

social welfare appeals office

annual report 2007



SOCIAL WELFARE
A P P E A L S
O F F I C E

Report by the Chief Appeals Officer on the activities
of the Social Welfare Appeals Office in 2007

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Prn. A8/0043
ISSN 1649-7309



Mr. Martin Cullen T.D.
Minister for Social and Family Affairs
Áras Mhic Dhiarmada
Dublin 1

March 2008

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 2007.

Yours sincerely,

Brian Flynn
Chief Appeals Officer

Foreword

This annual report fulfils my statutory duty to report on the activities of the Social Welfare Appeals Office in the calendar year 2007.

The function of my Office is to determine appeals by people who are dissatisfied with decisions made by deciding officers of the Department of Social and Family Affairs relating to entitlement to social welfare payments and insurability of employment and by officers of the Health Service Executive relating to entitlement to certain supplementary welfare allowances. It is an office of the Department independently responsible for determining such appeals and Appeals Officers are independent in coming to their decisions.

This report gives a statistical overview of our work, measured through appeals received and appeals finalised during the year, as well as commentary on a number of matters which arose from our work. It also contains a small selection of case studies which try to give a sense of the issues coming before Appeals Officers for determination. My Office's website www.socialwelfareappeals.ie gives a larger selection of case studies.

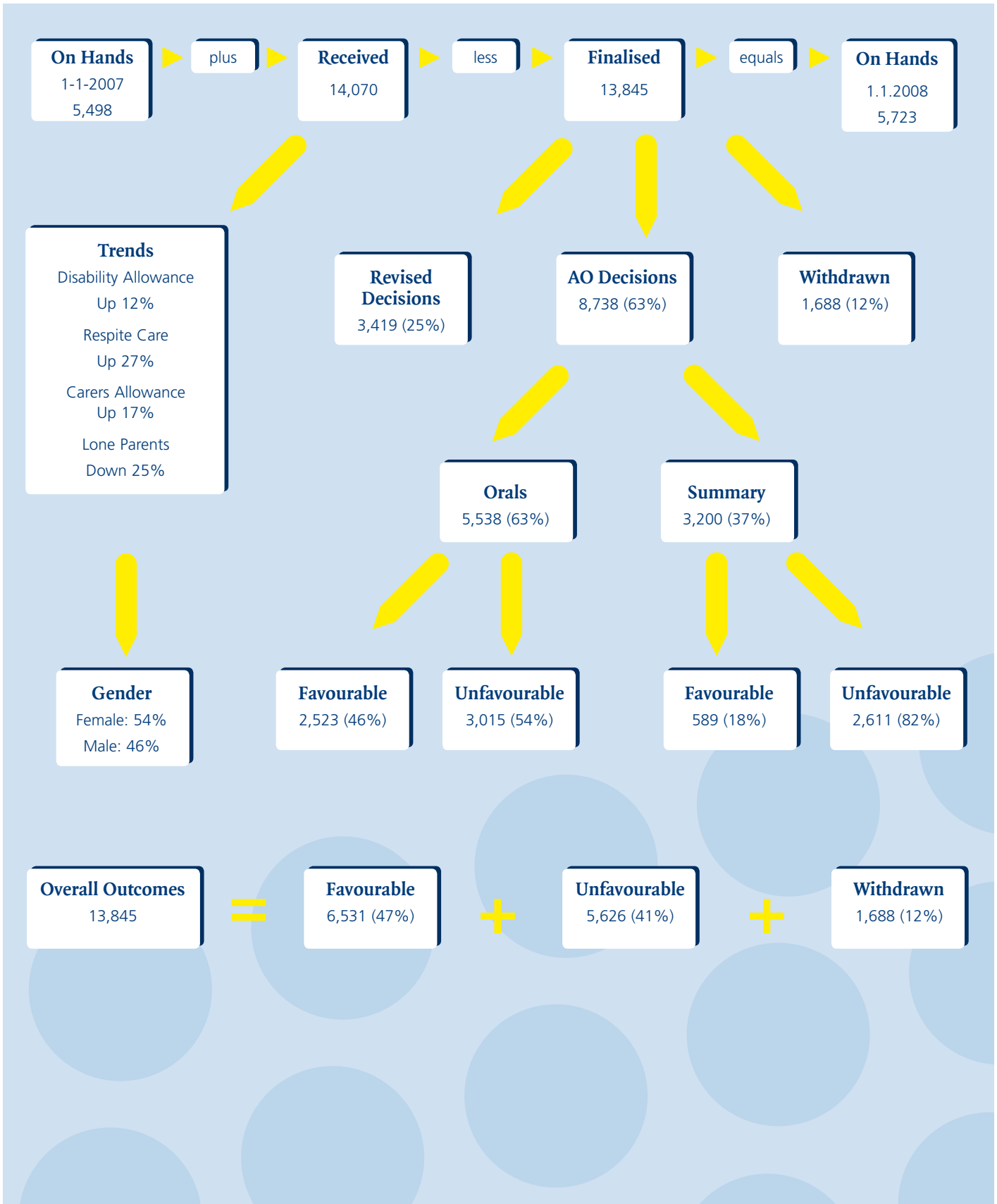
My thanks are due to the ongoing commitment and co-operation of all my staff in the support they give me in fulfilling my statutory duties. My thanks also to the Department and to the Health Service Executive for their co-operation with our work.

