

Casebase Number: G0120

**Thematic Note of SWAO Case Studies:
Disability Allowance**



Community Law and Mediation
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Period of Analysis: 2009-2020

Theme: Disability Allowance

Period of Analysis: SWAO Annual Reports 2009-2020

Keywords: Disability Allowance, Means Test, Habitual Residence, Substantially Restricted, Suitable Employment

Casebase No. Case G0120

Summary of the relevant law:

The criteria that a person (aged 16-66 years) must meet in order to qualify for receipt of Disability Allowance are that they are:

1. suffering from an injury, disease, congenital deformity or physical or mental illness or defect which has continued or may reasonably be expected to continue for a period of at least a year and substantially restricted because of your disability from doing work that would be suitable for a person of your age, experience and qualifications;
2. Of insufficient financial means; and
3. Habitually resident in Ireland.

1. Disability

Section 210 (1) (b) of The Social Welfare (Consolidation) Act 2005 (as amended) (“2005 Act”) states that in order to obtain Disability Allowance, a person must by reason of a specified disability be substantially restricted in undertaking employment of a kind which, if the person was not suffering from that disability, would be suited to that person’s age, experience and qualifications.

2. Means

Section 210 (1)(c) of the 2005 Act states that in order for a person to meet the means test for Disability Allowance, their weekly means cannot exceed the amount of Disability Allowance (including any increases of that allowance) which would be payable to the person.

3. Habitual Residence

While habitual residence is not defined in Irish law, Section 246 of the 2005 Act provides guidance. Accordingly, determination of whether an individual is habitual resident is a two-stage process in Irish law. The first step involves establishing whether a person has the right to reside in accordance with EU law. The second step is a determination of whether a person is habitually resident with reference to the specific circumstances of their case, with a particular focus on the five factors outlined in Section 246 (4) of the 2005 Act, which are as follows:

- length and continuity of residence in the State or in any other particular country;
- length and purpose of any absence from the State;
- nature and pattern of the person’s employment;
- person’s main centre of interest; and
- future intentions of the person concerned as they appear from all the circumstances.

Key grounds of appeals by appellants:

Key examples of thematic areas that individuals appealed decisions of the Appeals Officers under are as follows:

- The interpretation of mental health issues, social issues and behavioural disorders with regards to meeting the threshold of causing an individual be “*substantially restricted*” from employment;
- The interpretation of “*suitable employment*” should be a subjective assessment, based on the skills, experience and issues presently being faced by the particular appellant;
- How minors/young adults are assessed, and the differing considerations that are required when assessing this demographic;
- Overlapping conditions that are not sufficient on their own to substantially restrict an individual from employment, but the ability of the combined impact of the multiple issues to create a larger problem that prevents an individual from obtaining/retaining employment;
- Change of medical circumstance or availability of medical evidence to support Disability Allowance claim;
- The method by which means are calculated (E.g. consideration of household income, awards of damages, saving accounts with access limitations, inheritance, community employment scheme income, welfare payments from other countries etc.); and
- Appealing decisions on habitual residence on a subjective and case-by-case fact-driven basis.

Observations on appeal outcomes:

At the outset, a key observation is that the increase in variety and intersectionality of the disabilities, illnesses and diseases that are being raised by appellants as meeting the threshold for substantially restrictions to employment. In recent years, issues such as gender dysphoria, eating disorders, alcoholism, social withdrawal etc. are being considered as having the potential to substantially restrict employment opportunities. Concerning intersectionality, most appeals involved individuals who were suffering from both physical and mental issues, which are often interlinked and correlative. The SWAO has shown a willingness to expand what is classified as a disability, and to consider the compounding impacts of different issues faced by an individual.

It is evident from the determinations that how an appellant presents themselves during the course of the appeal is extremely influential; their interactions, attitude, behaviours, communication, demeanour and movements during the hearing are often cited by the SWAO when justifying a decision reached.

Alongside the considerations we would expect the SWAO to discuss when assessing an individual’s ability to work (E.g. qualifications, experience, home-life, language proficiency etc.), they also considered factors such as hobbies, interests, caring responsibilities, volunteering, friendships, participation in community life etc. when considering an appellant’s capability.

When considering what constituted “suitable employment” it appeared that for those with more serious disabilities, more difficult circumstances or who were older, the definition of “suitable employment” was narrower and more closely linked to their previous experience and training. Otherwise, the term “suitable employment” has been defined as “[applicable] to a wide variety of employment types and not just to the person’s usual or preferred type of work.”

With regards to the medical evidence cited in the Appeals, it was extremely rare that the opinion of the medical expert would not be key in the assessment of the severity of a disability, especially when activities were profiled and ranked by a GP/medical expert. Appellants that were unable to show a medical diagnosis/medical support letter to demonstrate the severity of their disability found it difficult to succeed.

The assessment of the disabilities of minors and young adults tended to be based on the individual's need for supervision, behaviour at home/school and, most importantly, their forecasted ability to cope with entering third-level education/work place. It was also clarified that minors do not need to show an employment record with reference to the requirements for habitual residence.

With regards to habitual residence, determining whether an appellant's centre of interest was in Ireland seemed to be largely based on the factual matrix of the appellant's circumstances (i.e. a tailored application of the five factors listed in 246 (4) of the 2005 Act to the precise circumstances).

It was also shown that an appellant being on a residency permission that specifically precludes their right to obtain employment in Ireland (E.g. Stamp 2A permission) should not be the precluding factor for an individual seeking Disability Allowance.

With regards to the right to reside, several appeals were made by individuals who were dependent direct relatives of an EU worker. For example, 2019/318/62 Disability Allowance – Section 318 Review below. The relative in this case was refused Disability Allowance as not deemed to have a right to reside if to become an unreasonable burden on the social assistance system of the State. Nevertheless see the High Court decision in *Voican* and Casebase [Case Report G0113](#).

With regards to means, several appeals were made by individuals that were having their means assessed on a household basis, who were seeking to be assessed on an individual basis. The determinative factor here was whether the couple were in fact living as spouses (as opposed to a separated couple living at the same address).

The appeals on means-related grounds also clarified that income received from the awarding of damages, saving accounts with access limitations, inheritance and community employment schemes should all be considered when calculating an individual's income. A recent case confirmed that, with regards to social security payments, benefits received from other Member State that are equivalent to Irish welfare payments should be excluded when assessing the appellant's means.

Relevant Case Studies of the SWAO Annual Reports 2009-2020

A.	2009	
	N/A	
B.	2010	
	2010/15 Disability Allowance – Oral Hearing	Question at issue: Overpayment
C.	2011	
		Question at issue for all 2011 case studies: Whether the appellant may be deemed to meet the Habitual Residence Condition (HRC) for purposes of her claim to Disability Allowance.
1.	2011/02 Disability Allowance – Summary Decision (Visa)	
2.	2011/05 Disability Allowance – Summary Decision	

3.	2011/11 Disability Allowance - Oral Hearing (Visa)	
D.	2012	
1.	Case 2012/05 - Disability Allowance – Oral Hearing	Question at issue: Means from her husband’s income from insurable employment not declared.
E.	2013	
	N/A	
F.	2014	
		Question at issue for all 2014 case studies: whether the appellant may be regarded as substantially restricted in undertaking suitable employment, by reason of a specified disability, which has continued or may reasonably be expected to continue for a period of at least one year .
1.	2014/01 Disability Allowance - Oral Hearing	Age 16: Dyspraxia, DCD – new claim
2.	2014/02 Disability Allowance - Oral Hearing	Age 16: ASD – new claim
3.	2014/03 Disability Allowance - Oral Hearing	Age 16: Hearing Loss – new claim
4.	2014/04 Disability Allowance – Summary Decision	Age 19: Psychosomatic Paralysis – new claim
5.	2014/05 Disability Allowance - Oral Hearing	Age 22: Learning Disability – new claim
6.	2014/06 Disability Allowance – Summary Decision	Age 22: Hepatitis C, ADHD – new claim
7.	2014/07 Disability Allowance - Oral Hearing	Age 27: Ulcerative Colitis – new claim
8.	2014/08 Disability Allowance – Summary Decision	Age 29: Hip Dislocation – revised decision
9.	2014/09 Disability Allowance - Oral Hearing	Age 32: Knee Injury – review
10.	2014/10 Disability Allowance - Oral Hearing	Age 32: Pernicious Anaemia – new claim
11.	2014/11 Disability Allowance - Oral Hearing	Age 32: PTSD – new claim
12.	2014/12 Disability Allowance - Oral Hearing	Age 36: Back Pain, Depression – new claim
13.	2014/13 Disability Allowance - Oral Hearing	Age 43: Epilepsy – new claim
14.	2014/14 Disability Allowance - Oral Hearing	Age 43: Back Injury – new claim
15.	2014/15 Disability Allowance - Oral Hearing	Age 44: Depression – new claim

16.	2014/16 Disability Allowance - Oral Hearing	Age 44: Diabetes, Hypertension – new claim
17.	2014/17 Disability Allowance - Oral Hearing	Age 45: Cerebral Aneurysm, Hearing Loss – review
18.	2014/18 Disability Allowance - Oral Hearing	Age 49: Back Pain, Depression – new claim
19.	2014/19 Disability Allowance - Oral Hearing	Age 49: Back Pain, Depression – new claim
20.	2014/20 Disability Allowance - Oral Hearing	Age 50: Dystonia – new claim
21.	2014/21 Disability Allowance - Oral Hearing	Age 54: Back Pain, Hearing Loss – new claim
22.	2014/22 Disability Allowance - Oral Hearing	Age 56: Hernia, Palpitations – new claim
23.	2014/23 Disability Allowance - Oral Hearing	Age 56: Osteoarthritis (Knee) – new claim
24.	2014/24 Disability Allowance - Oral Hearing	Age 58: Cardiac Stent, Lumbar Prolapse
G.	2015	
1.	2015/09 Disability Allowance – Oral Hearing	Question at issue: Medical eligibility in terms of employment
2.	2015/10 Disability Allowance – Oral Hearing	Question at issue: Medical eligibility in terms of employment
H.	2016	
1.	2016/15 Disability Allowance - Oral Hearing	Question at issue: Eligibility (means)
2.	2016/16 Disability Allowance - Oral Hearing	Question at issue: Eligibility (medical)
3.	2016/17 Disability Allowance - Oral Hearing	Question at issue: Eligibility (medical)
I.	2017	
1.	2017/16 Disability Allowance	Question at issue: Eligibility (medical)
2.	2017/17 Disability Allowance	Question at issue: Eligibility (medical)
3.	2017/18 Disability Allowance	Question at issue: Eligibility (medical)
4.	2017/19 Disability Allowance	Question at issue: Eligibility (medical)
5.	2017/20 Disability Allowance	Question at issue: Eligibility (medical)
6.	2017/21 Disability Allowance	Question at issue: Eligibility (medical)
7.	2017/22 Disability Allowance	Question at issue: Eligibility (medical)
8.	2017/23 Disability Allowance	Question at issue: Eligibility (medical)

9.	2017/24 Disability Allowance	Question at issue: Eligibility (medical)
10.	2017/25 Disability Allowance	Question at issue: Eligibility (habitual residence condition)
11.	2017/26 Disability Allowance	Question at issue: Eligibility (medical and means)
12.	2017/27 Disability Allowance	Question at issue: Eligibility (medical)
J.	2018	
1.	2018/12 Disability Allowance	Question at issue: Eligibility (medical)
2.	2018/13 Disability Allowance	Question at issue: Eligibility (medical)
3.	2018/14 Disability Allowance	Question at issue: Eligibility (medical)
4.	2018/15 Disability Allowance	Question at issue: Eligibility (medical)
5.	2018/16 Disability Allowance	Question at issue: Eligibility (medical)
6.	2018/17 Disability Allowance	Question at issue: Eligibility (medical and means)
7.	2018/18 Disability Allowance	Question at issue: Eligibility (medical and means)
8.	2018/19 Disability Allowance	Question at issue: Eligibility (medical)
9.	2018/20 Disability Allowance	Question at issue: Eligibility (medical)
10.	2018/21 Disability Allowance	Question at issue: Eligibility (medical)
11.	2018/22 Disability Allowance	Question at issue: Eligibility (medical grounds and HRC)
12.	2018/23 Disability Allowance	Question at issue: Backdating
13.	2018/24 Disability Allowance	Question at issue: Eligibility (means)
K.	2019	
1.	2019/16 Disability Allowance	Question at issue: Eligibility (means)
2.	2019/17 Disability Allowance	Question at issue: Eligibility (medical)
3.	2019/18 Disability Allowance	Question at issue: Eligibility (medical)
4.	2019/19 Disability Allowance	Question at issue: Eligibility (medical)
5.	2019/20 Disability Allowance	Question at issue: Eligibility (medical)
6.	2019/21 Disability Allowance	Question at issue: Eligibility (medical)

7.	2019/22 Disability Allowance	Question at issue: Eligibility (medical)
8.	2019/23 Disability Allowance	Question at issue: Eligibility (medical)
9.	2019/24 Disability Allowance	Question at issue: Eligibility (medical)
10.	2019/25 Disability Allowance	Question at issue: Eligibility (habitual residence condition)
11.	2019/26 Disability Allowance	Question at issue: Eligibility (habitual residence condition – right to reside)
12.	2019/318/62 Disability Allowance	Question at issue: Eligibility (Right to Reside)
L.	2020	
1.	2020/16 Disability Allowance	Question at issue: Eligibility (means and medical)
2.	2020/17 Disability Allowance	Question at issue: Eligibility (medical)
3.	2020/18 Disability Allowance	Question at issue: Eligibility (medical)
4.	2020/19 Disability Allowance	Question at issue: Entitlement (participation on a Community Employment scheme)
5.	2020/20 Disability Allowance	Question at issue: Eligibility (habitual residence condition)
6.	2020/21 Disability Allowance	Question at issue: Eligibility (habitual residence condition)
7.	2020/318/60 Disability Allowance	Question at issue: Entitlement to Living Alone Allowance
8.	2020/318/61 Disability Allowance	Question at issue: Eligibility (medical criteria)
9.	2020/318/62 Disability Allowance	Question at issue: Means (benefit from a Member State of the EU)

A. 2009 – N/A

B. 2010

1. 2010/15 Disability Allowance – Oral Hearing

Question at issue: whether it was correct to disallow the appellant’s claim in respect of a period between 2007 and 2008, on grounds that his means from employment exceeded the statutory limit – with the assessment of an overpayment of some €19,000.

Background: The appellant, a 25 year old single man who resides with his mother, applied for Disability Allowance in 2003 with a certified illness of benign essential tremor and was awarded payment. Subsequently, it came to the attention of the Department of Social Protection that he had been employed with effect from a date in 2007. Having examined his earnings in the period at issue, he was deemed not to have been entitled to payment and an overpayment was assessed.

Oral hearing: The appellant maintained that he was unaware of the earnings implications in relation to Disability Allowance. The Appeals Officer drew his attention to his initial interview by the Social Welfare Inspector, which had been conducted to determine whether he had any means in the context of this. (or his what?) He pointed out to the appellant that in his report of that interview, the Inspector stated that he had advised him of his obligations to notify the Department if and when he commenced employment. In reply, the appellant stated that he had no recollection of that interview or the Inspector's advice.

The Appeals Officer reviewed the documentary evidence on file, including a number of letters issued to the appellant by the Inspector which specifically referred to details of his income and advised of the obligation to notify the Department in the event of taking up employment. The appellant stated he had no recollection of receiving any such letter. He said that he had been away at college and his mother had managed all his affairs; in that capacity, she would have dealt with any correspondence received. He added that as he was in receipt of a Post Leaving Cert Maintenance Grant in addition to his Disability Allowance, he was not sure of the conditions for receipt of the payments. He attributed his failure to notify the Department to this lack of knowledge.

The Appeals Officer advised the appellant that evidence on file indicated that he had been working in a restaurant in 2004 and that he had sent the Department a Form P45 in respect of that employment, with an accompanying letter. The Appeals Officer suggested that this indicated that he was aware of the conditions pertaining to receipt of the payment. In response, the appellant reiterated his earlier written contentions that he never knew the details of the Allowance and that it was always his belief that it was his entitlement. He went on to say that he had been under 18 years of age when he applied for Disability Allowance and that his mother had managed completion of the claim form and related matters. He added that she generally cashed the payment at the post office on his behalf as she was his agent. He submitted, therefore, that he should not be liable for any overpayment.

Conclusion of the Appeals Officer: The Appeals Officer noted the contents of the Social Welfare Inspector's report, conducted when the appellant's means were assessed initially in 2003. He noted also that the report of the interview indicated that the appellant's mother was present throughout. He referred to the correspondence issued to the appellant on three occasions, all of which referred specifically to the requirement to notify any change in his circumstances, including the commencement of employment. In relation to the appellant's contention of ignorance of the conditions attaching to receipt of Disability Allowance, due in part to his medical condition, the Appeals Officer was not satisfied that this was the case. On the contrary, he noted that the medical report completed by the appellant's family doctor indicated that, despite his medical condition, he was assessed as 'normal' across a range of abilities, with the

exception of manual dexterity and balance. This, in the view of the Appeals Officer, was supported by the fact that the appellant did not require the appointment of a 'type 2 agent' where a person is unable to manage their own financial affairs and requires a person to act on their behalf. He had appointed his mother as a 'type 1 agent'; someone who could collect his payment from the local post office.

The Appeals Officer viewed the appellant's capacity to study and maintain himself while attending college and living away from home to be indicative of a person who can manage independently, a fact confirmed by his full-time employment. He referred to the appellant's claim form which indicated that he was over 18 years at the time and not 17 years, as he had stated. He noted the extensive communication from the Social Welfare Inspector to the appellant in late 2003 and early 2004 and was satisfied that the appellant was made aware of his obligations to notify the Department of any change in his circumstances or means. Based on all of these circumstances, he upheld the Deciding Officer's decision in the case. He stressed, however, that in pursuing the recovery of the overpayment, due regard must be taken of the fact that the appellant is the sole earner in the household while his mother is the recipient of a social welfare payment.

Outcome: Appeal disallowed.

C. 2011

1. 2011/02 Disability 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 Disability Allowance.

Background: The appellant's mother came to live and work in Ireland in 2003 and was granted a Stamp 4 visa. The following year, she was joined by her husband and children, one of whom was the appellant. As she was still a minor, the appellant's name was added to her mother's visa. Both of the appellant's parents were in employment and her mother applied for long-term residency (which was granted) and for Irish citizenship, which was being processed at the time the appeal was determined. Her mother had been in receipt of Domiciliary Care Allowance (DCA) in recognition of the level of disability and the extent of care required by the appellant. On reaching age 16 years, the appellant was required to apply for her own visa; she did so and was granted a Stamp 2A as she was still at school. She made a claim for Disability Allowance. While she was deemed to have met the medical qualifying criteria, her claim was disallowed on grounds that she did not meet HRC.

Appeal submission: The appellant's mother, supported by a social worker from the disability support group to which her daughter belonged, asserted that her daughter met HRC as she had been living in the State since she was 10 years old. She argued that it was inconceivable that a sixteen year old with an intellectual disability would be deported from Ireland while her mother continued to live and work here. She advised that she was liaising with the INIS as to the most appropriate visa for her daughter in view of her disability.

Consideration of the Appeals Officer: The Appeals Officer addressed each of the points cited by the Deciding Officer, as follows.

16 years old – no employment record in the State: The Appeals Officer noted that the appellant attended a school for children with special needs. In view of her age, quite apart from her disability, she considered that the appellant could not be expected to have an employment record.

Main centre of interest not established in the State: The Appeals Officer took note of the fact that the appellant had been resident in the State since she was 10 years of age, that her mother had been in receipt of DCA in recognition of the care provided for her, that she was living continuously in the State with her parents and siblings, that she had an intellectual disability and received support from the clinical team at the school she attended. She held that it had been established clearly that her only centre of interest was in the State.

Claimant holds Stamp 2A residency permit which permits the holder to remain in Ireland to pursue a course of studies on condition that the holder does not enter employment, does not engage in any business or profession, has no recourse to public funds and does not remain later than a date specified: The Appeals Officer observed that the appellant's residence status was relevant in establishing that she had a right to reside in the State and, therefore, that the question as to habitual residence might be determined. She could see no basis, however, for the Deciding Officer's reference to that status in outlining his reasons for concluding that she could not be deemed to meet HRC.

Nature and purpose of residence does not support HRC approval: The Appeals Officer considered that the meaning of this phrase in relation to the decision before her was unclear.

Intend to rely on State supports and benefits: The Appeals Officer observed that the basis for this conclusion was not clear and lacked any reference to the provisions of social welfare legislation. Consequently, she considered that it could not be accepted as a reason to support the decision in the case.

Evidence available does not substantiate habitual residence: Again, the Appeals Officer considered that this statement could not be accepted as a reason to support the decision in the case.

In conclusion, and paying particular attention to the duration and continuity of residence and a clearly established centre of interest in the State, the Appeals Officer considered it to be beyond doubt that the appellant met the habitual residence condition.

Outcome: Appeal allowed.

2. 2011/05 Disability Allowance – Summary Decision

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

Consideration of the Appeals Officer: The Appeals Officer noted that the appellant's wife, with whom he resides, had already (by way of previous appeal decisions) been recognised as being habitually resident in the State for purposes of her claims for both Child Benefit and Domiciliary Care Allowance.

In those circumstances, by association and as a matter of consistency, the Appeals Officer held that the appellant must be deemed to meet HRC requirements with effect from the date of his claim for Disability Allowance. Accordingly, he concluded that he may be entitled to payment from that date, having regard to the other conditions governing entitlement to payment under that scheme.

Outcome: Appeal allowed.

3. 2011/11 Disability Allowance - Oral Hearing

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

Background: The appellant came from South Africa to live in Ireland in 2006. He was in his teens at the time and travelled with his mother to join his father and brother, who had arrived here a year earlier. The appellant was in college and held a Stamp 2 visa when he sustained a traumatic injury, following an accident. He made a claim to Disability Allowance, which was disallowed on grounds that he did not meet the habitual residence condition.

Parties attending oral hearing: The appellant attended accompanied by his father.

Report of oral hearing: The Appeals Officer outlined the decision under appeal and those issues to which the Deciding Officer had regard in coming to his decision, as follows:

- nature and purpose of his residence in Ireland at the time of application does not provide for approval of habitual residence
- he has been granted permission to remain in Ireland as the dependant of an employed person
- he holds a Stamp 3 permitting him to reside in Ireland as the dependant of his father who is working in Ireland
- he is not permitted to enter employment while resident here on a Stamp 3 visa
- he cannot be considered to be habitually resident on the grounds under which he is permitted to reside in Ireland
- his main centre of interest is not established in Ireland
- the available evidence does not substantiate habitual residence

A discussion then ensued where the appellant confirmed the details of his arrival in the State, as outlined above. His father reported that they were in the process of applying for citizenship; that he and his other son had been recruited in South Africa to come and work for a company in Ireland; that he had been given a work permit for this purpose, and that his wife was working full time. He reported that the appellant had been in college in 2010, until he was involved in an accident and suffered neurological damage. He advised that the appellant had undergone surgery but had sustained visual impairment and major short-term memory problems. He has now reverted to a Stamp 3 visa. His father advised that he himself had been given a Stamp 4 and no longer needed a work permit.

Consideration of the Appeals Officer: The Appeals Officer noted that the appellant and his father came across as genuine and gave evidence in a credible manner. He noted also that the entire family had been in Ireland for over five years; following recruitment by a company [named] they had moved here ‘lock, stock and barrel’; both parents and the appellant’s brother were working here full time, and the appellant himself was in college before his accident. The Appeals Officer considered that the appellant’s centre of interest could only be considered to be in Ireland at that stage.

