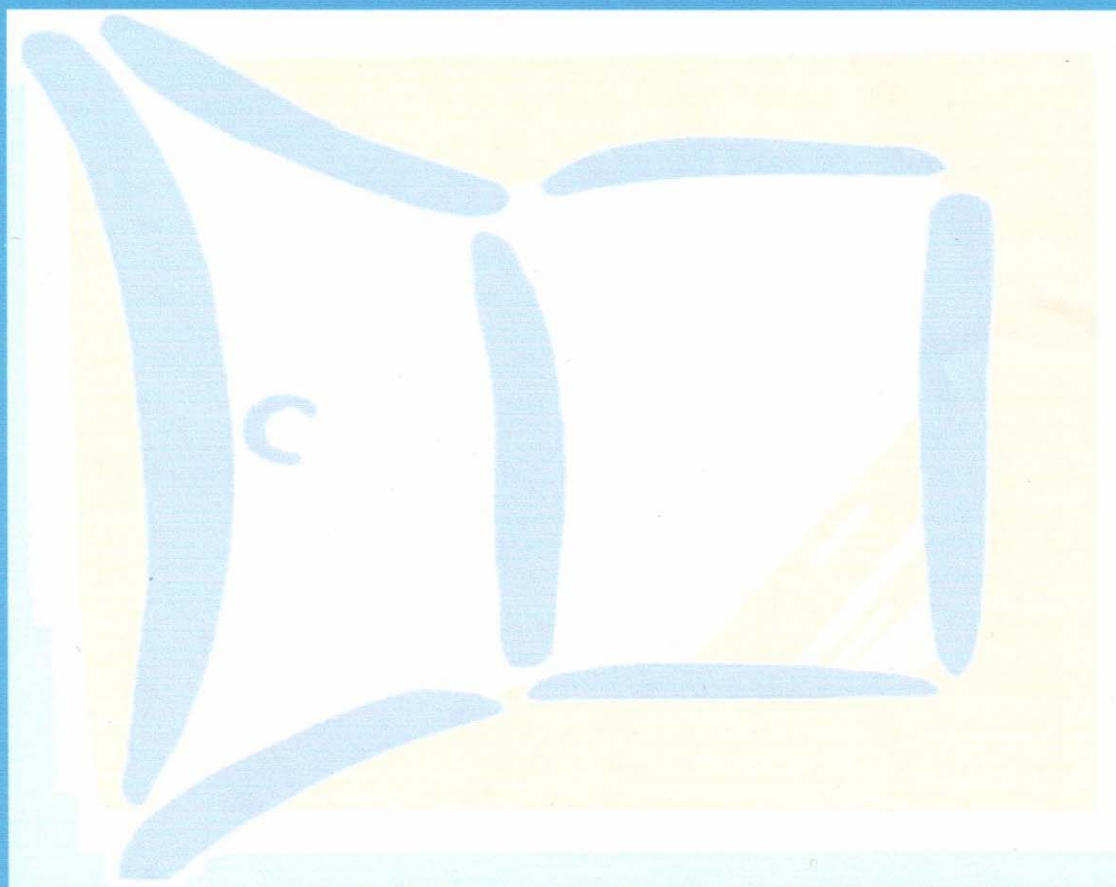


# **Social Welfare Appeals Office**

## **Annual Report 2012**



**Report by the Chief Appeals Officer on the activities  
of the Social Welfare Appeals Office in 2012**



Ms. Joan Burton T.D.  
Minister for Social Protection  
Áras Mhic Dhiarmada  
Dublin 1

June 2013

Dear Minister,

In accordance with the provisions of section 308 (1) of the Social Welfare Consolidation Act 2005, I hereby submit a report on the activities of the Social Welfare Appeals Office for the year ended 31 December 2012.

Yours sincerely,

Geraldine Gleeson  
Chief Appeals Officer

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# INTRODUCTION

The challenges which presented over the last number of years continued in 2012. In particular the number of appeals received increased by 4,243. This was largely because of the increased number of Supplementary Welfare Allowance appeals following the integration of the Community Welfare Appeals Service with the Social Welfare Appeals Office.

In terms of resources, we had to say goodbye to the 8 retired staff who assisted us throughout 2010 and 2011 which meant a significant loss in terms of experience and capacity from the start of 2012. In addition, throughout the year, significant resources had to be allocated to training new staff who had been appointed in 2011 and early 2012.

Nonetheless, the investments made in the years 2010 to date, particularly in the appointment of additional Appeals Officers and the implementation of an improved operating model have proved invaluable in ensuring that processing times for cases decided by Appeals Officers have improved by some 10.3 weeks overall notwithstanding the challenging environment. The processing time for an oral hearing has reduced by 13 weeks and it is notable that this was entirely attributable to a reduction in time taken to process the case within the appeals office itself.

It is true that processing times for a summary decision have increased slightly by 2.7 weeks in 2012. This is because the new model has rebalanced processing times as between oral hearings and summary decisions. There is no reason why a case which may be decided summarily should be progressed more speedily at the expense of a case which requires an oral hearing. In future, the objective is that there would be no more than 6 to 9 weeks between the times taken to process a case decided summarily and a case that requires an oral hearing.

It is estimated that an additional 6,000 appeals will be finalised in 2013 as against 2012 and this will further reduce the processing times in 2013.

In this year's report, for the first time, there is a table showing the breakdown of processing times by scheme as between time spent in the appeals office and time spent awaiting a response from the Department. While processing times within the control of this office have improved, the time taken awaiting a response from the Department has remained static or dis-improved further. To address this, a significant amount of work has been undertaken by the Department to improve these waiting times and it is expected that the most significant backlogs, mainly in those schemes where the qualifying criteria are medically based, will be eliminated by June 2013.

My office is acutely conscious that our work directly impacts on the quality of life of individuals and of families. Consistency of decision making is fundamental to good administration and can be difficult to achieve where judgement and interpretation are involved. To this end, during the year, my office continued to strive not only to improve processing times, but also to ensure that decisions are consistent and of the highest possible quality. I hope that all our efforts will ensure that those people who have recourse to this office will be confident that they are dealt with fairly and independently.

I am grateful for the efforts of all Appeals Officers and the administration staff for their continued flexibility and support throughout the year.

Finally, Mr Dan Kavanagh, Deputy Chief Appeals Officer retired at the end of December and I would like to pay tribute to his enormous contribution to the appeals service over many years and to wish him well in his well earned retirement.

Geraldine Gleeson

June 2013

## Statistical Trends – 2012

Our main statistical data for 2012 is set out in commentary form below and in the "Workflow Chart" and tables which follow.

### Appeals Received in 2012

The number of appeals being made to the Social Welfare Appeals Office remains high. In 2012, the Office received 35,484 appeals. This represents an increase of 4,243 on the 31,241 appeals received in 2011, and is significantly higher than the number of appeals being received prior to 2009.

### Clarifications in 2012

In addition to the 35,484 appeals registered in 2012, a further 3,401 appeals were received where it appeared to us that the reason for the adverse decision may not have been fully understood by the appellant. In those circumstances, the letter of appeal was referred to the relevant scheme area of the Department requesting that the decision be clarified for the appellant. We informed the appellant accordingly and advised that if they were still dissatisfied with the decision following the Department's clarification, they could then appeal the decision to my Office. During 2012, only 700 (21%) of the 3,401 cases identified as requiring clarification were subsequently registered as formal appeals. This is considered to be a very practical way of dealing with such appeals so as to avoid unnecessarily invoking the full appeals process.

### Appeals Types in 2012

The number of SWA appeals received increased by 74% when compared to 2011.

Appeals in relation to Invalidity Pensions increased by 109%; Carer's Allowance by 21% and Disability Allowance by 14%, whereas appeals in relation to Jobseeker's Allowance decreased by 5%; Illness Benefit by 28%; and Domiciliary Care Allowance by 9%.

### Workload for 2012

The workload of 52,972 for 2012 was arrived at by adding the 35,484 appeals received to the

17,488 appeals on hands at the beginning of the year. That total workload was 2.8% higher than the workload of 51,515 for 2011.

### Appeals Finalised in 2012

We finalised 32,558 appeals in 2012. The appeals finalised were broken down between:

- Appeals Officers (70.6%): 22,997 were finalised by Appeals Officers either summarily or by way of oral hearings (equivalent figure in 2011 was 25,390 or 74.6%),
- Revised Decisions (22.4%): 7,307 were finalised as a result of revised decisions being made by Deciding Officers before the appeals were referred to an Appeals Officer (6,035 or 17.7% in 2011), and
- Withdrawn (7%): 2,254 were withdrawn or otherwise not pursued by the appellant (2,602 or 7.7% in 2011).

### Appeals Outcomes in 2012

The outcome of the 32,558 appeals finalised in 2012 was broken down as follows:

- Favourable (50.4%): 16,417 of the appeals finalised had a favourable outcome for the appellant in that they were either allowed in full or in part or resolved by way of a revised decision by a Deciding Officer in favour of the appellant (48% in 2011),
- Unfavourable (42.6%): 13,887 of the appeals finalised were disallowed thereby upholding the decision of the Deciding Officer. (50.1% in 2011), and
- Withdrawn (7%): As previously indicated, 2,254 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (7.7% in 2011).

### Determinations by Appeals Officers in 2012

The following gives a statistical breakdown on the outcomes of determinations by Appeals Officers by reference to whether the appeal was dealt with summarily or by way of an oral hearing:

- Oral Hearings (40.3%): 9,267 of the 22,997 appeals finalised in 2012 were dealt with by way of oral hearings, of these 4,908 (53%) had a favourable outcome. In 2011, 48% of

the 8,821 cases dealt with by way of oral hearings had a favourable outcome.

- Summary Decisions (59.7%): 13,730 of the appeals finalised were dealt with by way of summary decisions, of these 4,202 (30.6%) had a favourable outcome. In 2011, 24.7% of appeals finalised by way of summary decision had a favourable outcome.

### **Processing Times in 2012**

During 2012, the average time taken to process all appeals was 33.1 weeks (32.5 weeks in 2011).

Of the 33.1 weeks overall average,

- 17.3 weeks was attributable to work in progress in the Department
- 0.9 weeks was due to responses awaited from appellants
- 14.9 weeks was attributable to ongoing processes within the Social Welfare Appeals Office (17.9 weeks in 2011).

When these figures are broken down by process type, the overall average waiting time for an appeal dealt with by way of a summary decision in 2012 was 27.8 weeks (25.1 weeks in 2011), while the average time to process an oral hearing was 39.5 weeks (52.5 weeks in 2011). When average processing times of appeals which were subsequently revised is excluded, processing times of all appeal types reduced by 10.3 weeks overall in 2012 when compared to 2011, with the time for an oral hearing down by 13 weeks and the time for summary decision up by 2.7 weeks. The average waiting time by scheme and process type are set out in Table 6.

The time taken to finalise appeals reflects all aspects of the appeals process which includes:

- seeking the Department's submission on the grounds for the appeal,
- further medical assessments by the Department in certain illness related cases,

- affording the appellant the opportunity to respond or submit any additional medical evidence where there is an unfavourable outcome following further medical assessments by the Department,
- further investigation by Social Welfare Inspectors where required and
- the logistics involved in arranging oral appeal hearings where deemed appropriate.

### **Appeals by Gender in 2012**

A gender breakdown of appeals received in 2012 revealed that 46.9% were from men and 53.1% from women. The corresponding breakdown for 2011 was 46.3% and 53.7% respectively. In terms of favourable outcomes in 2012, 49.1% of men and 51.4% of women benefited.

### **Statistical tables:**

Table 1: Appeals received and finalised 2012

Table 2: Appeals received 2005 – 2012

Table 3: Appeals outcomes by category 2012

Table 4: Appeals in progress at 31 December 2005 - 2012

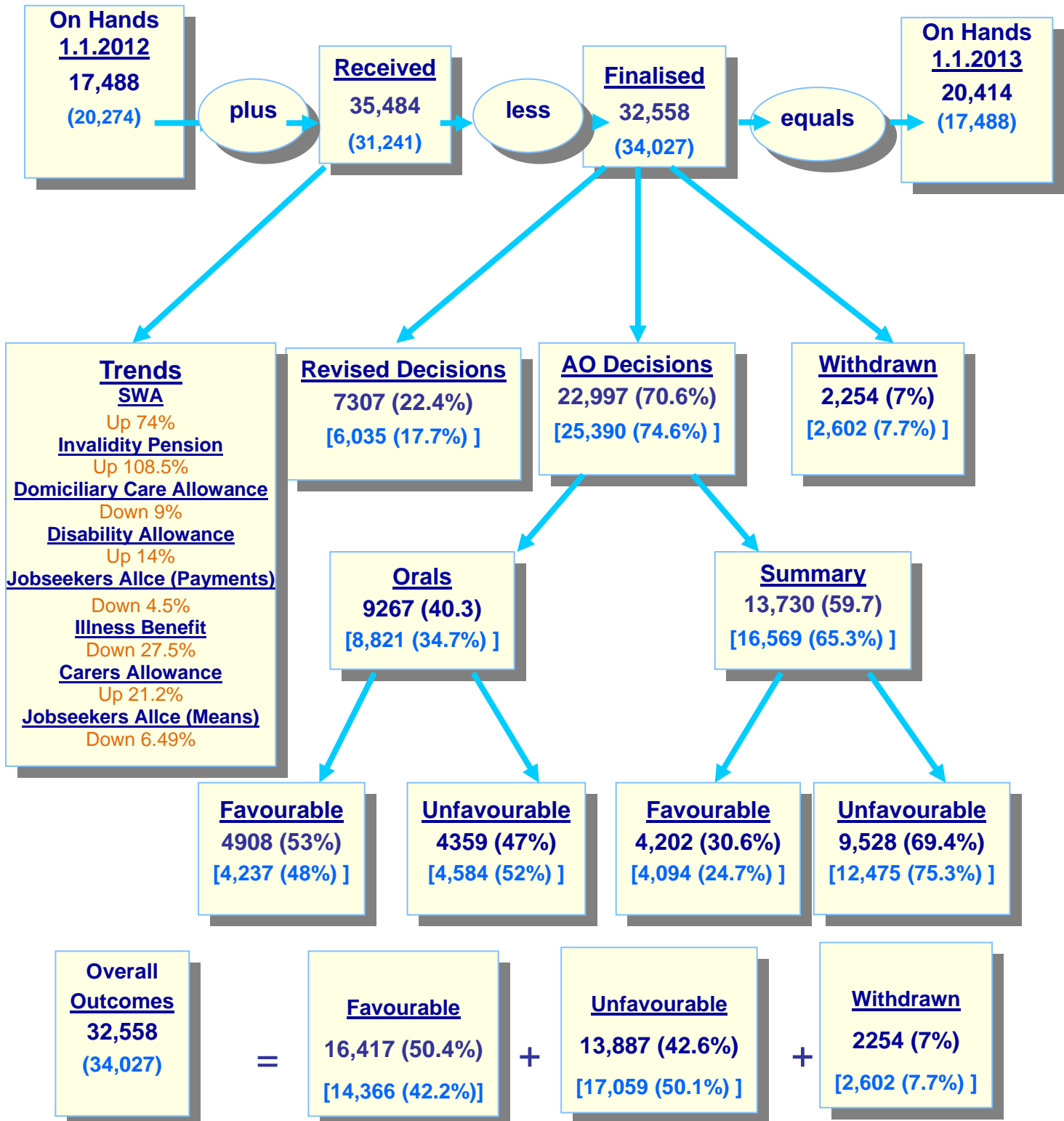
Table 5: Appeals statistics 1992 - 2012

Table 6: Appeals processing times by scheme 2012

Table 7: Appeals outstanding at 31<sup>st</sup> December 2012

## Workflow Chart - 2012

(Corresponding figures for 2011 are in brackets)