This report is published in bilingual form in accordance with statutory requirements. If you have any comments on any aspect of the report, please get in touch with me.

Brian Flynn

Director and Chief Appeals Officer

March 2008



Our statistical data for 2007 is set out in the “Workflow Chart” preceding this commentary and in tables 1, 2, 3, and 4.

Appeals Received

We received 14,070 cases which were registered as appeals in 2007, an increase of 2% on 2006. In addition to those registered, we received a further 1,426 cases where it appeared that the appellant may not have fully understood the reason for the adverse decision on their claim. In those circumstances, the letter of appeal was referred to the relevant scheme area of the Department with a request that the decision be clarified for the appellant. The appellant was informed accordingly and advised that if they were still dissatisfied with the decision after having received clarification from the Department they could still appeal the decision to my Office. During 2007, only 251 (18%) of the cases received were subsequently registered as formal appeals.

Appeals Types

There were some notable variations in the number of appeals received across scheme types when compared to 2006. One parent family payment appeals fell by 25% while there were increased receipts for disability allowance (up 12%), carers allowance (up 17%) and respite care grant (up 27%).

Workload for 2007

The total workload for 2007 was 19,568 when the 14,070 appeals received were added to the 5,498 appeals on hands at the beginning of the year. That was marginally more than the corresponding workload of 19,504 for 2006.

Appeals Finalised

13,845 appeals were finalised in 2007 compared to 14,006 in 2006 i.e. a 1% decrease. The 13,845 finalised were divided between:

- 8,738 (63%) determined by Appeals Officers – 9,100 or 65% in 2006,
- 3,419 (25%) resolved by way of revised decisions by deciding officers - 3,199 or 23% in 2006, and
- 1,688 (12%) withdrawn or otherwise not pursued - 1,707 or 12% in 2006.

Appeals on Hands

Appeals received in 2007 exceeded appeals finalised by 225 thus increasing the number of appeals on hands at the end of 2007 to 5,723 which was a 4% increase.

Appeals Outcomes

The outcomes of the 13,845 appeals finalised in 2007 were as follows:

- 6,531 (47%) had a favourable outcome for the appellant in that they were either fully allowed, partially allowed or resolved by way of a revised decision of a deciding officer (46% in 2006).
- 5,626 (41%) were disallowed and therefore had an unfavourable outcome for the appellant (42% in 2006).
- 1,688 (12%) were withdrawn or otherwise not pursued by the appellant (12% in 2006).

Appeals Officers’ Determinations

5,538 (63%) of the 8,738 appeals determined by Appeals Officers in 2007 were dealt with by way of oral hearings. Of those, 2,523 (46%) had a favourable outcome for the appellant. The corresponding figures for 2006 were 5,901 (65% of total) of which 2,705 (46%) had a favourable outcome.

The balance of 3,200 (37%) appeals determined by Appeals Officers in 2007 were dealt with by way of summary decision. Of those, 589 (18%) had a favourable outcome for the appellant. The corresponding figures for 2006 were 3,199 summary appeals (35% of total) of which 535 (17%) had a favourable outcome.

Appeals by Gender

The proportion of appeals received from men and women in 2007 was 46% and 54% respectively. In this regard, appeals from corporate entities were excluded. In looking at favourable outcomes, 46% of men and 50% of women benefited from such outcomes.