He accepted that this case was somewhat unusual insofar as the appellant did not have permission to work here as he holds a Stamp 3 visa. He took the view, however, that the appellant would not have applied for any social welfare payment in normal circumstances but that his accident had changed that. Based on the evidence before him, he was quite satisfied that the appellant was habitually resident in the State and that it was appropriate to allow the appeal.

Outcome: Appeal allowed.

D. 2012

1. Case 2012/05 - Disability Allowance – Oral Hearing

Decision under appeal: claim rejected – reason(s) stated:-

You have failed to show that your means do not exceed the statutory limit.

Issue: Means from her husband’s income from insurable employment not declared.

Background: The medical conditions were deemed to be satisfied in this case. However, the appellant did not provide details of her husband’s income from employment and the Deciding Officer held that she had failed to show that her means did not exceed the statutory limit. The appellant submitted that she and her husband were separated, albeit that they continued to reside in the same house. She stated that he was in employment and paid the mortgage, household and food bills but that she had no access to his pay-slips. A letter was submitted, which stated that the appellant was on a waiting list with the Legal Aid Board. In a report submitted to the Deciding Officer, the Social Welfare Inspector who investigated the case accepted that the appellant lived separately from her husband under the same roof and recommended

'direct provision' means of €100.00 per week on the basis that her husband paid the mortgage and bills. The Deciding Officer rejected this recommendation, stating that direct provision applied only to asylum seekers and that the appellant had the benefit of her spouse's earnings; a pay-slip was requested but not submitted by the appellant.

At oral hearing: the appellant advised that she has grown up children, and that she stays with them at week-ends. She said that they provide her with toiletries and some cash. She confirmed that her husband paid the mortgage and all bills, and that he bought food. She stated that he did not give her any money or maintenance payments, and said that he had agreed to continue to pay the bills until the issue of their separation had been decided. She asserted that there was no communication between them and that she had been advised to stay in the family home while the separation process was going on. She submitted that they had effectively separated about five or six years earlier; things had gone from bad to worse, and her serious medical problems had contributed to some of the difficulties they had experienced.

Comment/Conclusion: The Appeals Officer observed that the appellant had been extremely upset during the course of the hearing. He noted that her health was not good and that she met the medical qualifying criteria for the scheme. The issue under appeal was that of means and, in particular, whether or not the appellant should be assessed with means from her husband's income. From the evidence on file, including that of the Social Welfare Inspector who interviewed her, the Appeals Officer accepted that the appellant and her spouse while living in the same house were effectively separated. He took note of the fact that the Inspector had tried to estimate the value to the appellant of the mortgage repayments and the costs of household bills met by her husband. He noted, however, that the legislation does not provide for 'direct provision' for Disability Allowance purposes, or indeed 'benefit and privilege' as it does for Jobseeker's Allowance. He concluded that the appellant and her husband should not be treated as a cohabiting couple for social welfare purposes and, accordingly, that it was not appropriate to assess the appellant with means derived from her husband's earnings.

Decision of the Appeals Officer: The appeal is allowed

Note on reason(s) for decision: Disability Allowance is a means tested payment for persons who are substantially restricted in undertaking employment considered suitable having regard to age, education and work experience. The restriction must be expected to last for at least one year. In this case the appellant meets the medical criteria. Having examined all the available evidence carefully, including that adduced at the oral hearing, I am satisfied that the appellant and her spouse should not be treated as a cohabiting couple for social welfare purposes and that, in the circumstances, it is not appropriate to assess the appellant with means derived from [spouse name] earnings. I therefore decide that her means for DA purposes can be assessed as NIL and as such her appeal is allowed.

E. 2013 – N/A

F. 2014

1. 2014/01 Disability Allowance - Oral Hearing

Specified Disability: Dyspraxia and Developmental Co-ordination Disorder (DCD)

Background: The appellant is 16 years of age and is in fifth year at his local Community College. His mother had been in receipt of Domiciliary Care Allowance until he reached 16 years of age, when he was invited to apply for Disability Allowance. When his claim was disallowed, he made an appeal and his parents also made a written submission on his behalf.

Oral hearing: The appellant was accompanied by his parents. At the outset, the issue was explained and the Appeals Officer advised as to all the documents that were on the appeal file, including the Deciding Officer's decision and the appellant's own letter of appeal. He also explained the appeals process itself in some detail.

The appellant gave a short account of his interests, which include watching sport. He gave an outline of the work experience programme he had participated in when he was in Transition Year and said that the experience had been a positive one. His parents said that they considered the appellant had significant challenges, making reference to points outlined in his written submission. At her request, and with the agreement of the appellant, the Appeals Officer spoke with the appellant's mother and the appellant and his father left the hearing room.

The appellant's mother outlined the challenges experienced by her son. She drew particular attention to his difficulties with concentration span and memory, his co-ordination difficulties and motor challenges. She reported that he had difficulty with crowds and that he tended to withdraw from people. She stated that he had been the subject of constant teasing by classmates, particularly because of his co-ordination challenges and perceived clumsiness. She said that he did not engage in sports at all, and spent his time at home, watching television or on the computer. She made reference to his poor self-esteem and lack of confidence. She provided a medical report from her son's G.P., in which it was stated that he is nervous and shy; he finds it difficult to function in social settings especially if in large groups, and he requires assistance and supervision at home and in school.

Comment/Conclusion: The Appeals Officer observed that the appellant presented as a pleasant and friendly young man, who engaged well and was quite animated about his interests. He considered that he had underplayed the challenges he faces, which were evidenced by way of the medical reports and his parents' submissions.

The Appeals Officer noted the details outlined in the medical reports which accompanied the appellant's claim form, including the specialist reports referring to speech and language therapy and occupational therapy, and the Paediatrician's and Psychologist's reports.

He noted also that in completing the ability/disability profile on the claim form, his G.P. had assessed the appellant as follows:

- o Mental Health/Behaviour – affected to a moderate degree
- o Learning/Intelligence – affected to a moderate degree
- o Balance/Co-ordination – affected to a moderate to severe degree

- o Manual Dexterity – affected to a moderate degree
- o Speech – affected to a mild degree

The Appeals Officer noted that the appellant was reported to have difficulties functioning in social settings, challenges with concentration and memory, and problems with co-ordination and motor skills. He noted his G.P.'s report and assessment and his statement that the appellant requires assistance and supervision at home and in school, although he had not been approved for Special Needs Assistant (SNA) support. The Appeals Officer noted also that Domiciliary Care Allowance had been paid in respect of the appellant until he reached 16 years of age and, in this, that it had been accepted that his medical condition was such that he required substantially more care and attention than persons of his own age, who did not have a disability.

He noted that the appellant completed his Junior Certificate and had been granted three hours of resource teaching a week. He noted that the appellant had no real work experience, other than a week or so as part of a Transition Year programme. In that regard, he noted that his parents had drawn attention in their submission to the significant challenges which had arisen when the appellant was in a work placement.

The Appeals Officer concluded that the evidence indicated that the appellant required support, guidance and close supervision. He considered that he would be unable, at this point, to undertake work in an environment which could not offer him close and attentive supervision, substantially more than persons of his own age and experience would normally require. On balance, and having close regard to all the available evidence, including the appellant's own written submission, his parents' letter of appeal and the oral evidence which had been provided throughout the course of the oral hearing, he concluded that it had been established that the appellant, at this time, could be held to be substantially restricted in line with the governing legislative provisions.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must be expected to continue for at least one year.

Taking careful regard of all the available evidence, I decide that the appellant has established that he is substantially restricted in line with Social Welfare legislative provisions. In the circumstances, the appeal succeeds.

2. 2014/02 Disability Allowance - Oral Hearing

Specified Disability: Autism Spectrum Disorder

Background: The appellant, aged 16 years, attends secondary school and is in Transition Year. Following the rejection of his Disability Allowance claim, the appellant's father made an appeal on his behalf. He stated that his son was incapable of communicating on this matter, referring to his diagnosis of Autism at 3 years of age and submitting reports from the local Child and Adolescent Mental Health Services,

the Educational Psychologist who assessed the appellant, and the School Principal. He also included an outline of typical school day which had been compiled by his son's full-time Special Needs Assistant (SNA).

His father submitted that the appellant has required constant adult supervision to accommodate his engagement in society, including educational environments, and that this is ongoing. He stated that his son was not capable of interacting with his peers, had been unable to participate in any sporting activities despite trying to become involved in the Special Olympics. He stated that he leads a solitary life and is easily disturbed by change, to the point where he can self-harm. He has poor social skills and, while he is currently in Transition Year, he is accompanied by his SNA when on work experience. In conclusion, he submitted that the appellant is incapable of working to a task or in an environment that would be deemed suitable for his age, experience and qualifications.

In completing the ability/disability profile, his GP assessed the appellant as being affected in the following areas:

- o Learning/Intelligence - affected to a mild degree
- o Balance/Co-ordination - affected to a mild degree
- o Mental Health/Behaviour - affected to a moderate degree

Oral hearing: The appellant was accompanied by his father. The Appeals Officer observed that there was no need to ask the appellant more than one or two questions before it became obvious that he has a very serious incapacity such that he is unlikely ever to be capable of independent living never mind taking up employment. His father acknowledged the need to see the appellant and stated that his behaviour and demeanour at the oral hearing was actually very good with reference to his usual behaviour.

Comment/Conclusion: The Appeals Officer considered that the appellant demonstrated the outward signs and behaviour that reflected his diagnosis. He opined that the G.P.'s assessment was far removed from the reality of his condition as he had observed it at oral hearing. He concluded that the appellant is, and will probably remain, very severely restricted in undertaking any employment now or in the future and, accordingly, that the appeal should succeed.

Decision of the Appeals Officer: The appeal is allowed.

3. 2014/03 Disability Allowance - Oral Hearing

Specified Disability: Bilateral Hearing Loss

Background: The appellant is 16 years of age and applied for Disability Allowance in 2014. He had completed a Transition Year programme in the secondary school he was attending and was in fifth year at the time of the oral hearing.

Oral hearing: The appellant was accompanied by his father. The Appeals Officer explained his role, and outlined the oral hearing procedure and the question at issue. He asked the appellant if he had any difficulty in hearing or understanding him and he indicated that he had not.

The Appeals Officer asked the appellant about his current situation. He advised that he had completed the Junior Certificate last year and would sit the Leaving Certificate examination in 2015. He said he would like to pursue third level studies after that. The Appeals Officer asked if he had ever taken a summer job and he replied that he had worked for three days stacking shelves at a local supermarket as part of a work experience placement in Transition Year.

In response to the question as to how his hearing loss was affecting him at school, the appellant advised that he did not always hear what was said but would ask the teacher to repeat it. He said that he felt that his level of hearing was stable at present and that he was managing reasonably well. He stated that his biggest difficulty was being outdoors as he cannot hear what is happening behind him and needs to be careful.

The appellant's father made a request to speak with the Appeals Officer alone. The Appeals Officer asked the appellant's consent and he gave it. His father stated that the appellant fantasises and is very childish for his age. He said that he has to be watched constantly and he referred to an occasion when he had taken the family car without permission and had crashed it and broken the windscreen. He stated that the appellant was struggling at school and that he did not socialise much with his peers.

He said it was a full-time job watching him when he was not at school and that there was constant friction regarding homework and staying up late at night. He went on to express concern that the appellant could get up at night and go outside to play football if he could not sleep.

Comment/Conclusion: The Appeals Officer took into consideration the available medical evidence and the appellant's own account of his condition. He was satisfied that his loss of hearing would place certain restrictions on the type of work that he might undertake but he did not consider that it was such as to substantially restrict his progression through education or training and into suitable employment. He indicated that he had also had regard to his father's concerns, outlined at the oral hearing, although he noted that there was no medical evidence submitted which would indicate that the appellant was experiencing any mental health or behavioural difficulties.

Having considered all of the available evidence, the Appeals Officer concluded that it had not been established that the appellant was substantially restricted in undertaking suitable employment.

Decision of the Appeals Officer: The appeal is disallowed. I decide that the appellant is not entitled to payment of Disability Allowance because he is not substantially restricted in undertaking suitable employment.

Decision reason(s): I have taken into consideration the available medical evidence and the appellant's own account of his condition. I am satisfied that his loss of hearing

will place certain restrictions on the type of work that he may undertake, but I do not consider that it is substantially restricting his progression through education/training and into suitable employment.

Having considered all of the available evidence, including the statement of the appellant's father, I do not consider that it has been established that the appellant is, at present, substantially restricted in undertaking suitable employment. Regrettably, therefore, his appeal is disallowed.

4. 2014/04 Disability Allowance – Summary Decision

Specified Disability: Psychosomatic Paralysis

Background: The appellant made a claim for Disability Allowance when she was 19 years old, almost a year after she received a diagnosis. She submitted medical evidence from a Consultant Neurologist, a Consultant Orthopaedic Surgeon and a Consultant Psychiatrist. In completing the ability/disability profile, her G.P. assessed her mental health/behaviour as severely affected, her physical ability as moderately affected in two categories and profoundly affected in the areas of reaching and manual dexterity. Her claim was disallowed and she made an appeal which was dealt with by way of summary decision.

Comment/Conclusion: The Appeals Officer noted that the medical evidence indicated that the appellant had lost the use of her left arm as a result of a fall, and that she had been unable to move her arm at all since then. No explanation had been found for this condition and the view had been taken that it was not physiological and that she might benefit from psychiatric and psychological follow-up. Accordingly, the Appeals Officer examined the questions as to whether the loss of the use of her left hand/arm could be held to be a substantial restriction in carrying out suitable employment and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year.

He concluded that the appellant was suffering from a substantial restriction in carrying out suitable employment and that, as this condition had lasted for approximately eight months at the time of the application and that the medical profession was at a loss to explain it, it could be reasonably expected to continue for the foreseeable future. In the circumstances, the appeal was allowed and the Appeals Officer observed that it was to be hoped that the appellant's condition would resolve in due course.

Decision of the Appeal Officer: The appeal is allowed.

5. 2014/05 Disability Allowance - Oral Hearing

Specified Disability: Learning Disability

Background: The appellant, aged 22 years, has a diagnosis of Learning Disability. Evidence on file indicated that she was the victim of domestic violence as a young child and sustained significant head injury. In completing the ability/disability profile, her G.P. assessed her as follows:

- o Mental health/Behaviour – affected to a moderate degree
- o Learning/Intelligence – affected to a moderate degree
- o Vision – affected to a moderate degree
- o Balance/Co-ordination – affected to a mild degree
- o Manual Dexterity – affected to a mild degree
- o Lifting/Carrying – affected to a mild degree
- o Bending/Kneeling/Squatting – affected to a mild degree

The G.P. stated also that the appellant was awaiting an appointment with the Adult Learning Disability Services and was currently attending a course to improve self-confidence and socialising skills. In the appeal submission, the appellant's father requested more time to provide medical evidence. Reference was made to a neurological assessment which was to be carried out and which, it was suggested, would give a clearer picture of how the appellant struggles with everyday tasks. A letter was issued by the Social Welfare Appeals Office, requesting a copy of this report but no response was received.

Accordingly, the Appeals Officer decided to hold an oral hearing.

Oral hearing: The appellant attended with her father. Having outlined the decision under appeal, the Appeals Officer noted that further medical evidence was to have been submitted and that a written request for that evidence had met with no response. The appellant's father apologised, and said that the appellant was not in a position to deal with paperwork herself and that he had intended to reply. He reported that he was in receipt of Disability Allowance himself, suffering with depression, and that he had overlooked the need to follow up on correspondence. He went on to say that he was very keen to have matters resolved on his daughter's behalf and he pointed out that the opportunities available to her required that she be in receipt of Disability Allowance. He cited the support provided by the National Learning Network and the employer names he had been given, where employment was provided for people with disabilities – provided they were in receipt of Disability Allowance.

The appellant's father referred to the trauma and head injury she had sustained as a young child and he outlined the background to his request to secure custody and his experience as a lone parent. He said that the appellant had attended mainstream schools, receiving learning support all the way along. He reported that she had attended a number of courses run by the National Learning Network and that she had been allowed to participate and receive an allowance, as though she were in receipt of Disability Allowance. He said that he hoped that his daughter could obtain employment ultimately, perhaps on a part-time basis initially, with a view to becoming more independent.

The appellant said that she had done a course in animal care for two years, followed by one in crafts. She reported having nothing to do at the moment, and said she watches television and spends time with her dogs. Her father referred to the friends

she had made through the social club established by the National Learning Network, and to events and outings that they attend. The appellant agreed that she enjoyed spending time with her friends.

Comment/Conclusion: In the absence of the additional medical evidence referred to in the appeal submission, it was decided that an oral hearing would be helpful in this case. Having had an opportunity to meet the appellant, and having heard her father's account of the difficulties she encounters on a day-to-day basis and the support she requires, the Appeals Officer had no doubt that the appellant should be regarded as meeting the qualifying criteria for receipt of Disability Allowance.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Having carefully examined the evidence in this case, including the details presented by the appellant and her father at the oral hearing, I have concluded that she meets the medical qualifying condition for receipt of Disability Allowance and the appeal succeeds

6. 2014/06 Disability Allowance – Summary Decision

Specified Disability: Hepatitis C, ADHD, Drug Abuse

Background: The appellant, aged 22 years, had been in receipt of Disability Allowance for six years before having to serve a custodial sentence. On her release, her claim was disallowed. Her appeal against that decision was dealt with by way of summary decision.

Comment/Conclusion: The Appeals Officer noted the medical evidence and details outlined concerning the appellant's educational background. She had attended a school for children with special needs and cannot read or write without assistance from family or friends. He took note of the information provided as to the time she spent in prison and the fact that no reason had been stated for the decision to disallow her claim following her release. Having considered all the available evidence, the Appeals Officer concluded that the appellant satisfied the criteria for receipt of Disability Allowance.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability has continued or may reasonably be expected continue for at least one year.

Having carefully examined all the available evidence in this case, I have concluded that the appellant has established that she meets the qualifying medical conditions for Disability Allowance. In the circumstances, the appeal is allowed.

7. 2014/07 Disability Allowance - Oral Hearing

Specified Disability: Ulcerative Colitis/Crohn's Disease and Hearing Loss

Background: The appellant, aged 27 years, is a lone parent with one child and was in receipt of One Parent Family Payment and now making a claim for Disability Allowance.

Oral hearing: The appellant attended alone. She reported that she had been working in supermarkets and retail outlets but had not worked recently. She said that her hearing is very limited and that she generally needs to lip read. She referred to a recent assessment in her local hospital and advised that she had an appointment to have hearing aids fitted in six weeks. She went on to report that she had been feeling very bad for weeks on end, having had to use the bathroom very frequently and having rectal bleeding. She had attended doctors and the Accident and Emergency departments of her local hospital and a hospital in Dublin, where she visited family, and had been sent home with painkillers. During a visit to Dublin in 2013, she had collapsed and was taken to hospital where Ulcerative Colitis was diagnosed. She said the doctors seemed unsure as to whether she had Ulcerative Colitis or Crohn's Disease, and she said that she also had stomach ulcers.

The appellant reported that she currently attends a Consultant every three months, has a regular colonoscopy and gastroscopy, and has been prescribed a lot of medication. She said she has to plan any journey or visit so that she has easy access to a bathroom.

Comment/Conclusion: The Appeals Officer noted that the appellant has had major difficulties to contend with at a very young age, having been diagnosed with (either) Ulcerative Colitis or Crohn's Disease and having significant hearing problems which, he observed, might hopefully be helped with the fitting of hearing aids. He was quite satisfied that her medical complaints meant that she was currently substantially restricted in undertaking suitable employment and that she satisfied the criteria for receipt of Disability Allowance.

Decision of the Appeals Officer: The appeal is allowed.

8. 2014/08 Disability Allowance – Summary Decision

Specified Disability: Congenital Bilateral Hip Dislocation

Background: The appellant, aged 29 years, had applied for Disability Allowance in 2009. Her G.P. certified her incapacity and referred to multiple operations. He confirmed that the most recent operation at that time had taken place two years previously and that she was awaiting further surgery. The claim was disallowed and she made an appeal. Following an oral hearing in 2011, the Appeals Officer concluded that the appellant continued to have some impairment but not such that it could be regarded as significant and he held that the qualifying criteria were not met. The appellant re-applied in 2013 and Disability Allowance was awarded. Her G.P. reported that she had undergone a total hip replacement in 2012, and that she suffered chronic pain and depression.

Appellant's contentions: The appellant sought to have Disability Allowance awarded with effect from the date of her initial application and she submitted a detailed account of her medical history in support of that request. This referred to her diagnosis, surgery and pain management. In addition, she submitted that her extensive medical issues had led to a diagnosis of Depression for which she had been referred to a Psychiatrist.

Having been awarded Disability Allowance in 2013 and having regard to the appellant's request to have payment backdated to her initial application in 2009, the question at issue was whether the Appeals Officer's decision in 2011 was erroneous in the light of new evidence or new facts, as provided for under Section 317. This question was examined by a second Appeals Officer.

The Social Welfare (Consolidation) Act, 2005, Section 317, as amended, provides that:

1. An appeals officer may at any time revise any decision of an appeals officer—
(a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given, or

(b) where—

(i) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and

(ii) it appears to the appeals officer that there has been any relevant change of circumstances which has come to notice since that decision was given.

2. In subsection (1)(b)(ii), the reference to any relevant change of circumstances means any relevant change of circumstances that occurred before, or occurs on or after, the coming into operation of the Social Welfare and Pensions (No. 2) Act 2013.

Comment/Conclusion: In examining the case, the Appeals Officer noted the following:

1. The initial application was refused on grounds that the appellant did not meet the qualifying condition, a decision which was based on the opinion of the Medical Assessors that her existing restriction was not expected to last for more than one year – implying an acceptance that she was substantially restricted at the time, albeit that the condition was expected to be of short duration.
2. Subsequent events made clear that the appellant's medical condition, and consequent restriction, had been continuous since the period from her first application. In particular, she had provided evidence of ongoing problems following surgery in 2009 and the requirement for a revision of that surgery in 2012.
3. Since her initial claim in 2009, the appellant had experienced significant pain management issues which would have substantially restricted her ability to engage in employment.
4. The appellant's medical condition at the time of her second application included Depression, which had not been certified in the original application. However, the

medical evidence confirmed that this was something she had been dealing with since at least 2011, although no reference had been made to the fact in the report of the oral hearing in 2011.

5. The report of the Consultant Psychiatrist stated that the impact of the appellant's physical condition had been significant and had reduced her confidence and her ability to work.

The Appeals Officer considered that it was clear that the appellant had been suffering to a significant degree with the effects of Depression prior to her referral to the Consultant Psychiatrist in 2011. He noted that, when considering the issues in the case, it was particularly relevant that this did not appear to have been taken into account in relation to her initial application or in the context of her appeal.

Having examined all of the evidence available, and acknowledging that he had the benefit of hindsight in relation to the long-standing restrictions imposed on the appellant as a result of her medical conditions, the Appeals Officer revised the earlier appeal decision, with reference to the provisions of the Social Welfare (Consolidation) Act, 2005, Section 317 (1) (a). Accordingly, he held that with effect from a specified date in 2009, the appellant could be held to meet the qualifying criteria for receipt of Disability Allowance.

REVISED DECISION: The appeal is allowed.

Decision reason(s): I find that, with effect from [specified date] 2009, the appellant was suffering from a medical condition which was reasonably expected to last for at least one year and as a result of this condition, was substantially restricted in undertaking work which would otherwise be suitable having regard to the her age, experience and qualifications.