**Table 1: Appeals received and finalised 2012**

Scheme	In Progress 01-Jan-12	Receipts	Decided	Revised Decision	Withdrawn	In Progress 1- Jan- 13
			Appeals Officer	Deciding Officer		
State Pension (non-contributory)	179	258	216	64	22	135
State Pension (Transition)	22	43	16	8	2	39
Pre-retirement Allowance	2	-	1	-	-	1
State Pension (contributory)	91	128	88	16	9	106
Illness Benefit	2023	2,653	991	1,283	941	1,461
Invalidity Pension	1582	4,765	1,465	474	52	4,356
Partial Capacity Benefit	0	67	0	0	0	67
Disability Allowance	2958	6,223	4,310	730	111	4,030
Occupational Injuries Benefits	363	520	442	65	22	354
Treatment Benefit	1	3	2	-	1	1
Jobseeker's Benefit	583	1,289	889	365	99	519
Jobseeker's Allowance - Payments	1498	3,050	2,347	725	229	1,247
Jobseeker's Allowance - Means	1866	3,240	2,412	896	276	1,522
Widow's/Widower's and Guardian's Payments	79	136	118	16	2	79
One-Parent Family Payment	634	947	632	247	116	586
Maternity Benefit	20	29	25	3	-	21
Child Benefit	603	675	662	189	24	403
Carer's Benefit and Allowances	1208	2,859	1,671	518	37	1,841
Domiciliary Care Allowance	1385	2,186	1,809	625	24	1,113
Respite Care	166	278	192	90	9	153
Family Income Supplement	104	301	157	88	13	147
Farm / Fish Assist	121	271	169	40	22	161
Supplementary Welfare Allowances	1833	5,445	4,264	829	230	1,955
Liabile relatives	31	39	23	24	2	21
Insurability of Employment	136	79	96	12	11	96
<b>Totals</b>	<b>17,488</b>	<b>35,484</b>	<b>22,997</b>	<b>7,307</b>	<b>2,254</b>	<b>20,414</b>



**Table 2: Appeals received 2005 – 2012**

	2005	2006	2007	2008	2009	2010	2011	2012
State Pension (non-con), Blind Pen	339	413	347	287	340	370	338	258
State Pension (Transition)	35	28	30	15	22	7	29	43
Pre-retirement Allowances	23	21	11	10	3	2	1	-
State Pension (con)	126	71	86	87	88	256	106	128
Illness Benefit	2,742	2,674	2,564	3,597	4,948	5,473	3,659	2,653
Invalidity Pension	443	446	535	526	642	1,024	2,285	4,765
Partial Capacity Benefit	-	-	-	-	-	-	-	67
Disability Allowance	2,392	2,622	2,938	3,522	4,696	4,840	5,472	6,223
Occupational Injuries Benefits	434	440	423	409	396	459	356	520
Treatment Benefit	52	41	17	18	10	8	3	3
Jobseeker's Benefit	1,243	1,028	1,139	1,358	1,354	1,307	1,286	1,289
Jobseeker's Allowance - Payments	2,274	2,375	2,296	2,401	3,179	5,506	3,404	3,050
Jobseekers Allowance - Means	843	848	903	1,901	3,615	4,050	3,465	3,240
Widows/Widowers and Orphans Pensions	63	62	31	58	69	69	97	136
One-Parent Family Payment	1,034	931	701	774	810	1,124	1,079	947
Maternity Benefit	16	20	10	15	11	29	42	29
Child Benefit	357	236	269	689	1,361	1,051	824	675
Carers Benefit and Allowance	586	630	736	1,102	2,098	3,207	2,359	2,859
Domiciliary Care Allowance	0	0	0	0	836	1,858	2,401	2,186
Respite Care	206	361	457	319	262	162	303	278
Family Income Supplement	57	65	92	142	170	227	258	301
Farm / Fish Assist	114	71	66	61	137	244	220	271
Supplementary Welfare Allowances	327	329	323	437	789	1,020	3,129	5,445
Liabile Relatives	12	3	9	19	25	16	26	39
Insurability of Employment	79	85	87	86	102	123	99	79
<b>Totals</b>	<b>13,797</b>	<b>13,800</b>	<b>14,070</b>	<b>17,833</b>	<b>25,963</b>	<b>32,432</b>	<b>31,241</b>	<b>35,484</b>

**Table 3: Outcome of Appeals by category 2012**

	Allowed	Partly Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
State Pension (non-contributory) and Blind Pensions	33 10.9%	23 7.6%	64 21.2%	160 53.0%	22 7.3%	302
Illness Benefit	325 10.1%	15 0.5%	1,283 39.9%	651 20.2%	941 29.3%	3,215
Invalidity Pension	1,031 51.8%	4 0.2%	474 23.8%	430 21.6%	52 2.6%	1,991
Disability Allowance	2,114 41.0%	95 1.8%	730 14.2%	2,101 40.8%	111 2.2%	5,151
Occupational Injuries Benefits	121 22.9%	47 8.9%	65 12.3%	274 51.8%	22 4.1%	529
Jobseeker's Benefit	183 13.5%	37 2.7%	365 27.0%	669 49.4%	99 7.4%	1,353
Jobseeker's Allowance - Payments	810 24.6%	153 4.6%	725 22.0%	1,384 42.0%	229 6.9%	3,301
Jobseeker's Allowance - Means	395 11.0%	174 4.9%	896 25.0%	1,843 51.4%	276 7.7%	3,584
Widows/Widowers Pensions and Guardians Payment	28 20.6%	5 3.7%	16 11.8%	85 62.5%	2 1.4%	136
One-Parent Family Payments	171 17.2%	56 5.6%	247 24.8%	405 40.7%	116 11.7%	995
Carers Benefit and Allowances	694 31.2%	143 6.4%	518 23.3%	834 37.5%	37 1.6%	2,226
Domiciliary Care Allowance	874 35.6%	29 1.1%	625 25.4%	906 36.9%	24 1.0%	2,458
Respite Care	69 23.7%	3 1.0%	90 30.9%	120 41.2%	9 3.2%	291
Family Income Supplement	33 12.8%	9 3.5%	88 34.1%	115 44.6%	13 5.0%	258
Farm / Fish Assist	25 10.8%	31 13.4%	40 17.3%	113 48.9%	22 9.6%	231
Supplementary Welfare Allowances	1,017 19.1%	142 2.7%	829 15.6%	3,105 58.3%	230 4.3%	5,323
Insurability of Employment	8 6.7%	2 1.7%	12 10.1%	86 72.3%	11 9.2%	119
Other Appeals - State Pension (Contrib), Child Benefit, Treatment Benefit, etc.,	158 14.3%	53 4.8%	240 21.9%	611 55.4%	39 3.5%	1,102
<b>TOTALS</b>	<b>8,089</b>	<b>1,021</b>	<b>7,307</b>	<b>13,887</b>	<b>2,254</b>	<b>32,558</b>

**Table 4: Appeals in progress at 31 December 2005 – 2012**

	2005	2006	2007	2008	2009	2010	2011	2012
State Pension (non-con), Blind Pension	149	195	143	147	177	237	179	135
State Pension (Transition)	13	21	19	12	9	11	22	39
Pre-retirement Allowance	13	8	5	4	0	1	2	1
State Pension (contributory)	90	95	55	47	62	110	91	106
Illness Benefit	997	1,007	1,015	1,404	2,421	2,660	2,023	1,461
Invalidity Pension	260	268	297	317	474	612	1,582	4,356
Partial Capacity Benefit	0	0	0	0	0	0	67	67
Disability Allowance	1,040	1,127	1,311	1,550	2,846	3,046	2,958	4,030
Occupational Injuries Benefits	268	272	239	258	256	446	363	354
Treatment Benefit	23	7	3	8	6	4	1	1
Jobseeker's Benefit	390	277	317	448	692	766	583	519
Jobseeker's Allowance - Payments	668	576	681	755	2,085	3,318	1,498	1,247
Jobseeker's Allowance - Means	347	322	382	859	2,253	2,496	1,866	1,522
Widow's/ers and Guardian's payments	41	31	14	32	46	63	79	79
One-Parent Family Payment	642	461	296	388	472	833	634	586
Maternity Benefit	8	9	4	2	6	21	20	21
Child Benefit	136	104	131	573	1,420	1,187	603	403
Carers Benefit and Allowances	311	371	353	618	1,413	2,218	1,208	1,841
Domiciliary Care Allowance	0	0	0	0	776	1,386	1,385	1,113
Respite Care	69	166	221	119	185	114	166	153
Family Income Supplement	36	29	40	51	73	105	104	147
Farm / Fish Assist	65	32	31	34	98	163	121	161
Supplementary Welfare Allowance	54	43	79	114	139	343	1,833	1,955
Liable relatives (contributions)	10	2	2	15	22	22	31	21
Insurability of Employment	73	75	85	77	77	112	136	96
<b>TOTALS</b>	<b>5,703</b>	<b>5,498</b>	<b>5,723</b>	<b>7,832</b>	<b>16,008</b>	<b>20,274</b>	<b>17,488</b>	<b>20,414</b>

**Table 5: Appeals statistics 1992 – 2012**

<b>APPEALS STATISTICS 1992 - 2012</b>					
<b>Year</b>	<b>On hands at start of year</b>	<b>Received</b>	<b>Workload</b>	<b>Finalised</b>	<b>On hands at end of year</b>
<b>1992</b>	8,287	17,610	25,897	18,844	7,053
<b>1993</b>	7,053	18,285	25,338	20,021	5,317
<b>1994</b>	5,317	13,504	18,821	14,971	3,850
<b>1995</b>	3,850	12,353	16,203	12,087	4,116
<b>1996</b>	4,116	12,183	16,299	11,613	4,686
<b>1997</b>	4,686	14,004	18,690	12,835	5,855
<b>1998</b>	5,855	14,014	19,869	13,990	5,879
<b>1999</b>	5,879	15,465	21,344	14,397	6,947
<b>2000</b>	6,947	17,650	24,597	17,060	7,537
<b>2001</b>	7,537	15,961	23,498	16,525	6,973
<b>2002</b>	6,973	15,017	21,990	15,834	6,156
<b>2003</b>	6,156	15,224	21,380	16,049	5,331
<b>2004</b>	5,331	14,083	19,414	14,089	5,325
<b>2005</b>	5,325	13,797	19,122	13,419	5,703
<b>2006</b>	5,704	13,800	19,504	14,006	5,498
<b>2007</b>	5,498	14,070	19,568	13,845	5,723
<b>2008</b>	5,723	17,833	23,556	15,724	7,832
<b>2009</b>	7,832	25,963	33,795	17,787	16,008
<b>2010</b>	16,008	32,432	48,440	28,166	20,724
<b>2011</b>	20,274	31,241	51,515	34,027	17,488
<b>2012</b>	17,488	35,484	52,972	32,558	20,414

**Table 6: Appeals processing times by scheme 2012**

Scheme	SWAO (weeks)	Department of Social Protection (weeks)	Appellant (weeks)	Totals
Adoptive Benefit	13.5	37.7	-	51.2
Blind Pension	15.4	10.1	1.0	26.5
Carers Allowance	14.8	18.6	0.4	33.8
Carers Benefit	17.3	6.5	0.2	24.0
Child Benefit	17.7	34.2	0.4	52.4
Disability Allowance	14.8	18.1	0.3	33.3
Illness Benefit	13.7	19.7	5.8	39.2
Domiciliary Care Allowance	16.0	16.0	0.2	32.2
Deserted Wife's Benefit	33.8	14.9	0.7	49.4
Deserted Wfe's Allowance	24.6	7.5	-	32.0
Farm Assist	19.0	11.6	0.5	31.1
Bereavement Grant	10.2	14.0	-	24.2
Family Income Supplement	14.7	8.5	0.3	23.5
Invalidity Pension	11.7	24.8	0.5	37.1
Liabile Relatives	23.6	32.6	-	56.2
One Parent Family Payment				36.3
Maternity Benefit	17.0	14.9	0.9	32.8
State Pension (Con)	30.1	18.3	0.5	48.9
State Pension (Non-Con)	23.1	14.5	0.3	37.9
State Pension (Transition)	22.7	12.5	-	35.3
Occupational Injury Benefit	20.2	16.4	-	36.5
Occupational Injury Benefit (Medical)	13.9	49.6	40.0	103.5
Disablement Pension	21.6	17.6	0.2	39.4
Incapacity Supplement	25.8	19.4	-	45.2
Guardian's Payment (Con)	17.9	19.0	0.2	37.1
Guardian's Payment (Non-Con)	25.6	13.6	-	39.2
Pre-Retirement Allowance	54.6	-	-	54.6
Jobseeker's Allowance (Means)	17.8	24.0	0.2	42.0
Jobseeker's Allowance	17.2	19.0	0.1	36.3
JA/JB Fraud Control (2 cases)	19.3	106.8	-	126.1
Jobseeker's Benefit	14.3	21.8	0.3	36.4
Respite Care Grant	15.5	12.4	0.1	28.0
Insurability of Employment	45.2	22.6	0.1	68.0
Supplementary Welfare Allowance	10.4	7.3	0.3	18.1
Treatment Benefits	5.3	4.2	14.9	24.3
Survivor's Pension (Con)	20.6	12.2	0.1	32.9
Survivor's Pension (Non-con)	16.5	9.3	0.1	26.0
Widows Parent Grant	9.9	13.3	-	23.2
<b>All Appeals</b>	<b>14.9</b>	<b>17.3</b>	<b>0.9</b>	<b>33.1</b>