Clearing Times

During 2007 the average time taken to process all appeals was 22 weeks (21 weeks in 2006). However, if allowance is made for the 25% most protracted cases, the average time falls to 14.4 weeks (13.8 weeks in 2006).

The time taken to complete appeals covers all stages of the procedural process including the Department's submission on the grounds for the appeal, further examinations by the Department's Medical Assessors in certain illness related cases and the making of arrangements for the holding of oral hearings where deemed appropriate. Of the 22 weeks overall average:

- 10 weeks is attributable to work in progress within the Department,
- 2 weeks is due to responses awaited from appellants, and
- 10 weeks is attributable to ongoing processes within the Social Welfare Appeals Office.

table 1 ●●●●

appeals received and finalised 2007

	In Progress 1-Jan-07	Receipts	Decided Appeals Officer	Revised Decision Deciding Officer	Withdrawn	In Progress 31-Dec-07
State Pension (non-contributory)	195	347	284	87	28	143
State Pension (Transition)	21	30	23	7	2	19
Pre-retirement Allowances	8	11	6	5	3	5
State Pension (contributory)	95	86	77	22	27	55
Illness Benefit	1,007	2,564	915	1,088	553	1,015
Invalidity Pension	268	535	425	64	17	297
Disability Allowance	1,127	2,938	1,269	917	568	1,311
Occupational Injuries Benefits	272	423	391	30	35	239
Treatment Benefit	7	17	14	6	1	3
Jobseekers Benefit	277	1,139	854	177	68	317
Jobseekers Allowance - Payments	576	2,296	1,853	245	93	681
Jobseekers Allowance - Means	322	903	636	117	90	382
Widows/Widowers and Guardians Payments	31	31	40	4	4	14
One-Parent Family Payment	461	701	522	251	93	296
Maternity Benefit	9	10	14	1	0	4
Child Benefit	104	269	160	62	20	131
Carers Benefit and Allowances	371	736	493	216	45	353
Respite Care	166	457	328	70	4	221
Family Income Supplement	29	92	54	23	4	40
Farm / Fish Assist	32	66	45	14	8	31
Supplementary Welfare Allowances	43	323	272	0	15	79
Liabile relatives (contributions)	2	9	5	4	0	2
Insurability of Employment	75	87	58	9	10	85
Totals	5,498	14,070	8,738	3,419	1,688	5,723

table 2 ●●●●
appeals received
2000 – 2007

	2000	2001	2002	2003	2004	2005	2006	2007
State Pension (non-contributory), Blind Pen	558	575	433	376	328	339	413	347
State Pension (Transition)	23	25	33	46	39	35	28	30
Pre-retirement Allowances	48	32	28	24	21	23	21	11
State Pension (contributory)	77	106	239	155	104	126	71	86
Illness Benefit	3,968	3,434	3,284	3,634	3,071	2,742	2,674	2,564
Invalidity Pension	626	491	509	529	519	443	446	535
Disability Allowance	1,750	1,861	1,832	2,257	2,252	2,392	2,622	2,938
Occupational Injuries Benefits	806	677	575	503	470	434	440	423
Treatment Benefit	5	3	4	9	50	52	41	17
Jobseekers Benefit	2,481	1,881	1,588	1,626	1,421	1,243	1,028	1,139
Jobseekers Allowance - Payments	2,821	2,262	1,983	1,874	1,956	2,274	2,375	2,296
Jobseekers Allowance - Means	1,757	1,511	1,511	1,167	907	843	848	903
Widows/Widowers and Orphans Pensions	151	142	106	64	64	63	62	31
One-Parent Family Payment	779	762	840	1,348	1,271	1,034	931	701
Maternity Benefit	16	9	9	10	14	16	20	10
Child Benefit	50	56	46	41	324	357	236	269
Carers Benefit and Allowance	1,009	1,334	1,376	812	598	586	630	736
Respite Care	0	0	0	0	0	206	361	457
Family Income Supplement	63	78	72	43	47	57	65	92
Farm / Fish Assist	298	157	134	127	107	114	71	66
Supplementary Welfare Allowances	239	354	289	433	370	327	329	323
Liabile Relatives (contributions)	18	117	6	7	5	12	3	9
Insurability of Employment	106	92	120	139	145	79	85	87
Totals	17,649	15,959	15,017	15,224	14,083	13,797	13,800	14,070