Having examined all of the evidence in this case (and with the benefit of hindsight in relation to the long-standing restrictions imposed on the appellant as a result of her medical conditions), I am revising the appeal decision in this case under Section 317 (1) (a), Social Welfare Consolidation Act 2005.

9. 2014/09 Disability Allowance - Oral Hearing

Specified Disability: Knee Injury following road traffic accident

Background: The appellant, a 32 year old single man, had been in receipt of Disability Allowance until a date in 2013, when his claim was disallowed. His incapacity resulted from injury sustained in a road traffic accident in 2007. The medical evidence indicated that he had a stiff right knee and that this was expected to continue indefinitely. In completing the assessment of his functional abilities, the appellant's G.P. assessed six of the eight categories as normal, one as mild and one as moderate; of the physical abilities, he assessed one category as normal, one as moderate and six as severe. He had last been seen by a Medical Assessor for the Department of Social Protection in 2007. Following disallowance of his Disability Allowance claim, the appellant was in receipt of a basic income payment under the Supplementary Welfare Allowance scheme.

Oral hearing: The appellant was unaccompanied at the hearing. He advised that he had worked as a cleaning supervisor for a large cleaning company until 2006, when he was laid off and had made a claim for Jobseeker's Allowance. He referred to the road traffic accident in 2007 in which he had sustained a knee injury and which had resulted in the death of another passenger. He stated that, following the accident, he had spent six weeks in hospital. He attended a programme of physiotherapy subsequently and continues to attend an Orthopaedic Consultant once a year. He said that he has been prescribed sleeping medication and anti-inflammatory medication, to be taken as required.

The appellant reported that he has a 15 – 20 degree bend in his right knee, that he can get pain if walking longer distances and pain in his leg if sitting for too long. He said that he experiences pain when he is sleeping. He said that he used a stick until 2009 but no longer needs it. He advised that he had registered with SOLAS (Further Education and Training Authority) and had applied for a part-time job and for a plastering course.

Comment/Conclusion: The Appeals Officer observed that the appellant presented as having no obvious difficulty in walking and that the evidence indicated he had made progress in recovering from the injury sustained. He noted that the term 'suitable employment' applies to a wide variety of employment types and not just to the person's usual or preferred type of work and he noted also that the appellant had been engaged in job-seeking.

He considered that while the appellant's knee injury is likely to be longstanding and such as to restrict him in carrying out some types of employment, it had not been established that he was now substantially restricted in carrying out any suitable employment. He concluded that the appellant did not meet the required criteria for receipt of Disability Allowance and noted that it was open to him to re-apply for Disability Allowance in the event of new or additional medical evidence becoming available.

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): Disability Allowance is a payment for persons who are confirmed to be substantially restricted in undertaking any suitable employment having regard to their age, education and work experience. This medical restriction must be medically certified as having continued, or as being expected to continue for at least 12 months. The term "suitable employment" applies to a wide variety of employment types and not just to the person's usual or preferred type of work. I have carefully reviewed all medical and other evidence provided in this case including that adduced at the oral hearing. The evidence indicates that the appellant suffered significant injury in 2007 and at that time was deemed eligible for Disability Allowance. I have concluded that the evidence now suggests that the appellant has made progress in recovering from the effects of the accident.

I have concluded that while the appellant's knee injury will be longstanding and will restrict him in carrying out some types of employment, it has not been established that the appellant is now substantially restricted in carrying out any suitable employment

as referred to above. I have concluded that the appellant does not meet the required criteria for receipt of Disability Allowance. In the circumstances I regret that the appeal does not succeed.

It is open to the appellant to re-apply for Disability Allowance in the event of new or additional medical evidence becoming available in this case.

10. 2014/10 Disability Allowance - Oral Hearing

Specified Disability: Pernicious Anaemia, Gilbert's Syndrome

Background: The appellant is 32 years of age. In connection with his claim, his G.P. completed the ability/disability profile and assessed the appellant as being affected as follows:

- o Mental Health/Behaviour – affected to a mild degree
- o Balance/Co-ordination – affected to a mild degree
- o Manual dexterity – affected to a mild degree
- o Walking – affected to a mild degree
- o Climbing – affected to a mild degree

Oral hearing: The appellant provided a written statement pertaining to his circumstances. He outlined the background to his difficulties, which began in childhood, where he experienced regular stomach pains, nose bleeds, dizziness and weight loss. His condition was wrongly diagnosed initially as Gastroenteritis. He reported that he had worked for a few months in an apprenticeship after leaving school but was forced to give up due to extreme tiredness. He said that he had done some work in construction about six years ago, when he had been employed as a general labourer for about five months. The work tended to be of a casual nature which he said allowed him to recover somewhat between assignments. He said that, after a considerable time spent at home, and following a range of diagnostic testing, he had been diagnosed as having Pernicious Anaemia in his mid-twenties. He was treated with B12 injections and returned to studying. He was accepted on a degree course and moved close to the college to minimise the impact of travel. Having completed the first two years of the course, he had deferred his studies during the third year as a consequence of ill health. He reported having experienced burnout and constant headaches, hair-loss and exhaustion, allied to the financial stress of not being able to work to supplement his studies.

The appellant advised that he had returned to college and resumed his studies. He stated that he attends college from 9.30 a.m. to 5 p.m. and, while he has missed a few days, he has attempted to attend for at least part of every day. He reported that he continues to find it difficult to absorb nutrients and that this contributes to his constant tiredness. He said that he finds it particularly difficult to wake up in the morning and any exertion undertaken thereafter tends to exacerbate his symptoms, with sustained effort leaving him feeling burnt out. He also reported a disturbed sleeping pattern, extreme fatigue towards the end of the day, and an inability to eat much.

In conclusion, the appellant stated that he was attending the Migraine Clinic at his

local hospital, with a view to obtaining a diagnosis and treatment related to recurring migraines. He said that he had already had a Computerised Tomography (CT) scan.

Comment/Conclusion: In determining this case, the Appeals Officer had regard to all the documentary evidence available and, in particular, to the report of the appellant's G.P. and the ability/disability profile which he had completed. He noted that this indicated that the appellant suffers from a long-standing chronic condition and that he requires regular intramuscular injections to keep his condition somewhat under control. He noted also the reference to the appellant's concentration being affected and also to the statement that he experiences extreme fatigue. He took account of the appellant's letter of appeal and the oral evidence provided throughout the course of the hearing. He was satisfied that the appellant had provided an accurate account of his circumstances and the difficulties he encountered arising from his medical condition.

The Appeals Officer noted that the appellant had commenced a degree course and had completed over two years in college. While he had deferred his studies in the third year, he had recently recommenced those studies and the Appeals Officer considered that this suggested that the appellant felt well enough to commit to full participation in his course. He noted that the appellant had referred in his appeal submission to undertaking his current studies with a view to moving into an area with a self-defining schedule, and that he was hopeful that he would qualify with credentials which might allow him to become self-employed.

The Appeals Officer accepted that the evidence clearly indicated that the appellant struggles in sustaining effort and is adversely affected by his condition. However, he considered that his return to college with a view to gaining qualifications which might allow him to become self-employed in the future was indicative of an ability to apply himself to work. On that basis, he concluded that the appeal could not succeed.

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must be expected to continue for at least one year.

Having carefully considered all the available evidence in this case, including the medical evidence, I have concluded that the appellant has failed to establish that he meets the qualifying conditions. In the circumstances, the appeal must regrettably fail.

11. 2014/11 Disability Allowance - Oral Hearing

Specified Disability: Post-Traumatic Stress Disorder, Visual Impairment

Background: The appellant is 32 years of age and applied for Disability Allowance in 2013. He submitted a report from his G.P. which stated that he had lost his sight in one eye and suffered Post-Traumatic Stress Disorder, following an assault. His G.P. stated that he had been referred to the local psychiatric service. In completing the ability/disability profile, he assessed the appellant as being severely affected in the

area of mental health/behaviour, affected to a mild degree in terms of his hearing, and normal in the other categories outlined. He indicated that the appellant should be accompanied if he was asked to attend an in-person medical assessment. He submitted a letter on the appellant's behalf and this was accepted as an appeal. In that letter, he made reference to the appellant's ongoing mental health difficulties and advised that he had become homeless.

Oral hearing: The appellant attended alone. The Appeals Officer read the decision and clarified the question at issue. He made reference to the grounds of appeal which had been submitted on the appellant's behalf. The appellant confirmed that he had become homeless and advised that he was now living with his mother. He said that he was waiting to secure local authority housing.

In relation to employment, the appellant stated that he last worked in 2007, driving a fork lift truck. He advised that he had been let go when the company went out of business and that he had been in receipt of Jobseeker's Allowance since. He reported that he had participated in some training courses, and that these had referred mainly to construction. In terms of education, he advised that he had completed the Leaving Certificate and had undertaken a computer course.

The appellant reported that he has Asthma and attends his G.P. for monthly check-ups. He confirmed that he continues to attend his Psychiatrist every two weeks and that he also attends a hospital clinic, twice a year, in relation to his eye. He said that, following the assault, he did not visit the city centre for a year. He went on to say that he still experiences difficulty in leaving home and feels the need to be accompanied when he does. He said that he is very fearful of groups of people, particularly groups of young men. He reported feeling irritable and said that he suffers from recurrent flashbacks.

The appellant described intermittent pain in his head, near the eye where he lost his sight. He said the blindness in that eye causes problems and that he frequently walks into objects on his left-hand side. He reported having sleep difficulties and said that frequent flashbacks of the assault cause severe depressive episodes. He said that when depressed, he had self-harmed.

Comment/Conclusion: The Appeals Officer noted that the appellant's condition had not improved and that he continued to seek to be accompanied when leaving the house. He considered that this would severely restrict his ability to obtain and retain employment. In addition, he noted that the loss of his sight in one eye would restrict the type of work that would be suitable to his experience and education and he noted also that he was prone to walking into things on his left-hand side because of this visual impairment. Accordingly, he concluded that the qualifying criteria were met.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must have continued for or be expected to continue for at least one year. Having carefully examined all the evidence in this case, including that obtained at the oral hearing, and

taking account of the medical evidence available, I have concluded that the appellant has established that he meets the qualifying conditions. In the circumstances, the appeal succeeds.

12. 2014/12 Disability Allowance - Oral Hearing

Specified Disability: Low Back & Knee Pain, Depression, Gastritis

Background: The appellant, who is 36 years of age, came to Ireland in 2007. She made a claim for Disability Allowance in 2014 and, following the decision to disallow that claim, she made an appeal.

Oral hearing: The appellant was unaccompanied at the hearing. The Appeals Officer read the decision and outlined the question at issue. In response, the appellant advised as to the background to her claim and to the medical issues referred to in the report completed by her G.P.

The appellant reported that she had worked as a cleaner in hotels for a number of years until she was involved in a road traffic accident. She stated that she experienced pain in her back, right hip and right leg.

She outlined the medication she had been prescribed, as confirmed by her G.P. in a report submitted, including a Non-Steroidal Anti-Inflammatory Drug (NSAID) and other pain relief. She said that she finds walking difficult and that she has difficulty lifting things. She said also that she does not sleep very well at times due to pain. She advised that she can drive but finds it difficult sometimes. She said that she can do housework but that her sister has to help her at times.

In conclusion, the appellant said that she would like to work again but did not think she would be able. She submitted a letter from her G.P. outlining her medical condition.

Comment/Conclusion: The Appeals Officer observed that the up-to-date medical evidence provided by the appellant did not refer to her capability or otherwise for work. He noted that she experienced some pain and difficulty at times when walking and when lifting things. He noted also that she was able to drive and to do housework, although these were tasks which also presented difficulty at times. He took account of the medical evidence which indicated a level of restriction in undertaking work. He considered that when all the evidence was taken together, it suggested some restriction in undertaking suitable employment. However, he concluded that it did not constitute a substantial restriction within the meaning of the governing legislation.

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must have continued for or be expected to continue for at least one year. Having examined all the evidence in this case, and taking account of the medical evidence available, I have

concluded that while there may be some restriction to the appellant in undertaking suitable employment it does not constitute substantial restriction under the meaning of the legislation. In the circumstances, I regret that the appeal cannot succeed.

13. 2014/13 Disability Allowance - Oral Hearing

Specified Disability: Epilepsy

Background: The appellant, aged 43 years, had been in receipt of Disability Allowance between 2005 and 2011 when payment was stopped. He made a new claim in 2013 which was disallowed on grounds that he was not deemed to be substantially restricted from undertaking suitable employment, in line with the qualifying criteria. In completing the ability/disability profile on the claim form, his G.P. confirmed the diagnosis of Epilepsy and assessed the appellant as being affected in the following areas:

- o Consciousness/Seizures – affected to a moderate degree

The appeal was dealt with on a summary basis and disallowed. Following a further submission made by a solicitor acting on his behalf, the Appeals Officer set aside that decision and re-opened the appeal by way of oral hearing.

Oral Hearing: The appellant was represented by his solicitor and accompanied by his son, who assisted with interpretation. The question at issue was explained. The appellant's solicitor provided a copy of his written submission. A recent medical report was not available but the appellant's solicitor undertook to provide one for the Appeals Officer. He submitted that the appellant has suffered from Epilepsy since birth and that he is prone to frequent seizures, one of which had resulted in a fall where he fractured his arm. He referred to the medical evidence which suggested that there was still some residual incapacity arising from that injury. It was pointed out that the appellant was semi-literate and that he had been receiving Disability Allowance up to 2011. The Appeals Officer advised that he had no evidence to indicate the basis on which the medical qualifying conditions for Disability Allowance had been deemed to have been met previously.

The appellant's son said that his father had surrendered the allowance in 2011 as he understood that this would allow the family to qualify for Rent Supplement and he confirmed that he was now receiving Supplementary Welfare Allowance. The Appeals Officer pointed out that it was not necessary for the appellant to have been in receipt of a basic income under the Supplementary Welfare Allowance scheme in order that Rent Supplement would be payable.

In conclusion, it was submitted that the appellant's condition was unchanged. He still suffered from Epilepsy which required him to take medication and he had a substantial restriction as previously acknowledged.

Comment/Conclusion: The Appeals Officer noted that the appellant had qualified previously for Disability Allowance from 2005 to 2011. He concluded that his

medical condition was unchanged in that time, with medical evidence confirming that he continues to suffer frequent seizures.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): This appellant had previously been granted Disability Allowance from 2005 to 2011. The appellant's medical condition is unchanged in that time. Medical reports confirm that appellant continues to suffer frequent seizures.

14. 2014/14 Disability Allowance - Oral Hearing

Specified Disability: Back Injury

Background: The appellant, an EU national, is 43 years of age and came to live in Ireland in 2012. He had trained to be a steelworker but economic difficulties meant he had been unable to pursue that career. Instead, he worked as an engine mechanic from 1995 until 2009, when he had surgery on his back. He returned to work but sustained further injury to his back and underwent surgery again in 2011. At that stage, his wife and children were resident in Ireland and his wife was working. As a result of his back injury, and following his second operation, he was paralysed and had to use a wheelchair for some time as he had suffered neurological damage. He applied for Disability Allowance in 2014 and submitted medical evidence. In completing the ability/disability profile, his G.P. indicated that the appellant was affected to a moderate extent in walking and climbing, balance, continence, lifting, bending, sitting and standing. His application was refused on the basis that he was held not to be substantially restricted in undertaking employment. His appeal referred to disc herniation, paralysis and neurological damage.

Oral hearing: The appellant was accompanied by his wife. He advised that, since applying for Disability Allowance, he had been seen by an Orthopaedic Consultant and was awaiting a report from that consultation. He said that he would supply a copy when it was available. He said that he had been referred also to a Consultant Neurologist and that he had been to physiotherapy and was scheduled to have further sessions.

The appellant reported that he had left work in [EU country] as a result of his medical condition. Having suffered paralysis after his second operation, he was required to use a wheelchair. The nerves from his L5 joint had been crushed by a disc and this had affected function below the waist. He stated that he was doubly incontinent, and in continuous pain for which he had been prescribed medication.

The appellant advised that he had improved gradually for the first two years after his operation and that his condition had remained stable for a period after that. However, he outlined the manner in which his condition had begun to dis-improve: he has numbness in his lower legs and heels; he has experienced a loss of power in his legs; he walks with a crutch, but not far; he needs to move constantly in bed while sleeping and this restricts the amount of sleep he can get, and he can only sit for short periods. The Appeals Officer observed that the appellant had to stand on occasion and walk, using a crutch, during the course of the hearing.

Additional evidence: The Orthopaedic Consultant's report was submitted.

Comment/Conclusion: The Appeals Officer noted that the appellant's experience and education had been based around work of a physical nature, with a requirement to be able to lift heavy objects. He referred to the evidence submitted, indicating that he is severely compromised in his ability to undertake work of that kind. He considered that he would need extensive re-training in a carefully selected field in order that he would be able to seek future employment. The Appeals Officer concluded that the appellant was substantially restricted in seeking employment, that he had experienced health issues for a considerable period, and that his condition was unlikely to improve.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): The appellant's experience and education is based around work of a physical nature with a requirement to be able to lift heavy objects. The evidence submitted indicates that he is severely compromised in his ability to undertake work of that nature. His overall condition would not allow him to undertake work that requires him to stand or sit for lengthy periods. He would need extensive re-training in a carefully selected field that would suit his condition for him to be able to seek future employment. His situation means that he is substantially restricted from seeking employment. He has suffered from his condition for a considerable period and is unlikely to have his condition improve.

Having carefully examined the evidence in this case, including evidence submitted at the oral hearing, and taking account of the medical evidence available, I have concluded that the appellant has established that he meets the qualifying conditions. In the circumstances, the appeal succeeds.

15. 2014/15 Disability Allowance - Oral Hearing

Specified Disability: Depression

Background: The appellant, aged 44 years, had been in receipt of Illness Benefit for two years when his entitlement ended (as payment is made for two years only where claims are made following legislative changes implemented with effect from January 2009). He continued to submit medical certificates on a six-monthly basis, as before, and made a claim for Disability Allowance. That claim was disallowed and he made an appeal, which was determined by way of summary decision.

Comment/Conclusion: The Appeals Officer noted the medical evidence submitted. He noted that the G.P. had completed the ability/disability profile, assessing the appellant as being severely affected in ten of the categories outlined. He noted also that the G.P. had indicated that he would not regard the appellant as being suitable for rehabilitative or occupational therapy purposes and that there would be health and safety issues in relation to any employment or training in which he might be required to engage. He attributed these restrictions to on-going medical issues. In addition, the Appeals Officer took account of evidence submitted which indicated that the

appellant had low energy, was unable to focus or concentrate, had poor listening skills, suffered from loss of memory and from reactive depression. Finally, and having particular regard to the fact that his G.P. had strongly opined that it would be unsafe for the appellant to attempt to return to any place in the workforce, he concluded that the appeal must succeed.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability has continued or may reasonably be expected continue for at least one year.

Having carefully examined all the available evidence in this case, I have concluded that the appellant has established that he meets the qualifying medical conditions. In the circumstances, the appeal is allowed.

16. 2014/16 Disability Allowance - Oral Hearing

Specified Disability: Diabetes (Type 2), Hypertension

Background: The appellant, aged 44 years, had been in receipt of Illness Benefit and was in receipt of a Diet Supplement of €6.50 per week under the Supplementary Welfare Allowance scheme. He had an in- person assessment with a Medical Assessor of the Department of Social Protection. In the opinion made available to the Deciding Officer following that assessment, it was stated that while the medical evidence did indicate a level of incapacity, it was not consistent with substantial disability/restriction. In terms of the ability/disability profile, the appellant's G.P. had reported as follows:

- o Vision – affected to a mild degree
- o Manual Dexterity – affected to a mild degree
- o Reaching – affected to a mild degree
- o Lifting/Carrying – affected to a mild degree
- o Bending/Kneeling/Squatting – affected to a moderate degree

Oral hearing: The appellant attended alone and submitted a recent letter from his G.P., confirming the diagnosis and stating that he also suffers from Ischemic Heart Disease, and that his blood pressure is difficult to control. He also submitted a list of his prescribed medication.

The appellant advised that he had worked as an operative, doing the night shift, but left employment about two and a half years ago due to health concerns. Initially, he had claimed Jobseeker's Benefit but then made a claim for Illness Benefit. He reported that he had first become ill some eight years earlier and said that there is a history of heart disease in his family. He said that, more recently, he has had an issue with pain in his shoulder and is waiting for a pain clinic appointment.

The appellant stated that his Diabetes can be fine for a few days, and then it can go out of control. He reported that he has been attending his G.P. recently due to shoulder pain, that he attends the Diabetic Clinic every two months, and that he was hospitalised for one night last year because of low blood sugar. He advised that he is monitored by the clinic nurse and that his Diabetes is controlled by means of diet. He does not attend a Consultant.

The appellant went on to say that he requires bed rest and lies down regularly in the afternoon as he suffers from tiredness, breathlessness and sweats. In terms of exercise, he reported that he walks for 15- 20 minutes daily and would be afraid to walk too far in case his blood sugar levels fall. He said that he drives occasionally but that he checks his blood sugar levels beforehand.

Comment/Conclusion: The Appeals Officer observed that the appellant's main health issues were related to his Diabetes and to his newly certified shoulder pain. He had reported that he left work as a consequence of his Diabetes and that he had difficulty controlling his blood sugar levels. She noted, however, that there was little evidence that he had sought further medical intervention since leaving work; while he was attending a Health Centre and his condition was being monitored by a Nurse from the local hospital, he had not been referred for consultation with a Diabetic Consultant/Endocrinologist. The Appeals Officer accepted that the appellant's condition may restrict him in some ways but concluded that he had not established that he met the qualifying conditions for receipt of Disability Allowance.

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): The medical qualifying conditions for Disability Allowance require that a person must be substantially restricted in undertaking work which would otherwise be suitable having regard to their age, experience and qualifications and the specified disability must be expected to continue for at least one year. Having carefully examined the evidence in this case, including that presented at the oral hearing, I have concluded that it has not been established that this condition is met in the appellant's case. In particular, the most recent medical evidence presented was from the appellant's G.P. [on date specified] No specialist medical evidence has been made available in relation to the appellant's Diabetes which appears to be the main health issue spanning the last three years. In the circumstances, I regret that the appeal cannot succeed.

17. 2014/17 Disability Allowance - Oral Hearing

Specified Disability: Cerebral Aneurysm, Deafness, Depression

Background: The appellant, aged 45 years, had been in receipt of Disability Allowance since 2009 and had participated in a number of Community Employment (CE) schemes. Following a review, her claim was disallowed with effect from a date in 2014 as it was held that she no longer met the qualifying criteria. Medical evidence submitted indicated that she had a mastoidectomy in 2013, and that she also suffers from Tinnitus and Panic Disorder. In completing the ability/disability profile, her G.P.

assessed the appellant as being mildly affected in most categories, and affected to a moderate degree in relation to hearing.

Oral hearing: The appellant attended alone. She stated that she had been diagnosed as having a cerebral aneurysm many years ago, and that it is an inherited condition. She said that a member of her family had died as a consequence of the same diagnosis and that she has a fear of death at all times, making her very nervous. The Appeals Officer noted that the medical report indicated that her condition was stable and the appellant said that she was being monitored on an ongoing basis and has an MRI scan every six months.

The appellant reported getting severe headaches and migraines and said that bright lights and flashing lights affect her and that she wears sunglasses most of the time. She said that her headaches were unpredictable and can sometimes last for hours.

In relation to her hearing, the appellant stated she has no hearing at all in one ear and 50% in the other. She said that she cannot socialise as a result, nor can she obtain most types of work that involves groups of people, as she can only hear on a one-to-one basis. She said that she has had recurrent ear infections with associated Tinnitus, making her feel dizzy and disorientated. She referred to the surgery she had undergone for mastoiditis and said that she is scheduled to have the same procedure carried out on her other ear.

