has a severe disability that requires care and attention substantially in excess of that required by a child of the same age without that disability. The decision of the Deciding

Officer remained unchanged following a review by the Deciding Officer and an appeal which was determined by the Appeals Officer by way of an oral hearing was disallowed.

Review: The substantive question before the Appeals Officer was whether at the date of claim it had been established that the child was a qualified child for the purposes of the payment of Domiciliary Care Allowance as set out in Section 186C of the 2005 Act.

For the purposes of the review I read the Department's guidelines relating to the medical eligibility for Domiciliary Care Allowance. I formed the view that the paragraph I was referred to related specifically to the Expert Medical Group's agreed definition of 'disability'. I was satisfied that the Appeals Officer accepted that the child had a disability and that additional care and attention was required but the central question before him was whether the child had a disability so severe that he required care and attention substantially in excess of another child of the same age without the disability.

Insofar as it was submitted that undue weight was afforded to the evidence that the child was allowed to do certain activities independently and unsupervised and that this is not provided for in legislation I was satisfied that while the legislation does not specifically mention independent action or road safety it was open to the Appeals Officer to explore this aspect of the child's care needs.

In this respect I noted that the application form for Domiciliary Care Allowance (Dom Care 1) allows the person claiming the allowance to provide details of the child's care needs and specifically to set out the extra care needs compared with a child of the same age without the same disability.

The application form includes questions relating to safety and one of those questions specifically relates to comprehension or perception of road safety. In those circumstances the Appeals Officer was not precluded from considering this aspect of the child's care needs. Insofar as it was asserted that the Appeals Officer afforded undue weight to this evidence, I was of the view that having regard to the totality of the evidence presented this assertion was unfounded. The Appeals Officer had considered all of the evidence including the GP's report which outlined that the child's conditions affected him severely in the case of mental health and to a mild/moderate extent in nine other categories.

Insofar as it was outlined that the award of Disability Allowance to the child and Carer's Allowance to his mother was evidence of meeting the qualifying conditions for Domiciliary Care Allowance I was satisfied that the Appeals Officer was confined to considering the child's care needs at the date of application for Domiciliary Care Allowance. While acknowledging that the qualifying conditions for receipt of Carer's Allowance were met and payment awarded from when the child reached 16 years of age I was satisfied that it cannot be concluded that the care required some years earlier when the child was aged 13 had also been met. While acknowledging that the care required by a child of 13 may not be substantially different to the care required by a child at age 16 I outlined that the critical aspect in order to meet the legislative condition for receipt of Domiciliary Care Allowance is whether the care and attention required by the child is substantially more than a child of the same age without the condition. I was satisfied that, having regard to the totality of the evidence before the Appeals Officer, the evidence did not support a conclusion that the care required by the child was substantially more than a child of the same age without the condition.

Outcome: Decision not revised

4. 2020/318/59 Domiciliary Care Allowance

Question at issue: Eligibility (qualified child)

Grounds for Review: The appellant requested a review of the Appeals Officer's decision on the basis that the evidential threshold was set too high and insufficient emphasis had been placed on the evidence presented.

It was submitted that it was clear from the evidence presented that the child met the statutory criteria and that insufficient weight was attached to the evidence that the child had been assigned a special needs assistant. It was submitted that the criteria for a special needs assistant closely mirrors that of Domiciliary Care Allowance in that it must be established that the care needs of the child are substantially more than those of the child's peers. In this respect it was submitted that it was irrational to suggest that the child required a substantial level of care provision in a school environment that he did not require at home.

Background: The appellant's claim for Domiciliary Care Allowance was disallowed by a Deciding Officer on the grounds that the child was not regarded as a qualified child as defined in Section 186C of the 2005 Act. That outcome remained unchanged following a review by the Deciding Officer and the subsequent appeal was unsuccessful.

Review: The Appeals Officer concluded that the evidence presented indicated that the child required ongoing additional supports, supervision and care with regard to certified medical conditions. The evidence also indicated that the child attended mainstream school and had been assigned a special needs assistant, was able to travel to school by bus without assistance, washed and dressed independently and participated in sport activities. Having regard to the totality of the evidence the Appeals Officer concluded that it had not been established that the child was so severely disabled as to require continual or continuous care and attention which was substantially in excess of the care and attention normally required by a child of the same age. From my review of the decision it was clear that the Appeals Officer considered all the evidence, including that adduced at an oral hearing of the appeal, and his decision was based on the totality of the evidence. I found no evidence that the evidential threshold was set too high by the Appeals Officer or that insufficient emphasis had been placed on any of the evidence presented.

Insofar as it was contended that it was irrational to suggest that the child required a substantial level of care provision in a school environment that he did not require at home, I found no evidence that the Appeals Officer made such a suggestion. From my review the Appeals Officer set out in a clear and factual manner the evidence presented in support of the application. While the Appeals Officer noted that the child had a special needs assistant and that fact formed part of the evidence the Appeals Officer took into account, I was satisfied that the legislation governing entitlement to Domiciliary Care Allowance is that contained in Section 186C of the 2005 Act and not the legislation or criteria relating to the allocation of a special needs assistant.

Insofar as it was contended that there was insufficient analysis at the oral hearing in respect of a psychological report indicating that the child continued to achieve significantly below expectation for a child of his age, I was satisfied that the report in question primarily related to recommendations for future supports for the child and it did not support a conclusion that the child required continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age without the disability. Other medical evidence submitted in support of the request for a review of the Appeals Officer's decision also related to a referral to support services but did not support a conclusion that the child met the statutory conditions for receipt of Domiciliary Care Allowance.

Outcome: Decision not revised

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