

Casebase Number: G0121

**Thematic Note of SWAO Case Studies:
Partial Capacity Benefit**



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Period of Analysis: 2009-2020

Theme: Partial Capacity Benefit

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Summary of the relevant law:

The legislative basis for the Partial Capacity Benefit (the “**Benefit**”) is provided by Sections 46A-46D of the Social Welfare Consolidation Act 2005 (the “**Act**”) and the sections inserted into Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. 142/2007) by the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (Partial Capacity Benefit) Regulations 2012 (S.I. 43/2012) (the “**Regulations**”).

Under the Act, a person is entitled to receive the Benefit where:

- a) they have applied for it;
- b) they have a profound restriction on their capacity for work in relation to the capacity for work of a person of the same age who has no restriction;
- c) on the day immediately before the day the Benefit was claimed, they were in receipt either of Illness Benefits (for at least 26 weeks) or Invalidity Pension; and
- d) they are under pensionable age.

Degree of restriction on capacity to work

The Regulations provide for assessment of the degree of restriction based on the opinion of a medical assessor, taking into account: (a) medical evidence; (b) the claimant’s own assessment of their capacity for work; (c) certain medical protocols specified in the Regulations; and/or (d) any other relevant material evidence.

A claimant is regarded as having a **profound** restriction where they have a residual capacity for work which is not more than a quarter the norm in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work. The restriction is considered **severe** if it is not more than a half the norm; **moderate** if it is not more than a four-fifths the norm; and **mild** if the restriction is not materially different to the capacity for work of a person of the same age who has no restriction on his or her capacity for work.

Rate of Payment

Under the Act, claimants with a **profound** restriction are entitled to 100% of the weekly rate of Illness Benefit / Invalidity Pension being paid to them on the day immediately before the day for which the Benefit is awarded. Under the Act and the Regulations, claimants with lesser degrees of restriction are entitled to a percentage of their Illness Benefit/Invalidity Pension as follows: for **severe** restriction, 75%; for **moderate** restriction, 50%; and, for **mild** restriction, no benefit is paid.

Duration

Under the Act, the Benefit shall be paid for a maximum of 156 weeks. If Partial Capacity Benefit was received on foot of Invalidity Pension, you can apply for Partial Capacity Benefit again. You will be reassessed to find out if you qualify.

However, where the claimant was receiving Illness Benefit, they are paid for whichever is the shorter of 156 weeks or the period they would have been entitled to keep receiving Illness Benefit (albeit that if, on expiry of entitlement to Illness Benefit, they become entitled to receive Invalidity Pension, they may continue to receive the Benefit for up to 156 weeks).

Dis-qualification

The Regulations provide for disqualification for a period for failing without good cause to attend medical examination, comply with medical advice etc. An exception from disqualification may apply where a course of training is being undertaken.

Key grounds of appeals by appellants:

All but one of the appeals to date concern the assessment of the degree of restriction on the claimant's capacity for work. These appeals were allowed. All claimants were reassessed at the level of restriction they claimed, save for one case in which the claimant, having claimed severe, was moved up from mild to moderate.

The other appeal concerned one of the conditions that claimants must meet to receive the Benefit. The claimant had been on Illness Benefit and then Invalidity Pension. The Invalidity Pension was stopped when she returned to work and her application for the Benefit was not granted on the ground that she had not been in receipt of Illness Benefit (for at least 26 weeks) or Invalidity Pension on the day before she applied for the Benefit. Her appeal was allowed on the basis that, while DSD decided she was not in receipt of Invalidity Pension on the day before she made the claim, there was no valid written decision disallowing the Invalidity Pension. The factual circumstances around her return to work were also taken into account.

Observations on appeal outcomes:

The focus so far is on assessment of degree of restriction. The Appeal Officer has considered medical evidence available at the time of application for the Benefit including medical history, as well as medical evidence of ongoing symptoms and required treatment. Reports were from both GPs and other specialists.

There are also indications of the Appeal Officer having considered the medical evidence in the context of the specific duties that the claimant would be required to perform in their work.

All appeal decisions so far have been made by the Appeal Officer.

Relevant Case Studies of the SWAO Annual Reports 2009-2020

A - I.	2009 - 2017	
	N/A	
J.	2018	
1.	2018/37 Partial Capacity Benefit – Summary Decision	Question at issue: Degree of restriction on capacity for work
2.	2018/38 Partial Capacity Benefit – Summary Decision	Question at issue: Eligibility
K.	2019	
1.	2019/36 Partial Capacity Benefit – Oral Hearing	Question at issue: Eligibility (medical)
2.	2019/37 Partial Capacity Benefit – Summary Decision	Question at issue: Eligibility (medical)
L.	2020	
1.	2020/33 Partial Capacity Benefit – Oral Hearing	Question at issue: Eligibility (medical)

- A. 2009 – N/A
- B. 2010 – N/A
- C. 2011 – N/A
- D. 2012 – N/A
- E. 2013 – N/A
- F. 2014 – N/A
- G. 2015 – N/A
- H. 2016 – N/A
- I. 2017 – N/A

J. 2018

1. 2018/37 Partial Capacity Benefit – Summary Decision

Question at issue: Degree of restriction on capacity for work

Background: The appellant, in her early 60s, applied for Partial Capacity Benefit having been in receipt of Illness Benefit. She was returning to work for 16 hours per week. The claim was allowed and the restriction on capacity was assessed as “moderate.” The appellant appealed this decision.

