

Casebase Number: G0119

**Thematic Note of SWAO Case Studies:
Illness Benefit**



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Period of Analysis: 2009-2020

Theme: Illness Benefit

Period of Analysis: SWAO Annual Reports 2009-2020

Keywords: Illness Benefit; Disability; Incapable of work; PRSI Contributions.

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Summary of the relevant law:

Illness benefit is a weekly payment that can be made to an individual who:

- (a) is incapable of work due to illness;
- (b) is under 66 years old; and
- (c) has made the required PRSI contributions (see below).

Under Section 40 of the Social Welfare Consolidation Act 2005 (as amended), illness benefit can be paid for any “day of incapacity for work” which forms part of a “period of interruption of employment”. In this context:

- a “day of incapacity for work” means a day for which the individual is certified as unable to work (or to look for work) due to illness; and
- a “period of interruption of employment” means any 3 days (whether consecutive or not) within 6 consecutive days.

Neither weekends nor paid holiday leave are taken into account when counting “days of incapacity for work” or a “period of interruption of employment”.

Section 41 of the Social Welfare Consolidation Act 2005 (as amended) provides that, to be entitled to illness benefit, generally an individual must have:

- (a) at least 104 PRSI contributions paid since they first started working; and
- (b) either:
 - (i) 39 weeks of PRSI contributions paid or credited in the relevant tax year, of which 13 must be paid; or
 - (ii) 26 weeks of PRSI contributions paid in each of the relevant tax year and the previous tax year.

These rules are adjusted in certain circumstances, e.g. where an individual is already in receipt of certain other benefits immediately before applying for illness benefit.

For these purposes, the relevant tax year is the second-last complete tax year before the year in which a claim for illness benefit is made. E.g. where claim is made in 2022, the relevant tax year is 2020.

Social security contributions paid in certain other EEA member states or the UK can be counted for the purposes of qualifying for illness benefit, provided however that the last social security contributions were paid in Ireland. Periods of employment in certain other EEA member states or the UK can also be taken into account.

Key grounds of appeals by appellants:

The majority of the appeals are in relation to medical eligibility for Illness Benefit, i.e. that the individual is incapable of work due to illness. In the majority of these appeals, the appellant had been examined at least once by a Medical Assessor appointed by the Department of Social Protection but disagreed with their medical assessment. The various grounds for disagreement

include: (1) that the medical assessment only focused on physical impairment and not on mental health issues (regardless of whether these mental health issues were separate, related or resultant); (2) that further medical evidence contradicts the medical assessment; (3) that the medical assessment failed to take into account the severity of the medical condition; or (4) that the appellant's condition is changeable and was not at its worst on the day when the medical assessment was carried out.

There have only been two appeals where the appellant challenged the requirement to have a certain number of PRSI contributions. In both of these cases, the SWAO rejected the appeals on the basis that the PRSI contributions are a statutory requirement and that it cannot be waived.

Observations on appeal outcomes:

As an overall observation, appellants are generally successful where they provide plenty of evidence to demonstrate that they are incapable of work. The evidence does not necessarily need to be medical or specifically related to their work duties - the SWAO also takes into account the impact that the illness has on the appellant's daily life and routine tasks, e.g. ability to look after oneself and to do recreational activities.

While this evidence can be anecdotal and provided personally by the appellant, appellants are generally more successful where they provide letters of evidence from their GP and/or other medical practitioners. Where the GP has a long term relationship with the appellant and is familiar with their medical history, the letter from the GP can sometimes even take precedence over the medical opinion from the Medical Assessor that is appointed by the Department of Social Protection. For example, in one appeal, the SWAO disregarded a medical assessment which was carried out on a day in which the appellant coincidentally wasn't in much pain. It can also be helpful to provide copies of scans and medical tests.

In addition to physical illness, the SWAO also takes into account an appellant's mental illness. There is only one case in the Annual Reports where an appellant has been successful in arguing that they were incapable of work due to mental illness alone, in **Case 2018/11**. . Similar to physical illness, the mental illness must render the appellant incapable of work – generally, moderate mental health issues, general stress or an inability to cope with the demands of a busy job are not considered to render an individual incapable of work for the purposes of Illness Benefit. That said, the SWAO does take mental illness into account where it arises in conjunction with physical illness. For example, the SWAO has considered appellants to be incapable of work for the purposes of Illness Benefit where they had mental illness at the same time as their physical illness and also where they had mental health issues after/as a result of their physical illness.