The appellant advised that she had been taking part in Community Employment (CE) schemes for the past few years. At the time of the oral hearing, she had been working in the office of a religious order, doing light duties like photocopying. She said that she worked only in the mornings and was dropped off and collected each day. The appellant reported that she also experiences depression, and that her G.P. had recently prescribed medication. She stated that she gets afraid sometimes, has panic attacks and has a fear of leaving the house. She said that her sleep pattern is disturbed and that she finds it hard to concentrate and experiences mood swings.

Comment/Conclusion: The Appeals Officer referred to the comprehensive medical evidence submitted by the appellant. She noted that the appellant had participated in a number of CE schemes in recent years, even whilst undergoing ear surgery, and that she was due to finish her current scheme in a short time. She considered that the appellant's return to the workforce was not a viable option given the deterioration in her health, and having regard to the problems with her ear and difficulties associated with her hearing, as well as the panic attacks she was experiencing. Taking all of the foregoing into consideration, she was satisfied that it had been established that the appellant continued to be substantially restricted in undertaking suitable employment.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would be suitable with reference to their age, experience and qualifications and the specified disability must be expected to continue for at least one year. This substantial restriction must be medically certified as having continued, or as being expected to continue for at least 12 months. I have carefully examined all the evidence in this case including the medical evidence and

that adduced at the oral hearing. Taking account of the medical evidence, the appellant's cerebral aneurysm, now stable, combined with further awaited ear surgery, tinnitus, profound hearing loss and depressive features, I have concluded that the appellant has established that she continues to be substantially restricted and there is insufficient evidence to show that she is no longer restricted to the same extent as heretofore. Therefore appellant is deemed to continue to meet the qualifying conditions.

18. 2014/18 Disability Allowance - Oral Hearing

Specified Disability: Back Pain and Depression

Background: The appellant, aged 49 years, is separated. He had been in receipt of Disability Allowance for ten years but, following a review of his claim, it was held that he was no longer eligible on medical grounds. At the time of the oral hearing, he was in receipt of a basic income under the Supplementary Welfare Allowance scheme. In completing the ability/disability profile, his GP assessed the appellant as being affected in the following areas:

- o Bending/Kneeling/Squatting - affected to a mild degree
- o Mental Health/Behaviour - affected from a mild to a moderate degree
- o Sitting/Rising - affected from a mild to a moderate degree
- o Lifting/Carrying - affected to a moderate degree

An appeal was made on the appellant's behalf by his solicitor, asserting that he was incapacitated and unable to take up employment because of his medical difficulties. Reference was made to surgeries performed on his back, a recent recommendation for 'fusion', and psychiatric difficulties resulting from constant pain and discomfort. Details were provided as to his daily medication and it was submitted that he was not in a position to provide medical reports due to financial difficulties. His solicitor stated that he was taken aback at a decision to terminate payment in the absence of an in-person medical examination.

Oral hearing: The appellant was accompanied by a relative. He asserted that he was not capable of performing any type of employment because of his back complaint and depression. He stated that he had had two operations performed on his back a number of years ago and had been advised by an Orthopaedic Consultant not to have 'back fusion' at that stage because of the uncertainty of a successful outcome. Instead, he had been advised to learn to live with his condition. He reported that he had done so but while he has weeks when his back problem only affects him moderately, there are weeks when he cannot leave the bed/floor and must crawl to get to and from his kitchen/bathroom. He added that he has chronic episodes of pain some ten or fifteen times a year, when he is confined to bed/floor.

The appellant added that his condition and the fact that his long-term Disability Allowance entitlement had been discontinued had led to him being depressed. He stated that he had attempted suicide (confirmed by a letter from his G.P.) about six months previously and had been hospitalised for a few days. He reported that he was receiving counselling and did not have suicidal ideation at the time.

In conclusion, the appellant stated that he is incapable of performing any work at the present time. He referred to difficulties in standing, sitting and walking for long periods, and outlined the pain relief and anti-depressant medication prescribed by his G.P., as well as further medication which he imports and which his G.P. does not know about.

Comment/Conclusion: The Appeals Officer observed that the appellant appeared to walk with some difficulty and was uncomfortable sitting for the period of the hearing. He noted the appellant's age, history of back surgeries, current diagnosis of continued back pain with the possibility of further back surgery and his mental state which had led to him attempting to take his life by means of an overdose. He noted also his G.P.'s letter of support and the evidence he had given at oral hearing. In addition, he took account of the fact that the appellant had been in receipt of Disability Allowance for ten years and he considered that there was nothing to indicate that his physical or mental state had improved significantly in the meantime. He concluded that the qualifying criteria were met.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must have continued for or be expected to continue for at least one year.

Having carefully examined all the medical evidence in this case, including evidence adduced at oral hearing, I have concluded that the appellant has established that he meets the qualifying conditions. In the circumstances, the appeal succeeds

19. 2014/19 Disability Allowance - Oral Hearing

Specified Disability: Depression, Low Back Pain

Background: The appellant, aged 49 years, made a claim for Disability Allowance in 2014. In completing the ability/disability profile on the claim form, his G.P. assessed the appellant as being moderately affected in eight of the categories outlined and affected to a mild degree in one other area. He stated that the appellant had sustained an accident some years previously, suffering a disc prolapse, and that he had been experiencing depression for three years. He advised that there had been no specialist referral, and that he had not prescribed medication.

The appellant completed a Form MR 99, a questionnaire intended to allow for a personal assessment of the effects of injury or illness. In doing so, he had stated that he had sustained an injury to his back while working as a cleaner; his mental and physical health had been affected; he cannot interact with others; he experiences sleep disturbance and fatigue; he cannot lift; he struggles to climb stairs; he cannot use public transport, and he is unable to cope with crowds. He identified problems with manual dexterity, communications and pursuit of hobbies.

Oral hearing: The appellant attended alone. He stated that he was unable to work due to depression and low back pain. He said that the back pain began 18 months ago

when he pulled his back while lifting. He went to his G.P. who prescribed pain relief. He said he had been advised that he had a slipped disc and he was referred for an MRI scan. He advised that a slipped disc was ruled out following the scan but that he was still awaiting referral for specialist opinion.

The appellant said that he considers his G.P. has not fully examined his back or his medical history and that he just recommends *Paracetamol* for back pain.

He went on to say that he intended to change G.P. He reported that he continues to be restricted in relation to standing, and he cannot stand for long enough at the sink or cooker to prepare a meal, or stand in a queue for more than 30 seconds. He referred to pain shooting up along his back and said that he needs his partner's help to get out of bed and that, when they go shopping, she carries the shopping bags as he is unable to carry any weight. He said his sleep is severely disrupted and that he has to lie on the floor two or three night a week.

The appellant said he had been prescribed anti-depressants but could not afford to pay for them. He reported spending his time sitting at his computer or in his room, even when visitors call. He said he does not feel right in himself and that he avoids interaction with other people, and that his partner understands that he has problems.

Comment/Conclusion: The Appeals Officer noted that appellant had presented at the oral hearing as relaxed and that he had outlined his evidence clearly and with no sign of reservation. He considered that he had related well and had not displayed any apparent distress. He noted his description of the restrictions he experiences due to back pain and depression. He noted also the medical evidence in relation to the history and treatment of those conditions and concluded that it was not apparent that the appellant was affected to the extent that would render him substantially restricted from all work suitable to a person of his age and experience.

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must be expected to continue for at least one year.

The appellant presented at the oral hearing as relaxed and gave his evidence clearly with no sign of reservation or nervousness; he related well and did not display any apparent distress. He describes restrictions due to back pain and depression. I note the medical evidence in relation to the treatment and history of these conditions and find that it's not apparent the appellant is affected to the extent as to render him substantially restricted from all work suitable to a person of his age and experience. I regret therefore the appeal is disallowed.

20. 2014/20 Disability Allowance - Oral Hearing

Specified Disability: Dystonia

Background: The appellant, aged 50 years, applied for Disability Allowance and submitted a medical report stating her diagnosis and indicating that this was expected to continue indefinitely. Her G.P. completed the ability/disability profile and assessed her as being severely affected in terms of balance, with all other functional abilities assessed as normal. In terms of physical abilities, four were assessed as normal, while one was mild, two were moderate and lifting/carrying was assessed as severe.

Oral hearing: The appellant attended unaccompanied. She advised that she was in receipt of a basic income payment under the Supplementary Welfare Allowance scheme. She referred to the onset of Dystonia when she was about 30 years of age. She said that she had worked in a factory and in a shop formerly, and had become a carer for her mother when she became ill. Subsequently, she had claimed Jobseeker's Allowance and had participated in a Community Employment scheme. She reported that she had only carried out very light duties as part of that scheme.

The appellant stated that she had attended a Consultant Neurologist at the onset of the condition and had been advised that Dystonia is not unlike Parkinson's disease, that there is no cure and that it is probably genetic in origin. She reported that the condition had spread to her shoulders and that she cannot raise her right arm over her head. She had attended an Orthopaedic Surgeon earlier in the year and is on a waiting list for steroid injections. She went on to say that she has attended physiotherapy and acupuncture over the years, and has been prescribed pain relief and anti-inflammatory.

The appellant reported restricted mobility and limited flexibility and the presence of a tremor in her neck. She said that the condition has also affected her mental health.

Comment/Conclusion: The Appeals Officer observed that the appellant's physical presentation at the oral hearing was consistent with the symptoms and restrictions she had described. He noted the medical evidence submitted and her G.P.'s opinion that there were health and safety issues regarding employment or training. He concluded that the appellant would experience considerable difficulty in coping with the day-to-day rigours of the open workplace and that the appeal should succeed.

Decision of the Appeals Officer: The appeal is allowed.

21. 2014/21 Disability Allowance - Oral Hearing

Specified Disability: Low Back Pain, Hearing Loss, Urinary Issues

Background: It was held that the appellant, an EU national aged 54 years, did not satisfy either the Habitual Residence Condition or the qualifying condition as to substantial restriction in undertaking suitable employment. Subsequently, he made a claim for basic income support under the Supplementary Welfare Allowance scheme and he was deemed not to be habitually resident. He appealed all three decisions and the Supplementary Welfare Allowance one was dealt with first. (These appeals are given priority as they refer to basic income support.) That appeal was successful. Accordingly, he was held to be habitually resident for purposes of his Disability Allowance claim also and the only question to be determined related to the employment test.

Oral hearing: The appellant's daughter accompanied him, and she acted as interpreter throughout the hearing. He advised that he had attended English classes about three years ago but said that he worked with others who spoke the same language as he did, and went shopping where that language was spoken, so that his English remained poor. He said that his wife is still living in [EU country] and that they communicate through skype and phone conversations. The Appeals Officer observed that the appellant walked with the aid of a crutch and wore hearing aids. The appellant said that he was living in private rented accommodation with his daughter and her partner. He advised that they shared the cost of the rent and that he had been in receipt of Supplementary Welfare Allowance (Rent Supplement) towards his portion of the rent since 2010. He said that he had been suffering with back pain for the past ten years but that the pain had become more intense in the past two years. He incurred the injury while stepping out of a car in [EU country] ten years ago. He described how he heard a click and suffered immediate pain. He received a nerve root injection at the time and this brought him pain relief for about two years. He experienced pain and discomfort after this while working as a mechanic but he said that the pain had been bearable and that he was able to work through it. He reported that he had been less active since losing his employment as a general operative in early 2010 and that his back condition had deteriorated. He attended physiotherapy sessions in 2013 and had also gone swimming but said that he was not doing any exercise programme at this stage.

The appellant referred to the Orthopaedic Surgeon he was attending and provided details of his last out-patient appointment. He had been advised that he needed another Magnetic Resonance Imaging (MRI) scan. When the results of the scan were examined, a nerve block injection was recommended. At the time of the oral hearing, he had been given an appointment for this procedure. He reported that he has difficulty in sitting in any one position for a long duration and that his sleep is disturbed. In addition to his chronic lower back and leg pain, he reported that he has recently been experiencing problems with urinary frequency and urinary incontinence and he has been referred to the Urology Department at his local hospital. He provided details of the medication he has been prescribed.

Comment/Conclusion: The Appeals Officer noted that the medical evidence indicated that the appellant had been affected by his condition since 2010 and that his G.P. expected this to last indefinitely. He noted also that he had been referred to the Urology and Orthopaedic Departments at his local hospital and to the HSE Hearing Service Clinic in relation to his different presenting conditions. He considered that his need for a nerve block injection confirmed that the appellant was suffering significant pain in his lower back, and he took account also of the range of prescription medication that he was taking. He concluded that it had been established that the appellant had continued to be substantially restricted in undertaking suitable employment for a period in excess of twelve months.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must have continued for, or be expected to continue for, at least one year.

I am satisfied, having carefully examined all of the evidence available, including that adduced at oral hearing, that the appellant has established that he is substantially restricted from undertaking employment and that this restriction has continued for in excess of twelve months. In the circumstances, this appeal succeeds.

22. 2014/22 Disability Allowance - Oral Hearing

Specified Disability: Inguinal Hernia, Palpitations and Shoulder Pain

Background: The appellant, aged 56 years, is married and has children. He came to live in Ireland in 2001 and had been working in a meat factory until 2012, when he got an Inguinal Hernia. In completing the ability/disability profile, his GP assessed the appellant as being affected to a moderate degree in the areas relevant to his medical condition. His claim for Disability Allowance was rejected and, at the time he made his appeal, he was in receipt of a basic income payment under Supplementary Welfare Allowance scheme.

Oral hearing: The appellant was accompanied by his daughter. He reported that in 2003, he had experienced chest pain while working. He was taken to hospital and had cardiac bypass surgery. He said he was back at work within two to three months as his work permit was due to expire and he would have lost his job had he not returned at that point.

The appellant stated that he had worked until 2012 when he got an Inguinal Hernia. He said that this had occurred following an angiogram where the needle had been misplaced. He has been attending a Surgical Consultant and is due to see him again to discuss possible treatment. Currently, a conservative approach is being adopted having regard to his heart problems and the fact that the pain is likely to return even if he has surgery.

The appellant said he gets pain if he lifts anything and that his chest is very sore in the morning. He reported chest pain following activity, and said the muscle in his heart gets tired. He said that he walks every day and then gets bed rest. He referred also to a frozen shoulder which he had sustained about a year ago and to the physiotherapy he had attended. In addition, he mentioned an allergic reaction, which was causing an itch and said that he had been advised that this requires investigation.

In conclusion, the appellant said that he can drive short distances and that he watches television. He advised that his job was still there if he was capable of returning.

Comment/Conclusion: The Appeals Officer considered that this was a marginal case. He noted that his G.P. had assessed the appellant as affected to a moderate degree across a range of abilities relevant to his diagnosis and that his job was still open to him. He observed that there was no real evidence of major heart problems which might prevent him doing any kind of suitable work. However, he noted that the kind of work the appellant had done had always been of a physical nature and that his record of work since coming to Ireland was good, as well as the fact that he had

returned to work within two to three months of bypass surgery. Having regard to the date of his claim, the Appeals Officer considered that the appellant would not be in a position to return to work within a one year period and he took the view that his current Hernia difficulties would substantially restrict him in undertaking any kind of suitable employment. Accordingly, he allowed the appeal.

Decision of the Appeals Officer: The appeal is allowed.

23. 2014/23 Disability Allowance - Oral Hearing

Specified Disability: Osteoarthritis (Knee)

Background: The appellant, aged 56 years, had been in receipt of Illness Benefit. When her entitlement under that scheme (two years) was due to cease, she made a claim for Disability Allowance. She has a diagnosis of Osteoarthritis in her knee and had surgery some months earlier. At the time of the oral hearing, she was providing care for her mother and was in receipt of Carer's Allowance.

Oral hearing: The appellant attended alone. The formal decision was read and the question at issue clarified. The appellant was advised as to the evidence which had been relied upon in making the decision to disallow her claim.

The appellant reported that her last employment had been three years ago and that she had given it up as it involved standing and she was unable to continue because of pain. She confirmed that she had undergone knee surgery in 2013, and that she had attended her local hospital subsequently as a day patient. She contended that her knee was worse now than it had been before the surgery. She reported that she was able to drive but that her knee gets sore; that she cannot walk too far; that she used to go dancing but can no longer do this, and that exercise was difficult as she feels her leg is a dead weight.

The appellant stated that she cannot sit with her leg straight and that she is unable to stand for very long. She also finds that bending and stooping is difficult. She said that she takes *Paracetamol* once a day and that she is waiting for physiotherapy. She referred to problems in sleeping as she has to keep her leg outside the bed clothes. The appellant advised that she can manage to do housework, shopping and cooking and that she continues to provide care for her mother.

Comment/Conclusion: The Appeals Officer noted that while the appellant had obvious problems with her right knee, she was a carer for her mother and appeared to have no difficulty in carrying out this role. Having carefully examined all the evidence, including the account provided by the appellant at the oral hearing, she concluded that it had not been established that the qualifying conditions for Disability Allowance were met in this case.

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must be expected

to continue for at least one year. Having carefully examined all the evidence in this case, and taking account of the medical evidence available, I have concluded that the appellant has not established that she meets the qualifying conditions. In the circumstances, I regret that the appeal cannot succeed.

24. 2014/24 Disability Allowance - Oral Hearing

Specified Disability: Cardiac Stent, Prolapsed Lumbar Disc

Background: The appellant, aged 58 years, had a cardiac stent fitted twelve months previously and also has a Prolapsed Lumbar Disc. In connection with his claim for Disability Allowance, his GP assessed him as follows:

- o Mental Health/Behaviour – affected to a mild degree
- o Balance/Co-ordination – affected to a mild degree
- o Vision – affected to a mild degree
- o Manual Dexterity – affected to a mild degree
- o Sitting/Rising – affected to a mild degree
- o Walking – affected to a mild degree
- o Hearing – affected to a moderate degree
- o Reaching – affected to a moderate degree
- o Lifting/Carrying – affected to a moderate degree
- o Standing – affected to a moderate degree
- o Climbing Stairs/Ladders – affected to a moderate degree
- o Bending/Kneeling/Squatting – affected to a severe degree

Oral hearing: The appellant attended alone and the Appeals Officer clarified the question at issue and advised as to the information on the file that was relied on in making the decision. The appellant reported that in addition to his certified diagnosis, he also suffers from asthma and has done since he was 15/16 years of age. He referred to further problems in relation to the vision in his right eye and to hearing loss in his right ear. He said he had injured his back about four years ago when he was lifting bags of cement and that since then he had been unable to work as a carpenter/joiner in the family business. As a consequence, the equipment had been sold and the business closed.

The appellant went on to say that, following a heart attack, he had had a stent inserted. He made reference to his age and said he knows that he is not able to do the work he is skilled and experienced in. He said he takes medication to dull the pain in his back, is on heart medicine and has inhalers for his asthma. He advised that he had tried acupuncture to relieve the pain in his back. He said the pain is intermittent but, due to his condition, he gets pins and needles in his foot and he experiences constant stiffness. He reported walking at a measured pace to get some relief and for the benefit of his heart. He said he has great difficulty bending and stooping and has to bend from the knees, and he requires support to get upright. He is able to drive but finds getting in and out of the car difficult.

The appellant confirmed that he continues to attend a Consultant Cardiologist every three to four months and has regular appointments with a Consultant Neurosurgeon in relation to his back. He said he has discussed his condition with his G.P. but has been informed that it will not improve.

Comment/Conclusion: The Appeals Officer concluded that the appellant was substantially restricted in engaging in suitable employment in line with the relevant legislation. In reaching this conclusion, she noted his demeanour at the oral hearing. She observed that he had difficulty sitting and rising, that he was also breathless and relied on his inhaler on a couple of occasions, and that his hearing loss had been noticeable at times. She noted also the nature and duration of his previous employment and she was satisfied that he was substantially restricted by way of his age, skills, experience and incapacity as required by the governing legislation.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must have continued for or be expected to continue for at least one year. Having carefully examined all the evidence in this case, and taking account of the medical evidence available and the evidence adduced at the oral hearing, I have concluded that the appellant has established that he meets the qualifying conditions. In the circumstances, the appeal is allowed.

G. 2015

1. 2015/09 Disability Allowance – Oral Hearing

Question at issue: Medical eligibility in terms of employment

Background: The appellant, in his mid-30 s, had a diagnosis of Lower Back Pain and Hypertension. His G.P. assessed the categories of mental health/behaviour, walking, standing, sitting/rising as being moderately affected by his condition, while indicating that he was affected to a severe degree in relation to lifting/carrying, climbing stairs/ladders, and bending/kneeling/squatting. He advised that the appellant was suffering from severe low back pain, was unable to undertake any physical work, and was awaiting an orthopaedic consultation.

Oral hearing: The appellant was unaccompanied at the hearing. An official interpreter attended at the request of the Appeals Officer. The appellant outlined the following regarding his circumstances:

o His last employment was on a farm, where he had been sorting potatoes. This was seasonal work. He had been asked to do additional work which involved feeding the animals but he was having problems with his back at the time and was unable to do so. He had worked as a Kitchen Porter prior to the farm work.

o He said that his back first gave him problems about 5 years previously. He said there was no particular trigger, although he had been the victim of an assault and this may have been a contributory factor as he had been badly beaten. He said he had been hospitalised for a week in a [specified] central European country due to his back problem and that he had been treated with injections and medication.

o He submitted medical evidence for the Accident and Emergency department of his local hospital, where he had been taken by ambulance some months earlier due to severe back pain. He referred to a CT scan taken, which had shown problems with the discs in his back, although did not have a copy of the results with him. He advised that he had returned to the hospital the following month to see a doctor about rehabilitation exercises (appointment card submitted) but said that he had been told that he was not a suitable candidate for the exercises at present.

o He advised that he had attended hospital again recently due to the severity of the pain in his back, and that he had been prescribed medication. He submitted a copy of the prescription.

o He confirmed that he was awaiting an appointment with an Orthopaedic Surgeon (letter submitted). He said that he had been advised that he might need surgery and he was concerned about the risks.

o He reported that he was not able to bend and put his socks on; he cannot stay in one position for long; he must get out of bed in a certain way; he experiences shooting pain down his left leg to his heel; he is taking a range of medication including sleeping tablets, and is upset by the situation.

o The appellant confirmed that he also suffers from Hypertension. This is monitored by his doctor and the medication is changed from time to time. He reported that he can feel sick at times and gets headaches if it is not properly controlled.

o The appellant advised that he wears a pain relief band around his waist, and said that he would work if he was fit to do so. In conclusion, he said that he was nervous about his current situation.

Consideration: The legislation governing entitlement to Disability Allowance provides that the allowance is payable to a person who is, by reason of a specified disability, substantially restricted in undertaking employment of a kind which, if the person was not suffering from the disability, would be suited to that person's age, experience and qualifications.

The Appeals Officer noted the medical evidence, including the G.P. report which indicated that the appellant's mobility was moderately to severely affected by his condition. She noted the appellant's account of his circumstances, his experience as a Kitchen Porter and also his work sorting potatoes on a farm. In addition, she had regard to the G.P. statement that he was not able to do any physical work. She concluded that it had been established that the appellant was substantially restricted in undertaking suitable employment, by reason of a specified disability that had continued for at least one year and, therefore, that he satisfied the criteria for receipt of Disability Allowance.

Outcome: Appeal allowed.