table 3 ●●●●●

outcome of appeals by category

2007

	Allowed	Partly Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
State Pension (non-contributory) and Blind Pensions	65	30	87	189	28	399
Illnes Benefit	475	17	1,088	423	553	2,556
Invalidity Pension	281	8	64	136	17	506
Disability Allowance	536	35	917	698	568	2,754
Occupational Injuries Benefits	184	58	30	149	35	456
Jobseekers Benefit	209	31	177	614	68	1,099
Jobseekers Allowance - Payments	348	31	245	1,474	93	2,191
Jobseekers Allowance - Means	115	43	117	478	90	843
Widows/Widowers Pensions and Guardians Payment	11	1	4	28	4	48
One-Parent Family Payments	111	34	251	377	93	866
Carers Allowances	158	26	216	309	45	754
Respite Care	133	3	70	192	4	402
Family Income Supplement	14	2	23	38	4	81
Farm / Fish Assist	8	8	14	29	8	67
Supplementary Welfare Allowances	64	15	0	193	15	287
Insurability of Employment	8	3	9	47	10	77
Other Appeals [SP(C), Pre-retirement Allowances, Treatment Benefit, etc.]	41	6	107	252	53	459
Totals	2,761	351	3,419	5,626	1,688	13,845
	19.9%	2.5%	24.7%	40.7%	12.2%	

table 4 ●●●●
appeals in progress at 31st december
2007

	2000	2001	2002	2003	2004	2005	2006	2007
State Pension (non-con), Blind Pension	263	332	212	139	138	149	195	143
State Pension (Transition)	12	13	18	13	15	13	21	19
Pre-retirement Allowances	36	14	4	5	10	13	8	5
State Pension (contributory)	47	72	179	117	128	90	95	55
Illness Benefit	1,676	1,522	1,374	1,272	1,068	997	1,007	1,015
Invalidity Pension	352	272	227	234	276	260	268	297
Disability Allowance	946	852	857	802	803	1,040	1,127	1,311
Occupational Injuries Benefits	489	429	358	259	306	268	272	239
Treatment Benefit	4	0	2	2	11	23	7	3
Jobseekers Benefit	682	582	432	388	360	390	277	317
Jobseekers Allowance - Payments	719	607	541	318	468	668	576	681
Jobseekers Allowance - Means	593	392	405	268	290	347	322	382
Widows/ers and Guardians payments	113	86	62	29	31	41	31	14
One-Parent Family Payment	568	722	658	950	765	642	461	296
Maternity Benefit	5	3	6	4	4	8	9	4
Child Benefit	18	25	23	14	165	136	104	131
Carers Benefit and Allowances	691	749	514	275	249	311	371	353
Respite Care	0	0	0	0	0	69	166	221
Family Income Supplement	40	43	31	26	25	36	29	40
Farm / Fish Assist	116	52	57	61	39	65	32	31
Supplementary Welfare Allowance	50	44	42	38	65	54	43	79
Liabe relatives (contributions)	7	58	28	6	6	10	2	2
Insurability of Employment	110	104	126	111	103	73	75	85
Totals	7,537	6,973	6,156	5,331	5,325	5,703	5,498	5,723

Meetings of Appeals Officers

In accordance with my statutory obligations, meetings of Appeals Officers were convened in April and October 2007 to discuss best practice and consistency in decision making. The opportunity was also taken at those meetings to discuss the latest developments in administrative law and any relevant recent court judgments. Appeals Officers are required to keep themselves up to date on relevant aspects of administrative law in order to ensure that the service they provide remains responsive to the needs of appellants and others who use the service. The following is a summary of the more significant matters discussed at those meetings.

Illegal employment, PRSI and benefit entitlement

A number of cases have arisen on appeal from non-EEA nationals whose claims for social welfare benefits were disallowed on the grounds that they did not satisfy the relevant PRSI contribution conditions. It emerged that the individuals concerned had been working in the State without valid work permits. On the basis of legal advice received, the Department of Social and Family Affairs contended that the employment in question was illegal and that there was, in fact, no 'contract of employment' for the purposes of liability for PRSI contribution. Consequently, PRSI contributions that were paid in those circumstances were invalid and did not confer entitlement to social welfare benefits.