In order to prove that an appellant is currently incapable of work for the purposes of Illness Benefit, the SWAO pays particular attention to medical treatments received and to be received.

- In order to be successful, it is generally necessary for an appellant to provide evidence of current medical treatments, for example medication that they are currently taking, doctors that they are seeing regularly, etc. This can demonstrate that the appellant is currently incapable of work. That said, claims for Illness Benefit may be rejected where the medical treatments are so effective that the appellant is actually capable of work as a result.
- It can also be persuasive for an appellant to provide evidence of upcoming medical appointments and/or treatments. This can support the argument that the appellant is likely to be incapable of work for some time. In this regard, it would appear to be necessary for these

appointments and/or treatment to already be scheduled. For example, the SWAO has rejected an appeal in which it was argued that an appellant might need surgery at some point in the future.

- It is not always necessary that the current medical treatments are specifically related to the original illness. For example, it can be persuasive that the appellant is taking medication for mental health issues that were triggered by the original illness.
- While evidence of past medical treatments can provide context to a claim for Illness Benefit, it is less persuasive. For example, in one appeal, the appellant was relying on the fact that she had epilepsy, but this was disregarded by the SWAO given that she had been seizure free for 30 years.

Ultimately, the key question is whether the appellant is incapable of work. The SWAO appears to determine the question of whether an individual is incapable of work objectively. The SWAO considers whether the appellant is capable of any kind of work, and not necessarily the type of work that the appellant used to do. The SWAO does not take into account the appellant's work experience or age etc. For example, Illness Benefit is often refused where the appellant is capable of lighter, more sedentary work.

Please note that the recent decision by the Supreme Court in the *Sobhy* case (*Sobhy v. the Chief Appeals officer, Minister for Employment Affairs and Social Protection, Ireland, and the Attorney General* (2021) S:AP:IE:2021:000025). In this case, the Supreme Court held that an immigrant without the right to work, despite meeting the other criteria, including PRSI contributions, does not have the right to access maternity benefits. This may have implications for other social insurance payments.

Relevant Case Studies of the SWAO Annual Reports 2009-2020

A – F.	2009 - 2014	
	N/A	
G.	2015	
1.	2015/07 Illness Benefit- Oral hearing	Question at issue: Eligibility (medical)
2.	2015/08 Illness Benefit Oral hearing	Question at issue: Eligibility (medical)
H.	2016	
1.	2016/10 Illness Benefit- Oral hearing	Question at issue: Eligibility (medical)
2.	2016/11 Illness Benefit Oral hearing	Question at issue: Eligibility (medical)
I.	2017	
1.	2017/11 Illness Benefit- Oral Hearing	Question at issue: Eligibility (medical)
2.	2017/12 Illness Benefit- Oral Hearing	Question at issue: Eligibility (medical)
J.	2018	
1.	2018/07 Illness Benefit - Oral Hearing	Question at issue: Eligibility
K.	2019	

1.	2019/14 Illness Benefit - Summary Decision	Question at issue: Eligibility (contributions)
2.	2019/15 Illness Benefit - Summary Decision	Question at issue: Eligibility (medical)
L.	2020	
1.	2020/13 Illness Benefit - Summary Decision	Question at issue: Eligibility (medical)
2.	2020/14 Illness Benefit - Oral Hearing	Question at issue: Eligibility (medical)
3.	2020/15 Illness Benefit – Summary Decision	Question at issue: Eligibility (contributions)

A. 2009 - N/A

B. 2010 - N/A

C. 2011 - N/A

D. 2012 - N/A

E. 2013 - N/A

F. 2014 - N/A

G. 2015

1. 2015/07 Illness Benefit - Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, a woman in her 50's, had a diagnosis of Multilevel Degenerative Disc Disease and had been in receipt of Illness Benefit since 1990. Following a review, which included an assessment by a Medical Assessor for the Department of Social Protection, her claim was disallowed on grounds that she was no longer deemed to be incapable of work and not entitled to Illness Benefit under the provisions of the governing legislation (Section 40 (3) (a) of the Social Welfare (Consolidation) Act, 2005).