**Table 7: Appeals outstanding at 31<sup>st</sup> December 2012**

<b>Scheme</b>	<b>In progress in Social Welfare Appeals Office</b>	<b>Awaiting Department response</b>	<b>Awaiting Appellant response</b>	<b>Total</b>
JA Means/Farm Assist	896	779	8	1,683
Jobseeker's Allowance/Benefit	979	778	6	1,763
Disability Allowance	947	3,072	11	4,030
Illness Benefit	396	898	166	1,460
Carers Allowance	578	1,174	14	1,766
Child Benefit	188	212	3	403
Domiciliary Care Allowance	399	709	5	1,113
Invalidity Pension	1,028	3,316	12	4,356
Supplementary Welfare Allowance	938	1,001	16	1,955
Other schemes	877	989	19	1,885
<b>Totals</b>	<b>7,226</b>	<b>12,928</b>	<b>260</b>	<b>20,414</b>

# Social Welfare Appeals Office 2012

## **New model of work**

In last year's annual report (2011), the basis of the new model of work was outlined. One of the benefits identified was that the process would be quicker for the appellant. This was on the basis that, under the old model, files were assigned to Appeals Officers for vetting, following which they would either decide the appeal based on the information contained in the file (a summary decision), or return the file for the case to be dealt with by way of an oral appeal hearing, most likely by a different Appeals Officer. Under the new model, where an Appeals Officer is assigned a case load, he or she will either decide the case summarily or, if an oral hearing is warranted, will conduct the hearing him/herself.

As a result of the introduction of the new model, processing times for an oral hearing have reduced by three months. This is a very significant reduction and is entirely attributable to efficiencies in the way the work is processed within this office.

On the other hand, processing times for a summary decision have increased slightly by 2.7 weeks in 2012. This is because the new model has rebalanced processing times as between oral hearings and summary decisions. There is no reason why a case which may be decided summarily should be progressed more speedily at the expense of a case which requires an oral hearing. In future, the objective is that there would be no more than 6 to 9 weeks between the times taken to process a case decided summarily and a case that requires an oral hearing.

This is all the more important given that some more complex cases are now being decided summarily where it is possible to decide the case in favour of the appellant. This is in essence a culture shift where Appeals Officers who come across a convincing case are willing to accept it as such and no longer consider that they need to proceed to oral hearing in order to establish a

compelling case. This still takes less time than determining an appeal by way of oral hearing.

During the year, in the context of a report by FLAC, concern was expressed that a policy change in favour of summary decisions may have the effect of undermining an appellant's opportunity to attend an oral hearing, which carries a higher success rate. It is the case that up to 2009, the proportion of cases decided summarily was on average 36% whereas in 2012 the proportion had risen to 56%. However, crucially, in 2009 the success rate for summary decisions was 18% whereas in 2012 it had risen to 30%. This significant increase in the number of appeals allowed on a summary basis reflects the culture shift referred to above.

## **SWA Integration**

This is another topic that remained live in 2012. Timely receipt of submissions from the Department became a very big concern during 2012. Delays in receiving files from the Department are all the more difficult if the file relates to the Supplementary Welfare Allowance (SWA) scheme as, because of the nature of such payments, these cases are prioritised in the Appeals Office. The difficulties encountered in 2012 in relation to SWA submissions seemed to relate to the question of responsibility for preparing the files for submission. I am happy to say that these difficulties have now largely been ironed out and that these files are, in the main, being submitted in a timely manner.

Another aspect of the integration relates to a range of administrative shortcomings in the processing of SWA cases prior to their submission to the Appeals Office. Among the issues are:

- Failure in some cases to address the appeal contentions, as required by the legislation.
- Decisions which did not appear to have been based on any proper investigation or assessment of the available evidence.

- Decisions not properly explained to the appellant.

A lot of work has been carried out by the Department in this regard during 2012, including tailored training courses, and we will continue to monitor this aspect of the process in 2013.

## **Decisions project**

When an appeal is received, the Deciding Officer is asked to comment on the contentions put forward by the appellant in support of their appeal. Once the contentions are addressed, he or she will either confirm the decision or, where warranted, will revise the decision. It is the practice of the Department that the Deciding Officer who examines the appeal contentions is the same one who made the original decision. On the recommendation of this office, during 2012, a project was undertaken under the auspices of the Decisions Advisory Office to have a certain number of cases reviewed by a different Deciding Officer and to examine and report on quality assurance issues arising from that review. This project is on-going and there will be a report in 2013 on the outcome.

## **Training**

Training was provided throughout the year on a range of issues, for example:

- A seminar was held on legal issues relating to appeal hearings covering the sources of law, the role of the Appeals Officer, fair procedures and decisions.
- Training in relation to the set up and conduct of oral hearings was held for newer officers.

- Training in relation to insurability issues covering contracts of service and contracts for service, regulations, common and statute law.
- In-depth training for newcomers in May.
- Case conferencing and workshops throughout the year covering many issues and cases of interest.

## **Meetings with Decisions Advisory Office**

Feedback to the Department on issues arising in relation to appeals is a very important feature of the appeals process. Arrangements to provide such feedback include: meetings with particular scheme areas in relation to specific issues that arise from time to time and regular meetings with the Department's Decisions Advisory Office. The office also provides feedback directly through input at courses organised by the Department for its Deciding Officers.

In order to ensure effective oversight of the policy and process issues arising in relation to schemes which have medical criteria, the Department put in place a programme board to bring together the various areas which touch on these schemes, including the Medical Review and Assessment Service and the appeals office. This has proved very effective in terms of feedback on issues arising in relation to these schemes.



# Meetings and Consultations

## Meetings of Appeals Officers.

Meetings of all Appeals Officers were held in March and November 2012 with smaller meetings taking place throughout the year. These meetings were convened to discuss issues arising in relation to the office and the work and to discuss best practice and consistency in decision making. This is to ensure that everybody dealing with the office is accorded the same fully informed and fair treatment, irrespective of the particular Appeals Officer who may deal with his or her case. This is particularly relevant for appellants who, because of their needs and, at times, very difficult circumstances, can rightly expect that their particular situations will be considered with an in-depth knowledge of social welfare provisions and with understanding. This is all the more important in dealing with cases where human judgement and interpretation are involved.

**Some of the issues which arose are set out below.**

### **Domiciliary Care Allowance**

An issue which is particular to this scheme is the extent to which, in cases where an application has been refused, additional medical and parental information is given, which in many cases would have affected the original decision. In some cases, further additional evidence may be submitted at the appeal stage of the process. This makes the process frustrating and long drawn out for applicants and carries a significant administrative overhead for the Department and the Appeals Office. Getting the correct balance of evidence required at the initial claim stage must become a priority. Another issue for Appeals Officers is the somewhat limited information provided in relation to the opinion of the Medical Assessor who reviewed the case for the Department.

The Minister established a group to examine the operation of the Domiciliary Care Allowance scheme and its processes including medical processes. The group was chaired by Sylva Langford and included many bodies representative of parents and other stakeholders. The Social Welfare Appeals Office contributed to this review and implementation of some of the recommendations of this review group should assist in relation to the issues identified above.

### **Invalidity Pensions**

From the beginning of 2009, changes in legislation provided that a person's entitlement to Illness Benefit is limited to two years. In the event that a person is still incapable of work at the end of the two year period, they may claim Disability Allowance or Invalidity Pension, depending on the nature and likely duration of their condition. In 2012, the number of Invalidity Pension appeals more than doubled when compared to 2011 (4,745 as against 2,285).

Allied to the increase in appeals, delays in processing these appeals within the Department developed with the consequence that, in many cases, the disallowance was more than one year old before it was seen by an Appeals Officer.

The qualifying criteria for receipt of Invalidity Pension includes a condition that a person has been incapable of work for a period of 12 months and is likely to be incapable for a further 12 months.

In cases where the decision was made on the basis that a person was unlikely to be incapable of work for a further 12 months, and 12 months had elapsed since the refusal and there was evidence that the incapacity had continued throughout the period, the Department was advised that an Appeals Officer would be likely to allow such cases.

### **Disability Allowance**

Often cases present where people have substantial difficulties beyond the specified disability, such as addictions of one kind or

another, or circumstances where a person is beyond mid-years and was employed in physical work over very many years, having perhaps left school at an early age. These are just some of the socio-economic factors which Appeals Officers consider must be taken into account in assessing the extent to which the specified disability presents a substantial barrier to employment. It is not clear in many cases that these factors are considered sufficiently by the Department, either at decision stage or when the decision is reviewed.

### **Supplementary Welfare Allowance – Basic Income**

Where a person's entitlement to a primary payment is being examined, that person may make a claim for Supplementary Welfare Allowance. During 2012, a number of cases presented where the primary payment, for example, Jobseeker's Allowance, was refused on the basis that the Deciding Officer was not satisfied that the person concerned had disclosed their means. Nonetheless, it was noted in the appeals office that when such cases came to appeal, the Supplementary Welfare Allowance was being paid on the basis that the person had no means. It is not tenable that the Department refuses one payment on the basis that they are not satisfied the person has not disclosed their means while at the same time, awarding another payment on the basis that they have disclosed their means. Following discussions with the Department, it was agreed that in such cases the two Deciding Officers would confer in order to identify where the difficulty in relation to the means test is arising.

### **Supplementary Welfare Allowance - Rent Supplement**

Many difficult cases presented during the year arising from changes to the rent limits which came into effect from January 2012. While the revised limits were applied to new claims with effect from January, cases that were already in payment at the start of the year were reviewed at different times throughout the year. Where cases were reviewed because their rent exceeded the

new limit, they were afforded somewhere between 8 to 12 weeks to negotiate a reduction in rent with their landlord or to move to cheaper accommodation. The legislation does not make provision for a grace period to be allowed to a person in order to effect a reduction or to source alternative accommodation and this can result in inconsistencies, and makes it difficult for Appeals Officers who operate on the basis of legislation. Following discussion, and in order to ensure some consistency in these cases, Appeals Officers agreed, where possible, to allow a grace period up to the next contractual rents review.

There was also inconsistency in decision making where it was found, following the grace period, that a person's rent still exceeded the limit. In some cases, the Rent Supplement was terminated which is in accordance with the legislation. However, in others, the amount of the Rent Supplement was reduced to the amount of the new maximum limit although this does not conform to the legislation. Where such cases were appealed, Appeals Officers had no option but to allow the appeal as there is no legislative basis for such a decision by a Deciding Officer.

Another issue which arose in 2012 with regard to this scheme was the requirement that, in certain circumstances, a person must be assessed with having a housing need before they can be paid a Rent Supplement. In a number of cases, applicants were unable to secure either admission to the housing list or a decision that they did not satisfy the conditions. This left appellants in a very difficult situation and is an issue which must be addressed by the Department.

# Organisational and Operational Matters

## Staffing Resources

The number of staff serving in my Office at the end of 2012 was 95 which equates to 88.5 full-time equivalents. The corresponding staffing levels for 2011 were 91 and 85.2 respectively.

The staffing breakdown for 2012 is as follows:

1 Chief Appeals Officer	1.0
1 Deputy Chief Appeals Officer	1.0
41 Appeals Officers (3 work-sharing)	40.4
3 Higher Executive Officers (1 work-sharing)	2.4
11 Executive Officers (3 work-sharing)	10.2
8 Staff Officers (3 work-sharing)	6.5
30 Clerical Officers (9 work-sharing)	<u>27.0</u>
	<b>88.5</b>

The structure of my Office is set out in the Organisation Chart at Appendix 1 to this report.

## Parliamentary Questions

During 2012, 1,261 Parliamentary Questions were put down (1,334 in 2011) in relation to the work of my Office. Of that number, replies were given in Dáil Éireann to 1,205 and the remaining 56 were withdrawn when the current status of the appeal case which was the subject of the Question was explained to the Deputy.

## Correspondence

A total of 8,443 enquiries and representations were made by public representatives on behalf of appellants in 2012 (7,813 in 2011).

## Freedom of Information

A total of 173 formal requests were received in 2012 (178 in 2011) under the provisions of the Freedom of Information Acts. Of these requests, 171 were in respect of personal information and 2 were in respect of non-personal information.

# Case Studies of Appeals Officers' Decisions

## Annual Report 2012 – Case Studies

**Introduction:** The case studies included in this part of the report represent a small sample of the appeals determined during 2012. They provide a brief outline of the background and question at issue in each case, as well as an account of the way in which the appeal was dealt with, the evidence evaluated and the point at issue resolved. All social welfare appeals arise from adverse decisions having been made on issues of entitlement, whether currently or retrospectively. In the cases featured, questions at issue refer to a broad range of criteria on which entitlement was assessed, including means, social insurance contributions, medical evidence, habitual residence in the State, and social advantage in the context of EU Regulations. These questions occurred in a variety of social contexts, prompting the claim in some cases, while leading to a review of continued entitlement in others. They include references to possible elder abuse, poverty, anti-social behaviour, and the impact of a medical diagnosis or particular set of circumstances on children and their care givers. A more comprehensive sample of cases is available on our website at: [www.socialwelfareappeals.ie](http://www.socialwelfareappeals.ie)

**New format:** A new format has been adopted for this section of the report, with a view to providing a more exact account of each of the cases included: the text of the decision under appeal is stated and the Appeals Officer's decision is set out as it was issued to the appellant. Names, addresses and specified dates have been withheld in order to safeguard the appellants' anonymity.