The position taken by the Department, although supported by legal advice, could be regarded as somewhat harsh in the context of the arrangements for the granting of work permits that existed prior to January 2007 and which placed the onus on the employer to apply for and obtain the work permit. In the cases which arose on appeal, it was the employer's failure to obtain or renew a work permit that resulted in problems for the employed person. Appeals Officers have noted the legal advice obtained by the Department and will take it into consideration when determining appeals along with any other relevant factors that may be adduced in the context of the appeal.

Habitual Residence Condition

Two year residency

The habitual residence condition was introduced in May 2004 as a qualifying requirement for all social assistance payments. The legislation is framed in a manner that presumes that a person shall not be habitually resident until the contrary is shown. There is a rebuttable presumption that a continuous period of residence (2 years) in the State or in the Common Travel Area is required. Appeals Officers have noted that some deciding officers of the Department were using the two year residency provision as the main basis for deciding that applicants were not habitually residents and were failing to look at other issues. Appeals Officers have commented that the residency requirement is merely one of a number of indicators that a person is habitually resident in the state but is not conclusive in its own right.

Residence visas

"Stamp 4" residence visas are granted by the Department of Justice, Equality and Law Reform and provide holders with a right to remain and work in the State for periods of up to two years. The position adopted by Appeals Officers is that possession of a Stamp 4 visa is merely an indicator that a person may be habitually resident for social welfare purposes but is not decisive in all cases. Appeals Officers have noted that some deciding officers accept the holders of Stamp 4 visas as automatically satisfying the habitual residence condition without further question.

Inconsistencies in Decision-Making

I drew attention in my 2006 report to the need to have adequate safeguards in place to ensure consistency in the decision making process relative to the habitual residence condition. Appeals Officers are still coming across appeal cases in which conflicting decisions have been given in respect of the same person claiming different payments. The view of Appeals Officers is that once the habitual residence condition is satisfied for one social assistance payment it should be satisfied for all, subject to no major change in the claimant's circumstances (such as a return to the country of origin).

Child Benefit

Normal residence of the child

Under the legislation child benefit is only payable to the person (usually a parent) with whom the qualified child normally resides. Determining the child's normal residence can often give rise to problems where parents have separated and where joint equal custody has been awarded by the courts. Appeals Officers have expressed concern about the lack of flexibility in the current statutory provisions for dealing with this type of situation.

Child Benefit and migrant workers - EU Legislation

EU legislation contains a number of provisions aimed at protecting the social security entitlements of migrant workers. One such provision is contained in Article 86 (2) of EU regulation 1408/71 which provides that a claim for “family benefit” made in one EU member state may, subject to certain conditions, be regarded as having been made in the competent state (i.e. the state that is responsible for payment of benefit). Child benefit is a “family benefit” under EU legislation and falls within the scope of this provision. It is normally the country of employment that is the competent state for child benefit purposes and this can present problems in the case of migrant workers moving between member states. It is the responsibility of the institutions in the different member states to liaise with each other and ensure that there is a seamless transfer of entitlement.

A number of child benefit cases have arisen on appeal in 2007 in which the provisions of these EU regulations were not applied resulting in a loss of entitlement for the families involved. My Office has raised this issue with the Department and has drawn attention to the fact that the relevant EU provisions are not adequately covered in the Department’s guidelines. I understand that the guidelines are currently being updated.

Criminal prosecution or Social Welfare Appeal?

Where new evidence is produced to indicate that the original decision on a benefit claim was incorrect, deciding officers of the Department have statutory power to revise those decisions. Such revised decisions will have the effect of reducing entitlement or disallowing a claim altogether and are usually backdated. A consequence of the backdating of a revised decision is the setting up of an overpayment which is recoverable by the Department from the claimant. There is a right of appeal to my Office against revised decisions of deciding officers. Where serious fraud or other serious irregularity is involved, the Department may also initiate criminal prosecution proceedings in the courts.

The question arose during the year as to whether the prosecution through the courts should take precedence over the appeals process. Conflicting legal opinions on this point had been received by my Office and by the Department. With a view to resolving the issue, my Office sought legal advice from the Office of the Attorney General which indicated in a detailed opinion that Appeals Officers are free to proceed to hear appeals in cases in which there are also prosecutions pending. Effectively, each process may proceed independently of the other. This advice puts the matter beyond any doubt and will be followed by my Office when dealing with such cases.