Oral hearing: The appellant attended alone. She reported that she had had a good job that she enjoyed, prospects of progressing in her role and an expectation of a good pension in retirement. However, in view of her medical condition, she was required to retire on grounds of ill health.

The appellant stated that, at times, she is unable to do anything for herself, and that she has to take periods of rest throughout the day to get some relief from pain. She advised that she had no recollection of hurting her back but that the problem got worse after childbirth. She said that she tries to swim but cannot afford it at the

moment. She advised that her husband and children help with household tasks. Her husband is farming and this helps as he is in and out during the day. She said that when she cooks, she prepares something that will do dinner for a few days.

The appellant stated that she had to have a pain relief injection in the previous month and that she had had another one about six months before that. She said that when the pain is bad, she is unable to dress herself and that using the bathroom presents difficulty. She reported that she has also developed neck pain over the last number of years and that she gets bad pins and needles in her right arm and elbow so that it can take her an hour in the morning before she can move her arm comfortably. She went on to provide an account of the extent to which she felt she was compromised in the activities of daily living as a result of her diagnosis, and she provided details of an appointment with a Consultant Neurophysiologist which had been scheduled for a date in the following month.

The appellant advised that it had taken her two years to complete an ECDL (computer training) course because she was unable to sit for long periods. She provided details of the medication she has been prescribed.

Consideration: Having examined all the evidence available, including that adduced at oral hearing, the Appeals Officer concluded that it had been established that the appellant was incapable of work, in line with the qualifying conditions for receipt of Illness Benefit.

Outcome: Appeal allowed.

2. **2015/08 Illness Benefit - Oral hearing**

Question at issue: Eligibility (medical)

Background: The appellant, a woman in her 40s, was suffering from Ligament Injury in her left knee which had started late in 2013. She was employed as a packing operator in a local factory. In connection with a review of her Illness Benefit claim, her G.P. provided a report at the request of the Department of Social Protection and advised that the condition was likely to last for 6 to 12 months. He also completed an ability/disability profile, assessing the appellant as being affected to a severe degree in the categories of bending, sitting, standing, climbing and walking. The appellant attended a Medical Assessor for the Department and a report of that examination was made available to the Deciding Officer. Ultimately, it was determined that the appellant was not incapable of work, in line with the qualifying criteria for receipt of Illness Benefit.

Oral hearing: The appellant attended alone. She advised that she had been in receipt of Jobseeker's Benefit following the disallowance of her Illness Benefit claim. She reported that she had recently started a six-month training course in computer applications with a view to retraining. She advised that she was still submitting medical certificates to the Department.

The appellant outlined the background to the injury she had sustained, describing how she had tripped over some cable in the workplace and suffered an injury to her left

leg. She was referred to the company doctor and had an MRI scan. This showed a tear in the ligament and she was advised that she could not return to work until she was fit. She reported that she attends her G.P. and had been referred for a steroid injection in her knee some twelve months earlier. She advised that she had attended a Physiotherapist and that she continues to do the recommended exercises at home. She takes pain relief medication as required. The appellant reported that she is aware of her left knee, that she feels the bones grinding and that the knee dislocates quite often so that she has to bend her leg to get it back to where it should be. She said that the Orthopaedic Consultant had advised that she was too young for a knee operation but that it was likely that surgery would be required in the future.

In terms of progress, the appellant reported that it had become easier to manage than when she sustained the injury originally. However, she had concluded that she would not be returning to her previous employment and that she saw her future in retraining for office/administrative work. In conclusion, she advised that she had made a claim for compensation in connection with the injury.

Consideration: The Appeals Officer noted that while the appellant continued to have difficulties associated with her knee injury, she was keen to embark on a new career and was currently retraining in an area that would better accommodate her needs. Having considered carefully all of the evidence, including that adduced at oral hearing and the medical evidence available, she concluded that it had not been established that the appellant was incapable of work, in line with the qualifying conditions for receipt of Illness Benefit.

Outcome: Appeal disallowed.

H. 2016

1. 2016/10 Illness Benefit - Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in his 40s, had a certified incapacity of chronic back pain (lumbar spine) and had been in receipt of Illness Benefit for some months. Prior to the onset of incapacity, he had been working in construction. Following two medical examinations, his claim was disallowed on grounds that he was no longer deemed to be incapable of work and not entitled to Illness Benefit under the provisions of the governing legislation (Section 40 (3)(a) of the Social Welfare Consolidation Act 2005). In support of his appeal, the appellant submitted further medical evidence, including a letter from his G.P., stating that his life had changed completely after back surgery and that he experienced acute exacerbation episodes, which could last for up to a week.