**Evidence:** In all cases, there is documentary evidence available to the Appeals Officer. This includes the claim form and any supporting evidence, the report of the Social Welfare Inspector where there has been an investigation and the assessment of the appellant's doctor and that of the Medical Assessor(s) for the Department of Social Protection in any case

where there is a medical issue. The appeal itself, in the form of a letter or the completed appeal form (SWAO1), and any additional evidence submitted will also be before the Appeals Officer.

**Appeal process:** The documentary evidence is examined carefully with a view to determining the appeal. An oral hearing is likely to be held only where there is a conflict in the evidence, or the issue is such that elaboration or clarification is likely to be obtained by holding an oral hearing. For this reason, it is important that an appellant would submit the best evidence – that is evidence which is relevant, up-to-date and lends weight to the case they wish to make in relation to their appeal. This will facilitate the processing of the appeal and help to minimise delay.

**Decisions:** In any case where an appeal is disallowed, the reason for the decision is provided. In cases where the appeal is allowed, however, Appeals Officers may not always include an explanation in addition to the formal decision.

## Case 2012/01 - Carer's Allowance

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

The Chief Medical Advisor having examined the medical evidence has decided that, in his opinion, the person being cared for is not so invalidated or disabled as to require full-time care and attention as laid down in the Carer's Allowance legislation.

**Background:** In 2007, Carer's Allowance was awarded in respect of the appellant's son. Following a review in 2011, payment was terminated in line with the decision outlined above. It was the opinion of the Department's Medical Advisor that while available medical evidence indicated a level of dependence, it did not indicate the need for full-time care and attention. Her son's GP advised that he expected the condition diagnosed to continue indefinitely; in completing an ability/disability profile, he indicated that her son's condition was severe under a number of headings, including

mental health/behaviour; learning/intelligence and consciousness/seizures.

**Diagnosis:** Epilepsy, depression and ADHD  
Hyperkinetic disorder

**At oral hearing:** the appellant referred to her son's diagnosis. She said that he is 17 years old and cannot be left alone at any time. She provided an outline of a typical day, which included getting up at 9-10 a.m. and then sitting in the living room wrapped in a duvet. She said that he does not go out alone, but sometimes goes to the shops with her. She reported that this can be difficult as he has temper tantrums and is easily provoked. She went on to say that he gets more agitated in the evenings and can lash out. He goes to bed at about 10 p.m. but can still be awake at 2-3 a.m. The appellant said that they had removed a television from his bedroom as a precaution when he began throwing things out the window.

The appellant spoke about her son's depression and said that he also experiences frustration. He had attended counselling for three sessions but then refused to go back. She advised that the Gardaí had been called to the house on a number of occasions, the last being three weeks earlier, because of her son's aggression within the household. In terms of his epilepsy, he attends Beaumont Hospital every six months. The appellant said that he takes 'petit mal' seizures every two to three days; he drools, gets headaches and generally has to go to bed until the episode passes. Previously, he had suffered from 'grand mal' seizures, but these had been controlled since he was hospitalised with one during 2011. He also attends the Child and Adolescent Mental Health Services every two to three months, and is under the guidance of the child psychologist there. In addition, he attends his GP every two months or so. The GP talks to him, checks his medication and observes him. In conclusion, the appellant submitted a number of letters and reports in respect of her son's condition.

**Comments/Conclusions:** In determining the appeal, the Appeals Officer took into consideration the testimony of appellant at the hearing, and an assessment of the

relevant documentation on file and the additional documentary evidence submitted at the oral hearing. In the circumstances set out by the appellant, and supported by the medical evidence to hand, he concluded that the appeal should succeed.

**Decision of the Appeals Officer:** The appeal is allowed.

### **Case 2012/02 - Carer's Allowance**

**Decision under appeal: claim terminated - reason(s) stated:-**

Your Carer's Allowance claim is terminated with effect from [specified date] on grounds that you are no longer proving full-time care and attention for a relevant person.

**Background:** The appellant had been in receipt of Carer's Allowance in respect of his father, who was in his late sixties, and had been diagnosed with alcohol dependency, diabetes and depression. Following a report to the Department of Social Protection from the local Gardaí, the claim was reviewed and subsequently terminated. In his appeal submission, the appellant contended that he provided full-time care for his father. He outlined the nature of that care, including the supervision of medication and being available around the clock. He stated that his father had fallen two months earlier and had broken his hip and arm. He submitted that his father was totally reliant on him.

**At oral hearing:** the Deciding Officer attended at the request of the Appeals Officer, as did the Garda who was involved in the case. The Deciding Officer confirmed that he had relied upon a Garda report made to the Department of Social Protection, in which it was stated that the appellant appeared not to be carrying out his caring duties and suggested that the appellant's father be placed in alternative care.

The Garda reported that he had visited the appellant's address and had found the house in filth. He stated that there was evidence of intravenous drug use and that he had observed the appellant to be in a very unhealthy state. He

submitted that the appellant was obviously using heroin and was incapable of looking after himself, not to mention his father. He noted that there were other occupants in the house, living upstairs.

In response, the appellant stated that he was now off drugs and had been on a methadone treatment programme for the previous four months. He reported that he was in receipt of Jobseeker's Allowance, that he was availing of meals on wheels and that the public health nurse visited once a week. He conceded that he had been incapable of providing full-time care for his father while using heroin.

The Garda accepted that the appellant had cleaned himself up and noted that he had put on weight. He expressed concern that the appellant's erstwhile friends might resume their residence with the appellant, to his detriment and that of his father. However, he acknowledged that the appellant genuinely wanted to care for his father and said he hoped that the situation could be resolved.

In conclusion, the Appeals Officer advised the appellant that he would require an update from the Department of Social Protection (the local Social Welfare Inspector) to the effect that the qualifying conditions for Carer's Allowance were satisfied before reinstatement could be considered.

**Consideration:** The Appeals Officer noted receipt of the Social Welfare Inspector's report. He considered that it confirmed that the Deciding Officer was correct to withdraw payment of Carer's Allowance on the grounds that the appellant had not been caring for his father at the time: he had been incapable of providing care. He noted that the Garda involved in the case had accepted that the appellant was now addressing his drug habit, and that the Social Welfare Inspector had noted a significant improvement by comparison with his earlier visit to the appellant. He concluded that it had been established that the appellant once again satisfied the conditions for payment of Carer's Allowance. In the absence of an alternative date, he determined that Carer's Allowance should be reinstated with effect from [specified date], when the appellant

attended the oral hearing and the indications were that he was in a position to care for his father.

The Appeals Officer observed that this case had had an encouraging outcome and that the role of the Gardaí was appreciated. As the Gardaí would not always be in a position to attend oral hearings, he suggested that future reports should be directed through Social Welfare Inspectors who could then present the evidence of their investigations.

**Decision of the Appeals Officer:** The appeal is allowed from [specified date] only.

**Note on reason(s) for decision:** In the absence of an alternative date, I am prepared to re-instate the Carer's Allowance from [specified date], when the appellant attended the oral hearing and the indications were that he was in a position to care for his father.

### **Case 2012/03 - Child Benefit**

**Decision under appeal: refusal of request to award payment from an earlier date - reason(s) stated:-**

On the basis of the additional information received, I regret to inform you that I am unable to revise the original decision to award Child Benefit for [C] from [specified date] 2010.

**Issue:** Date of Award.

**Background:** A claim for Child Benefit was made by the appellant in respect of his son, who came to reside with him. He sought to have the claim backdated to an earlier date, at which point he had been awarded sole care and custody of his son. He submitted copies of Court Orders (from another jurisdiction) in support of this claim. He pointed out that an earlier Order had removed from his estranged wife her legal rights to their son's care and custody, vesting them in her parents instead. He advised that as the child's grandparents had not assumed their legal responsibilities, a second Order was issued, overriding the original one and giving the appellant sole custody. The appellant travelled to take custody of his son pending finalization of

court proceedings. He continued, on approval, to be entitled to Supplementary Welfare Allowance (Rent Supplement) throughout the period at issue

**At oral hearing:** the appellant's main contention related to the status of his son during the period where he stated the child had been unlawfully abducted from his country of ordinary and habitual residence to another State.

The appellant advised that his marriage had ended in 2006, while the family lived in Ireland, and that his son lived initially with his former wife. He sought, and was granted, access rights in 2007. He stated that the child's mother thereafter unlawfully abducted him to another state. He reported that he pursued a process (through the Hague Convention) to establish sole legal guardianship of his son and to return him to this State.

**Comment/Conclusion:** The Appeals Officer referred to the Social Welfare (Consolidation) Act, 2005, Section 219 (c), which provides that a child shall be a qualified child for the purposes of Child Benefit where he or she is *ordinarily* resident in the State. Section 220 of the Act provides that a person with whom a qualified child normally resides shall be entitled to Child Benefit in respect of that child.

The Appeals Officer noted that the primary intention of the Hague Convention is to preserve whatever child custody arrangement existed immediately before an alleged wrongful removal or retention of a child. The Convention mandates return of any child who was habitually resident in a contracting nation immediately before an action that constitutes a breach of custody or access rights. Its purpose is to discourage unilateral removal of a child from that place in which the child lived when removed or retained, which should generally be understood as the child's ordinary residence. He concluded that the evidence established that the child was wrongfully removed from this State and that, until the time of abduction, he was ordinarily resident here.

He considered that the evidence indicated that the appellant was not a 'qualified person' for the

purposes of Child Benefit in the period leading up to the Court Order which had allowed for the handing over of his son into his care. He noted that the appellant, whilst pursuing finalization of court proceedings in another State, was treated as continuing to be habitually resident in Ireland for social welfare purposes. A Court Order of [specified date] brought into effect the appellant's sole entitlement to parental rights and the Appeals Officer determined that to be the effective date from which the appellant was a 'qualified person' for the purposes of Child Benefit. He considered that the child was not at any stage 'ordinarily' resident in the other State and observed that court proceedings, pursued under the Hague Convention, had subsequently established fact in this matter. Accordingly, he concluded that the child could be considered as having re-established his ordinary residence in the State from at least the [specified date] in 2010, following the Order of the Court. He concluded that, with effect from that same date, the appellant was a qualified person for the purposes of Child Benefit.

**Decision of the Appeals Officer:** The appeal is allowed.

**Note on reason(s) for decision:** In order that Child Benefit may be paid, the child in question must be ordinarily resident in the State. Having examined the evidence carefully in this case, I have concluded that the child [C] may be considered to have resumed his ordinary residence in the State at least from [specified date] 2010. On this basis the appeal succeeds.

### **Case 2012/04 - Child Benefit (summary)**

**Decision under appeal: revised decision as to entitlement - reason(s) stated:-**

When [M] left this State, you were no longer entitled to claim Child Benefit payment for her. As a result of this revised decision under Section 302 (b) of the Social Welfare (Consolidation) Act, 2005, you have been overpaid Child Benefit for the period September 2010 to December 2010 inclusive amounting to €600.

**Background:** The appellant, a Lithuanian national, made a Child Benefit claim in respect of his sister. The Deciding Officer considered the appellant to be the 'qualified person' with whom the child normally resided in Ireland, under the provisions of the Social Welfare Consolidation Act, 2005, Section 220 (1) (a) and held that the child could be regarded as 'ordinarily resident' in the State with reference to the provisions of Section 219 (1) (c). On this basis, Child Benefit was deemed to be payable under domestic legislation. When the child returned to live in Lithuania, however, it was held that she ceased to be ordinarily resident in the State and that the appellant ceased to be a qualified person.

**Comment/Conclusion:** The Appeals Officer noted that in his letter of appeal, the appellant had submitted that he was the child's legal guardian and had argued that as he was sending the Child Benefit payments to Lithuania, he should remain entitled to payment.

**Decision of the Appeals Officer:** The appeal is disallowed. I decide that the appellant is not entitled to payment of Child Benefit for the period September 2010 to December 2010.

**Note on reason(s) for decision:** Social welfare legislation prescribes that the Minister may make rules for determining with whom a qualified child may be regarded as normally residing [Section 220 (2) (a) of the Social Welfare Consolidation Act 2005]. These rules are prescribed in the Social Welfare (Consolidated Claims, Payment and Control) Regulations, 2007, as follows.

#### *Article 159*

*For the purposes of Part 4, the person with whom a qualified child shall be regarded as normally residing shall be determined in accordance with the following Rules:*

*1. Subject to Rule 2, a qualified child, who is resident with more than one of the following persons, his or her -*

*mother,*

*step-mother,*

*father,*

*step-father,*

*shall be regarded as normally residing with the person first so mentioned and with no other person.*

*4. A qualified child, who is resident elsewhere than with a parent or a step-parent and whose mother is alive, shall, where his or her mother is entitled to his or her custody whether solely or jointly with any other person, be regarded as normally residing with his or her mother and with no other person.*

While I note that the appellant has power of attorney to represent the child's mother in certain circumstances, I do not consider that this gives him legal custody. As her mother is entitled to her custody, the child must be regarded as normally residing with her and with no other person. Therefore, I must decide that the appellant is not entitled to payment of Child Benefit.

#### **Case 2012/05 - Disability Allowance**

**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.

### **Case 2012/06 - Domiciliary Care Allowance**

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

[J] is not regarded as a qualified child:

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

**Diagnosis:** Attention Deficit Hyperactivity Disorder (ADHD)

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

**At oral hearing:** a discussion ensued where the appellant made the following points in support of her assertion that her son meets the medical

qualifying condition for Domiciliary Care Allowance, as follows:

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

He sleeps fairly well at night but this is largely due to the fact that he wears himself out during the day

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

**Decision of the Appeals Officer:** The appeal is disallowed.

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

### **Case 2012/07 - Domiciliary Care Allowance**

**Two decisions under appeal: both claims rejected – reason(s) stated:-**

[S] is not regarded as a qualified child, nor is [L]:

It is clear from your application that your child requires additional support; however, while the diagnosis of your child's disability is not in question, the medical evidence provided does not indicate that the extra care and attention required is substantially in excess of that

required for a child of the same age who does not suffer from your child's condition. As a result your child is not considered eligible for Domiciliary Care Allowance.