Rent Supplement - Regeneration Areas

In my 2006 report, I drew attention to concerns about the validity of a directive issued by the Minister for Social and Family Affairs that rent supplement should not be paid to applicants within the Ballymun Regeneration Area who did not have the prior consent of Dublin City Council and to the subsequent legal advice that my Office obtained from the Attorney General in that regard. I am pleased to note that the 2007 Social Welfare and Pensions Act contained specific provisions which addressed this matter by way of statutory restrictions on the payment of rent supplement in designated regeneration areas.

PRSI and company directors

Increasing numbers of company directors are seeking formal decisions from the Department concerning the correct rate of PRSI payable in their case i.e. whether PRSI Class A (employed) or Class S (self-employed) should apply. The decisions in many of these cases are disputed and end up being appealed to my Office with a consequent increase in both the volume and complexity of the work arising. A possible reason for the high number of appeals is confusion over the correct rate of PRSI payable by company directors vis-à-vis their income tax liability. While some directors are regarded as self-employed for PRSI purposes, all are covered under the PAYE provisions of income tax legislation as “office holders” and are taxed under the Schedule E (PAYE) system which normally applies to employees. Further confusion can arise where directors hold two positions in the company, one as an “office holder” and the other as a working director whose employment may be on similar terms to that of an employee. There may often be difficulties in these cases in determining whether or not a company director is employed under a contract of service (i.e. as an employee) and this is frequently disputed on appeal. During 2007 my Office submitted a proposal to the Department of Social and Family Affairs aimed at simplifying the present arrangements by including all working company directors within the PRSI Class A rate. It is understood that this proposal is currently under consideration in the Department.

Overpayments and Fraud

I referred earlier in this report to the authority available to deciding officers to revise decisions in cases where new evidence is produced to indicate that the original decision on the claim was incorrect. Such revised decisions can give rise to overpayments and, in some cases, the revised decisions and overpayments are due to fraud, wilful concealment or misrepresentation on the part of the applicant at the time of original claim. In other cases, the revised decision/overpayment may arise because of a change in circumstances since the date of the original decision (but with no indication of fraud). Appeals Officers have noted that some deciding officers are applying the “fraud” provisions of the legislation

in all cases involving overpayments. This is a serious development given that an allegation of fraud could lead to additional penalties and even to the institution of a criminal prosecution by the Department. My Office will bring this matter to the attention of the Decisions Advisory Office with a request that additional training be provided to deciding officers.

Language Difficulties at Appeals

Interpreters at oral appeal hearings

An emerging trend in recent years is the increasing numbers of foreign nationals availing of my Office's services. A number of the appellants concerned do not enjoy a sufficient command of English to enable them do themselves justice at their oral appeal hearing. To overcome this difficulty my Office arranges for the attendance of interpreters to assist those appellants. Despite our best efforts, it is possible in some instances that language difficulties will not become apparent until the appellant arrives at the appeal hearing, resulting in adjournments and delays. I have sought the assistance of the Department in this regard by requesting them to identify any cases that they are aware of in which the appellant may have need of the services of an interpreter when submitting appeal files to my Office.

Translation of Documents

One of the conditions for receipt of illness benefit is that the claimant must be incapable of work. As part of its control policy, the Department conducts medical reviews of those in receipt of illness benefit from time to time. Where a person is found to be capable of work the claim is disallowed and there is a right of appeal to my Office. In the case of a claimant who is in receipt of illness benefit but resides in another EU member state reciprocal arrangements exist whereby the social security agency in that state will undertake the medical examination on behalf of the Department. In a small number of cases it transpired that a full translation of the foreign medical examination report was not included in the file papers presented to the Appeal Officer, thus making a determination very difficult. My Office has raised this with the Department to ensure that in all future cases a full translation of all foreign medical and other relevant evidence will be provided.