Oral hearing: The appellant was accompanied by his wife. He reported that he had undergone discectomy surgery in 2014 but that it had been unsuccessful and he was experiencing continuous back pain. He said that while there had been a reduction from the extreme level of pain which he had prior to surgery, he continued to experience an ongoing high level of discomfort.

The appellant reported that the pain tends to be more extreme in the mornings, and that he struggles to get out of bed on occasion and requires his wife's assistance. He said that he also needs help to put on his shoes and socks, he cannot do any housework or lift anything heavy, he experiences discomfort in standing or sitting for any length of time, and his sleep is disturbed. He confirmed that he had attended physiotherapy and was currently following a recommended exercise programme at home and that he has been referred to a consultant in anaesthetics and pain management and hopes to be given pain relief injections. He advised that the constant feeling of pain and discomfort, and the restrictions imposed on his lifestyle, have caused him to become depressed and that he has been prescribed anti-depressant medication. He went on to say that the dose had been increased recently and that his G.P. had suggested that he see a counsellor.

The Appeals Officer outlined details of the reports completed by the Medical Assessors for the Department of Social Protection and invited the appellant to comment. He noted that the first Medical Assessor reported that there were no signs of nerve root impingement or substantial restriction and that, in his opinion, the appellant was capable of light duties with appropriate back care. The second Medical Assessor had observed that a clinical examination had not revealed acute nerve root irritation and he had opined that the appellant was capable of light/semi-sedentary work.

In response, the appellant said that both assessments had been held in the afternoon when he was not experiencing the same degree of stiffness and restriction as he feels in the morning. In addition, he asserted that neither assessment had been conducted during periods when he was experiencing pain most acutely and he advised that he has frequent acute episodes.

Consideration: The Appeals Officer considered that the opinions of the Medical Assessors had been qualified; both had deemed the appellant capable (at best) of light, sedentary type work. He noted that there was no indication that the appellant's mental health had been assessed. He noted also that his G.P. had provided a comprehensive letter of support and additional medical evidence which served to establish that her opinion that the appellant was not capable of work for the foreseeable future was a strongly reasoned one. He concluded that this had been reinforced by the appellant's testimony at oral hearing.

Outcome: Appeal allowed.

2. **2016/11 Illness Benefit - Oral Hearing**

Question at issue: Eligibility (medical)

Background: The appellant, in her late 50s, had worked as a chef in a nursing home prior to her Illness Benefit claim. She had a certified incapacity of stress and medical evidence referred also to epilepsy and uterine cancer. The G.P. had indicated that the expected duration of her illness was six to twelve months and advised that she attends a neurologist and a gynaecologist and that she was not taking medication. In completing the ability/disability profile, the G.P. assessed 'Mental Health/Behaviour'

as mildly to moderately affected by her condition and all other categories as normal. In completing the Impact and Lifestyle questionnaire (issued in connection with a review of her claim), the appellant stated that her ability to interact with people had been affected, as had her concentration and memory, as well as her ability to cook, read and sleep. She reported that she was participating in a Vocational Training Opportunities Scheme (VTOS) course and that it was helping to restore her confidence.

The appellant was referred for a medical examination and, having regard to the Medical Assessor's opinion, her claim was disallowed as it was held that she was no longer incapable of work under the provisions of the legislation governing entitlement to Illness Benefit (Section 40(3)(a) of the Social Welfare Consolidation Act 2005). Having made an appeal, the appellant was referred for a second medical examination. There was no change in the assessment and the decision was confirmed. In making an appeal against that decision, she requested an oral hearing.

Oral hearing: The appellant reported that she was not fit to return to her previous employment because of problems with her back. In addition, she said she considered that her communication skills were not all they had been and that her memory was not as good as it used to be, especially in the morning. She related no restrictions or problems in relation to her daily routine. She submitted that the VTOS course suited her as she could do things at her own pace, whereas she had found her previous workplace to be very stressful. She referred to a change in work practice which meant that she had been required to work a 10 hour shift and she said that this was too much for her back. She went on to say that she was no longer able for the demands of a busy kitchen and the modern requirements of food preparation and managing staff. She expressed frustration that she had been unable to complete the VTOS course because of the decision to terminate her Illness Benefit claim.