**Diagnosis [S]:** ADHD, screening for Asperger syndrome

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

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

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

A discussion ensued where the following points were made:

- [S] has been diagnosed with ADHD and is being screened for Asperger Syndrome
- [L] has been diagnosed with ADD and with sensory and motor skill problems
- Both children are currently on *Ritalin*
- The medication is not effective
- The appellant attends the CAMHS Clinic with the children 3 times per week
- The children both struggle in school
- Neither of them has social skills and they are not growing up like other children; they are very immature for their age
- They cannot be allowed out to play with other children as they are likely to get

frustrated and lash out either at each other or other children and can hurt them unintentionally

- In the house, all windows upstairs have to be kept locked as they have no sense of danger
- They have to be watched at all times
- [S] sleeps a maximum of 4 hours per night and if he is awake either herself or her husband have to be awake too
- The only sport they do is football and even then someone has to stay and supervise
- [S] makes animal noises while [L] lives in a world of his own
- They cannot go out for meals or there will be havoc

[S] is obsessed with Lego but it has to be new pieces every few days

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

**Decision of the Appeals Officer:** The appeal is allowed.

### **Case 2012/08 - Domiciliary Care Allowance**

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

[N] is not regarded as a qualified child as provided for under Chapter 8A, Social Welfare Consolidation Act 2005 because:

It is clear from your application that your child requires additional support; however, while the diagnosis of your child's disability is not in question, the medical evidence provided does not indicate that the extra care and attention

required is substantially in excess of that required for a child of the same age who does not suffer from your child's condition. As a result your child is not considered eligible for Domiciliary Care Allowance.

**Diagnosis:** learning disability

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

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

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

but forgets why he is doing this. In addition, [N] has a very bad speech impediment.

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

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

**Decision of the Appeals Officer:** The appeal is allowed.

## 2012/09 - Domiciliary Care Allowance

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

[R] is not regarded as a qualified child as provided for under Chapter 8A, Social Welfare Consolidation Act 2005 because:

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

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

**Background:** The appellant has two children and the claim was made in respect of her elder

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

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

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

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

contact and goes around with his hands in his pockets.

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

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

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

**Decision of the Appeals Officer:** The appeal is allowed.

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

### **Case 2012/10 - Guardian's Payment**

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

In order to qualify for Guardian's Payment (Contributory), a child must meet the legislative definition of an orphan as contained in Section 2 (1) of the Social Welfare (Consolidation) Act, 2005 [outlined]. Having carefully considered all of the available evidence in this case, I am satisfied that the current arrangement for [M] is as a result of a private, mutual agreement between her mother and yourself. Her mother provides maintenance towards her upkeep from her Child Benefit. As such, [M] cannot be considered to be an orphan in accordance with the provisions governing the scheme. Therefore, Guardian's Payment is not payable.

**Issue:** Whether the Deciding Officer was correct to so decide.

**Background:** The appellant's daughter had on-going health problems and the appellant was looking after her granddaughter on a daily basis. The child's father is deceased.

**At oral hearing:** the Social Welfare Inspector attended at the request of the Appeals Officer. The appellant advised as follows:

- Child Benefit continued to be paid to the child's mother.
- She (the appellant) had not applied formally for custody of her granddaughter.

- The child stays full-time with the appellant but her mother visits her and the appellant brings her to visit her mother.
- The child's mother had been admitted to hospital for further investigation of her condition (the first occasion on which she had been hospitalised).
- The child's mother was working on a Community Employment scheme for twenty hours (5 days per week).
- The child's mother can perform most activities of daily living but gets tired very easily. She drives and is still independently mobile with a stick but had been falling a lot of late.
- The child's mother remains the first contact name for school; should the need arise she would ring the appellant to go to the school.
- The appellant feeds and clothes her granddaughter. While the child's mother offers her money, the appellant does not always accept it.

**Comment/Conclusion:** The question at issue was whether the child [M] may be defined as an orphan for purposes of Guardian's Payment. The Appeals Officer noted that the Social Welfare (Consolidation) Act, 2005, Section 2(1) defines an orphan as follows.

"Orphan" means a qualified child—

- (a) both of whose parents are dead, or
- (b) one of whose parents is dead or unknown or has abandoned and failed to provide for the child, as the case may be, and whose other parent—
  - (i) is unknown, or
  - (ii) has abandoned and failed to provide for the child,where that child is not residing with a parent, adoptive parent or step-parent.

The Appeals Officer noted that the child's father was deceased, and that her mother's medical condition placed certain restrictions upon her as regards providing care. He noted also that the

child lived full-time with her grandparents but was visited by and visited her mother frequently. He took note of the fact that the child's mother offered money for her upkeep although the appellant frequently refused to accept. In addition, he noted that the child's mother retained legal custody and was paid Child Benefit as well as an increase for a qualified child on her Survivor's Pension.

Taking all of the available evidence into consideration, the Appeals Officer was not satisfied that that the care arrangements for the child, whereby she lived with her grandmother, established that her mother had abandoned and failed to provide for her. Accordingly, he did not consider that the child could be regarded as an orphan for purposes of the governing legislation.

**Decision of the Appeals Officer:** The appeal is disallowed. I decide that [M] is not an orphan for the purposes of social welfare legislation.

**Note on the reason(s) for decision:** Taking all of the available evidence into consideration, including that adduced at the oral hearing, I am not satisfied that that the care arrangements for [M], whereby she lives with her grandmother, establish that her mother has abandoned and failed to provide for her, as required by social welfare legislation. Consequently, the appellant is not entitled to receive Guardian's Payment for her. Regrettably, her appeal does not succeed.

## **Case 2012/11 - Guardian's (Contributory) Payment**

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

In order to qualify for Guardian's Payment (Contributory), a child must meet the legislative definition of an orphan as contained in Section 2 (1) of the Social Welfare (Consolidation) Act, 2005 [outlined]. Having carefully considered all of the available evidence in this case, I am satisfied that the care arrangement for [N] from end September 2010 to January 2011 was as a result of a private, mutual agreement between his mother and yourself. His mother is now resident with him at your address. As such, [N]

cannot be considered to be an orphan in accordance with the provisions governing the scheme. Therefore, Guardian's Payment is not payable.

**Background:** The appellant claimed Guardian's Payment (Contributory) in 2010 in respect of her grandson [N]: his father was serving a prison sentence and his mother had left Ireland and gone abroad. She returned after some months and the appellant's claim was refused as outlined above.

**At oral hearing:** the appellant was represented by a solicitor from the Northside Community Law Centre. The Social Welfare Inspector and the Deciding Officer attended at the request of the Appeals Officer. The Inspector reported that she had met the appellant at the house where she was living with her husband, her daughter and [N]. She confirmed that she had been satisfied that the appellant was looking after [N] for the duration of his mother's absence from the State.

The appellant's solicitor pointed out that this issue had been ruled on after the return of the appellant's daughter and she suggested that, as a consequence, the view had been taken that the absence was only of a temporary nature. She argued that had the claim been processed at the date of the application, a different decision might have been made. She referred to the Inspector's report and the fact that she had taken the view that the appellant was entitled to the payment for the duration of her daughter's absence from the State, and had further suggested that the appellant contact the Guardian's Payment area of the Department to enquire if the payment could be reinstated for the period during which her daughter had attended rehabilitation. She contended that no evidence had been produced to indicate an arrangement between the appellant and her daughter regarding the care of [N], as had been suggested by the decision to refuse her claim. On behalf of the appellant, she denied that any such arrangement existed and she submitted that the decision was incorrect on that basis.

The appellant advised that her daughter was a drug addict, and said that she was a heavy user and would disappear for a couple of days at a time; on those occasions, she would look after [N]. In relation to the period at issue, she said that her daughter went missing and she had just assumed it was another of those short duration disappearances. However, after a period of a week or so, she became very concerned. She said that she had also become aware that her daughter was involved in a new relationship. After about eight days, her daughter phoned her and advised that she was in another country. The appellant said that she was not terribly coherent at the time. She went on to say that she had assumed at that point that her daughter would come home soon. Her concern for her daughter's safety grew and she made contact with the Gardaí and with the relevant Irish embassy. Ultimately, she obtained a phone number for her daughter's boyfriend and was able to contact her. She said that her daughter told her that she was planning to stay where she was and appeared not to have an interest in her son's welfare. After some months, she purchased a ticket for her to come home. She reported that her daughter went into a rehabilitation centre on her return and that she continued to look after [N]. She said that she had not sought payment in respect of that period, that she simply wanted to be paid for the period that her daughter was abroad having effectively abandoned her son.

The appellant said that she had been afraid to seek legal custody because of her age, and a concern that she and her husband would not be allowed to keep [N]. She confirmed that she was in receipt of Child Benefit and that her husband was in receipt of a child dependant increase on his pension. In conclusion, she said that her daughter was clean from drug use for a number of months and things were looking positive for her.

**Comment/Conclusion:** The Appeals Officer was satisfied that the documentary evidence affirmed the case outlined by the appellant. He noted that the decision to refuse the claim related to a point in time after the date of application and with the benefit of hindsight in

terms of the return to Ireland of the appellant's daughter. He noted also that the Deciding Officer's reference to an agreement entered into between the appellant and her daughter had been made without evidence of such an agreement and, as such, was merely conjecture. He examined the question as to whether, at the time of her application, the appellant believed that her daughter had abandoned [N]. Based on the transient nature of her daughter's behaviour owing to her drug use, and the appellant's account of the circumstances of her departure and absence in the period at issue, he considered that it was reasonable for her to have made that assumption. He noted that this had, in effect, been recognised by the Department in paying Child Benefit to her and in approving a child dependant increase on her husband's pension.

The Appeals Officer noted that the governing legislation refers to abandonment as one of the criteria for determining whether a child may be regarded as an orphan for purposes of Guardian's Payment. He examined a legal definition which states that: *abandonment refers to a parent's choice to wilfully withhold physical, emotional and financial support from a minor child. In other words, abandonment is when a non-custodial parent fails to fulfil his or her parental responsibilities and chooses not to have contact with his or her child.* He considered that this was precisely what had occurred in this case, and that had the Department conducted its investigation prior to the return of the appellant's daughter a different outcome would have prevailed, having regard to the evidence available.

The Appeals Officer noted that there is nothing in social welfare legislation to indicate a time frame upon which to rely in relation to any specific case of abandonment of a minor, or in terms of the time that must pass before such abandonment may be deemed to have occurred. In contrast, he noted that this issue is addressed elsewhere in legislation in relation to adoption. In the circumstances, and for purposes of his decision, he chose dates based on evidence which confirmed that the appellant and her spouse were put in the position of having to care for [N]



initially until the date immediately preceding the return of the appellant's daughter.

**Decision of the Appeals Officer:** The appeal is allowed.

**Note on reason(s) for decision:** Having considered all of the evidence in this case, including that adduced at the oral hearing, I decide that the appellant is entitled to receive Guardian's Contributory Payment in respect of her grandson [N] for the period from [date specified] 2010 to [date specified] 2011.

### **Case 2012/12 - Jobseeker's Allowance (Means)**

**Decision under appeal: claim awarded at reduced rate – reason(s) stated:-**

You are entitled to Jobseeker's Allowance from [specified date] at the rate shown - half the rate for a couple less means of €41.00 per week. As your spouse/civil partner/cohabitant is also getting a social welfare payment, your weekly rate of payment is limited to this amount.

**Issue:** Co-habitation.

**Background:** The appellant was assessed with means of €41.00 based on his partner's income from part-time employment. The Deciding Officer concluded that he was co-habiting with a person [named] who, having made a claim for Jobseeker's Allowance in her own right, had named the appellant as her partner. The appellant denied that they were partners and said she had made a mistake. He said they were cousins.

**At oral hearing:** the Appeals Officer explained to the appellant how his rate of payment of €115 had been calculated. He advised him that the Deciding Officer considered that the person [named] was his partner as she had completed a form stating this to be the case. The Appeals Officer had called the person [named] to the oral hearing but she had failed to attend.

The appellant said that when the claim form was being completed, the person named had been

asked who was living in the house with her and she said the appellant. When the Appeals Officer asked how she had known his PPS number, he said that she had phoned him and asked for it. He was adamant that the person named was not his partner. He said he had moved out of his parent's house as it was too crowded. He advised that his brother had a disability and needed a room of his own, and he had medical evidence confirming his brother's disability. The appellant said that he paid his rent separately and he had a letter from the Private Residential Tenancies Board (PRTB), addressed to him only, stating that he had been registered as a tenant. He said that if he lost the appeal he would move back home and his sister would move into the house with the person named. He went on to say that he owed his mother about €2,500.

**Comment/Conclusion:** In this case, the appellant had been awarded Jobseeker's Allowance from a date [specified] in 2012 at half the rate for a couple less means of €41.00 per week. The Deciding Officer concluded that he was co-habiting with a person named as she had earlier signed a Jobseeker's Allowance repeat claim form stating that the appellant was her partner. The file was sent subsequently to the Social Welfare Inspector to review his means. The Appeals Officer noted that the Inspector did not proceed with the means review as the decision was under appeal. However, she had interviewed the appellant twice and on both occasions he had denied being in a relationship. The Inspector had taken the view that he was in a relationship based on the form signed by the person named.

The Appeals Officer noted the appellant's statement that when the person named was making her claim, she had been asked who was living in the house with her and she had said the appellant and phoned him for his PPS number. He observed that this may or may not have been the case but in the circumstances that it was a somewhat plausible explanation. He examined the claim form at issue and noted that it had been completed by the local social welfare Branch Office Manager, and then signed by the person named. He observed that she may or may not have realized what she was signing as

her signature was not on the same page as that on which the appellant had been listed as her partner. The Appeals Officer noted that there was no other evidence of co-habitation, nor was co-habitation investigated as set out in Operational Guidelines issued by the Department of Social Protection to its staff ([www.welfare.ie/en/Pages/Cohabitation.aspx](http://www.welfare.ie/en/Pages/Cohabitation.aspx)). In the absence of such an investigation, he concluded that the evidence of co-habitation was very limited and open to question. In the circumstances, he considered that he had no option but to conclude that co-habitation had not been proved.