Meetings with the Decisions Advisory Office

The Decisions Advisory Office provides the main forum through which the operational relationship between my Office and the Department is maintained and developed. During 2007 the Decisions Advisory Office was decentralised

to Carrick-on-Shannon and, as a consequence, there was a complete change in the personnel of that Office. Despite these changes, regular meetings with the new Decisions Advisory Officer, Ms. Joan McMahon, and her staff continued during 2007. These meetings provide the main framework for providing feedback to the Department on various issues that have arisen in the course of appeal cases. I would like to thank the Decisions Advisory Officer and her staff for their help and co-operation with our work during the year.

Among the issues discussed with the Decisions Advisory Officer in 2007 were the following.

Administrative issues

In my report for 2006, I highlighted some of the concerns expressed by Appeals Officers regarding the shortcomings in the Department in relation to decision making and the quality of appeals submissions. Quite a number of similar issues were raised with the Decisions Advisory Office during 2007, including: -

- absence of a formal decision by a deciding officer,
- failure by deciding officers to address the appeal contentions as required under legislation,
- inadequate information being provided by deciding officers to claimants regarding adverse decisions,
- reasons for the deciding officer's decision being unclear and not supported by the documentary evidence.
- use of acronyms, jargon or unfamiliar terms that causes confusion and lack of clarity,
- where overpayments are set up arising from revised decisions, failure to indicate in the appeal submissions the amount of the overpayment, and
- application of the fraud provisions of the legislation in setting up an overpayment rather than the non fraud provisions in circumstances where the overpayment is deemed to have arisen as a result of new facts or evidence that have come to notice.

Appeals Officers are conscious of the fact that their decisions may ultimately be challenged in the High Court and that shortcomings or deficiencies at the initial decision making stage in the Department have the potential to undermine the entire decisions and appeals process.

Arising out of our ongoing discussions with the Decisions Advisory Office, a number of initiatives aimed at improving the situation are being undertaken: -

- 1) A new updated set of guidelines for deciding officers in dealing with appeals has been prepared by my Office and has been submitted to the Decisions Advisory Office for its consideration prior to being circulated throughout the

Department. I am satisfied that the new guidelines will have a significant impact on improving the standard of decision making and appeals submissions.

2) A detailed survey of all appeals received in my Office during the months of February and March 2008 will be undertaken in order to quantify the extent of the problems and short-comings in appeal files being submitted to my Office and also assist in informing the Department's training and information dissemination strategies.

3) Formal training for deciding officers will be better targeted and focused on the needs of my Office. As referred to later in this report, my Office contributed to 12 training courses in 2007 involving some 252 deciding officers of the Department. We will continue to assist the Decisions Advisory Office in whatever way we can in providing training for deciding officers in the current year.

Service Delivery Modernisation – Pension Services Office

The processing of all state pension claims was transferred to a new computer system in 2006 as part of the Department's service delivery modernisation programme. A feature of the new system is the electronic recording of decisions which were previously recorded as paper decisions by deciding officers. Problems have arisen when pension cases come to appeal and the statutory requirement of producing a 'certificate of decision' by a deciding officer has not been met. The absence of a formal decision by a deciding officer in such cases is a major flaw in the process and one that has been brought to the attention of the Decisions Advisory Office. It is understood that arrangements are being made for extracting formal paper decisions in cases that are being appealed.

Family Income Supplement

Family income supplement is a weekly payment targeted at families at work on low pay. The relevant legislation provides that where a person fails to make a claim within the "prescribed time" he shall be disqualified for payment in respect of any period before the date on which the claim was made. However, a recent appeal case on the issue of a late claim revealed that no regulations had been made to specify the "prescribed time" for making a claim. In the circumstances, the concept of a "late claim" cannot apply to the family income supplement scheme (i.e. a person cannot be disqualified for payment on the grounds that he or she has made a late claim). The matter has been brought to the attention of the Decisions Advisory Office.

Respite Care Grant

Respite care grant is an annual payment to carers who look after people who are in need of full-time care and attention. The payment is made regardless of the carer's means but is subject to other conditions. In dealing with an appeal to

refuse a back-payment of respite care grant, an Appeals Officer discovered a technical deficiency in the relevant legislation. While a time limit for making a claim for respite care grant is prescribed in the statutory regulations, there is no reference to how claims made outside of the statutory time limit should be dealt with. The matter has been brought to the attention of the Decisions Advisory Office.

Staffing Resources

The number of staff serving in my Office at the end of 2007 was 60 which equates to 53.8 full-time equivalents. The corresponding staffing levels for 2006 were 61 and 54.55 respectively.