The Appeals Officer outlined details of the Medical Assessor's reports. The first referred to the diagnosis of stress and noted that the appellant had finished counselling, was not taking any medication and suggested that she might cope well with a return to work. The second report noted that the appellant had a history of epilepsy but had been seizure free for 30 years and that it had been five years since the diagnosis of cervical cancer and she was attending for annual review. In relation to the certified incapacity of stress, it was noted that her mood had improved, that she had reported no restrictions, and the opinion was offered that she was fit for light sedentary duties. The Appeals Officer reviewed the letter from the appellant's G.P., stating that she was attending a VTOS course and was managing well but felt she was unable to engage in full-time employment, and she concurred with this assessment.

Consideration: The Appeals Officer noted that her G.P. had indicated that the appellant's diagnosis of stress had affected her mental health to a mild to moderate degree and had advised that she had not been prescribed medication and was not attending any support services. He noted that the medical evidence indicated no other significant impact across the range of other abilities. Having regard to all the medical evidence and to her own account at oral hearing, he concluded that the appellant was capable of work within the meaning of social welfare legislation.

Outcome: Appeal disallowed.

I. 2017

1. 2017/11 Illness Benefit - Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her 30s, had a certified incapacity of back pain and had been in receipt of Illness Benefit for some months. Prior to the onset of incapacity, she had been working as a sales assistant. Following a medical examination by the Department, her claim was disallowed on grounds that she was no longer deemed to be incapable of work and was not entitled to Illness Benefit under the provisions of the governing legislation (Section 40(3) (a) of the Social Welfare Consolidation Act 2005). The Medical Assessor was of the opinion that the appellant was mildly affected with regards to lifting and carrying and was capable of a return to work taking the normal precautions with her back. The appellant submitted further medical evidence in support of her appeal including a letter from her GP stating that she had ongoing lower and upper back paraesthesia into her arms and legs. It was reported that the x-rays of the appellant's cervical and lumbar spine showed spondylolisthesis. She also submitted MRI results detailing cervical disc protrusion, initial spondylosis and there was also a reference to a hernia.

Oral hearing: The appellant reported that she had worked as a shop assistant in a retail store. She reported that her back problem started about three years ago. She had MRIs which showed disc protrusions. She said that she had massage and needle therapy for her back and neck and it improved her symptoms for a short time. Her back symptoms became problematic again and she resumed taking medication. She said that she continues to suffer from pain in her mid-back and the lower left side of her back. She said that she had recently commenced physiotherapy to help treat her condition. She submitted medical evidence from a Senior Clinical Physiotherapist regarding the ongoing issues with spinal processes and disc protrusions. It was also confirmed that the appellant had been referred for a course of physiotherapy at a hospital.

Consideration: The Appeals Officer considered the overall evidence of the case including the medical evidence from the Senior Clinical Physiotherapist regarding the appellant's ongoing issues and had regard to the fact the appellant was undergoing treatment for her condition. She was satisfied that the appellant was currently incapable of work.

Outcome: Appeal allowed.

2. 2017/12 Illness Benefit - Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her 30s, had a certified incapacity of back pain and had been in receipt of Illness Benefit for over one year. Prior to the onset of incapacity, she had been working as a carer. Following a medical examination by the

Department, her claim was disallowed on grounds that she was no longer deemed to be incapable of work and was not entitled to Illness Benefit under the provisions of the governing legislation (Section 40(3)(a) of the Social Welfare Consolidation Act 2005). The Medical Assessor was of the opinion that the appellant was mildly affected with regards to walking, climbing stairs, bending/kneeling/ squatting and lifting/carrying and that she was capable of sedentary/semi-sedentary work. The appellant submitted a letter from her GP in support of her appeal, stating that her back pain had been giving her trouble intermittently over the last year and she had never, in that time, been well enough for employment.