2. 2015/10 Disability Allowance – Oral Hearing

Question at issue: Medical eligibility in terms of employment

Background: The appellant has a diagnosis of Diabetes, Type 1, and made a claim for Disability Allowance when she reached 16 years of age. Her mother had been in receipt of Domiciliary Care Allowance (payable until a child is aged 16 years) in respect of her care. The claim was rejected, with the Deciding Officer stating that in arriving at the decision, he had taken account of the opinion of the Department's Medical Assessor who considered that the appellant was not substantially restricted in seeking suitable employment, by reason of a specified disability which had lasted or was expected to last for a period of at least one year. The appellant made an appeal, emphasising the long-term nature of her specified disability.

Oral hearing: The appellant was accompanied by her mother. In line with the medical evidence on file, she confirmed that she had been diagnosed in 2004. She advised that her insulin prescription had been administered by injection initially and that she had required four injections per day. She said that this had imposed restrictions on her lifestyle. However, she advised that she had since had a pump fitted for the administration of insulin and that she was in close contact with the diabetic nurse in her local hospital, so that any checks or queries could be dealt with promptly.

The appellant reported that she continues to check her blood sugars four times daily, that she is always 'carb counting' in relation to meals, and that she has given up swimming as she is not comfortable in terms of the insulin pump getting wet. She said she was a bit worried about how she will manage in college, without her mother's care and support, and having to transfer to another hospital when she reaches 17 years. She confirmed that she is in Transition Year (TY) in school and provided an account of her participation in a busy TY programme. She reported that she takes part in a number of sports and that she goes horse-riding often.

The appellant's mother outlined the nature of the care and support she continues to provide, including being on call at all times, and she outlined her concerns for her daughter in the future.

Consideration: The Appeals Officer noted that the appellant had presented as positive and able to cope well with her specified disability, that she had an active lifestyle and was getting on well at school, with plans for third level education. She noted her age, experience and qualifications and, having examined all the evidence, concluded that the appellant could not be deemed eligible for receipt of Disability Allowance.

Outcome: Appeal disallowed.

H. 2016

1. 2016/15 Disability Allowance - Oral Hearing

Question at issue: Eligibility (means)

Background: The appellant's claim was rejected on grounds that her means exceeded the statutory qualifying limit. Her weekly means were assessed at €274.00, derived from capital. In addition, she was assessed with the market value of a property which had been disposed of in 2011, when she and her husband transferred it to their son, as well as a sum of money which they had given him as a wedding present. In connection with a claim for Carer's Allowance in 2013, account had been taken of the capital value of the house and the money given to her son. At that time, it was held that she had deprived herself of capital in order to qualify for a higher rate of Carer's Allowance. When she made a claim for Disability Allowance in 2016, the same assessment was applied in determining her means.

Oral hearing: The appellant was accompanied by her husband and the Social Welfare Inspector attended at the request of the Appeals Officer. Her husband confirmed that he was in receipt of an Invalidity Pension and advised that he had successfully appealed a decision not to grant him an increase for a qualified adult in 2015. The Inspector was not aware of this and advised that he had only been asked to report on the appellant's means for purposes of her Disability Allowance claim. He said that he had relied on a previous report which had been completed in 2013 in connection with a claim for Carer's Allowance, and he referred to the means assessed. He advised that he could not comment further as he had been unable to locate the relevant file.

In relation to the means assessed, the appellant and her husband insisted that the money withdrawn from their account in 2009 had been for the benefit of their son and had been a wedding present. They referred to the property bought in 2011 and said that it should have been put into their son's name at the time but that they had not made clear their instructions to the solicitor and that this had been an expensive mistake.

The Appeals Officer noted that no evidence was presented to support the contention that the capital and the property were disposed of for social welfare purposes. He advised the appellant that he would consider the question after he had sight of the previous appeal dealing with her husband's Invalidity Pension claim.

Consideration: The Appeals Officer examined the continued assessment of capital and property which the appellant and her husband no longer owned but were held to have disposed of in connection with a Carer's Allowance claim made in 2013. He noted that the provisions of the Social Welfare Consolidation Act 2005, Schedule 3, Part 2(4) had been cited as a basis for the decision although the relevant provisions were outlined in Schedule 3, Part 3. He noted that the Social Welfare Inspector had advised that he had been asked to report on means for Disability Allowance purposes only and that he had acknowledged having relied on a previous report completed in connection with a Carer's Allowance claim and that the considerations of the Deciding Officer had not been available to him. He noted that the capital at issue had been disposed of in 2009, while the property was transferred in 2011, and he considered that the facts of the case were such as to have required a full re-

investigation. He considered that an earlier decision, made in relation to another claim, could not be the sole evidence relied upon. He noted also that, at this remove, there was no evidence presented to support the contention that the capital and the property had been disposed of for social welfare purposes rather than for reasons of genuine family settlement. In addition, he referred to the investigation of a claim for payment of a qualified adult increase with her husband's Invalidation Pension claim and noted that another Inspector had not accepted that the capital was disposed of and the property transferred for social welfare purposes. He concurred with that assessment and concluded that the appellant had no assessable means.

Outcome: Appeal allowed.

2. 2016/16 Disability Allowance - Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her mid-40s, has a diagnosis of intellectual disability, hypothyroidism and anaemia. She made claim for Disability Allowance and this was refused on medical grounds. In completing the ability/disability profile, her G.P. had assessed her abilities in the areas of 'Mental Health/Behaviour' and 'Learning/Intelligence' as affected to a mild to moderate degree by her condition. In an appeal against that decision, it was submitted that she had been in receipt of Disability Allowance previously and that her condition remained unchanged.

Oral hearing: The appellant attended with her mother who spoke on her behalf. She referred to the appellant's learning difficulties and said that she was not capable of independent living. She advised that she had attended a special school and then a training centre for people with intellectual disabilities. Subsequently, the centre had facilitated her in gaining assisted employment and she works in a local supermarket. She advised that this had been classified as work of a rehabilitative nature for social welfare purposes.

Her mother reported that the appellant had sustained injuries following a road traffic accident in 2007 and that she had taken legal proceedings on her behalf. She advised that she had received a compensation award of some €120,000 and had been made a Ward of Court, with a committee appointed to oversee the distribution of assets. She went on to say that she had lost her Disability Allowance payment on foot of the means assessed based on the compensation.

Her mother advised that she has had to seek a payment every three months equal to the Disability Allowance payment the appellant would have received. She referred to other payments made, in relation to holidays for example, and said that the amount remaining had reduced to just over €60,000. She went on to say that the appellant needs her parents' support, that she is unable to cook or clean and has little concept of money as is shown by her being made a Ward of Court. She said that the G.P. who filled in the claim form has very little contact with the appellant who, apart from her intellectual disability, is in good health. She went on to say that she had understood originally that the claim had been refused on means grounds and could not believe

that it had actually been disallowed on medical grounds, as had the claim made in 2015.

Consideration: The Appeals Officer noted that the appellant had been in receipt of Disability Allowance all her adult life until she received a compensation award which resulted in her means being in excess of the qualifying limit. However, he observed that when she reapplied in 2013, only €90,000 of her compensation remained. This resulted in a means assessment of €110.65 weekly but the claim had been refused on medical grounds. A subsequent claim in 2015 had also been refused on medical grounds. He concluded that the evidence was sufficient to conclude that the medical qualifying criteria were met. Having regard to the circumstances of case, which included the appellant being a Ward of Court and her inability to act on her own behalf, he determined that she had established an entitlement to Disability Allowance with effect from the date of the earlier claim in 2013.

Outcome: Appeal allowed.

3. 2016/17 Disability Allowance - Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in his mid-30s, had been in receipt of Disability Allowance from 2002. A review of his claim was carried out in 2013, when the Department of Social Protection received information from the Revenue Commissioners under a Protocol for Consultation, Information and Data Exchange. The data provided referred to Deposit Interest Retention Tax, and outlined interest earned on accounts held by the appellant. An investigation indicated that he had been awarded compensation for injuries sustained in a road traffic accident in 2003. The amount at issue was of the order of €1.75 million and it was held that he had failed to notify the Department. His claim was disallowed with effect from a date in 2003 and an overpayment in the amount of €108,000 was assessed under Section 302(a) of the Social Welfare Consolidation Act 2005. In an appeal against the decision made on the appellant's behalf, it was submitted the Department had been fully informed about the nature of his injuries and the fact that a claim was pending and its duty of care to him was questioned.

Oral hearing: The appellant was accompanied by a relative. The Deciding Officer, who attended at the request of the Appeals Officer, outlined the decision. She made reference to the significance of applying the provisions of Section 302(a), that is, that it had been held that there had been wilful concealment of a material fact. She presented details of the appellant's claim and an account of the review process. She concluded that he had failed to advise the Department of a major change to his financial circumstances in connection with an award made by the Court in 2003.

It was submitted that the appellant was just 18 years of age when interviewed by the Social Welfare Inspector in connection with his claim, that he was still receiving rehabilitative care after a catastrophic accident and he had little recollection of that time or what was asked of him. A request for access to his personal data had been made under the Freedom of Information (FOI) Acts. It was pointed out that the

evidence indicated that the Inspector had noted that a personal injuries compensation claim was pending and was expected to be finalised within two years. In addition, reference was made to a request made by the same Inspector for the claim to be reviewed again in the following year, while an officer within the Disability Allowance area had indicated that a review should be undertaken by a date in 2002. It was noted that no review had been undertaken and it was submitted that this constituted negligence and a failure to implement a duty of care to the appellant. It was contended that there was no intent to deceive and that an overpayment should not be assessed. The Deciding Officer acknowledged that a review should have been conducted but advised it had been overlooked due to staff shortages and pressure of work. She suggested that there may not have been fraudulent intent but she reiterated that there was an onus on the appellant to have notified the Department. She advised that the appellant had been informed both verbally and in writing of this obligation.

Consideration: The Appeals Officer observed that he had some sympathy with the points submitted on the appellant's behalf and he noted the extent of the injuries he had sustained. He noted also the Deciding Officer's evidence and her statement as to why the case had not been reviewed early in 2000 and he considered that the oral hearing had served to indicate that there had been no real intent by the appellant to defraud the Department. He considered that there were faults on both sides but that, ultimately, the primary responsibility rested with the appellant who should have notified the Department of the very significant compensation award made. He noted that the evidence confirmed that the appellant had been advised verbally of his requirement to inform the Department of any change to his circumstances at the application interview stage, and that he had been advised again in writing at the date of award and that reminders were also available on his Disability Allowance payment books. He noted that there was no medical evidence to the effect that the appellant was incapable of managing his own affairs.

He concluded that the decision to disallow the application with effect from a date in 2003 was correct, with the overpayment assessed being fully recoverable. Having regard to the circumstances of the case, however, he applied the provisions of Section 302(b) of the Social Welfare Consolidation Act 2005, which refers to a revised decision given in the light of new evidence or facts, accepting that there was no wilful intent to defraud. He noted that the amount assessed as overpaid was substantial and advised the appellant that it was open to him to contact the Department of Social Protection and to comment on any proposals for recovery or to challenge any recovery plan outlined.

Outcome: Appeal disallowed.

I. 2017

1. 2017/16 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant's claim for Disability Allowance was refused on the grounds that he was not substantially restricted from undertaking suitable

employment, as set out in the governing legislation. The appellant had been in receipt of Supplementary Welfare Allowance for over one year prior to his application, on illness grounds. The initial medical report from the GP gave his medical conditions as back pain, low platelets, gastritis, and gout. He stated that the appellant had an MRI, was attending the outpatient department at a local hospital, and was being treated with a combination of medication and physiotherapy. In the ability/disability profile on the medical report, the GP indicated that the appellant was moderately affected in lifting/carrying, bending/kneeling/squatting, and climbing stairs/ladders, and was normal in all other abilities.

Consideration: In a letter supporting the appeal, the appellant's GP elaborated further on the issue of back pain. He also stated that the appellant had a serious bowel problem which results in "*frequent bowel movements, up to 15 times per day*" which was being investigated by a hospital. On consideration of both the original and the new medical evidence, the Appeals Officer was of the opinion that the combined effect of the joint pain and of the gastritis, which manifested itself in the form of frequent and uncontrollable bowel movements, on a daily basis, were sufficient to meet the legislative requirement that the appellant was substantially restricted from taking up work. Given that both of these medical conditions are currently under investigation with specialists, he was satisfied that the appellant would reasonably be expected to remain substantially restricted for a further period of 1 year. The decision was made in accordance with Section 210 of the Social Welfare Consolidation Act 2005 and Article 137 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) which sets out the medical eligibility criteria for Disability Allowance.

Outcome: Appeal allowed.

2. 2017/17 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in her mid-50s, was intellectually impaired since birth. She had previously been in receipt of Disability Allowance. The current application was made in August 2016 and was refused by the Department on the grounds that the appellant was not considered to be substantially restricted in undertaking suitable work, having regard to age, qualifications and experience. A letter from the appellant's GP stated that the appellant was not able to manage her own affairs and had always lived at home. He also indicated that in her advancing years it was likely that she would become more dependent and require further care. A letter from the appellant's father stated that the appellant attended special needs schools and then spent time with Rehab and RehabCare. At the time of application she was involved in rehabilitative work for 6 hours a week. A letter from RehabCare stated that she required and would continue to require support indefinitely for accessing and participating in social, cultural, recreational, health and wellbeing and occupational activity.

Consideration: Having assessed the evidence the Appeals Officer concluded that the appellant was substantially restricted in undertaking work and this will continue for

the foreseeable future, and she therefore met the medical eligibility criteria for Disability Allowance.

Outcome: Appeal allowed.

3. 2017/18 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in his mid-50s, had a diagnosis of Crohn's disease, colitis and bowel obstruction and applied for Disability Allowance in March 2017. He was disallowed on medical grounds. The ability/disability profile completed by the appellant's GP stated that the appellant was moderately to severely affected by his condition in the area of continence. He was moderately affected in the area of reaching, manual/dexterity, lifting/carrying, bending/ kneeling/squatting, sitting/rising, standing, climbing stairs/ladders and walking. The appellant's condition started in 2014 and the GP indicated that it was unclear how long the condition would last. The appellant had had several hospital admissions, and underwent surgery in the summer of 2017. He had been prescribed multiple medications for his condition.

Consideration: The Appeals Officer examined the question as to whether the appellant's medical condition could be held to be a substantial restriction in carrying out suitable employment and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year, in accordance with the legislation. She concluded that the appellant was suffering from a substantial restriction in carrying out suitable employment and that, as this condition had lasted for approximately three years at the time of the application and that as his symptoms had not settled and he had had recent surgery, it could be reasonably expected to continue for the foreseeable future.

Outcome: Appeal allowed.

4. 2017/19 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in his 30s, applied for Disability Allowance and was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specific disability that may reasonably be expected to continue for a period of at least a year. The appellant had a diagnosis of generalised anxiety disorder and alcohol dependence. He was prescribed both Lustral and Ativan and was attending a Consultant Psychiatrist. The ability/disability profile was completed by his GP in October 2016 and indicated that he was severely affected in mental health/behaviour, but normal in the other 15 areas.

Consideration: An updated GP report from January 2017 stated that some element of training and activity may be beneficial for the appellant but that he also believes his current condition renders him substantially restricted in undertaking work which

would otherwise be suitable taking into account his age, experience and qualifications. Having carefully examined all the evidence in this case, and paying particular attention to the GP's updated report, the Appeals Officer concluded that appellant was severely affected by his mental health issues and that this constituted a substantial restriction in undertaking suitable work.

Outcome: Appeal allowed.

5. 2017/20 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant's claim for Disability Allowance was rejected on the grounds that he was not substantially restricted from working, as set out in the governing legislation. He had been in receipt of a Jobseeker's Allowance immediately prior to making his application. His GP stated his main medical condition was lower back pain which started twenty years previously. He also referred to alcohol dependency but did not elaborate further on this.

Oral hearing: At the hearing the appellant stated that he left school at Junior Certificate level and did an apprenticeship as a barman. Most of his employment had been as a barman and it was the only work he was qualified to do. He advised the Appeals Officer that his back pain was intermittent and only flared up 3 times per year. On further discussion of his problems with alcohol, it emerged that the appellant had a significant alcohol dependency issue. The appellant revealed that he had a long-established, heavy dependency on alcohol, and that he had to consume a considerable amount of alcohol to muster the courage to appear at the oral hearing. He further revealed that he had been in a residential alcohol treatment programme on four separate occasions in recent years.

Consideration: The main medical grounds included in the application form were related to back pain and back problems. From the appellant's account of how this condition affected his daily life, the Appeals Officer was not satisfied that he was substantially restricted due to this specific condition. However, it was clear that the appellant had a significant alcohol dependency issue, as certified by his GP and from the information that he provided at the appeal hearing. In particular, despite his statement that he attended a residential alcohol treatment programme on four occasions, he continued to have a strong dependency on alcohol. Given the fact that he trained as a barman, and that this would be his main profession should he be seeking to return to work, the Appeals Officer was of the opinion that his alcohol dependence would substantially restrict him from working, given his qualifications and experience, and that this condition was likely to continue for more than one year.

Outcome: Appeal allowed.

6. 2017/21 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her early 50s, had a diagnosis of breast cancer and chronic anxiety. Her claim for Disability Allowance was refused on medical grounds. The GP indicated that she was moderately affected in mental health/behaviour, continence and lifting/carrying, and mildly affected in standing. The GP outlined the appellant's cancer treatment which consisted of surgery, chemotherapy and radiation. Following completion of the treatment, she remained on Tamoxifen daily. She suffered with right hand pain and swelling due to seroma which required aspiration. She also suffered with chronic anxiety and depression and was on antidepressant medication since the diagnosis.

Oral hearing: The appellant described the treatment she had undergone for breast cancer and noted that she would remain on Tamoxifen for 5 to 10 years. She stated that she gets seroma on the site of the surgery and had this aspirated on a number of occasions in 2016. She had not had it drained since, and had some swelling at the time of the appeal hearing. She reported that she was now cancer free at the time and was having annual mammograms. The appellant described suffering with swelling of her right hand since her treatment. She was right handed and found lifting difficult due to this. She reported taking paracetamol for pain when needed and having to be careful with her hands and wearing gloves when doing tasks. Her toes were also sore due to her treatment and she had to wear open shoes/sandals. She said that treatment brought on early menopause and she suffered with severe sweating which woke her at night. She was tired every morning and had no energy. She suffered with incontinence and wore pads. This problem may have been as a result of pregnancies but she was reluctant to follow up with investigations as she had had enough hospital treatment for her cancer. She attended a cancer care group for massages and reflexology. The appellant reported that she had suffered with anxiety since her diagnosis. She was on anti-depressant medication since then. She did not attend any formal counselling but talked to people at the cancer care group. She found physical tasks at home difficult and required a lot of assistance from her family with cooking and housework.

Consideration: Having had the benefit of the oral hearing the Appeals Officer was satisfied that the GP's opinion was reflective of the appellant's own assessment of her health situation. While noting the appellant's cancer treatment had been successful she still suffered the residual effects of the treatment and suffered with chronic anxiety since her diagnosis. The Appeals Officer was satisfied that the appellant was substantially restricted in undertaking suitable work and that this restriction was likely to continue for a further 12 months.

Outcome: Appeal allowed.

7. 2017/22 Disability Allowance – Oral Hearing (not heard)

Question at issue: Eligibility (medical)

Background: The appellant, in her late-30s, had a third level education and a history of being in employment. She had a medical diagnosis of anxiety, depression and headaches. She made a claim for Disability Allowance and this was refused by the Department on medical grounds. Her GP indicated that she was mildly to moderately

affected by her conditions in the areas of continence and mental health/behaviour. The medical report also indicated that her medical conditions were expected to last 3-6 months. The appellant, in her letter of appeal, submitted that she suffered from bad depression and migraines despite being advised by her medical team that her illness would not necessarily impact on her ability to work again. The appellant disputed this assertion and stated that she was bed bound most days through illness and consequently would be ringing in sick if in employment.

Oral hearing: The appellant did not attend the scheduled oral hearing and did not seek a rescheduling of the hearing. As a consequence, the Appeals Officer made a decision based only on the documentary evidence before him. He concluded that the medical evidence was insufficient to establish that the medical qualifying criteria pertaining to the Disability Allowance scheme had been met by the appellant in this instance. He decided that the appellant had not demonstrated that she had a disability that had continued or may have reasonably been expected to continue for a period of at least one year nor had she shown that by reason of that disability that she was substantially restricted in undertaking suitable employment having regard to her age, qualifications and experience.

Outcome: Appeal disallowed.

8. 2017/23 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in his late-50s, was educated to Leaving Certificate standard and has not been in insurable employment in over a decade. He had a diagnosis of depression, anxiety and diabetes, diagnosed in 2012. The GP indicated that his condition severely affected him in the area of mental health/behaviour. He made a claim for Disability Allowance and this was refused on medical grounds.

Oral hearing: The appellant attended the hearing unaccompanied and stated that he had not worked regularly for some 15-20 years and was living alone, avoiding any form of social interaction or contact with people. Such was the severity of his mental health issues that he withdrew from society to a point where he stopped collecting his social welfare payments and was financially destitute for a number of years. He stated that he had gone for periods of years without speaking to anyone; his only contact with the outside world was irregular contact with two family members. He lived frugally and cited times where he had less than €20 per week to get by on. This situation persisted until his family intervened and sought professional help in an attempt to source a regular income for the appellant and to ensure that he was linked in and engaging with medical and mental health services. Prior to applying for Disability Allowance the appellant had not attended a GP since childhood. He had worried and agonised about attending the oral hearing for weeks in the lead up to same and was clearly discomfited whilst in attendance. The appellant submitted additional information in support of his appeal which opined that the appellant was not medically capable of engaging in paid employment during his ongoing rehabilitation.

Consideration: The Appeals Officer concluded that the medical evidence and the credible evidence adduced at oral hearing was sufficient to establish that the appellant had a disability that had continued for a period of at least one year, and was likely to continue for a further year, and that by reason of that disability that he was substantially restricted in undertaking suitable employment having regard to his age, qualifications and experience.

Outcome: Appeal allowed.

9. 2017/24 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in his mid-40s, had a diagnosis of myoclonic jerks and applied for Disability Allowance. The GP indicated that he was moderately affected in the area of consciousness/seizures and all other areas were assessed as normal. Additional medical evidence was submitted in the form of a letter from a consultant in internal medicine/ geriatrics, stating that a CT brain scan was normal, his symptoms had settled down with prescribed medication, and it appeared his myoclonic jerking had been associated with binge drinking. The claim for Disability Allowance was refused by the Department on medical grounds. In an appeal against that decision, the appellant submitted that he was still not feeling well, continued to have seizures now and then, and that he had stomach problems and low back problems.

Oral hearing: The appellant reported that he had been employed as a security officer but was one of a number of staff who had been let go. He said he had also been involved formerly in running a sports club. The appellant advised that the myoclonic jerks had started about four and a half years ago and that he had been referred for neurological assessment (in line with medical evidence provided). He stated that a lump had been removed from his back and reported that it is niggling but not sore, and that he takes paracetamol if pain relief is required. The appellant reported that the consultant neurologist had taken him off medication and advised that he make a further appointment if the jerking started again. He indicated that he had not experienced myoclonic jerks in the meantime. The Appeals Officer reviewed the medical evidence with the appellant, making reference to the point concerning binge drinking and the appellant stated that he now takes a social drink only.

The appellant said that the experience of jerking has left him feeling afraid to work. He reported that he sleeps poorly but that his GP will not prescribe medication as he might become addicted. He made reference to the stomach problems referred to in his appeal letter saying that he had recently had a scope and biopsy done and was prescribed medication. In conclusion, he said he was feeling down about having had to give up sports following removal of the lump on his back.