**Decision of the Appeals Officer:** The appeal is allowed

### Case 2012/13 - Jobseeker's Benefit

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

Your Jobseeker's Benefit application is disallowed on the basis that you are not available for full-time employment and not unemployed. This decision is effective from [specified date] in 2012.

**Legislation:** Social Welfare (Consolidation Act), 2005, Section 62 (a) (ii) and (iii).

**Issue:** Availability for full-time work/unemployed.

**Background:** The appellant was an employee of a local manufacturing company. He started work with the company in 2010 and was employed on a fixed-term contract basis. The company re-organised some of their workforce in 2012 and the appellant was moved, involuntarily, from working 5 weekdays to working two weekend days with 12 hour shifts. The company had replied to the Deciding Officer's request for clarification, confirming that they had moved some of their employees from weekday to weekend shift work because of increased demand for greater output at weekends. They indicated that such movement was defined in Company/Union agreements and advised that it remained standard practice in such situations. They referred also to working with staff in

seeking voluntary redeployment and to resorting to involuntary movement thereafter, where gaps still remained. They confirmed that the appellant had moved at their request to weekend work and that the move had been involuntary. In his appeal, the appellant submitted that he had suffered a loss of work (and income), that he was available for work elsewhere over the reference period Monday to Friday, and he contended that comparable workers on similar shifts were being paid social welfare allowances.

**At oral hearing:** the appellant attended the hearing in the company of a person working with his local T.D. The Deciding Officer attended at the request of the Appeals Officer, as did the manager of the Social Welfare Local Office. Having read the decision, the Deciding Officer outlined the background to the case. She advised that she was unaware of any similar cases being allowed and stated that similar cases had been disallowed with the decisions upheld on appeal. She went on to say that the company had taken on additional employees in the meantime, and contended that this indicated that the reduction in the appellant's work days was not a consequence of any diminution in the work but rather reflected the nature of the contract, which allowed the company manoeuvre the workforce to working patterns that best suited demand.

The appellant contended that he had not voluntarily sought the move and that he had lost work and income as his working days/week had been reduced significantly. He pointed out that he satisfied all other statutory conditions applying to receipt of Jobseeker's Benefit, and considered that he was available for and genuinely seeking work. In this, he provided evidence of having applied for a position as general operative with the local authority. He also advised of having applied for another position within the company, which had been advertised recently. In conclusion, he said that he had been prepared, where he found alternative suitable employment, to give notice to his current employer and he advised that he had subsequently taken up a position on a fixed term contract for three months with another [named] company.

The advocate for the appellant submitted that he was entitled to seek benefit support as his employment 'week' was reduced on an involuntary basis. He contended that the appellant was available for and genuinely seeking alternative full-time employment and that he was, in the event of finding such work, willing to resign from the position he held.

**Comment/Conclusion:** The Appeals Officer referred to the provisions of social welfare legislation which prescribe that a day shall not be treated as a day of unemployment unless on that day the person is genuinely seeking, but unable to obtain, suitable employment. Legislation further prescribes that a person is considered as being available for employment, where they can show that they are willing and able, at once, to take up an offer of full-time employment. He noted the appellant's contention that he was available for employment, that he had looked for work throughout the relevant period, and that he had been willing to leave the position he held on finding suitable alternative full-time employment.

The Appeals Officer paid particular regard to the detail of the contract and to the interpretation applied by the Deciding Officer. The fact that the appellant did not volunteer to change shifts was uncontested and he considered that fact to have been critical to the case. He noted that it had been accepted that the nature of the contract was such that the employer used different shift patterns in the running of the business which allowed, in particular, for flexibility within the workforce in meeting production demands. It was an agreement entered into by both the company and the union. The Appeals Officer noted also that the terms of the contract specified a particular work shift, Monday through to Friday, and referred to other shifts that might be introduced once an initial training period had been completed.

The Appeals Officer observed that an employment contract is by nature an agreement that sets out the conditions of employment, the employee's rights, responsibilities and duties. It is usual that the parties (employer/employee) are bound by the terms of the contract until it ends. In this case, he noted that the contract provided

for clear definition of the terms and conditions applying to the job; it also allowed for greater flexibility within the workforce, having regard to the workflows and demands of the business.

The Appeals Officer accepted that the appellant had been moved to weekend work which, although provided for in the contract, was involuntary and his workdays and earnings were reduced. He concluded that the appellant had sustained a substantial loss of employment; although the contract allowed for such a change in terms and conditions, the appellant's acceptance of the contract in the first instance did not preclude him from seeking Jobseeker's Benefit where he experienced a loss from his normal work and where it was established that the loss and movement to new reduced shift arrangements was on an involuntary basis.

The Deciding Officer had held also that the appellant was not available for full-time employment based on the Exclusive Service conditionality specified in the contract. The Appeals Officer noted the reference as follows: *Under the Organisation of Working Time Act, an employee can work a maximum of 48 hours per week. Employees must make written application to HR to work outside the company.* He considered, in context, that this condition only applied as an obligation on 'employees' where they seek work outside the company and at the same time intend continuing to work for the company. He noted the appellant's contention that, aside from this, he was available for full-time work and had applied for a full-time position with the local authority and an alternative full-time position within the company. He noted also that the appellant had since secured a full-time position with another company. He concluded that in the period at issue, the appellant was unemployed and available for full-time work in line with the requirements of the legislation.

**Decision of the Appeals Officer:** The appeal is allowed.

**Note on reason(s) for decision:** Social welfare legislation provides that a person, for the

purposes of Jobseeker's Benefit, must be unemployed and available for employment.

Having carefully reviewed the available evidence, including that presented at oral hearing of this case, I consider that the appellant has established he involuntarily suffered a loss of employment and is available for employment, in line with the legislation applying. On this basis the appeal succeeds.

### **Case 2012/14 - State Pension (Contributory)**

#### **Decision under appeal: refusal to award pension from an earlier date - reason(s) stated:-**

Section 110 (1) of the Social Welfare (Consolidation) Act 2005 provides that a self-employed contributor shall not be regarded as satisfying the qualifying conditions unless ALL [sic] outstanding PRSI contributions are paid. Based on the PRSI contributions paid by you as a self-employed person you qualify for State Pension (Contributory). However, according to our records, you have outstanding liabilities for PRSI contributions for the following year(s), 1990/1991. As all outstanding PRSI contributions are not paid you are deemed not to satisfy the qualifying conditions. As a result, you are not entitled to the pension, at this time.

**Subsequent decision:** I award State Pension (Contributory) from [specified date] 2010 at the maximum rate of €230.30 per week.

**Background:** The appellant made a claim for State Pension (Contributory) but was disallowed initially as he had outstanding unpaid PRSI liabilities in the amount of €168.00. He was awarded pension at the maximum rate of €230.30 per week with effect from the date on which he met those liabilities. He made an appeal against the decision and sought to have payment awarded with effect from the date of his 66<sup>th</sup> birthday. He contended that he had always been fully compliant and that the Revenue Commissioners must not have made proper returns to the Department of Social Protection.

**At oral hearing:** the appellant was accompanied by his accountant, who submitted a statement to the effect that the company could not locate the appellant's records for the relevant income tax year. The appellant said that he started in business in 1979 and had always been tax compliant as his bar licence would not have been renewed otherwise. His accountant said that he was at a loss as to how the underpayment of PRSI had occurred. He had checked with Revenue and while he had been informed that they had no record of any amount outstanding, he was advised also that they would not have records going back that far. He contended that the appellant had been unfairly penalised for the small amount of PRSI involved. For his part, the appellant said that he could not understand how he came to owe €168.00 as he would have paid the full amount he was billed for and certainly would not have made an issue of such a small amount. The accountant said he would check again to see if a further search might yield the relevant returns.

**Additional evidence:** The appellant's accountant submitted a notice of assessment for the tax year at issue which showed a PRSI assessment of €880.00. He advised that he had also located a copy of a letter which had been sent to the appellant, informing him of his outstanding liabilities and advising that he must pay these in order to obtain his tax clearance certificate and to secure his publican's licence. He contended that it was logical to assume that the appellant had paid his liabilities and acquired a tax clearance certificate in order to obtain the licence.

**Comment/Conclusion:** The Appeals Officer examined the additional information provided by the accountant, which was in line with the Department's assessment. He noted, however, that no evidence had been provided to indicate that the liabilities had been paid. He noted also the appellant's assertion that he had always been tax compliant and that he was required to be in order to have his publican's licence renewed. He observed that it was difficult to understand how such an amount could be outstanding, having regard to the evidence available. However, the records established

that there was PRSI outstanding and the Appeals Officer noted that the appellant had not been able to provide any evidence of amounts paid to Revenue for the year in question. He noted that the appellant had argued also that had he not paid his liabilities he would not have received a tax clearance certificate and would not then have had his publican's licence renewed. The Appeals Officer was aware, however, that information available from Revenue ([www.revenue.ie](http://www.revenue.ie)) indicated that in some instances certificates may be issued once a proportion of liabilities are paid. In the circumstances, he accepted that the appellant had an outstanding PRSI liability when he made his claim and that he paid this amount on [specified date], the date from which his pension was awarded. The Appeals Officer concluded that in line with the provisions of social welfare legislation, State Pension (Contributory) could not have been awarded before that date.

**Decision of the Appeals Officer:** The appeal is disallowed.

**Note on reason(s) for decision:** Having carefully examined the evidence available, I have concluded that the decision in this case is correct. The appellant has not rebutted the evidence that he had an outstanding PRSI liability when he made his claim. The appellant has been awarded State Pension from the date he paid the outstanding liability which is in line with the provisions of social welfare legislation. In the circumstances, I regret that the appeal cannot succeed.

### **Case 2012/15 - One Parent Family Payment**

#### **Decision under appeal: entitlement in period specified with overpayment assessed - reason(s) stated:-**

As you aware, this allowance is not payable to a person who is cohabiting, that is, living with another person as husband and wife. I am satisfied that you were cohabiting with [person named] from at least [specified date] and I have decided that you were not entitled to One Parent Family Payment from this date. As you

continued to cash your One Parent Family Payment up to and including [specified date], you have incurred an overpayment amounting to €125,000. This decision has been made in accordance with Section 302 (b) of the Social Welfare (Consolidation) Act, 2005.

**Overpayment:** €125,000, reduced subsequently to €98,000.

**Background:** Following a review of her One Parent Family claim, awarded initially as Deserted Wife's Benefit, the question of the appellant's continued entitlement was referred for investigation. In connection with the investigation, she was interviewed by a Social Welfare Inspector who took the view ultimately that she had been cohabiting with a person named. The Deciding Officer disallowed her claim, in line with the decision outlined above. The Deciding Officer also wrote to the appellant and advised as to the amount of the overpayment assessed, inviting her to comment on methods of repayment. In her response, the appellant asserted that the circumstances of her case were not examined fully and that her entitlements should be off-set against the overpayment. She made an appeal against the decision, stating that the person named was merely a tenant who contributed to the household bills. The person in question sought to confirm this by providing a statement to the effect that he was paying maintenance from his Jobseeker's Allowance.

The amount of the overpayment was adjusted subsequently to take account of periods for which the person named would have been entitled to claim the appellant as an adult dependant on his Jobseeker's Allowance payment.

**At oral hearing:** the appellant was accompanied by a friend. The Social Welfare Inspector attended at the request of the Appeals Officer, as did the Deciding Officer.

The Deciding Officer outlined the decision under appeal and stated that she had relied upon the Social Welfare Inspector's report. In relation to the person named in the decision as cohabitant,

the Inspector had noted the following prior to interviewing the appellant:

- he was listed on the electoral register at the same address as the appellant
- he had a car and motorbike and both were registered at the appellant's address
- he was registered as a tenant by the local authority at the appellant's address

The Inspector read from his report, and stated that he had interviewed the appellant on a date [specified]. He said that she had accepted that the person named in the decision had lived at her address since his own marriage had broken up. She acknowledged that he contributed to the household and she said that he was the father of her child. The Inspector stated that the appellant had not claimed an increase in her payment in respect of the child and that she had offered no explanation for this. He opined that it was likely that the couple had been cohabiting since 1999.

On behalf of the appellant, the person who had accompanied her submitted that the overpayment was excessive and not proportionate. He asserted that the appellant had allowed the person named to stay in her home out of sympathy and that there had been no stability in those early years. He also sought copies of the reports relied upon by the Deciding Officer and asked that the hearing be adjourned so that the appellant could respond in full to the case against her.

*The hearing was adjourned.*

The appellant sought and was given copies of all documents, as well as a copy of the Department of Social Protection's Operational Guidelines on Cohabitation ([www.welfare.ie/en/Pages/Cohabitation.aspx](http://www.welfare.ie/en/Pages/Cohabitation.aspx)).

**At the re-convened oral hearing:** the same parties attended. The appellant confirmed that she had examined all of the evidence supporting the decision under appeal. She insisted that she had been truthful in her dealings with the Department. She said she did not have means and was struggling to live. It was pointed out

that an Inspector had reported in 1998 that there was no cohabitation. The appellant argued that she did not grasp the issue involved and had since regulated her position as regards social welfare entitlements. This was clarified to mean that she was now being paid as a qualified adult dependant on the social welfare payment of the person named.

The Deciding Officer advised that the appellant had notified the Department in 1997 that her cousin had moved in with her. This turned out to have been the person named. She stated, however, that the effective date which had been specified in the decision had been determined with reference to the date on which the person named had been included as a tenant by the local authority. The Inspector contended that the reference to his being the appellant's cousin represented a deliberate misleading statement as evidenced by the appellant's initial failure to disclose to him that the person concerned was living at her address. He reported that when asked directly, she had then admitted that the person named was living there.