Oral Hearing: The appellant reported that she had problems with her back since she was in her 20s. She reported that she was referred to a medical specialist in this regard about 8 – 9 years ago and was advised that she may need surgery in the future. She also reported that her back was affected by a road traffic accident some years later. She was treated with medication, injections and physiotherapy at that time. She reported that she had a back x-ray in 2016 but she was not sure of the results. She had not attended a medical specialist in relation to her back in recent times. She reported pain in her back, leg, shoulder, elbow and hand. She takes medication. She reported that she has good and bad days and there are days when she can get no relief from the pain. The appellant reported that she knows that she cannot return to her work as a carer and she considered herself unfit for any work at the time of the hearing.

Consideration: The Appeals Officer considered the overall evidence before her including the findings of the Department’s Medical Assessor and the letter from the appellant’s GP. The appellant’s account of how she was affected by her medical condition was noted. It was also noted that whilst the appellant provided a comprehensive account regarding the impact of her condition, the Appeals Officer was of the opinion that the appellant had not submitted sufficient medical evidence in support of the range of issues as described in relation to her back, shoulder, arms and leg. The Appeals Officer also noted that the appellant had not attended a medical specialist in relation to her back condition in recent years. The Appeals Officer concluded that whilst the appellant may not be able to resume her work as a carer due to her incapacity, she considered that the appellant was not incapable of work for Illness Benefit purposes.

Outcome: Appeal disallowed.

J. 2018

1. 2018/07 Illness Benefit - Oral Hearing

Question at issue: Eligibility

Background: The appellant had been in receipt of Illness Benefit up to a date in 2012 when her claim was disallowed by the Department. Following a medical review she was found incapable of work and the appeal against the Department’s decision was withdrawn. She subsequently attended in-person medical assessments in 2017 and 2018 and the medical assessors concluded that the appellant was capable of light/moderate semi-skilled work. The appellant’s Illness Benefit payment was

disallowed from a date in November 2017 on the grounds that she was not incapable of work.

Oral Hearing: The appellant stated that she lived with her husband who was in full-time employment and her 2 children, aged 10 and 7. She said she suffered from anxiety and depression and submitted medical certificates on a 6 monthly basis. She stated that she was educated to Leaving Certificate level and had worked for 13 years as a quality controller before being made redundant when the factory closed in 2006. She was then in receipt of Jobseeker's Benefit. She started to experience panic attacks and applied for Illness Benefit. She stated that she had experienced childhood trauma and had been in counselling since she was approximately 20 years of age. She had lost a child and had experienced severe post- natal depression following the births of her children. She had attended a psychiatrist and had been discharged from the service. Her last appointment was about 2 years ago. She attended her doctor as required, on average every 2 months. She was taking anti-depressant and anti- anxiety medication. The appellant stated that her medical condition related to her mental health rather than to any physical disability. She experienced ongoing feelings of fear and worry. She experienced a lack of motivation. She stated that her medication had stabilised her condition but had left her feeling numb. She stated that even when she was working she had suffered extreme stress, particularly when at work meetings. She attributed much of this to her desire to please and her fear of displeasing. She had commenced a FÁS course in 2008 but was unable to cope. She stated that she had discussed progression options with her doctor but that her doctor had opined that she was not ready yet. The appellant's husband confirmed the appellant's account. He stated that his wife was unable to deal with any stressful situation.

Consideration: The Appeals Officer having examined all the available evidence including the medical evidence and that adduced at the oral hearing concluded that the appellant would be unable to cope with the ongoing stresses associated with the workplace and remained incapable of work.

Outcome: Appeal Allowed.

K. 2019

1. 2019/14 Illness Benefit - Summary Decision

Question at Issue: Eligibility (Contributions)

Background: The appellant submitted an application for Illness Benefit in April 2018. Her claim was disallowed on the grounds that she did not meet the contribution conditions. She was advised by the Department that she did not have the required 39 paid or credited PRSI contributions in 2016 or the alternative 26 paid PRSI contributions in each of the years 2015 and 2016.

Consideration: Illness Benefit is a social insurance based scheme for people who are incapable of work due to illness. The PRSI contribution conditions are set down in Section 41 of the 2005 Act.

The legislation requires that a person must have a minimum of 104 paid PRSI contributions and at least 39 paid or credited contributions in the second last complete contribution year before the beginning of the year in which he/she is making a claim. If a person does not have 39 paid or credited contributions in the second last complete contribution year the condition can be met by having at least 26 paid contributions in each of the second last and third last complete contribution years before the beginning of the year in which a claim is made.