Consideration: The Appeals Officer, in reviewing the evidence, noted the appellant's diagnosis and the GP's assessment of the degree to which it affected his abilities. She also noted the medical evidence, reviewed at oral hearing and confirmed by the appellant, that he is no longer experiencing myoclonic jerking. The Appeals Officer

concluded that the appellant could not be deemed to be substantially restricted in undertaking suitable employment, taking into account his age, experience and qualifications.

Outcome: Appeal disallowed.

10. 2017/25 Disability Allowance – Summary Decision

Question at issue: Eligibility (habitual residence condition)

Background: The claim for Disability Allowance was disallowed by the Department on two grounds: that that appellant did not meet the medical qualifying criteria for the scheme and she was not habitually resident in the State. As part of the appeal process the appellant’s case was reviewed by the Department and then deemed to meet the medical criteria. Therefore, the issue remaining to be determined by the Appeals Officer was whether the appellant was habitually resident in the State.

The relevant legislation in this case is Section 246 of the Social Welfare Consolidation Act 2005 and Article 5 of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548/2015.)

Consideration: The Appeals Officer referred to the relevant legislation: Section 246 of the Social Welfare Consolidation Act 2005 and Article 5 of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015.) In order to be habitually resident, a person must first establish that they have the right to reside. Article 5 of the Regulations provides for “*permission for permitted family members to enter the State*”. This article applies to a person “*who is the partner with whom a Union citizen has a durable relationship, duly attested*”. The documentary evidence indicated that the appellant was living with her partner. The Appeals Officer noted it was open to the appellant to apply directly to the Irish Naturalisation and Immigration Service for a decision that she be treated as a “permitted family member” in order to establish her right to reside in the State but until the appellant established her right to reside in the State, she could not be assessed for habitual residence for social welfare purposes.

Outcome: Appeal disallowed.

11. 2017/26 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical and means)

Background: The appellant, in his early 40s, made a claim for Disability Allowance which was disallowed on two grounds: he did not meet the medical qualifying criteria and his means were deemed to be in excess of the statutory limit of €380.70, for his circumstances. The Appeals Officer examined each of these questions separately.

Consideration: The appellant had a diagnosis of cauda equina syndrome and lumbar back pain. The Appeals Officer having assessed the medical evidence including details of relevant investigations, attendance at specialists and physiotherapy, prescribed medication, and the GP's assessment as to the severity of the degree to which his condition affected his ability across a range of areas, concluded that the appellant was substantially restricted in undertaking suitable employment, and met the medical condition for Disability Allowance. Accordingly, the appeal was allowed on that point.

In relation to means, the Appeals Officer noted that means had been assessed with reference to the appellant's partner's earnings from employment. Having examined the evidence, including details of earnings shown on the pay slips submitted, the Appeals Officer concluded that the appellant's means had been assessed correctly and in line with the provisions of the governing legislation. In the circumstances, although the medical eligibility for the scheme had been met, the means were in excess of the statutory limit, and the appellant was not eligible for Disability Allowance.

Outcome: Appeal disallowed.

12. 2017/27 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her early 20s, had completed secondary education and had no employment history. She had a heart condition SVT (supraventricular tachycardia) which caused chest pain and palpitations. A medical report completed by her GP in January 2016 indicated the expected duration of the condition to be 12-24 months. On the ability/disability profile, the GP indicated that she was moderately affected in 4 areas, mildly affected in 2 areas, and the remaining 10 were normal. A report from a consultant cardiologist in February 2017 referred to recurring episodes of palpitations every 1-3 months, with episodes usually occurring while at rest. It was felt medication was not reducing frequency of symptoms.

Oral hearing: The appellant attended the hearing with a close relative who explained that the appellant suffered from a heart condition which caused periodic episodes of chest pain and rapid heartbeat at a rate of 150-160 beats per minute which was stated to be twice the normal rate. The history of the appellant's heart condition was recalled since onset. She was on a waiting list for electrophysiology study and ablation, as recommended by the cardiologist.

Consideration: The Appeals Officer considered the medical evidence which confirmed that the appellant suffered from a heart condition which caused periodic episodes of pain and rapid heartbeat. The occurrence of such episodes was stated to be 3-4 in a six month period resulting in debility for 2 days or so. The appellant indicated reluctance to over-exert or come under any type of stress until a corrective procedure had been tried. Having regard to the impact on the appellant as a consequence of her diagnosis and taking into account the frequency of acute episodes the Appeals Officer found that the illness should not result in a substantial restriction from all suitable work. While acknowledging the appellant's reluctance to engage in onerous and

stressful activity, the Appeals Officer concluded that a wide variety of sedentary type occupations should be possible.

Outcome: Appeal disallowed.

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1. 2018/12 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, a 17 year old student, had a diagnosis of insulin dependent diabetes, asthma and migraine. The ability/disability profile completed by the GP stated that the appellant was mild to moderately affected by her condition in the area of lifting/carrying. She was mildly affected in the areas of consciousness/seizures, vision, reaching, bending/ kneeling/squatting, standing, climbing stairs/ladders and walking and considered normal in all other areas. In her letter of appeal, the appellant stated that she required extra care and attention. The appellant stated that she had to count her carbohydrates to match her insulin intake and monitor and record her blood glucose readings.

Consideration: The Appeals Officer examined the question as to whether the appellant was substantially restricted in undertaking work which would otherwise be suitable with reference to her age, experience and qualifications and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year, in accordance with the legislation. The Appeals Officer assessed the evidence including medical history and details of prescribed medication and concluded that the appellant had not shown that the qualifying criteria for receipt of Disability Allowance had been met. While noting that the appellant had to monitor her blood sugars and adjust her insulin intake, the Appeals Officer did not consider that the appellant was substantially restricted in undertaking work having regard to her age, qualification and experience.

Outcome: Appeal disallowed.

1. 2018/13 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, a teenager at the date of appeal, was not considered by the Department as being substantially restricted in undertaking suitable employment by reason of a specified disability which had continued or was expected to continue for at least one year.

Consideration: The Appeals Officer examined the question as to whether the appellant was substantially restricted in undertaking work which would otherwise be suitable with reference to his age, experience and qualifications and, if so, whether

this had continued or might reasonably be expected to continue for a period of at least one year, in accordance with the legislation.

The Appeals Officer formed the view that the combined professional medical evidence in this case certified that the appellant had a diagnosis of autism. The Appeals Officer noted the appellant's appeal correspondence written by a family advocate, in which it was stated that the appellant was extremely uncomfortable with anyone other than his own family and also that he engaged in specified self-harm habits to cope with strangers or while in public places. In addition, the demanding daily routine of the appellant's parents and family were outlined in a diary provided with the letter of appeal. This diary indicated that in addition to being diagnosed with autism which is accepted as a life-long condition, the appellant also required significant additional care and support at all times to function and to undertake normal activities of daily living.

Having examined and considered all of the available evidence, the Appeals Officer concluded that it had been established that the appellant had a disability that had continued for a period of at least one year, and was likely to continue for a further year and that by reason of that disability the appellant was substantially restricted in undertaking work having regard to his age, qualification and experience.

Outcome: Appeal allowed.

2. 2018/14 Disability Allowance - Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in his mid-50s, had a diagnosis of upper abdominal pain with a history of diverticular disease since 2010. The appellant had a colonic polyp removed in 2016. His application for Disability Allowance was disallowed on medical grounds. The appellant's GP indicated he expected the appellant's condition to last indefinitely. He had been prescribed Nexium twice daily. The GP indicated that the appellant's condition did not affect his ability to carry out any of his activities of daily living and all activities were marked as normal. The appellant stated on his application form that on account of his condition he was unable to go for regular walks and he found it difficult to go shopping as he had to be in close proximity to bathroom facilities. He indicated that this answer was the same for all parts of the form. On appeal he stated that he was still attending his GP with stomach problems for which he had a number of tests done.

Consideration: The Appeals Officer concluded that the medical evidence confirmed the appellant's condition of abdominal pain and that he had been prescribed medication in relation to this. The Appeals Officer also noted that the appellant's medical condition was not considered by his GP to affect his ability in relation to any activities of daily living.

While noting that the appellant's condition affected him negatively to some degree, the Appeals Officer was not satisfied that it had been established that the appellant had a disability that had continued or may have reasonably been expected to continue

for a period of at least one year nor had it been shown that the appellant was substantially restricted in undertaking work which may be considered suitable having regard to the appellant's age, qualifications and experience.

Outcome: Appeal disallowed.

3. 2018/15 Disability Allowance - Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in her late 20s, had a diagnosis of stress and anxiety. Her application for Disability Allowance was refused on the grounds that she was not substantially restricted in seeking suitable employment, by reason of a specified disability, which was expected to last for a period of at least one year. The ability/disability profile completed by the appellant's GP stated that the appellant was moderately affected in the area of mental health/behaviour and indicated that she was suitable for work/training for rehabilitative purposes. She was educated to University degree level and held a number of different employments in the past. On appeal the appellant outlined that she had been suffering from anxiety and depression on and off since 2007 and this was also confirmed by her GP. During this time it had caused her to take a year off University and periods off work. Her GP confirmed she was taking anti-depressant medication and was attending counselling.

Consideration: The Appeals Officer noted that, at the time of application, the appellant's GP specified on their report that her medical condition moderately affected her ability in relation to her mental health/behaviour with all other areas being marked as normal indicating that she functioned normally in every other way. The report indicated that she had no hospital admissions and was not attending a consultant psychiatrist and that she was suitable for work/training for rehabilitative purposes. In the appellant's appeal and supporting letter from the GP, it was noted that she had commenced anti-depressant medication and started attending counselling. Whilst there was evidence to indicate that the appellant was experiencing some challenges in her life, the Appeals Officer found that the medical evidence indicated that the condition was not quite at the level of posing a substantial restriction to accessing the type of work that might be available to her. With the ongoing counselling and treatment, there was also reason to believe the condition would improve.

Outcome: Appeal disallowed.

4. 2018/16 Disability Allowance - Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in her mid-50s, had a diagnosis of osteoarthritis of her hips and lumbar spine disc degeneration. She was refused Disability Allowance on the grounds that she did not satisfy the medical conditions. The GP also indicated that the appellant had a history of diverticulitis, osteopenia, Achilles tendon repair and left

shoulder surgery for impingement. She had been referred to an orthopaedic surgeon and for physiotherapy and was taking a number of prescribed medications. On clinical examination the GP found that the appellant had severe pain in her left hip and lower back with reduced range of movement. In the ability/disability profile of the medical report the GP indicated the degree to which the appellant's condition had affected her ability. Lifting/carrying, bending/kneeling/squatting, climbing stairs/ladders and walking were deemed to be severely affected, sitting/rising and standing were deemed to be moderately affected, reaching was deemed to be mildly affected and all other categories deemed to be normal. The GP indicated that the appellant was not suitable for work/training for rehabilitative purposes. The appellant was educated to primary school level and last worked as a carer.

The appellant stated in her appeal that she had been suffering with her right hip for over two and a half years and had two bulging discs in her back which caused her chronic pain. She stated that she had an operation on her left shoulder a few years ago for impingement and had restricted movement as a result. She stated that she had been referred to physiotherapy for her back and she was unable to work. She enclosed a doctor's letter which confirmed the foregoing and concluded that these conditions were chronic and would continue for a prolonged period and she was not fit to work.

Consideration: The Appeals Officer concluded that the evidence, in particular the GP report and letter, was sufficient to establish that the appellant had a disability that had continued for a period of at least one year, and was likely to continue for a further year, and that by reason of that disability that the appellant was substantially restricted in undertaking suitable employment having regard to her age, qualifications and experience.

Outcome: Appeal allowed.

5. 2018/17 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical and means)

Background: The appellant, in his 60s, had a diagnosis of thyrotoxicosis and exophthalmos which were expected to continue indefinitely, applied for Disability Allowance in December 2016. The claim was disallowed on two grounds: (1) failure to show that means did not exceed the statutory limit and (2) that he did not meet the medical qualifying criteria. As the means aspect of the appeal had been resolved by the time the Appeals Officer was dealing with the appeal she confined her consideration to the medical criteria.

Consideration: The Appeals Officer noted the medical report completed in November 2016 as part of the application for Disability Allowance, in which the GP reported that the appellant was attending an endocrinologist and an ophthalmologist and was being treated with medication. In his appeal notification the appellant stated that he would provide further medical evidence in relation to his conditions. He stated that he was awaiting surgery on his left eye and there was a risk he may lose sight in

it. The appellant also stated that he was being reviewed regularly in relation to his eyes, heart and lymph and was scheduled for surgery in July 2017.

The Appeals Officer had the benefit of further medical evidence which indicated that the appellant's condition had deteriorated and he was waiting a total thyroidectomy as medical treatment had not been successful. In addition the appellant was having ongoing treatment for his eyes in the form of injections and he was under review by a cardiologist for atrial fibrillation. The Appeals Officer concluded that, having regard to the totality of the medical evidence, in particular the GP's report, the appellant's evidence on appeal and the additional medical evidence submitted, it had been established that the appellant was substantially restricted in undertaking work which would otherwise be suitable to his age, experience and qualifications.

Outcome: Appeal allowed.

6. 2018/18 Disability Allowance - Summary Decision

Question at issue: Eligibility (medical and means)

Background: The appellant, aged 30, had a diagnosis of fibromyalgia and multiple trigger points and chronic pain, applied for Disability Allowance in August 2017. She worked up to February 2018 when she resigned as she felt unable to keep working. The claim was disallowed by the Department on two grounds: (1) that her means from employment of €459.28 per week were in excess of the statutory limit of €193 per week applicable in her circumstances and (2) she did not meet the medical qualifying criteria. The Appeals Officer examined each of the questions separately.

Consideration: In relation to means the Appeals Officer concluded that the decision of the Department was correct up to 9th February 2018 which was the appellant's last payment date having resigned from her employment on 2nd February 2018. The Appeals Officer noted that thereafter the appellant may be deemed to have no means from insurable employment.

In relation to the medical criteria the Appeals Officer noted that the appellant's GP specified that the appellant's medical condition severely affected her ability in relation to one area, moderately affected her ability in three areas and mildly affected her ability in one area, all other areas marked as being normal. The appellant was attending a consultant and was being treated with appropriate medications. The Appeals Officer concluded that the medical evidence indicated that the appellant functioned normally in the majority of areas with her condition affecting her at most in five areas. The Appeals Officer noted that whilst the appellant had a chronic condition the GP expected that the condition would improve within 12/24 months. The GP indicated that the appellant was suitable for part-time work of 20 hours per week work/ training of a rehabilitative nature. While noting that the appellant experienced some challenges the Appeals Officer concluded that the medical evidence indicated that her conditions were amenable to being managed with appropriate medication. The Appeals Officer concluded that the appellant could not be deemed to be substantially restricted in undertaking suitable employment having regard to the appellant's age, experience and qualifications.

Outcome: Appeal disallowed.

7. 2018/19 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her late 30s, had a diagnosis of fibromyalgia which started in 2011 and was expected to continue indefinitely. The medical report completed by the appellant's GP also stated that the appellant was attending a rheumatology clinic but had no hospital admissions and had no relevant investigations. Her application for Disability Allowance was disallowed by the Department on the grounds that she did not satisfy the medical conditions for receipt of Disability Allowance.

Oral Hearing: At the oral hearing of her appeal, the appellant outlined that she started getting pains in 2010 and was diagnosed with fibromyalgia in 2011. She also outlined that she attended a rheumatology clinic and her condition was being treated by medication which had been changed a number of times to find what worked best for her. She submitted she also received an appointment with the pain clinic and that she has been waiting to get injections for the pain and had been referred for further x-rays on her lower back and hips. She stated that she had pain all over with some days better than others and that she had numbness in her legs with tingling in lower back and legs, stiffness all over, loss of power in that she could not open tight bottles and had poor grip, did not sleep and was up 6/7 times at night and had chronic fatigue. She also submitted that she could walk on good days but sometimes got muscle spasms and also had bad veins in her legs, she could not stand for long periods and if she did her back locked, could not lift anything but managed with the children as they understood that she could not lift them. She submitted that her condition was getting worse all the time and she saw her rheumatologist for review every year unless she needed to see him sooner and she was prescribed Vimovo for pain, Duloxetine for muscle relaxant, Stematil for stomach as she felt sick all the time with anxiety and also had IBS. She submitted she was also diagnosed with a slight problem with muscular dystrophy and that she had Reynaud's Syndrome. She also submitted that she attended counselling. She could drive and did whatever household duties she could.

Consideration: The Appeals Officer noted the legislation governing entitlement to Disability Allowance which provides that a person shall be regarded as being substantially restricted in undertaking suitable employment by reason of a specified disability where he or she suffers from an injury, disease, congenital deformity or physical or mental illness which has continued or, in the opinion of a Deciding Officer or an Appeals Officer, may reasonably expect to continue for a period of at least one year. The Appeals Officer outlined that there was no medical evidence available to support the appellant's contentions that she had been diagnosed with muscular dystrophy, Reynaud's Syndrome or IBS. The Appeals Officer noted the appellant's contention that she suffered from anxiety but also noted that this was not referred to in the medical report and that she was not prescribed any medication. From

the medical evidence submitted, the Appeals Officer noted that the appellant had not been referred to any specialist for treatment.

The Appeals Officer noted the GPs opinion in the medical report that the appellant's mental health/behaviour was normal and that her condition mildly or moderately affected some of her physical abilities and her opinion that the appellant was suitable for work/training for rehabilitative purposes. The Appeals Officer noted a report from the Rheumatology Unit that the appellant showed "no features to suggest an alternative diagnosis to fibromyalgia". The Appeals Officer advised the appellant at oral hearing that there was no evidence on file to support many of her contentions relating to her medical diagnoses and complaints and offered the appellant the opportunity to provide medical evidence of these contentions within a two week period. No additional evidence was received and the Appeals Officer proceeded to make his decision based on the available evidence. The Appeals Officer concluded that while the appellant did experience some restriction it was not such that she could be considered to be substantially restricted in undertaking suitable employment having regard to her age, qualifications and experience.

Outcome: Appeal disallowed.

8. 2018/20 Disability Allowance - Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in her 60s, had a diagnosis of inflammatory bowel disease and ulcerative colitis which was expected to continue indefinitely. Her application for Disability Allowance was disallowed on the grounds that she did not satisfy the medical conditions. The medical report completed by the appellant's GP outlined that the appellant was attending a specialist and was awaiting a scan and repeat scope. The GP also stated that the appellant was not suitable for work/training for rehabilitative purposes. The ability profile indicated that the appellant's condition moderately affected her mental health/behaviour and continence while all other abilities were normal. A further letter from her GP confirmed the diagnosis of inflammatory bowel disease and stated that a recent colonoscopy showed severe inflammation and histology consistent with Crohn's disease. In her letter of appeal, the appellant outlined that she suffered from flare-ups which entailed severe abdominal cramps, fatigue and rectal bleeding and that she had to use the toilet 10-15 times each morning which left her very tired and lacking in energy.

Consideration: The decision before the Appeals Officer was to determine if the appellant satisfied the medical conditions for Disability Allowance. The legislation provides that Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must have continued for or be expected to continue for at least one year.

In examining all the evidence in this case including the appellant's submissions and the medical evidence, the Appeals Officer noted that the appellant continued to attend a specialist and was awaiting further treatment. The Appeals Officer also noted the

most recent medical evidence which indicated that a histology following a scan was consistent with Crohn's disease and that the appellant was awaiting a further scan in this regard and was not currently considered suitable for work/training for rehabilitative purposes. The Appeals Officer concluded that the appellant had established that she was substantially restricted by her condition in undertaking work which would otherwise be suitable having regard to her age, experience and qualifications and that her condition could reasonably be expected to continue for a period of at least one year.

Outcome: Appeal allowed.

9. 2018/21 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in his late 40s, had a diagnosis of low back pain, disc prolapse, depression and psoriasis which were expected to continue indefinitely, applied for Disability Allowance in December 2017. The claim was disallowed on the grounds that he did not meet the medical qualifying criteria.

Consideration: The Appeals Officer noted that the appellant's GP specified that the appellant's medical conditions affected him severely in lifting/carrying and bending/kneeling/ squatting, moderately affected his mental health/ behaviour, reaching and climbing stairs/ ladders and mildly to moderately affected his sitting/rising, standing and walking. The appellant was attending a consultant orthopaedic surgeon and had been referred for an epidural injection which at the oral hearing he informed the Appeals Officer was scheduled for a date in October 2018. The appellant had been prescribed a number of medications and was certified as being not suitable for work/training for rehabilitative purposes. The Appeals Officer had the benefit of additional medical evidence, including letters from the appellant's GP, dated from March 2018 and July 2018. The Appeals Officer noted the most recent medical evidence from the appellant's GP which certified deterioration in the appellant's arthritic condition and spondyloarthritic change in his spine and that his activities of daily living were confined to minimal mobility. The Appeals Officer concluded that the medical evidence and the evidence adduced at oral hearing was sufficient to establish that the appellant had a disability which could reasonably be expected to continue for at least one year as required by the governing legislation and that the appellant was substantially restricted in undertaking suitable employment having regard to his age, qualifications and experience.

Outcome: Appeal allowed.

10. 2018/22 Disability Allowance - Summary Decision

Question at issue: Eligibility (medical grounds and HRC)

Background: The appellant, a third country national in his 20s, came to Ireland with his mother, and lives with her and his step-father. In connection with a claim for Disability Allowance, he completed Form HRC1. Details provided on the form

indicated that he came to Ireland to live with his mother and step-father (a copy of their marriage certificate was enclosed); he was being supported by his step-father, who was in employment since early 2016; he had a social pension deposit account in the country where he had been living, and hoped to make his permanent home with his family in Ireland and to obtain employment suitable for a person with a disability.

The claim was disallowed on grounds that the appellant did not meet the medical qualifying criteria. He was deemed not to be habitually resident in the State as he was held not to have demonstrated a right to reside in line with the European Communities (Free Movement of Persons) Regulations, 2015 (S.I. No. 548 of 2015). With reference to the five criteria provided for under Section 246 (4), it was held that the evidence in his case did not substantiate habitual residence.

In his appeal, the appellant submitted that he came to Ireland to join his family; he is disabled from childhood and he cannot live without his mother who is his carer; as a disabled person, he has a right under the Convention for the Rights of Persons with Disabilities (CRPD) to live with his mother who cares for him; he is in receipt of €110 per month from a disability pension, and his centre of interest is in Ireland as he needs to live with his family.

The appellant was granted temporary residency status while his step-father's application for residency on his behalf (and that of his mother) was being processed with reference to the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015); ultimately, he was granted EUFAM Stamp 4 status. His claim was re-examined in light of a notification from the Irish Naturalisation and Immigration Service (INIS) in relation to the latter status. However, the Department concluded that this did not automatically mean entitlement to social welfare payments, and it was contended that the provisions of S.I. No. 548 of 2015 applied, in terms of the requirement to have sufficient resources not to become an unreasonable burden on the State.

Consideration: The Appeals Officer identified the governing legislation as Section 210 of the Social Welfare Consolidation Act 2005 which provides that Disability Allowance may be payable to a person who meets the qualifying criteria as to age, specified disability, and means. In addition, it is a requirement of the legislation that a person is habitually resident in the State. Section 246 of the 2005 Act sets out the provisions as to habitual residence, and the relevant provisions of EU law are outlined in the European Communities (Free Movement of Persons) Regulations, 2015 (S.I. No. 548 of 2015).

In relation to habitual residence, the Appeals Officer noted that Section 246 (4) provides that when determining whether a person is habitually resident in the State for purposes of the Act, all the circumstances of the case must be taken into account including, in particular, the following: the length and continuity of residence in the State or in any other particular country; the length and purpose of any absence from the State; the nature and pattern of the person's employment; the person's main centre of interest, and the future intentions of the person concerned as they appear from all the circumstances. Section 246 (5) provides that a person who does not have a right to reside in the State may not be regarded as being habitually resident in the State.