On behalf of the appellant, her friend submitted that the reference to her cousin was a 'Dublin saying' and was not indicative of an effort to mislead. He asserted that the appellant had had a difficult life and had not gained financially, and he went on to say that he could not understand how such a huge overpayment had arisen.

**Comment/Conclusion:** The Appeals Officer summarised the evidence supporting the decision that the appellant had been cohabiting with the person named, as follows:

- the appellant admitted that they had been living together since 1997
- he was included as a tenant by the local authority in 1999
- he is listed there on the electoral register and his car is registered there
- the appellant and the person named lived as a couple and they have a child

- the appellant now admits that the person named is the child's father
- the appellant did not disclose the child's birth and forewent the child increase on her One Parent Family Payment
- the appellant and the person named are registered on the child's birth certificate as resident at the same address
- the appellant admitted that she was now cohabiting with the person named and had been included as a dependant on his social welfare payment
- the appellant admitted that he had been contributing to the household, both rent and childcare
- the couple had been together since 1998, at least, and this indicated stability
- the appellant said that she reared the children on her own, he did not help but she added that he was no different from a lot of men in that regard

the appellant has sought to be treated as a couple for social welfare purposes and the overpayment assessed was reduced by allowing the deduction of the social welfare rate for a couple over the period of the overpayment when the person named was not working

The Appeals Officer considered that the only reasonable conclusion was that the appellant and the person named had been living together as a couple in an intimate and stable relationship since the date specified in the decision. He concluded that the appellant and her partner would have been entitled to Family Income Supplement in 2004 and 2005, and calculated that that notional entitlement would have been €940 per annum for both years. He determined that this amount should be deducted from the overpayment.

**Decision of the Appeals Officer:** The appeal is disallowed.

**Note on reason(s) for decision:** Having carefully examined the evidence in this case,

including that presented at oral hearing, I have concluded that it has been established that the appellant [person named] have been cohabiting since [specified date]. The evidence indicates that they share finances and household duties, that they shared responsibility for the care of their child, and that the length of the relationship points to a degree of stability in their relationship as a couple. In the circumstances, I must conclude that the decision regarding cohabitation is correct and I regret that the appeal cannot succeed.

### **Case 2012/16 - State Pension (Non-Contributory)**

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

It has been decided that you are not entitled to State Pension (Non-Contributory) from [specified date] as your means exceed the statutory limit of €245.00 per week.

**Background:** The appellant applied for State Pension (Non-Contributory) on a date in 2011 and his claim was disallowed on the grounds that his means were in excess of the statutory limit. The Deciding Officer concluded that he had divested himself of €133,000. This, together with a bank balance of €34,500, amounted to €167,500 on which his means were calculated. In 2008, the appellant sold a house which he had inherited from a friend and in 2009, he sold land. He gave 90,000 to his nephew and €43,000 to his brother.

**At oral hearing:** the appellant was accompanied by a constituency worker for his local T.D. The Appeals Officer had requested that the Social Welfare Inspector attend but as she was not available, he read her report. The appellant said that he had inherited the house, which he sold in 2008, from someone who had been a lifelong friend of his family and she had asked him to look after his brother as he had been very good to her. Accordingly, he had given him €43,000 to respect her wishes. He said he had given his nephew €90,000 as he had been self-employed but was out of work and had a mortgage. He said he would not leave anyone struggling and it

was more important to look after relatives than get the pension. He said he thought he would have plenty left as he had over €30,000 in the bank at the time. However, repairs to his house had cost more than he expected. He said that his nephew comes and stays with him for about three weeks every year and has been doing so since he was a child. He said he knew he would not get the pension if he had the money from the sale of the house but that was not why he gave away the money. He also gave land to his nephew. He said the Single Farm Payment entitlement for this farm was just over €1,000 and that his nephew gave that money to him. In conclusion, he said that the land was practically idle with only a couple of cattle on it. He showed his bank deposit book which showed a balance of €11,000.

**Comment/Conclusion:** The Appeals Officer noted that the appellant had been in receipt of Old Age pension from 1992 to 2005 when his means were reviewed. At that time, he had been assessed with means of €360 per week based on capital held, and this was in excess of the statutory limit for pension purposes. He applied for State Pension (Non-Contributory) in 2011 after giving money to his brother and nephew. He noted also that the Deciding Officer had concluded that the appellant had divested himself of capital in order to qualify for pension and had, on that basis, assessed the capital as means.

The Appeals Officer accepted that the appellant might have given money to his brother to honour the wishes of the person who left him the house. He accepted also that he might have given his farm to his nephew as he was unlikely to be able to work the farm any longer once he entered his eighties. He considered, however, that while he might have wanted to help his nephew, giving him €90,000 did not seem justified in the circumstances. He noted that the appellant was familiar with the means assessment process from his previous claim and that he had admitted at the oral hearing that he knew he would not get the pension while he had that much money in the bank; although he had gone on to say that he did not do it to get the

pension. In the circumstances, the Appeals Officer concluded that while he might have wanted to help his nephew, he knew what he was doing in giving the money away. Accordingly, he was satisfied that the appellant deprived himself of €90,000 and that this fell to be assessed as means. This, together with the money in his bank account, while less than the amount of means he was assessed with at the time of his claim, still exceeded the statutory limit.

**Decision of the Appeals Officer:** The appeal is disallowed.

**Note on reason(s) for decision:** From the evidence available I have concluded that the appellant deprived himself of capital in order for to qualify himself for the State Pension (Non-Contributory) and this falls to be assessed as means in line with the provisions of social welfare legislation. Therefore, his means exceed the statutory limit. In the circumstances, I regret that the appeal cannot succeed.

### **Case 2012/17 - Respite Care Grant (summary)**

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

You are not entitled to a Respite Care Grant because you are employed outside the home for more than 15 hours per week.

**Background:** The appellant lived three miles away from the care recipient. She was employed by the care recipient on a full-time basis (8 hours per day 6 days per week) and stated that she was on call 24 hours per day if required. The appellant has also applied for Carer's Allowance

**Comment/Conclusion:-** The Appeals Officer noted that the care recipient had been deemed to require full-time care and attention and that the Social Welfare Inspector had reported that the appellant was providing that care and attention. He considered the salient point to be



that it was the care recipient herself who was the employer; the employment at issue took place in the care recipient's home. It was not disputed that the hours were more than 15 per week. He considered that the question, therefore, was what had been intended when the limitation was put in place, and what 'outside the home' was to be interpreted to mean.

He referred to S.I. 142 of 2007, Article 169 (3), which states:

For the purposes of a respite care grant payable in respect of full-time care and attention...where it is shown to the satisfaction of a deciding officer or an appeals officer that adequate provision has been made for the care of the relevant person, a carer may engage in employment...provided that where the employment...is outside the home the aggregate duration...shall not exceed 15 hours per week.

The Appeals Officer regarded the crucial phrase as being 'adequate provision has been made for the care of the relevant person'; it is only after this provision has been put in place that the carer can engage in employment or the other activities specified. He considered that the clear implication, therefore, was that the employment referred to in the relevant provision was employment other than the caring duties performed by the carer.

The Appeals Officer noted that in both the Social Welfare (Consolidation) Act, 2005 and the Regulation S.I. 142 of 2007, the primary requirement for a carer is that s/he resides with the care recipient. It is only if the carer is *not* residing with the care recipient that specific conditions and circumstances are prescribed. He considered that the legislation allows for a carer being either resident or non-resident but that it differentiates between them.

The Appeals Officer noted that while the condition as to working outside the home applies to both resident and non-resident carers equally, a carer who is a non-resident carer is already outside his/her own home for the period defined as satisfying the 'full-time care and attention'

condition. In such circumstances, he examined the question as to what 'outside the home' can be taken to mean. He concluded that if the condition applies equally to both resident and non-resident carers, it follows that the home in question is the care recipient's home. In this case, the appellant was a non-resident carer whose full-time job was that of carer for the care recipient. The Appeals Officer noted that all the hours in question were performed in the care recipient's home, as were all caring duties. He concluded, therefore, that the appellant was not employed outside the care recipient's home for more than 15 hours per week.

**Decision of the Appeals Officer:** The appeal is allowed.

### **Case 2012/18 – SWA (Rent Supplement)**

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

Your application for Rent Supplement has been disallowed as your long-term housing need has already been met, i.e. you have a home in Poland where your wife and son reside.

**Background:** The appellant, a Polish national, was employed in Ireland from 2007. Having lost that employment, he qualified for Jobseeker's Benefit and thereafter, as a former EU worker, qualified for Basic Income and Rent Supplement under the Supplementary Welfare Allowance (SWA) scheme. On moving address some twelve months later, he was refused continuation of Rent Supplement at his new address, on the grounds that the Designated Person was not satisfied that he had established a valid housing need in accordance with the requirements of social welfare legislation (S.I. 412 of 2007, Article 9) as he had a place of residence and accommodation in Poland, where his wife and family continued to reside. He continued to receive SWA (Basic Income) until he recommenced employment.

**At oral hearing:** the appellant was supported by an advocate from Crosscare, and an interpreter also attended. It was confirmed that at the time

of his initial claim for SWA Basic Income and Rent Supplement, the appellant had been employed in Ireland for more than 52 weeks. The point was made that, in such circumstances, he was entitled, as a former EU worker, to social advantage under the provisions of Regulation EC 1612/68.

It was argued, on behalf of the appellant, that denial of Rent Supplement would mean that a person in the appellant's situation was unable to avail of entitlement to social advantage supports under Regulation 1612/68, while they remained in Ireland as a former EU worker seeking to resume employment.

**Comment/Conclusion:** The Appeals Officer made reference to the following:

*The concept of social advantage referred to in article 7 ( 2 ) of EU Regulation No. 1612/68 includes all advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other member states therefore seems suitable to facilitate their mobility within the community.*

- European Court of Justice c 315/95 ECR 1 - 1417 Peter de Vos v. Stadt Bielefeld

He noted that the European Court of Justice has stated that, when evaluating the entitlement to the same social advantages as domestic workers, it will use the criteria of the position of a person as a worker, his residency in a territory and the appropriateness of the advantages to the support of mobility within the Community.

Having considered the issues and circumstances in this case, the Appeals Officer concluded that where a person holds entitlement to social advantage supports under the provisions of EU Regulation 1612/68, in addition to basic SWA payments, this entitlement must also include coverage for accommodation costs – otherwise the person would be unable to remain in the country for continued migrant job-seeking purposes, as is the whole purpose of providing

social advantage supports in the first place. He considered that ownership or access to accommodation outside of Ireland in the person's native EU country, where their family may continue to reside, should not exclude a qualified former EU worker from entitlement to Rent Supplement within the framework of social advantage supports envisaged under Regulation 1612/68. Accordingly, he concluded that the appeal was allowed with effect from the date of his application for Rent Supplement at the second address, and that the rate and duration of Rent Supplement should be determined following a review of the appellant's circumstances, having regard to household situation, means and his resumption of employment.

**Decision of the Appeals Officer:** The appeal is allowed with effect from the commencement of his tenancy at [specified address]. The rate of payment and the duration of entitlement are to be determined with reference to all other conditions governing entitlement to Rent Supplement.

**Note on reason(s) for decision:** As a former EU migrant worker in Ireland, the appellant held an entitlement to certain social advantage supports in the State under the provisions of EU Regulation 1612/68. In such circumstances, I do not consider that the availability or ownership of a place of accommodation in a person's home country in another State within the European Union (as was so in this case) may be regarded as meeting a person's accommodation needs as prescribed for the purpose of entitlement to Rent Supplement by means of S.I. 412 of 2007, Article 9.

In order to allow the appellant to exercise and avail of such entitlement to social advantage, I consider that the social advantages and supports in question must cater for the fundamental issue of accommodation costs as otherwise a person is unable to properly avail of such entitlements. Having considered the circumstances in this case, including evidence presented at oral appeal hearing, I decide that this appeal is allowed as outlined above.

## Case 2012/19 - SWA (Basic Income)

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

Your application for assistance under the Basic Supplementary Welfare Allowance Scheme has been refused for the following reason(s): not habitually resident.

**Background:** The appellant lived in Ireland with four dependent children for approximately seventeen years, returning to the UK in 1999 to seek medical treatment. She came back to Ireland in 2011 to live with her adult daughter. She had been in receipt of Disability Allowance and reapplied upon her return. She applied for Supplementary Welfare Allowance (Basic Income) as an interim payment and was deemed not to be habitually resident due to her lack of employment record, the length of residency, the length of time spent abroad, lack of permanent accommodation or means in Ireland.

**At oral hearing:** the appellant stated that in 1998 she was investigated for cancer and another undiagnosed condition which left her in severe pain and exhausted. She underwent extensive tests but remained undiagnosed.

Having heard a radio interview with a man with similar symptoms who had been treated successfully by a consultant in the UK, she consulted her doctor who recommended that she seek an appointment with the same consultant. She was diagnosed with Fibromyalgia and, at that time, there was no specialist in Ireland. She said that it took six years for her condition to be stabilised and she remained in the UK, relying on a disability income support payment. She was able to study and attained an Open University degree.

The appellant said that her condition deteriorated and she became wheelchair bound. She had an electric chair which allowed her to get around but she was becoming increasingly frail and suffered several falls whilst on her own. Her daughter had suggested she return to Ireland where she could help her. She said that she returned with the intention of continuing to work in her chosen field but had not applied for any jobs to date as she felt she needed to establish her base again

and could not do that without some State support. She reported, however, that her position became more precarious when her daughter ordered her from her house. She stated that her daughter suffers from mental health issues and that she had no choice but to move to a friend's house temporarily. She said that she was exploring opportunities to establish herself in self-employment and that her daughter-in-law was willing to assist her in getting around by car if need be.

With regard to her residency, the appellant stated that she was in private rented accommodation in the UK and she had surrendered the tenancy upon her return to Ireland, three of her children and their children live in Ireland, and she has no other family ties to the UK. She said that she paid a friend's son to bring all her belongings to Ireland and nothing remains in the UK.