The appellant made a claim for Illness Benefit in 2018. She had more than the minimum of 104 paid contributions and met the first contribution condition. The second last complete contribution year for a claim made in 2018 was 2016. The available evidence showed that the appellant had 17 qualifying paid or credited PRSI contributions in 2016. This was 22 qualifying contributions below the minimum threshold of 39 qualifying contributions required to establish an entitlement to Illness Benefit on this basis. The third last complete contribution year was 2015. The available evidence showed that the appellant had 44 paid PRSI contributions and 14 credited PRSI contributions in respect of 2015.

Based on the evidence, although the appellant had more than 26 paid PRSI contributions in 2015, as she did not also have a minimum of 26 paid PRSI contributions in 2016, the Appeals Officer concluded that she had not established that she met the required PRSI contribution conditions as laid down in the governing legislation.

Outcome: Appeal disallowed.

2. 2019/15 Illness Benefit - Summary Decision

Question at Issue: Eligibility (Medical)

Background: Following a review of the appellant's entitlement to Illness Benefit her claim was disallowed as she was found to be capable of work. The appellant attended a medical assessment and the Medical Assessor was of the view that the appellant was capable of work. The Ability Profile contained in the medical report, completed by the appellant's GP, is designed to capture the degree to which the appellant had been affected in 16 general abilities. The appellant had been moderately affected in mental health. All other categories were described as normal. The GP's diagnosis was depression. In her appeal, the appellant stated that she had been suffering from depression and anxiety for a considerable number of years. She stated that she suffered panic attacks and that she had high blood pressure, anaemia and low haemoglobin. She stated that she suffered from fibroids and endometriosis.

The legislative provisions relating to Illness Benefit are set out in Part 2 - Chapter 8 (Sections 40 to 46) of the 2005 Act and Part 2 - Chapter 1 (Articles 20 to 28) of the Social Welfare (Consolidated Claims Payments and Control) Regulations, 2007 (S.I. No. 142 of 2007).

Section 40 (3) (a) of the 2005 Act provides that:

*(3) For the purposes of any provision of this Act relating to illness benefit —
(a) a day shall not be treated in relation to an insured person as a day of incapacity for work unless on that day the person is incapable of work.*

Consideration: The appeal contentions submitted by the appellant were reviewed and considered by the Appeals Officer together with the medical evidence. The Department's Medical Assessor conducted an in-person review and found the appellant to be capable of work. The Ability Profile which was completed by the appellant's GP stated that the appellant had been moderately affected in mental health. All other categories were described as normal. The Appeals Officer concluded that the medical evidence did not support a conclusion that the appellant was incapable of work for the purposes of Illness Benefit.

Outcome: Appeal disallowed.

L. 2020

1. 2020/13 Illness Benefit - Summary Decision

Question at Issue: Eligibility (medical)

Background: The appellant was in receipt of Illness Benefit from June 2018. He underwent a medical review assessment in the Department in September 2019. The Medical Assessor formed the opinion that the appellant was capable of light work with some restrictions. The appellant provided additional medical evidence to support his contention that he remained incapable of work. This additional medical evidence was reviewed by a Medical Assessor in January 2020, who formed the opinion that the appellant was capable of 'other' types of work.

The available medical evidence was that MRI scans of the appellant's lumbar spine showed L5-S1 discopathy with nerve root pressure. The appellant had undergone recurrent rehabilitation treatment. A medical certificate dated February 2020 confirmed that he continued to attend rehabilitation and that on a visit for rehabilitation in February 2020 ultrasound and cryotherapy for analgesic and anti-inflammatory effects were performed. Other rehabilitation provided included spine massage, TENS currents, magnetotherapy and individual exercises to reduce the pain associated with discopathy of his lumbar spine. The appellant was also diagnosed with symptoms of adjustment disorder for which he was prescribed medication.

There were differences in the expressed medical opinions as to the extent to which the appellant's conditions continued to impact his work capacity. Both medical opinions outlined that the appellant remained incapable of returning to his usual type of work in construction. The disparity was as to whether the appellant was or was not capable of light work or 'other' work, from February 2020.

Consideration: The legislative provisions relating to Illness Benefit are set out at Part 2- Chapter 8 (Sections 40 to 46) of the 2005 Act and at Part 2- Chapter 1 (Articles 20 to 28) of the 2007 Regulations. Section 40 (3) (a) of the 2005 Act provides that, for

the purposes of any provision of this Act relating to illness, a day shall not be treated as a day of incapacity for work unless on that day the person is incapable of work.