The Appeals Officer referred to the two stage process which involves establishing, in the first instance, whether a person may be held to have a right to reside in accordance with EU law and, secondly, determining whether that person may be deemed to be habitually resident with reference to the provisions of Section 246 (4). She noted that INIS advised the appellant that the Minister for Justice and Equality had decided to approve his application for a residence card under Regulation 7 of the Regulations (S.I. No. 548 of 2015) on the basis that he is a qualifying family member of a Union citizen who is residing in the State in exercise of their rights under the Directive (220/38/EC). Accordingly, she concluded that he may be held to have a right to reside in accordance with EU law. Moreover, she considered that the evidence served to establish that his main centre of interest is in the State and that he may be deemed to meet the habitual residence requirement for purposes of his claim.

In terms of the medical qualifying criteria, the Appeals Officer noted that the appellant has a diagnosis of Intellectual Disability and Congenital Adrenal Hyperplasia. Having assessed the evidence, including the medical history which referred to severe birth trauma and global developmental delay, details of prescribed medication, clinical findings, his expectation that the condition would continue indefinitely, she concluded that he may be deemed to meet the qualifying condition which applies in terms of a specified disability. Accordingly, she held that the qualifying criteria for receipt of Disability Allowance were met.

Outcome: Appeal allowed.

11. 2018/23 Disability Allowance - Summary Decision

Question at issue: Backdating

Background: The appellant's claim for Disability Allowance was awarded following a revised decision by the Department with effect from a date in March 2015. Following that decision a request was made to have the date of the award made effective from May 2014. The appellant submitted that the basis for that date coincided with an application submitted by him for Illness Benefit. The request to backdate the effective date of the award of Disability Allowance was refused by the Department and an appeal was submitted. In its decision the Department stated that lack of knowledge does not constitute good cause for the delay in making a claim.

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

Consideration: The question at issue was whether the appellant had an entitlement to receive Disability Allowance from a date earlier than March 2015, with reference to the legislative provisions governing late claims. The Appeals Officer noted the

appellant's assertion that a Department official did not provide him with the information he required and which would, presumably, have allowed him to submit a claim at an earlier date. It was submitted that his wife's claim for Carer's Allowance was backdated and that this might serve as a precedent for backdating his Disability Allowance claim. However, the evidence suggested that the appellant's wife's claim was made in October 2014 and following a successful appeal was allowed from date of application. The question of backdating the claim was not examined.

On the question as to information, the Appeals Officer noted that the appellant did not indicate when he made the enquiries to which he referred and that, for its part, the Department had advised the appellant in a letter issued in August 2014 that he could apply for Disability Allowance. The Appeals Officer did not find the appellant's contention that he lacked computer skills and was solely dependent on assistance and information provided verbally by the Department to be compelling but proceeded to examine the question of good cause.

The Appeals Officer noted that the medical evidence submitted in support of his claim indicated that the appellant was in severe unremitting pain, using crutches and reliant on others for transport, his diagnosis was uncertain and he was attending a number of consultants and undergoing a range of diagnostic assessments in the period from August 2014. In the circumstances of the appellant's uncertain diagnosis and the severity of the pain he was experiencing, the Appeals Officer considered that there was a case for considering that the appellant might not have been well placed to take note of the information outlined in the Department's letter of August 2014 or to have clarified sufficiently any potential entitlement prior to the date of his claim. In the circumstances, the Appeals Officer concluded that Disability Allowance may be backdated for a period of six months, in line with the provisions of social welfare legislation.

Outcome: Appeal allowed.

12. 2018/24 Disability Allowance – Summary Decision

Question at issue: Eligibility (means)

Background: The appellant's application for Disability Allowance was refused on the grounds that her means assessed at €339.20 per week was in excess of the weekly maximum for her circumstances, which was €321.10. The means derived from the appellant's husband's income. In appealing the decision, the appellant stated that her husband's earnings had nothing to do with her and it was extremely unfair and unjust. She asked why she was not being treated as an individual with her own PPSN, stating that she had no source of income and was not well enough to work or earn money. The appellant also stated that she was struggling to keep up with bills and other expenses, and that she could no longer drive due to her illness which brought with it further costs.

Consideration: The question under appeal was whether means had been correctly assessed for the purposes of Disability Allowance. The medical eligibility for Disability Allowance was not being questioned. Social welfare legislation provides that when assessing a person's means for the purposes of Disability Allowance, their

spouse/civil partner/cohabitant's income and savings/capital must be included in the assessment. The appellant stated that the family were struggling financially but expenses like mortgage, electricity etc. are not factored in for the purposes of social welfare means assessment. The Appeals Officer noted that the appellant stated that her means exceeded the statutory limit by just €18.10. The Appeals Officer took into account the following – means from capital, means from the appellant's husband's insurable employment and his private pension. The Appeals Officer was satisfied that the means were calculated correctly by the Department and in accordance with social welfare legislation.

Outcome: Appeal disallowed.

K. 2019

1. 2019/16 Disability Allowance – Summary Decision

Question at issue: Eligibility (means)

Background: The appellant, in her late 20's, applied for Disability Allowance in February 2018. Her file was sent to a Social Welfare Inspector (SWI) for investigation. Having met with the appellant and having received further information from the executors of the appellant's grandfather's estate the SWI reported the appellant had capital in the form of savings of €83,000. This amount consisted of savings in a UK bank account in the amount of €75,000 and savings in Irish bank accounts in the amount of €8,000. The Deciding Officer reviewed the file and the appellant was assessed with means of €78.00 per week. She was awarded a Disability Allowance at a reduced rate on this basis.

In her appeal the appellant contended that she did not have weekly means as assessed by the Department. She stated that the savings left to her from her grandfather's estate were in a bank account to which she did not have access. This was due to an understanding between both the appellant and the executors of her grandfather's estate as she suffered from bipolar disorder symptoms which included impulsive spending and poor money management.

She stated that the money was only released in limited circumstances such as to meet extraordinary medical expenses. The appellant further stated that due to the prospect of a "no deal Brexit" the money in the UK bank account had been subsequently transferred to her Irish bank account.

Consideration: In line with the provisions of Social Welfare legislation, a person's financial circumstances (means) must be assessed in order to determine entitlement to Disability Allowance. Having considered all of the evidence the Appeals Officer was satisfied that the appellant was the beneficiary of the capital in the form of the savings as assessed by the Department. The Appeals Officer was satisfied that the Department had assessed the appellant's means in accordance with the governing legislation.

Outcome: Appeal disallowed.

2. 2019/17 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in her late 30's, had a diagnosis of neck pain and anxiety following a road traffic accident in 2015. She made a claim for Disability Allowance in October 2018. Her claim was refused by the Department on the grounds that she was not substantially restricted in undertaking suitable employment by reason of a specified disability. The appellant submitted an appeal where she outlined that she had been told by numerous medical professionals that she was not fit for work. The appellant stated that she had a cleaner as she was not able to clean her house and that she was receiving pain injections. She submitted letters from her GP and her pain specialist.

Consideration: The appellant had Leaving Cert standard education and Fetac level 5 in childcare and ECDL. She was employed by a crèche. It was noted by the Appeals Officer that, in completing the ability/disability profile, her G.P. assessed her condition as affecting her to a severe degree in the area of manual dexterity, to a moderate degree in relation to mental health/behaviour, to a mild degree in relation to continence, reaching, lifting/carrying, bending/kneeling/squatting, sitting/rising, standing, climbing stairs/ladders and walking, with an expectation of the condition continuing indefinitely. Her GP reported that she had relevant investigations and attended specialists in orthopaedics and pain and took prescribed medications which were outlined. Having assessed the evidence the Appeals Officer concluded that the appellant had met the qualifying criteria for receipt of Disability Allowance in that she was substantially restricted in undertaking suitable employment by reason of a specified disability, as outlined in the governing legislation.

Decision: Appeal allowed.

3. 2019/18 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in his early 60's, was not considered by the Department as being substantially restricted in undertaking suitable employment by reason of a specified disability which had continued or was expected to continue for at least one year. The appellant did not complete substantial portions of the application form, including work history and how his illness was affecting him. The medical reports submitted indicated that there had been serious medical issues accumulating for some time, and that the appellant was restricted physically in some aspects.

Consideration: The Appeals Officer examined the question as to whether the appellant was substantially restricted in undertaking work which would otherwise be suitable with reference to his age, experience and qualifications and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year, in accordance with the relevant legislation.

Oral Hearing: The Appeals Officer adduced further information at the hearing in relation to the appellant's work history, which was primarily physical in nature. The Appeals Officer considered this information with the medical information, both contemporary and historical. The Appeals Officer determined that the most suitable employment, given the appellant's qualifications, age and experience, seemed to be skilled welding or fitting type work, otherwise general construction foreman or labouring type work.

The medical evidence indicated that the appellant's condition substantially restricted him from engaging in such work and this restriction was likely to continue for at least a further year.

Outcome: Appeal allowed.

4. 2019/19 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant's application for Disability Allowance was refused by the Department as it was determined that the medical condition was not met, in that the appellant was not substantially restricted. The appellant, in his late 50's, was educated to Intermediate/Junior Certificate level. Having been unemployed for a number of years, the appellant undertook some self-learning online courses.

The medical evidence informed that the appellant suffered a stroke 3 years prior to his application for Disability Allowance and had been diagnosed with Type 2 diabetes in the previous year. The appellant had been admitted to hospital for a time following the stroke. The appellant had not undergone any other medical interventions and had not actively attended any specialist for his conditions. An Ability Profile Report in which a medical assessment is made of the impact of the appellant's condition in relation to 16 daily activities advised that the appellant was mildly affected in relation to vision, bending/ kneeling/squatting and climbing stairs, otherwise he was not negatively affected by his medical conditions. The appellant advised that he would have to attend additional medical appointments in the future as a result of his diabetes diagnosis and that his condition would negatively impact him in the future.

The appellant failed to attend an oral hearing convened to afford him an opportunity to provide additional evidence or a personal account of the impact of his condition on his ability to work. The Appeals Officer determined that the appellant had not established that he was substantially restricted in obtaining suitable employment having regard to his age, qualification and experience as required by the governing legislation.

Outcome: Appeal disallowed

5. 2019/20 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in her early 60's, had a diagnosis of mood disorder, generalised arthritis, asthma and osteoarthritis, expected to continue indefinitely. She made a claim for Disability Allowance in December 2018. The appellant stated that she had primary level standard education and completed a secretarial course in the UK about 40 years ago. She last worked as a shop assistant 15 years ago. Her GP outlined that since the original application the appellant had developed a cardiac problem and was awaiting further evaluation of this.

The GP further stated that the cardiac problem may have caused a collapse about a week earlier which resulted in the appellant suffering a hand injury that required corrective surgery. The GP confirmed ongoing musculoskeletal problems and stated that while the appellant's mental health was stable, it required continuing professional input. The GP's letter confirmed the evolving nature of the appellant's illnesses.

Consideration: The Appeals Officer noted that in completing the ability/disability profile, the GP had assessed the condition as affecting the appellant's abilities of mental health/behaviour to a severe degree, moderately in the areas of balance/co-ordination, reaching, lifting/carrying, bending/kneeling/squatting and standing, mildly in the areas of manual dexterity, sitting/rising, climbing stairs/ladders and walking. The GP reported that the appellant had relevant investigations and was on prescribed medication.

Having assessed the evidence, the Appeals Officer concluded that the appellant met the qualifying criteria for receipt of Disability Allowance, as outlined in the governing legislation.

Outcome: Appeal allowed.

6. 2019/21 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her late 40s, had a diagnosis of chronic lower back pain which she had suffered for over a year, and the condition was certified by her GP to be expected to continue indefinitely.

The GP's medical report stated that the appellant was on a waiting list for an Orthopaedic Consultant but that she had no hospital admissions and had no relevant investigations to date. Her application was disallowed by the Department on the grounds that she did not satisfy the medical conditions for receipt of Disability Allowance.

Oral Hearing: At the oral hearing it was established that the appellant had experienced a bad fall in very poor weather conditions almost 2 years earlier. The appellant had not attended hospital at that time. She then began to experience a great deal of pain arising from the fall and this had worsened over time. Her GP had prescribed and recommended pain relieving medication, physiotherapy treatments and sought an appointment for the appellant with an Orthopaedic Consultant.

The appellant was experiencing severe back pain and pain in her hands, legs, feet and shoulder. On a daily basis, the appellant required assistance in performing what were previously for her normal everyday tasks such as lifting or carrying, dressing herself, and also assistance when rising from a chair or her bed. The appellant was taking prescribed pain relief medications but she found that these were not improving her condition. The appellant's mental health had also been adversely affected by the daily pain and the impact on her ability to function normally and independently.

The appellant was waiting for an appointment with an Orthopaedic consultant and her GP had advised that surgery may be considered in her particular case following that appointment. The appellant had been to a number of physiotherapists without success or improvement in her condition.

Consideration: The Appeals Officer noted the legislation governing entitlement to Disability Allowance which provides that a person shall be regarded as being substantially restricted in undertaking suitable employment by reason of a specified disability where he or she suffers from an injury, disease, congenital deformity or physical or mental illness which has continued or, in the opinion of a Deciding Officer or an Appeals Officer, may reasonably expect to continue for a period of at least one year.

The Appeals Officer was satisfied from the evidence that for over a 2 year period and despite ongoing physiotherapy and pharmacological treatments the appellant was still experiencing high levels of pain and also very substantial restrictions of movement while she was awaiting an appointment with an Orthopaedic Consultant. The Appeals Officer concluded that the appellant was substantially restricted in undertaking suitable employment having regard to her age, qualifications and experience as specified in the governing legislation.

Outcome: Appeal allowed.

7. 2019/22 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her mid 20s, had a diagnosis of gender dysphoria and depression. Medical reports on file outlined that the appellant preferred to be identified/ addressed in the feminine context. The appellant had voluntarily left her most recent employment as she couldn't cope with the male environment. Her application for Disability Allowance was disallowed by the Department on the grounds that she did not satisfy the medical conditions for receipt of Disability Allowance.

The appellant had previously attended both psychiatric and endocrinology clinics. She had also received zoladex injections and medication was noted as sertraline.

Oral Hearing: At the oral hearing the appellant stated that she had no hospital admissions in relation to her condition. The appellant was attending a counselling

psychologist within the Mental Health Services. She informed the Appeals Officer that she had received a diagnosis on the autistic spectrum in 2005 from her clinical psychologist. She stated that her sleep pattern was badly affected and that she found it difficult to interact with others or hold down a conversation. She stated that she often forgot to eat and as a result had weight issues. The appellant stated she could carry out all normal daily tasks which included hobbies such as playing in a band that often perform around the country.

She informed the Appeals Officer that she had received support and information regarding gender transition from the LGBT community and had access to support from the Transgender Equality Network Ireland.

Consideration: The Appeals Officer noted the GPs opinion in the medical report that the appellant was deemed to be mildly affected in mental health and that all other categories were deemed normal. It was further noted that in the GPs opinion the appellant's condition would last between 12-24 months.

On the appellant's application form her GP stated that it would be in the appellant's best interest to get back to work or college. The Appeals Officer concluded that while the appellant had some limitations and was experiencing a difficult period in her life, the medical evidence on file and that adduced at oral hearing was not such that she could be considered to be substantially restricted in undertaking suitable employment having regard to her age, qualifications and experience.

Outcome: Appeal disallowed.

8. 2019/23 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, aged 16 years, had a diagnosis of diabetes type 1 and hyperthyroid. An application for Disability Allowance was refused in April 2019 as the Department found that the appellant was not substantially restricted in undertaking suitable employment, by reason of a specified disability, which was expected to last for a period of at least one year. The medical report dated February 2019 confirmed the appellant's diagnosis. The GP indicated that these conditions would continue indefinitely.

Oral Hearing: The appellant explained to the Appeals Officer at the hearing that her conditions were over-lapping and medication to alleviate one condition adversely affected the other. All areas on the ability/disability profile were shown as normal or mild, although it was not stated whether the appellant would be suitable for work or training for rehabilitative purposes. The appellant was attending school.

Consideration: The question to be examined was whether the appellant's medical condition could be held to be a substantial restriction in carrying out employment which would otherwise be suitable with reference to her age, experience and qualifications and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year.

The Appeals Officer noted the indicators shown on the ability/disability profile that some level of monitoring was required to avert and minimise the risk of harm. However, having regard to the totality of available evidence and having regard to the appellant's age, qualifications and experience, the Appeals Officer was not satisfied that the appellant was substantially restricted in seeking suitable employment, by reason of a specified disability, which was expected to continue for a period of at least one year.

Outcome: Appeal disallowed.

9. 2019/24 Disability Allowance – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, aged 16 years, had a diagnosis of ADHD (Attention Deficit Hyperactivity Disorder/Asperger's). He applied for Disability Allowance in January 2019 and was refused on the basis that he was not substantially restricted in seeking suitable employment, by reason of a specified disability, which was expected to last for a period of at least one year.

Oral Hearing: The question to be examined was whether the appellant's medical condition could be held to be a substantial restriction in carrying out employment which would otherwise be suitable with reference to his age, experience and qualifications and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year. At the hearing the appellant referred to medical evidence contained within his application and determined that his condition had a significant effect on his ability to interact in a calm and sustained manner or to take direction. The appellant continued to attend school with assistance of supports and planned to undertake the Leaving Certificate in 2021.

Consideration: As per the medical report of January 2019, the appellant was diagnosed with ADHD Asperger's. The GP indicated an indefinite duration for this medical condition. The ability profile, contained within this report, is designed to capture the degree to which the medical conditions adversely affect the claimant in 16 general abilities. In the appellant's case it was noted that both mental health/behaviour and learning/intelligence were severely affected while most other categories were between normal and moderately affected.

The appellant was on a range of medication specifically to assist in the management of stabilising his condition. He was attending school and studying a reduced number of subjects for his Leaving Certificate planned in June 2021. However, it was noted that while in transition year, he completed only 2 one-hour days' work experience (out of 20). This placement had been facilitated by his mother with a local employer. In his application, appeal submission and at the oral hearing, the appellant's mother referred to this and other examples of her son's high level of support needs.

Having regard to his age and acknowledging that continuing to attend mainstream school should assist in developing skills and qualifications, it could not be determined

that the effects of his current condition would lessen sufficiently to the extent that he would be able to undertake suitable employment as defined within governing legislation. In consideration of this, the Appeals Officer found that the appellant was substantially restricted in seeking suitable employment, by reason of a specified disability, which had or was expected to continue for a period of at least one year.

Outcome: Appeal allowed.

10. 2019/25 Disability Allowance – Summary Decision

Question at issue: Eligibility (habitual residence condition)

Background: The appellant, an EU National, made a claim for Disability Allowance in August 2016 and this was disallowed in November 2018 and re-stated in a decision in May 2019. The appellant was living at an address with his partner who is an Irish national and the appellant was an adult dependant on his partner's claim. He stated that he came to Ireland in March 2016. He was allocated a PPSN in May 2017 and was employed for part of the period between May 2017 and September 2018. Records show that during this period the appellant had 38 paid PRSI contributions. He returned to his country of origin for 3 months from September to December 2018.

He had a health diagnosis of hepatitis B with cirrhosis and attended a hepatology clinic but was not on medication nor had he had any recent hospital admissions. It was indicated that these conditions which commenced in 2015, prior to his arrival in Ireland, would continue indefinitely. In the appeal submission, the appellant acknowledged that he was out of the State for a three month period in 2018.

Governing Legislation: European Communities (Free Movement of Persons) Regulations 2015 (S.I. 548 of 2015) sets out the circumstances in which an EU citizen has the right to reside in the State. Section 210(9) of the 2005 Act states that in order to qualify for Disability Allowance the person must be habitually resident in the State.

Section 246(5) of the 2005 Act provides that a person, who does not have a right to reside in the State, shall not be regarded as being habitually resident in the State.

The main legislative provisions relating to Disability Allowance are contained in Sections 209 to 212 of the Act of 2005 and Articles 137 to 140 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007).

Consideration: The Appeals Officer identified the governing legislation as Section 210 of the 2005 Act which provides that Disability Allowance may be payable to a person who meets the qualifying criteria as to age, specified disability, and means. In addition, it is a requirement of the legislation that a person is habitually resident in the State. Section 246 of the 2005 Act sets out the provisions as to habitual residence, and the relevant provisions of EU law are outlined in the European Communities (Free Movement of Persons) Regulations, 2015 (S.I. No. 548 of 2015).

The Appeals Officer referred to the two stage process which involves establishing, in the first instance, whether a person may be held to have a right to reside in accordance with EU law and, secondly, determining whether the person may be deemed to be habitually resident with reference to the 5 factors outlined in Section 246 of the 2005 Act.

The Appeals Officer noted that Section 246 of the 2005 Act provides that when determining whether a person is habitually resident in the State, all the circumstances of the case must be taken into account including, in particular, the following: the length and continuity of residence in the State or in any other particular country; the length and purpose of any absence from the State; the nature and pattern of the person's employment; the person's main centre of interest, and the future intentions of the person concerned as they appear from all the circumstances. Section 246 (5) provides that a person who does not have a right to reside in the State may not be regarded as being habitually resident in the State.

The Appeals Officer noted that the appellant retained worker status for 6 months after his employment ended in September 2018. However, as the appellant was no longer in employment or self-employment, was not self-sufficient or a student he did not have a right to reside in the State. The Appeals Officer also concluded that the appellant did not have access to social assistance beyond the 6 months following the cessation of his employment.

In those circumstances the Appeals Officer concluded that the appellant did not have a right to reside in the State and could not be regarded as being habitually resident in the State.

Outcome: Appeal disallowed

11. 2019/26 Disability Allowance – Oral Hearing

Question at issue: Eligibility (habitual residence condition – right to reside)

Background: The appellants, both EU nationals, first came to Ireland in 2015 to join their daughter who was living in Ireland for some years and was in employment, and applied for Disability Allowance. While they were considered medically suitable for Disability Allowance they were refused on the grounds that they did not have the right to reside in the State and therefore did not meet the habitual residence condition for Disability Allowance. Neither appellant had any employment history in Ireland.

Oral Hearing: The hearing was attended by the appellants and their daughter. The habitual residence condition was explained to the appellants including the information required by the Appeals Officer to make the decisions. The appellants outlined their history and family circumstances before coming to Ireland in 2015.

They stated that their daughter was their only child. They had some siblings in their country of origin but the links were tenuous and their parents were now deceased. They had both been in employment in their country of origin. Since they ceased employment they had both been in receipt of a state pension and had lived on these

pensions. They no longer had a family home in their country of origin and had no bank accounts there or in Ireland. They received one-off financial assistance from their daughter in 2014 while they were living in their country of origin. There was no documentary evidence of this financial transaction.

They confirmed that they did not receive any other financial support from their daughter prior to coming to Ireland. They continued to get their pensions via a family friend who collected their pensions and transferred the money to Ireland. They stated that their daughter had been supporting them since coming to Ireland but they did not want to be a burden on her. They stated that they would love to work in Ireland but there were too many barriers for them given their medical conditions.

Consideration: Section 210 (9) of the 2005 Act provides that a person shall not be entitled to Disability Allowance unless he or she is habitually resident in the State. Section 246 (4) of the 2005 Act provides generally for the defining characteristics of what it means to be ‘habitually resident’ in particular 5 factors to be considered when assessing the person’s main centre of interest and future intentions. Section 246(5) of the 2005 Act states that a person who does not have a right to reside in the State shall not be regarded as being habitually resident.