In conclusion, the appellant stated that when she lived here prior to 1999 she had no intention of leaving but had no choice in moving to seek medical treatment which was not available in Ireland. She stated she did not have any means to return to the UK even if she wanted to.

**Comment/Conclusion:** The Appeals Officer noted that in the decision to refuse the claim in this case, there had been a heavy reliance on the facts that the appellant had no employment record in the State, had lived the majority of her life outside the State, and came to Ireland without funds to support her or any permanent accommodation. She considered that while it was fair to say that her centre of interest had been the UK, the reasons for her return, her severing of all ties to the UK, and her efforts since her return to establish herself within her area of expertise, as well as the fact that her family all reside here, led her to conclude that the appellant may be considered to be habitually resident for the purpose of qualifying for Supplementary Welfare Allowance where all other qualifying conditions were met.

**Decision of the Appeals Officer:** The appeal is allowed from the date of application.

**Note on the reason(s) for the decision:** I am satisfied that the appellant has established her centre of interest in the State since her return and may be regarded as being habitually resident from the date of application.

## **2012/20 – SWA (Rent Supplement)**

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

The application is refused for the following reason:

You have not provided evidence that the Housing Authority regard you as having a housing need in accordance with Section 9 of the Housing Act, 1998. Legislative basis: Social Welfare (Consolidation) Act, 2005, Section 198 3F (a).

**Background:** The appellant has eight children, two of whom live permanently with another family member under a care order. She sold her home in 2009 and moved into private rented accommodation. The local authority would not enter the family onto the housing list as they were deemed, in effect, to have made themselves homeless by selling the house.

**At oral hearing:** the appellant was accompanied by the secretary to her local T.D. and by an advocate from Novas Initiatives (NI). The appellant explained that she bought her house from her uncle for €20,000. She advised that her eldest child does not live with her and is estranged; she has a child who has an extremely rare medical condition and is frequently sick and hospitalised. The appellant described a series of incidents which the Appeals Officer was not disposed to record but she was satisfied that the relevant authorities, including the Gardaí, the local authority and the community welfare service, were all familiar with and equally accepting of the veracity of the anti-social behaviour experienced by the appellant and her family. She went on to relate family difficulties including the attempted suicides of her husband and, some months later, her daughter.

The NI advocate outlined the appellant's early life experiences of abuse and her adult experiences of domestic violence. She said that she had bought the house at issue, having been awarded compensation for an accident, thinking it would secure her family's future. However, problems began when concerted efforts were made by some persons locally to make the family move. The house was sold back to the local authority and the proceeds were handed over to persons who were alleged to have made threats against the family. It was submitted that the appellant had no choice then but to move into private accommodation, being excluded from the local authority's housing list as she was deemed to have made herself homeless. The decision to exclude the family was the subject of appeal to the local authority at the time of the oral hearing.

The NI advocate went on to say that the family was living in extreme poverty, a direct result of paying the rent each month from basic social welfare payments; she referred to social workers involved with the family finding the house devoid of food and heating. She said that the children frequently miss school as they do not have adequate footwear or clothing.

**Comment/Conclusion:** The Appeals Officer noted that the appellant had appeared to be under severe stress. She observed that this case was undoubtedly a most exceptional appeal where the family had been struck by long-term dysfunction, trauma, and illness. A combination of abuse, violence and intimidation had left the appellant in an extremely vulnerable position and she found herself at the centre of maintaining her family through mental health issues and extreme poverty. She noted that, for the most part, there was no documentary evidence to support the claims made by the appellant, however the weight of verbal evidence given at oral hearing was sufficient to convince her of the exceptional circumstances surrounding this case and she concluded that there was overwhelming justification in awarding assistance towards rent.

The Appeals Officer referred to the original decision, which was based on the legislative provision that a claimant must have been assessed as having a housing need by the local

authority. In this case, the appellant did not satisfy that condition. The Appeals Officer noted, however, that there is provision in legislation which allows a supplement to be paid where it appears that the circumstances of the case so warrant. She concluded that this case fell clearly within the parameters of such exceptions.

**Decision of the Appeals Officer:** The appeal is allowed.

**Notes on the reason(s) for the decision:** I am satisfied that the appellant has shown exceptional circumstances in this case and I am invoking Article 38(1) of SI 412 of 2007 and awarding assistance towards rent from the date of application being [specified date].

### **Case 2012/21 – SWA (Rent Supplement) (summary)**

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

Your application for assistance under the Supplementary Welfare Allowance scheme has been refused for the following reason(s):

The person beneficially entitled to the rent payable under the tenancy is not a body which provides services on behalf of or ancillary to the Executive using residential care staff which receives a subvention from the Minister for Health & Children in respect of the claimant. As per Part 3, Article (9) (2) (h) (iii) of Statutory Instrument 41 of 2007.

**Background:** The appellant, who has an intellectual disability, applied for Supplementary Welfare Allowance (Rent Supplement) in respect of her accommodation in a voluntary housing association where supervision by care staff was provided as required. That application was disallowed, as outlined above, and an appeal was made.

**Comment/Conclusion:** In assessing the appeal in this case, the Appeals Officer noted that Health Service Executive (HSE) customers with intellectual disabilities (other than those of a profound nature) are no longer automatically

provided with residential care and accommodation by the HSE; the policy and practice for some time now has been to accommodate such clients in situations of independent rented accommodation, supported and supervised by care staff as required. He noted also that such support staff are recruited by the housing owners/managers and funded by the HSE, who retain responsibility for client care and support but not for the on-site accommodation, as is the case with regard to those clients who live in full-scale residential care, such as those residential centres owned or managed by St. Michael's House, the Sisters of Charity et al.

In terms of the amount of supplement payable, the Appeals Officer referred to the governing legislation, as follows:

S.I. 412 of 2007, Article 13 – Amount of supplement in certain cases:

In the case of a claimant whose tenancy is with an approved body which is in receipt of assistance under the scheme of capital assistance referred to in Article 9 (2) (j), the maximum supplement payable under Part 3 of these Regulations shall be—

- (a) €60.00, in any case where the claimant is a spouse, civil partner or co-habitant, and
- (b) €55.00, in any other case

**Decision of the Appeals Officer:** The appeal partially allowed in regard to the matter of an entitlement to a Rent Supplement in respect of her residence with [named] Voluntary Housing Association at [specified address].

**Note on reason(s) for decision:** Appeals to the Social Welfare Appeals Office are determined either on the basis of the documentary evidence provided, or otherwise following an oral hearing on the case, which is granted at the discretion of the Appeals Officer. Having examined this case carefully, however, I have concluded that an oral appeal hearing is not required, and have arrived

at this decision on the basis of all available information and evidence in regard to the appellant's situation.

Social Welfare legislation provides the basis for determining entitlement to Rent Supplement. Article 9 2 (h) (iii) of S.I 412 of 2007 provides that: it shall be a condition of any claimant's entitlement to a supplement that the person beneficially entitled to the rent supplement under the tenancy is not a body which provides services on behalf of, or similar or ancillary to, the (Health Service) Executive using residential care staff and which receives a subvention from the Minister for Health and Children in respect of the claimant.

In light of the foregoing legislative provision, I have carefully considered the circumstances and details of the appellant's present accommodation with [named] Housing Association, within the context of the services provided by the Health Service Executive (HSE) in this locality.

Having done so, I conclude that whilst some of the services provided by the [named] Housing Association for the main part are indeed 'similar or ancillary' to those provided by the Executive (HSE), the provision of accommodation no longer falls within this remit in light of currently established HSE policy and emphasis on semi-independent and community-based living arrangements for customers in circumstances which are similar to those of the appellant.

On these grounds, I conclude that in the appellant's situation, the provisions of Article 13, Part 3 of S.I 412 of 2007, are more appropriate than those contained in Article 9 2 (h) (iii), and on these grounds I decide that, subject to all other governing conditions, an entitlement to Rent Supplement may exist in this case up to the prescribed limit of €55.00 per week. On these grounds, this appeal is partially allowed.

## **Case 2012/22 - Survivor's (Contributory) Pension**

### **Decision under appeal: revised entitlement with overpayment assessed - reason(s) stated:-**

My decision is based on the report received from the local Social Welfare Inspector, in which he stated that [person named], was cohabiting with you for the past 20 years, and prior to your application for a Widow's Pension. Accordingly, I have decided that you had no entitlement to Widow's Contributory and I am terminating your payment immediately from your date of award.

This decision has been made in accordance with Section 302 (a) of the Social Welfare (Consolidation) Act, 2005, on the grounds that you wilfully concealed a material fact from the Department. As a result of this decision, you have been assessed with an overpayment. In the circumstances of this case, it is the intention of the Department to recover the overpayment in full. Our Debt Management Section will be in contact with you shortly regarding repayment of this overpayment.

**Overpayment assessed: €73,300.**

**Background:** The appellant applied for a Widow's (Non-Contributory) Pension in 2001, following the death of her husband. The case was investigated by a Social Welfare Inspector and, shortly afterwards, the appellant withdrew her claim and signed a statement to this effect as recorded by the Inspector at the time. No formal reason was given for the withdrawal. The appellant was issued with a letter which advised her that no further action would be taken as a result of her wish not to continue with the claim. Later in that same month, however, a Deciding Officer concluded that she had an entitlement to a Widow's (Contributory) Pension based on her late husband's PRSI contributions and a letter was issued to the appellant advising as to the date of award .

The appellant, at the time of her initial application, was in receipt of Unemployment Assistance from a [specified] Social Welfare Local Office. In 2009, the person named in the overpayment decision applied for Jobseeker's

Allowance at that office and advised that the appellant was his partner and that she was in receipt of a Widow's Pension. He stated that he had been cohabiting with her for the previous 20 years. The Department of Social Protection commenced an investigation into the appellant's circumstances. Ultimately, it was decided that she was not entitled to the Widow's Contributory Pension with effect from a date in 2000. As a consequence of this decision, an overpayment of €73,300 was assessed.

The revised decision was made under Section 302 (a) of the Social Welfare (Consolidation) Act, 2005, which refers to wilful concealment of a material fact – taken to mean cohabitation with the person named for some 20 years without advising the Department.

**At oral hearing:** the appellant was accompanied by a constituency worker from the office of her local T.D. The Deciding Officer attended at the request of the Appeals Officer. She read the decision and outlined details of the case history, referring to the Social Welfare Inspector's report and letters of natural justice which had been issued to the appellant inviting her to comment before a decision was made. On the issue of the overpayment, she advised that the appellant had been awarded a State (Non-Contributory) Pension with effect from her 66<sup>th</sup> birthday and that this had the effect of reducing the overpayment amount to €50,500. She confirmed that the person named had been deemed to be an adult dependent on the appellant's pension.

The appellant outlined the background to her relationship with the person named. She accepted that they had been living together in the period at issue. She advised that when she was interviewed by the Social Welfare Inspector in 2001, in connection with her Widow's (Non-Contributory) Pension claim, she told the Inspector that she was co-habiting and that this was the reason for her withdrawing the claim subsequently. She said that at the time of her application she was in receipt of Unemployment Assistance and when she got the pension book from the Department, she stopped that claim. She went on to say that she had accepted the payment in good faith on the basis that she had

withdrawn her non-contributory claim and had not applied for a contributory pension.

On behalf of the appellant, her advocate asked if an application for a contributory pension had ever been made and if so, was there an application form. She stated that the appellant was distraught at the prospect of having to repay such a large overpayment, and went on to say that the appellant genuinely did not understand that she was not entitled to Widow's (Contributory) Pension. The appellant stated that she did not deliberately set out to defraud the State.

Following a general discussion about the application, the Deciding Officer accepted that there had been no claim for a Widow's (Contributory) Pension but she made the point that it was unclear as to why the Widow's (Non-Contributory) Pension claim had been withdrawn. She said that, in any event, when the appellant got the award letter for the contributory pension she would have received a leaflet about the conditions for receipt of the payment. She accepted that no review had taken place after the pension was awarded and acknowledged that the only contact the Department had with the appellant was when she changed her address.

**Comment/Conclusion:** In reviewing the documentary evidence, the Appeals Officer noted that on her Widow's Pension application form, the appellant had declared her Unemployment Assistance payment and had indicated that she had been separated from her husband for some years prior to his death. He noted also that while an exact reason was not given by the Social Welfare Inspector at the time in relation to withdrawal of the claim, there was a notation on the file which stated the name and age of the person named as cohabiting with the appellant.

The Appeals Officer noted that the appellant had claimed a Widow's (Non-Contributory) Pension and, following an interview with the Social Welfare Inspector, she withdrew that claim on the basis of cohabitation with the person named. While this was not specifically mentioned in the notice of withdrawal which had been written by the Inspector and signed by the appellant, he

was satisfied nonetheless from her testimony at the oral hearing and the notation on the file as written by the Inspector that this is the case. He noted also that it was clear that the appellant had never applied for a Widow's (Contributory) Pension and that there is no option to do so on the Widow's (Non-Contributory) Pension claim form.

While he accepted that, in the circumstances, the appellant had no entitlement to a Widow's (Contributory) Pension based on cohabitation with the person named, he considered that the decision to revise the original decision by using Section 302 (a) of the Social Welfare Consolidation Act, 2005 – in effect wilful concealment of a material fact – was unsafe given that she had never applied for the payment in the first place and that it would not stand up under scrutiny. He made a decision with reference to Section 302 (c) of the Act, determining that the decision to disallow the Widow's Contributory Pension should take effect from a different [specified] date, which was the date of the appellant's 66<sup>th</sup> birthday as after that date she had been awarded a State (Non-contributory Pension).

**Decision of the Appeals Officer:** The appeal is allowed.

**Note on reason(s) for decision:** Having considered all of the evidence on file and that adduced at the oral hearing I am satisfied that no wilful concealment of the facts has occurred in this case. In the circumstances I am allowing the appeal under Section 302 (c) of the Social Welfare Consolidation Act, 2005 and that the decision to disallow the payment of her Widow's

Contributory Pension should take effect from [specified date] which is the date of her 66<sup>th</sup> birthday as after this date she has now been awarded a State Non-Contributory Pension. The appeal therefore succeeds.



## Appendix 1

# Social Welfare Appeals Office Organisation Chart