Consideration: The Appeals Officer outlined that Partial Capacity Benefit is payable where an eligible person applies to join or re-join the workforce and has a restriction in capacity for work in comparison to the norm. A person shall be regarded as having a severe restriction in capacity for work where the residual capacity is between 25% and 50% of the norm and a moderate restriction in capacity for work where the residual capacity is between 50% and 80% of the norm. The issue under appeal was the decision to reduce the extent of restriction from severe to moderate. The nature, extent and the effects of the appellant’s medical condition was set out in a report

completed by her doctor. It stated a diagnosis of breast cancer expected to continue indefinitely. Her abilities were assessed under 16 functional and physical categories. With regard to the functional abilities, her mental health was assessed as affecting her to a moderate extent and her physical abilities reaching and lifting/carrying were assessed as affecting her to a severe extent. The report noted that the patient got tired easily. The Appeals Officer noted that the nature of the appellant's work involved a high degree of manual handling, that she was right handed and that her cancer surgery was on the right side. The Appeals Officer also noted that the appellant stated that her condition is such that she can only work 2 days per week. The Appeals Officer concluded that the appellant's medical condition was such that she continued to have a severe restriction on her capacity for work.

Outcome: Appeal allowed.

2. 2018/38 Partial Capacity Benefit – Summary Decision

Question at issue: Eligibility

Background: The appellant, aged 40 years, had been in receipt of Illness Benefit and subsequently Invalidity Pension from May 2012. She returned to work part-time on medical advice in March 2017 for a trial period. The trial period was extended and she then applied for Partial Capacity Benefit. Due to her return to work, her Invalidity Pension was stopped and she was disallowed Partial Capacity Benefit on the grounds that the appellant was not in receipt of Illness Benefit or Invalidity Pension for at least 26 weeks on the day before she applied for Partial Capacity Benefit.

Consideration: Partial Capacity Benefit is payable in cases where an eligible person has a restriction in capacity for work due to a medical condition in comparison to the norm, and the person applies to join or re-join the workforce. Social Welfare legislation provides that a person may qualify for Partial Capacity Benefit if their restriction on capacity to work is assessed as moderate, severe or profound. Participation on the scheme is voluntary. In order to qualify, a person must on the day immediately before the day for which benefit is claimed, be in receipt of Illness Benefit (for 26 weeks) or Invalidity Pension. The Department decided that the appellant was not in receipt of Invalidity Pension on the day before she made the claim for Partial Capacity Benefit. The Appeals Officer noted that the appellant contacted the Department in the first instance and the Department's decision was in response to the appellant's wish to apply for Partial Capacity Benefit. The Appeals Officer noted that social welfare legislation provides that the decision of a Deciding Officer shall be in writing and signed by him or her. Where the decision of the Deciding Officer is not in favour of the person, the Deciding Officer shall set out in writing the reasons for the decision and issue a memorandum of the decision to the person. The Appeals Officer did not find a valid decision from the Department to the appellant disallowing Invalidity Pension, giving the reasons for the decision and informing the appellant that she had the right of appeal.

The Appeals Officer noted that the appellant returned to work on medical advice for limited hours for a trial period, that the trial period was extended and the appellant contacted the Department to enquire about Partial Capacity Benefit. The Appeals Officer concluded that in the absence of a valid decision disallowing Invalidity

Pension, the application for Partial Capacity Benefit can be regarded as a valid claim from the date she returned to work. The appellant's GP in the medical report stated a diagnosis of hyperinsulinemic hypoglycaemia and seizures which began in 2012 and were expected to continue indefinitely. The report stated multiple hospital admissions with no cause found. The report also contained a letter from a Consultant Endocrinologist. The Appeals Officer examined the evidence available in this case, including the medical evidence and decided that the appellant's medical condition was such that she had a profound restriction on her capacity for work. Accordingly, he concluded that Partial Capacity Benefit should be paid at the rate of 100% of the appellant's Invalidity Pension entitlement.

Outcome: Appeal allowed.

K. 2019

1. 2019/36 Partial Capacity Benefit – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant applied for Partial Capacity Benefit in October 2017. Her application was approved from January 2018 at the rate of 50%, based on the medical assessment of being moderately affected by her medical circumstances. The appellant appealed the assessment of moderate.

The appellant had intended to start work in November 2017 for 8 hours per week. However, she did not start that job and as a result the Partial Capacity Benefit did not go into payment. She was then in receipt of Invalidity Pension.