Determining if a person is habitually resident is a two part process which firstly requires that the person has a right to reside in the State and secondly, if a right to reside is established, an assessment under 5 factors to determine the person’s centre of interest and future intentions. Section 246(6) of the 2005 Act provides for persons who shall be taken to have the right to reside in the State and includes “a person who has the right under the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) to enter and reside in the State or is deemed under those Regulations to be lawfully resident in the State”. The first step was therefore to consider the appellants’ right to reside having regard to the fact that they were now resident in the State for more than 3 months.

The appellants came to Ireland in 2015 and as they had not resided in Ireland for a continuous period of 5 years did not have the right to reside under EU Regulations.

Their only income was small pensions from their country of origin and support from their daughter who had a limited income herself and was caring for her own child. They were applying for Disability Allowance as a long-term support having both indicated that they would be unable to work due to their medical conditions.

This indicated that they did not have sufficient resources not to become an unreasonable burden on the social assistance system of the State. Neither of the appellants were in education or studying. The appellants did not therefore have a right to reside under Article 6 of EU Regulations S.I. 548 of 2015.

The appellant’s daughter is a Union citizen who has a right to reside as she is in employment. The question to be considered was if the appellants had the right to reside as qualifying family members which is defined in Article 3(5) of EU Regulations. The appellants were direct relatives in the ascending line of their daughter but to be considered qualifying family members they must both be considered to be a ‘dependent’ relative of their daughter. Based on the guidance from

the EU Commission in 2009 the ‘dependency’ must have already existed in the previous country of residence and cannot be created by virtue of the fact that they moved to Ireland. The dependency covers material supports received to meet essential needs having regard to financial and social conditions and requires documentary evidence.

The appellants supported themselves through work in their country of origin and subsequently through their combined pensions. The only support they reported from their daughter prior to coming to Ireland was one off financial support in 2014 of which there was no documentary evidence. The evidence did not establish any pre-dependency on their daughter prior to coming to Ireland. The Appeals Officer concluded that the appellants could not be considered to be dependent direct relatives of their daughter and did not as a result have the right to reside in Ireland under S.I. 548 of 2015. In those circumstances they did not meet the habitual residence condition for the purposes of Disability Allowance.

Outcome: Appeal disallowed

Section 317 review request: The appellants subsequently requested a review of the Appeals Officer’s decisions and provided additional information. The Appeals Officer reviewed the decisions in light of the information provided and noted that the contentions raised were not presented by any attendees during an in depth examination of the issue at the oral hearing and that these new contentions had not been substantiated. The Appeals Officer concluded that there was insufficient evidence to revise the decisions and that the decisions not to allow the appeals stood.

Section 318 review request: The appellants requested a review by the Chief Appeals Officer of the decisions given by the Appeals Officer. The Chief Appeals Officer having reviewed the Appeals Officer’s decisions and the outcome of the review conducted by the Appeals Officer pursuant to Section 317 of the 2005 Act, did not consider that the Appeals Officer had erred in fact or law and declined to revise the decisions of the Appeals Officer.

12. 2019/318/62 Disability Allowance – Section 318 Review

Question at issue: Eligibility (Right to Reside)

Grounds for review: An advocate acting on behalf of the appellant requested a review of the Appeals Officer’s decision on the basis that the Appeals Officer erred in law. The question at issue was whether the appellant had a right to reside in the State.

Background: The appellant, an EU national, came to Ireland to live with her daughter who was herself living and working in Ireland for a number of years. The appellant applied for Disability Allowance and this was refused by the Department on the grounds that the appellant had not established that she had a right to reside in the State. The Appeals Officer found that while the appellant had established a right to reside as a direct dependent in the ascending line of a worker she nonetheless did not have access to social assistance.

Review: From my review of the Appeals Officer's decision it was clear that the Appeals Officer was satisfied that the appellant was a dependent direct relative in the ascending line of a Union citizen who was a worker in Ireland. In accordance with guidance from the EU Commission on implementing these provisions, the Appeals Officer was also satisfied that the appellant had established that the dependency existed prior to her joining her daughter in Ireland. Notwithstanding that, the Appeals Officer concluded that the appellant was not entitled to receive assistance under the Social Welfare Acts. The grounds for review were to the effect that, once the right to reside had been established, the appeal should have been allowed and the question of whether the appellant was habitually resident could be considered thereafter.

From my review of the Appeals Officer's decision it was clear that the Appeals Officer considered that the appellant had a right to reside on the basis of being a dependent direct relative in the ascending line of a Union citizen who is a worker in Ireland, and accordingly the provisions of Article 6 (3)(a) (iv) of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) applied. In my review I outlined that in accordance with the Directive 2004/38/EC and the Regulations of 2015 (S.I. 548 of 2015) giving further effect to the Directive, the right to reside in the State is not unconditional. The Directive and the Regulations draw a distinction between economically active persons and those who are not.

Article 11 of S.I. 548 of 2015, dealing with the retention of rights of residence provides:

A person residing in the State under Regulation 6, 9 or 10 shall be entitled to continue to reside in the State for as long as he or she satisfies the relevant provision of the regulation concerned and does not become an unreasonable burden on the social assistance system of the State.

While the appellant was residing in the State under Article 6 the right to reside was not unconditional and she may continue to reside for as long as she satisfied the provisions of Article 6 and did not become an unreasonable burden on the social assistance system of the State. In those circumstances I did not consider that the Appeals Officer had erred in law on the grounds submitted on behalf of the appellant.

Outcome: Decision not revised

L. 2020

1. 2020/16 Disability Allowance – Summary Decision

Question at issue: Eligibility (means and medical)

Background: The appellant was asked by the Department in connection with his claim for Disability Allowance to submit certain information in relation to accounts held in financial institutions. He was also asked to fully complete the application form. The appellant responded but did not supply the requested information regarding a Post Office account which he had declared in the application form.

Consideration: A medical report was completed by the appellant's GP. The diagnosis was anxiety and the condition was of indefinite duration. In the ability/disability profile his condition was described as moderately affecting his mental health and he had been prescribed medication.

In appealing the decision, the appellant stated that he suffered from social anxiety. He also stated that he submitted the information requested by the Department. However, the Department stated that the information regarding the Post Office account was still outstanding.

The Appeals Officer found that the appellant had not established that he was substantially restricted in undertaking suitable employment by reason of a specified disability which had continued for or was expected to last for a period of at least one year. The Appeals Officer also found that the appellant failed to show that his means did not exceed the maximum rate payable as he had failed to provide information requested by the Department.

Outcome: Appeal disallowed

2. 2020/17 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in his early 60s, had a diagnosis of epilepsy and a history of chronic obstructive pulmonary disease. His claim for Disability Allowance was refused by the Department on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability.

The appellant submitted on appeal that he remained under the care of a neurologist and had recently undergone a series of scans in relation to brain abnormalities that had been identified as a result of an epilepsy diagnosis. He outlined how the onset of the epilepsy had affected him in terms of work and home life.

Consideration: The appellant had worked in construction all of his life and was no longer able to do so due to health and safety concerns arising from the impact of epilepsy. He could no longer drive and his ability to retrain for another occupation was affected. It was noted by the Appeals Officer that in completing the ability/disability profile his GP had assessed his condition as affecting him to a severe degree in relation to consciousness/seizures, climbing stairs/ladders and walking, to a moderate degree in relation to balance/coordination and standing and to a mild degree in relation to lifting/carrying. His GP reported that he was attending relevant specialists and had ongoing investigations and hospital admissions. He was on medication for his condition.

The Appeals Officer concluded that the appellant had met the qualifying criteria for receipt of Disability Allowance in that he was substantially restricted in undertaking suitable employment by reason of a specified disability, as outlined in the governing legislation.

Outcome: Appeal allowed

3. 2020/18 Disability Allowance – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant, in his early 40s, applied for Disability Allowance. The application was refused on the grounds that he was not substantially restricted in undertaking suitable employment by reason of a specified disability which was expected to last for a period of at least one year. He was diagnosed with diabetes and shoulder pain which started prior to 2013 and was expected to continue indefinitely. He was attending diabetic and musculoskeletal clinics and at the time of the appeal he was awaiting the administration of an injection to alleviate shoulder pain and stiffness.

The appellant had worked as a waiter for a number of years in the previous decade. No other information was provided in relation to any other employment. The appellant stated his mental health was affected due to disturbed sleep and fatigue. He said his physical health was affected due to diabetes and he had difficulties in standing, walking and lifting. He said he could not participate in sporting activities, read for very long periods and could not help with housework.

The appellant's GP stated that the appellant was on Illness Benefit due to diabetes which was difficult to control, had chronic shoulder pain and was unfit for work until the diabetes was controlled.

Consideration: The question before the Appeals Officer was whether the appellant was substantially restricted in undertaking work which would otherwise be suitable with reference to his age, experience and qualifications and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year in accordance with the governing legislation.

The Appeals Officer noted the appellant's medical conditions and the degree to which they affected his activities of daily living as certified by his GP. The Appeals Officer also noted the indicators shown on the ability/disability profile which indicated that the appellant's ability was normal in 14 of the 16 activities profiled. While the Appeals Officer accepted that the appellant experienced some difficulties as a result of his medical conditions, he was not satisfied that the evidence supported a conclusion that the appellant was substantially restricted in undertaking employment that would otherwise be suitable having regard to his age, experience and qualifications.

Outcome: Appeal disallowed

4. 2020/19 Disability Allowance – Summary Decision

Question at issue: Entitlement (participation on a Community Employment scheme)

Background: The appellant had been in receipt of Disability Allowance which was suspended by the Department when the appellant commenced participation on a Community Employment (CE) scheme. The question before the Appeals Officer was whether the appellant retained entitlement to Disability Allowance while participating on the scheme.

Consideration: The Appeals Officer noted that the appellant was paid a training allowance by SOLAS which was equal to, or above, the rate of Disability Allowance and entitlement to Disability Allowance was suspended.

The Appeals Officer concluded that the appellant did not retain an entitlement to Disability Allowance while participating on the CE scheme. The Appeals Officer noted that once the scheme ended payment of Disability Allowance may be resumed, provided the person satisfied the qualifying criteria. The Appeals Officer also noted that this appeared to have been the case in the appellant's situation.

Outcome: Appeal disallowed

5. 2020/20 Disability Allowance – Summary Decision

Question at issue: Eligibility (habitual residence condition)

Background: The appellant, an EU national aged 16 years, came to Ireland in 2018 to reside with his uncle who had been granted guardianship of the appellant. Prior to coming to Ireland the appellant lived with his mother, grandmother and other relatives. His grandmother cared for him but owing to ill-health neither his mother nor grandmother could continue to care for him.

An application for Disability Allowance was disallowed as the Department determined that the appellant was not habitually resident in the State. This was based on the determination that the appellant did not derive a right to reside in the State as he was not a qualified or permitted family member under the European Communities (Free Movement of Persons) Regulations 2015, (S.I. No. 548 of 2015).

On appeal, the appellant submitted that he was a dependent of his uncle both prior to and since coming to Ireland and that in those circumstances he had a right to reside in the State under the 2015 Regulations.

Consideration: The Appeals Officer relied on Sections 210(9) and 246 of the 2005 Act and Articles 3 and 5 of the European Communities (Free Movement of Persons) Regulations 2015, (S.I. No. 548 of 2015).

The Appeals Officer concluded that the appellant did not satisfy the condition of being a qualified family member as he was not a spouse, civil partner, direct descendant or dependent direct relative in the ascending line of the Union citizen.

The Appeals Officer went on to consider if the appellant was a permitted family member under the 2015 Regulations. Article 5 of the 2015 Regulations makes provision for family members who are not the spouse/partner, direct descendants or dependent direct relatives in the ascending line. Under the provisions of Article 5 such other family members, referred to as permitted family members, have the right to have their entry and residence facilitated in the host EU country if:

- they are dependent on the EU citizen; or
- they are members of the EU citizen's household; or
- where on serious health grounds strictly require the personal care of the EU citizen.

The Appeals Officer concluded that, based on the facts of the case, the appellant did not satisfy any of these requirements.

Outcome: Appeal disallowed

6. 2020/21 Disability Allowance – Oral Hearing

Question at issue: Eligibility (habitual residence condition)

Background: The appellant, an EU national in her late 20s, applied for Disability Allowance in May 2019. Her application was refused in September 2019 on the grounds that she was not habitually resident in the State. The length and continuity of her residence in the State was specifically cited.

In her application, the appellant stated she had lived in her home country until coming to the State in February 2017. She indicated she had lived continuously in Ireland since her arrival. She had been in employment but had been on sick leave since February 2019.

The appellant stated she had been renting a house with an ex-partner but became homeless when the relationship broke up. She was registered with the local homeless outreach team and the local multidisciplinary team regarding her mental health. She was attending therapy twice a week. She had an Irish bank account. She had no dependents or property in the State.

In her appeal, the appellant stated that she came to Ireland with the intention of working and studying here. She stated that her mother was living close by and she recently moved to a new tenancy. She had three jobs since coming to Ireland but had to resign from her last employment due to her mental health.

Oral Hearing: The appellant provided a letter from her Local Authority advising she was eligible for local authority housing and had been placed on the housing list. She said she had returned to her home country for less than a fortnight on a holiday to visit her grandmother. She indicated that she was not in work in Ireland at that stage. She had been permanently employed but had to resign her job in March 2019. She stated that she explored the possibilities of getting a job in Ireland before she arrived. She stated that she was looking for, and actively seeking, employment. She stated that she planned to stay and live in Ireland and to go back to work, if that was possible. She had participated in local sport events, planned to join a local club and to do some more volunteer work. She stated that she was going to therapy. She indicated that she did not hold bank accounts in other countries. She stated that her mother resided in Ireland. She provided a copy of her tenancy agreement and a letter confirming that her tenancy had been registered with the Residential Tenancies Board.

Consideration: The Appeals Officer identified the governing legislation as Section 210 of the 2005 Act which provides that Disability Allowance may be payable to a person who meets the qualifying criteria as to age, specified disability, means. In addition, it is a requirement of the legislation that a person is habitually resident in the State. Section 246 of the 2005 Act sets out the provisions as to habitual residence.

In relation to the length and continuity of residence in the State or in any other particular country, the appellant had resided continuously in the State since 2017, with the exception of one brief absence. In relation to the length and purpose of any absence from the State, she had one holiday, of less than a fortnight duration, to visit her grandmother. In relation to the nature and pattern of her employment, she had been in almost continuous employment since her arrival in the State, up to the date on which she ceased employment due to illness. In relation to her main centre of interest, she had no property in the State or abroad and her mother resided in the State. She had also been deemed eligible for local authority housing. In relation to her future intentions as they appeared from all the circumstances, the appellant intended to remain in the State and there was no evidence that demonstrated otherwise. On the basis of the evidence, the Appeals Officer concluded that the appellant was habitually resident in the State.

Outcome: Appeal allowed

7. 2020/318/60 Disability Allowance – Section 318 Review

Question at issue: Entitlement to Living Alone Allowance

Grounds for Review: The Department in its request for a review asserted that the Appeals Officer erred in fact by allowing payment of an increase in respect of living alone in circumstances where the appellant's child resided with her. The Department outlined that in order to qualify for this increase the person must live completely alone. There are very limited exceptions to this rule: one of which relates to a person who is residing alone but stays with a relative/friend at night or a relative/friend stays overnight for security reasons.

Background: The appellant was in receipt of Disability Allowance and applied for an increase in that payment in respect of living alone. The appellant's child lived with her. The Appeals Officer allowed the appeal with the effect that the increase in respect of living alone was awarded.

Review: On review I noted that Section 211 (1)(c) of the 2005 Act provides that the rate of Disability Allowance shall be increased by the amount set out in Column 6 of Part 1 of Schedule 4 of the Act where the person is living alone. Section 3 (1) of the 2005 Act provides that (e) the circumstances in which a person is to be regarded as living alone shall be specified in regulations. In circumstances where no such regulations have been made and in the absence of such legislation I considered that the words should be given their ordinary meaning.

It was clear that the appellant was not living alone and this was not disputed and the circumstances of her living arrangements did not come within the limited exceptions outlined by the Department.

The appellant could not therefore be considered to be living alone within the meaning of the governing legislation.

Outcome: Decision revised

8. 2020/318/61 Disability Allowance

Question at issue: Eligibility (medical criteria)

Grounds for Review: The appellant submitted that in circumstances where the medical evidence in a Disability Access Route to Education (DARE) application referred to “significant ongoing illness” that will “remain static” the medical criteria for Disability Allowance had been met and the Appeals Officer erred in law with regard to the weight afforded to this evidence.

Background: The appellant, aged 16 years, had diagnoses of Type 1 diabetes and hyperthyroid which the treating GP indicated were likely to continue indefinitely. The decision of the Deciding Officer to refuse the claim was made by reference to Section 210(1)(b) of the 2005 Act. The subsequent appeal was disallowed. The Appeals Officer noted that the ability/disability profile indicated that the degree to which the appellant was affected by the diagnosed conditions was normal in some categories and mild in the remaining categories.

A review of the Appeals Officer’s decision was conducted under Section 317 of the 2005 Act. In support of that request a copy of a DARE application was submitted. DARE is a third level alternative admissions scheme for school leavers whose disabilities have a negative impact on their second level education and offers reduced points places to school leavers who, as a result of having a disability, experience additional educational challenges. However, the Appeals Officer did not consider that the additional information in the DARE application warranted a revision of his earlier decision.

A further review of the Appeals Office’s decision was conducted under Section 317 of the 2005 Act in light of additional correspondence consisting of confirmation of the original diagnoses and advising that the appellant had been referred to CAMHS and to counselling/psychiatric services. However, the Appeals Officer did not consider that the additional information was such as would refute the determination already made.

Review: From my review of the Appeals Officer’s decision and subsequent reviews it was clear that the Appeals Officer fully accepted that the appellant was restricted by certified medical conditions. The question before the Appeals Officer was whether the appellant was substantially restricted in undertaking employment in accordance with the legislation governing entitlement to Disability Allowance. It was clear that the information outlined in the DARE application was evidence of diagnoses and prognosis for a specific purpose but I did not consider that it was evidence of the

impact of those diagnoses on the appellant's capacity to undertake suitable employment.

I therefore did not consider, as was submitted, that in circumstances where the medical evidence referred to "significant ongoing illness" that will "remain static" that this equated to the criteria for Disability Allowance having been met. I was also satisfied that the Appeals Officer had sufficient regard to this evidence and considered it in the context of the totality of the evidence presented by the appellant.

I also reviewed the material that was before the Appeals Officer which outlined that the appellant had been referred to CAMHS, was on a waiting list for an appointment for the treatment of anxiety and depression and had also been referred to a counsellor and psychiatrist for similar treatment. In this respect the Appeals Officer fully accepted that the appellant availed of and benefited from various supports and interventions. However, the Appeals Officer also referred to the ability/disability profile completed at the time of application for Disability Allowance. This profile is designed to capture the degree to which the medical conditions affect a claimant in 16 general abilities. In the appellant's case all areas were shown as normal or being mildly affected. Having regard to the totality of the evidence presented the Appeals Officer was not satisfied that the appellant could be regarded as substantially restricted in undertaking suitable employment within the meaning of the governing legislation. I did not consider that the Appeals Officer had erred in fact and/or law and the contentions submitted by the appellant did not point to error of fact and/or law such that the decision of the Appeals Officer should be revised.

Outcome: Decision not revised

9. 2020/318/62 Disability Allowance

Question at issue: Means (benefit from a Member State of the EU)

Grounds for Review: The review in this case was sought on the basis that the Appeals Officer erred in law in failing to apply specified provisions of Regulation (EC) 883/2004 in the assessment of means in order to establish entitlement for Disability Allowance.

Background: The appellant suffered a workplace accident in the UK which had left him unable to work and he was awarded an Industrial Injury Disablement Benefit by the UK authorities.

The appellant's claim for Disability Allowance was disallowed by the Deciding Officer on the grounds that the appellant's means were in excess of the statutory limit applicable to a person in his circumstances. The Industrial Injury Disablement Benefit paid to the appellant by the UK authorities was assessed as means.

The Appeals Officer disallowed the subsequent appeal and outlined that in accordance with the Rules for calculating means all income in cash and any non-cash benefits must be taken into account. The Appeals Officer noted that Table 2 of Schedule 3 in the 2005 Act outlines the monies and payments that are specifically disregarded and

decided that as the UK Industrial Injury Disablement payment was not mentioned it fell to be included in the means assessment.

Relying on Articles 4 and 5 of Regulation (EC) 883/2004, it was submitted that the Industrial Injury Disablement payment is equivalent to Disablement Benefit under the Occupational Injuries Scheme under Irish legislation (the 2005 Act) and should be excluded in the means test for Disability Allowance.

Review: The legislation governing entitlement to Disability Allowance is contained in Chapter 10 of Part 3 of the 2005 Act. Section 209 provides that means shall be calculated in accordance with the Rules contained in Part 2 of Schedule 3 of the Act.

In accordance with the Rules account shall be taken of all income in cash but excluding amounts set out in Table 2 to Schedule 3. The exclusions include inter alia any moneys by way of benefit and assistance under the 2005 Act. Disablement Benefit is a benefit under the Occupational Injuries Benefits provided for by Chapter 13 of Part 2 of the 2005 Act and as such is excluded when calculating a person's means for the purposes of Disability Allowance.

Social security arrangements for migrant workers and their families are coordinated across the EU in accordance with Regulation (EC) 883/2004 and its' implementing Regulation (EC) 987/2009. Both Regulations became applicable on 1st May 2010. Article 5 of Regulation (EC) 883/2004 provides for the assimilation of facts as follows:

Equal treatment of benefits, income, facts or events

Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;

(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.

For the purpose of this review and in order to establish if the Industrial Injuries Disablement Benefit from the UK authorities is like Disablement Benefit under the Occupational Injuries Benefits under the 2005 Act, I consulted the relevant government websites.

The www.gov.ie website describes Disablement Benefit as a payment under the Occupational Injuries Scheme payable to an insured person who suffers a loss of physical or mental faculty as a result of an occupational accident or a prescribed occupational disease, on or after 1 May 1967.

References to occupational accidents include reference to prescribed occupational diseases as well as occupational injuries.

The www.gov.uk website describes Industrial Injuries Disablement Benefit as a payment to help if a person is ill or disabled from an accident or disease caused by work. The scheme also covers more than 70 prescribed occupational diseases.

In light of the above descriptions I was satisfied that the Industrial Injuries Disablement Benefit under UK legislation is a benefit like Disablement Benefit under the Occupational Injuries Scheme under Irish legislation.

The purpose of Article 5 of Regulation (EC) 883/2004 is to ensure that persons who have exercised their right of free movement within the EU should be treated equally with persons who have been subject to the legislation of just one Member State. The principle of assimilation of facts provided for in Article 5 of Regulation (EC) 883/2004 obliges Member States when applying their own legislation to take into account like facts or events that have occurred in other Member States or under the legislation of other Member States.

As the Industrial Injuries Disablement Benefit under UK legislation is a benefit like Disablement Benefit under the Occupational Injuries Scheme under Irish legislation I concluded that Article 5 of Regulation (EC) 883/2004 applied and the Industrial Injuries Disablement Benefit fell to be excluded from the means test for Disability Allowance in the same way as Disablement Benefit is excluded.

In order to achieve equal treatment of benefits as provided for in Article 5 of Regulation 883/2004, I concluded that an amount equivalent to that payable in the same circumstances if the payment was Disablement Benefit should be excluded in assessing the appellant's means.

Outcome: Decision revised

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