

Casebase Number: G0125

Title of Payment: Domiciliary Care Allowance



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Date of Final Decision: 10 March 2021

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Keywords: Domiciliary care allowance; appeal; judicial review; evidence; eligibility; change of circumstances

Organisation who represented the Claimant: N/A

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Case Summary:

This case concerned the question of whether it was fundamental to a claim for benefit or assistance under the Social Welfare (Consolidation) Act 2005 (the “Act”) that the person claiming that benefit or assistance should be entitled to it at the time the claim is made. A person may become entitled to a benefit which was previously claimed at a time when they were not eligible. This case concerned the question of whether, when this occurs following the rejection of a claim, is it necessary to make a fresh claim, or can the rejected claim be revived in accordance with the Act.

The facts here concern determinations made by appeals officers to refuse to revise earlier decisions of appeals officers which declined claims for domiciliary claim allowance. The claimants argue that the latter appeals officers erred in stating that any new fact or evidence provided in an application to review a decision must bear on establishing the right of the claimant at the time of the claim for benefit, and not at a later time. Owens J notes that the Chief Appeals Officer disagrees with the applicants’ position that the appeals officers erred and that the Chief Appeals Officer is correct in this view:

“The statutory framework governing decisions and appeals relating to a claim does not permit a claimant to demonstrate that changes in circumstances subsequent to the time of that claim give rise to a right to benefit so as to enable this issue to be revisited in a revival of a claim which has been rejected following an appeal.”

Accordingly, Owens J rejected the judicial review claim that the appeals officers acted contrary to law in determining that a claimant under the 2005 Act must establish entitlement at the time of submission of the claim.

The background to each of LL and DZ’s claims are detailed in the judgment. With respect to LL (and LL’s child H), the initial claim was submitted in April 2015 and was subsequently rejected. In 2019, the applicant’s solicitor provided a letter for the purpose of supporting LL’s application for domiciliary care allowance which detailed a medical prescription from 2017 and contained further information on H’s health. This letter was submitted as “further evidence which was not available at the time of the oral hearing”. It was determined that the letter did not provide any additional information relating to the care required by H at the time of the application in 2015. Owens J supports the position of Chief Appeals Officer that “*while an applicant is*

entitled to rely on evidence that post-dates the original application or any earlier decision, the substance of that evidence must relate to the eligibility of an applicant at the time of the original application for the purpose of deciding whether a decision to refuse that payment was erroneous”.

Owens J was also critical of the delay in bringing judicial review proceedings a “very long time” after the date of the decision which it challenged, and did not find the attributing of the delay to Covid-19 restrictions to be convincing. Owens J found that the excusing circumstances offered were not sufficient to extend the time limit for judicial review under O.84 r.21(3) of the Rules of the Superior Courts.

DZ’s claim (relating to her son K) was made in March 2018, rejected and subsequently appealed. A HSE report was made available in October 2019 relating to K and submitted with a request for review of the original decision. The appeals officer wrote on 31 January 2020 to state that an appeal may only be reviewed if new information of acts come to light which would render the initial appeal decision erroneous at the time it was made, and stated specifically that:

*“We appreciate that K’s conditions will present challenges but regret that it has not been established that the original appeal decision in this case was erroneous **based on the evidence available at the time...**”*

Owens J determined that this is not the correct test to apply. New facts and evidence may be presented under the Act (albeit relating to the time of the application). On the basis of this error which may have affected the outcome of the process, Owens J ordered that the decision of 31 January 2020 be set aside and the application be remitted back to the appeals officer.

In the case of DZ, Owens saw fit to extend the time allotted for judicial review on the basis that the initial delay related to circumstances outside the control of DZ and her solicitors, in particular correspondence between solicitors and the Social Welfare Appeals Office.

Key Conclusions:

The Act requires that a claimant be entitled to the benefit sought at the time when the claim is submitted. Proof of change of circumstances which establish that the right of the claimant to benefit has first arisen at some point in time later than the time of making of an unsuccessful claim for that benefit must be the subject of a new claim.

Evidence post-dating the original application can be relied on in an appeal, although it must relate to the eligibility of the applicant at the time of the original application.

Judicial review claims should be brought within the timeline afforded by law and the Court will not look favourably on delays within the control of the applicant and/or their solicitors.

Relevant Legislation:

Social Welfare (Consolidation) Act 2005

Key Arguments:

Central to this case is the interpretation of ss. 301(1) and 317(1) of the Act. Section 317(1)(a) provides:

(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...”

Section 301(1) gives similar revision powers to deciding officers. The Court states that the revision power of 317(1)(a) is limited. While the reviewer is obliged to consider any new evidence or facts having a bearing on the correctness of the original decision and examine whether these would lead to a conclusion 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 [the decision] was given”, what is being examined is the decision on whether the claimant has established a right to benefit at the date of the claim.

The Court states that while the Act does not expressly identify the point of time when eligibility must be established, Owens J has relied on the language of Section 241(1) requiring claims to be made in the “prescribed manner” as support for the determination that the Act requires that a claimant be entitled to the benefit sought at the time the claim is submitted.

Counsel for the applicants argued in favour of an interpretation of the 2005 Act which allows appeals officers to consider material showing change of circumstances after the date of a claim which has been rejected, and referred to Section 319 as support for this interpretation. Owens J noted that while Section 319(c) may deal with changes of circumstances resulting in a claimant being entitled to increased levels of benefit, this does not support the claimants’ proposed interpretation.

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Observations:

Further evidence introduced to appeal an adverse finding for a benefit application under the Social Welfare (Consolidation) Act 2005 must relate to the circumstances at the time of the application. This decision has very far reaching consequences for people taking appeals and all experts reports should state clearly that the evidence being given is relevant to the time at which the application was made.

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