The available medical evidence at the time of her application certified that she suffered from narcolepsy. She was certified as being severely to profoundly affected in mental health/behaviour, moderately affected in learning/intelligence, consciousness/seizures, balance/co-ordination climbing stairs/ladders and mildly affected in manual dexterity and walking. A number of medical reports from a sleep disorder specialist were also provided.

Consideration: Partial Capacity Benefit is payable in cases where an eligible person has a restriction in capacity for work due to a medical condition in comparison to the norm, and the person applies to join or re-join the workforce. Social Welfare legislation provides that a person may qualify for Partial Capacity Benefit if their restriction on capacity to work is assessed as moderate, severe or profound. For the purpose of the appellant's claim for Partial Capacity Benefit, the Appeals Officer noted that the appellant was in receipt of Invalidity Pension which was awarded since her application for Partial Capacity Benefit was approved and that the appellant never commenced employment as planned.

The Appeals Officer considered all of the evidence, including the medical evidence regarding the appellant's ongoing symptoms and noted that the appellant had been out of the workforce since 2016, concluded that the appellant had a residual capacity to do some work at present, albeit at a minimal level at least at the outset, and therefore, decided that she had a profound restriction on her capacity for work at that time.

Outcome: Appeal allowed

2. 2019/37 Partial Capacity Benefit – Summary Decision

Question at issue: Eligibility (medical)

Background: The appellant was in receipt of Invalidity Pension and her application for Partial Capacity Benefit was refused. The appellant stated that she suffered from pins and needles, pain, shakes, fatigue, aches, forgetfulness, disturbed sleep and muscle spasms. She could not sit for long periods and standing for long periods caused pain. A medical report was completed by her GP. The diagnosis was fibromyalgia and the condition was of indefinite duration. The medical history was fatigue, migraine and drooping eyelid. The appellant attended a Rheumatology Unit and was due to have more investigations of her condition. The appellant stated that she had been in receipt of Illness Benefit, Disability Allowance and Invalidity Pension for the previous 7 years.

Consideration: The governing legislation specifies the conditions for which a person would be assessed as having a profound, severe, moderate or mild restriction on his or her capacity for work. A person is assessed as having a moderate restriction on his or her capacity for work if that person is assessed as having a capacity for work which was greater than one half and not more than four fifths of the norm for a person of the same age who had no restriction on his or her capacity for work. The Ability Profile completed by her GP stated that the appellant had been moderately affected in lifting/carrying, bending/kneeling/squatting, sitting/rising, standing and climbing stairs/ladders.

She had been mildly affected in reaching, manual dexterity and walking. The Appeals Officer noted that the appellant attended the Rheumatology Unit and was due to have more investigations of her condition. Having considered all of the evidence, the Appeals Officer concluded that the appellant's medical condition was such that she continued to have a moderate restriction on her capacity for work.

Outcome: Appeal allowed

L. 2020

1. 2020/33 Partial Capacity Benefit – Oral Hearing

Question at issue: Eligibility (medical)

Background: The appellant, in her mid-30s, applied for Partial Capacity Benefit in September 2018. The Deciding Officer deemed the appellant's restriction on her capacity for work to be mild and the appellant's claim was refused. The appellant submitted that the restriction on her capacity for work was severe.

The GP reported that the appellant's mental health was moderately affected by her condition as were some aspects of her mobility. She had a medical history of chronic back pain and sciatica, chronic sinusitis, pelvic pain and endometriosis. She attended psychology and physiotherapy. The appellant submitted a letter from her GP which outlined that she had multiple medical problems which limited her ability to work. She had constant pain, had an anxiety disorder and was due to have surgery in 2019. The appellant also submitted a detailed medical report from a psychotherapist, which covered her presenting issues and interventions from May 2018 to September 2019.

Consideration: Partial Capacity Benefit is payable in cases where a person has a restriction on capacity for work due to a medical condition in comparison to the norm, and the person applies to join or re-join the workforce. The governing legislation provides that a person may qualify for Partial Capacity Benefit if their restriction on capacity for work is assessed as moderate, severe or profound.

The Appeals Officer noted that the appellant commenced working part-time in September 2018 and worked for 24 hours per week over three days. She was absent from work due to surgery for a number of months in 2019. The appellant stated that she saw part-time work as part of her recovery and as a way of progressing back into the workplace. She continued to have treatment for physical and mental health conditions.

The governing legislation provides that a person shall be regarded as having a severe restriction on his or her capacity for work where that person has a residual capacity for work which is not more than a half of the norm in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work. The Appeals Officer noted that the appellant had been working 24 hours per week over three days when she made a claim for Partial Capacity Benefit in September 2018. Given the extent of her employment, the Appeals Officer did not consider that the appellant's residual capacity for work did not exceed half of the norm at that time.

Based on the evidence the Appeals Officer was however satisfied that the appellant had a residual capacity for work which was not more than four fifths of the norm in relation to the capacity for work of a person of the same age, who has no restriction on his or her capacity for work and concluded therefore that the appellant had a moderate restriction in her capacity for work with effect from September 2018.

Outcome: Appeal partially allowed

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