The Appeals Officer concluded that as the evidence was that the appellant had commenced treatment for mental health issues, in addition to being treated for physical health issues, and also, as the evidence was that he continued to receive rehabilitative treatment on his back, he was not, due to the combination of physical and mental health issues, currently, well enough to return to any work environment. The evidence was that treatment for the appellant's adjustment disorder combined with rehabilitation treatment for his discopathy condition may bring about sufficient improvement, in the short to medium term, to allow him to return to work of a type that did not place high physical demands on his body. However, the Appeals Officer was satisfied, from the available evidence, that the impact of the appellant's combined medical conditions continued to render him incapable of work at that time.

Outcome: Appeal allowed

2. 2020/14 Illness Benefit - Oral Hearing

Question under appeal: Eligibility (medical)

Background: The appellant was in receipt of Illness Benefit from July 2018 with diagnoses of hypertension, sciatica and anxiety disorder associated with heavy alcohol use and obesity. He attended an in-person assessment with a Medical Assessor from the Department in September 2019 and was found not to be incapable of work.

The opinion of the Medical Assessor was that the appellant was capable of light to moderate work. The report of the Medical Assessor indicated that the appellant had been in employment between 2001 and 2018. The report explained that the appellant's blood pressure was stable and controlled while on medication. The sciatica was no longer present unless he over-exerted himself. The Medical Assessor reported that the appellant was not on any medication for anxiety or attending any counselling.

Oral Hearing: The appellant submitted that the problem with his sciatica started in 2009. He said he had attended physiotherapy for this complaint but had stopped previous to his claim. He indicated to the Appeals Officer that he helped his brother in law move some furniture in December 2019 and as a result tweaked his back again. He stated that he could manage to cut the lawn and attend to his garden so long as he did not have to bend down. He reported that he enjoyed walking for up to 45 minutes three to four times a week. He could drive but said he had not driven for a while. He cooked for himself. The appellant informed the Appeals Officer that he had no scheduled medical appointments.

Consideration: For Illness Benefit purposes, 'incapacity for work' does not take account of what might be 'suitable' work for a person given their age, work experience etc. Unlike Disability Allowance for example, it simply requires that a person is incapable of work generally.

The appellant was diagnosed with hypertension and stated that he suffered from sciatica and back pain since 2009. He was certified as incapable of work and in

receipt of Illness Benefit from July 2018. The latest certificate of incapacity for work in November 2019 indicated the appellant's incapacity as hypertension. The Appeals Officer noted that the Illness Benefit questionnaire completed by the appellant in September 2019 indicated that he had on-going issues with back pain and sciatica, took medication for high blood pressure and could not pick items up without feeling pain. No other functions/activities were reported to be affected.

The Appeals Officer concluded that while it was clear that the appellant experienced some residual effects from hypertension/anxiety/back pain which restricted him from engaging in heavy work, he was capable of lighter duties. In these circumstances, he could not have been said to be incapable of work for the purposes of Illness Benefit.

Outcome: Appeal disallowed

3. 2020/15 Illness Benefit - Summary Decision

Question at Issue: Eligibility (contributions)

Background: The appellant's application for Illness Benefit in May 2020 was disallowed on the grounds that he did not satisfy the PRSI contribution conditions. The Department outlined that the appellant did not have 13 paid contributions at the appropriate class in order to requalify for Illness Benefit.

Consideration: Illness Benefit is a social insurance based scheme for people who are incapable of work due to illness. The qualifying conditions in relation to PRSI contributions are contained in Sections 41 to 4 of the 2005 Act. The legislation provides that where entitlement to the benefit has exhausted, a person can requalify by way of 13 paid contributions since the last day for which the person was entitled to benefit.

The appellant based his grounds of appeal on medical circumstances and the impact of his diagnosed conditions on his capacity for work. However, the reasons for refusal of his claim were not related to the medical criteria but rather on the grounds that he did not meet the PRSI contribution conditions.

The Appeals Officer concluded that the appellant did not have the required 13 paid PRSI contributions in the relevant period as required by the governing legislation.

Outcome: Appeal disallowed

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