The staffing breakdown for 2007 is as follows:-

1 Chief Appeals Officer	1.0
1 Deputy Chief Appeals Officer	1.0
1 Office Manager	1.0
17 Appeals Officers (including 2 work-sharers)	16.4
3 Higher Executive Officers (1 work-sharing)	2.8
10 Executive officers (including 4 work-sharers)	8.9
7 Staff Officers (including 4 work-sharers)	5.0
20 Clerical Officers (including 6 work-sharers)	17.7
	53.8

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

Once again we have lost experienced Appeals Officers during the year, one on retirement, one relocated due to decentralisation and one re-assigned to the Department. I want to thank Tony Maher, Tony Fennessy and Georgina Kelly respectively for their commitment and dedication to their work while in my Office and to wish them well in retirement and in their future careers. Thanks are also due to the administrative staff who left my Office during the year.

Parliamentary Questions

During 2007, 267 Parliamentary Questions were put down (263 in 2006) in relation to the work of my Office. Of that number, replies were given in Dáil Éireann to 53 and the remaining 214 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 2,697 enquiries and representations were made by public representatives on behalf of appellants in 2007 (2,575 in 2006).

Freedom of Information

A total of 51 formal requests were received in 2007 (49 in 2006) under the provisions of the Freedom of Information Acts. Only one of these requests was in respect of non-personal information.

Training

Deciding Officer Training

Over the years, my Office has contributed to the training of deciding officers under the aegis of the Department's Decisions Advisory Office which has responsibility in that area. During 2007, contributions were made to 12 training courses involving a total of 252 deciding officers. Those training presentations focused on the role and statutory powers of Appeals Officers and drew attention to specific shortcomings in decision making and in the presentation of appeal files to my Office. The ongoing implementation of the Government's decentralisation programme has given rise to a large turnover in the deciding officer cadre in the Department's scheme areas and that is a situation which is likely to continue into the foreseeable future. In that context, training of new deciding officers will continue to be a critical requirement. My Office will continue to assist in whatever way it can in the delivery of that training.

Diversity Awareness Training

With the ongoing demographic changes in Irish society, Appeals Officers are increasingly being exposed to different cultures, languages and traditions in the course of their official duties. During the year, each Appeals Officer attended a training course in diversity awareness which was delivered by an expert in that field. I will continue to monitor the need for additional training in this area as it is deemed necessary.

Special Quasi-Judicial Training for Appeals Officers

Appeals Officers are conscious of the fact that administrative law – as it pertains to them in their role as single member administrative tribunals – is very much part of the quasi-judicial environment in which they operate. It is incumbent on us to ensure that relevant training is provided to Appeals Officers to ensure that they can properly discharge their duties.

During 2007, my Office became aware that the Institute of Public Administration (IPA) had devised a special training course aimed specifically at the chairs and members of quasi-judicial tribunals. Having regard to the quasi-judicial role exercised by our Appeals Officers, we considered that training of that nature was very relevant to our work and, following discussion with the IPA, we were able to devise a customised training programme for delivery to Appeals



Officers in late 2007 and early 2008. All Appeals Officers have now attended the three day course.

Appeals Submissions

I drew attention in my report for 2006 to the problems caused by delays within the Department in submitting relevant file papers and appeals submissions to my Office so as to allow appeals to be processed. Such delays unnecessarily prolong the time taken to dispose of appeals and adversely affect our ability to provide a quality customer service. In early 2007, my Office took specific steps aimed at reducing those time delays and they have proved very successful. The number of outstanding files from Departmental scheme areas has been reduced from a weekly average of 1,400 in January to a weekly average of 900 by the end of the year, a reduction of some 35%. In addition, a significant reduction occurred in the number of the oldest cases outstanding. I am happy to record the excellent co-operation we received from the Department in relation to this initiative. We will continue to monitor the situation in 2008 with a view to achieving further improvements in this area.

Customer Charter

In line with the requirements of the Quality Customer Service Initiative across the civil service, my Office has published a Customer Charter which sets out our commitments to delivering the best possible level of service to the many thousands of customers who seek our assistance each year. The Charter can be viewed on our website www.socialwelfareappeals.ie. Copies of the Charter will be distributed to Departmental Local Offices and Citizen Information Centres.

Address to Citizens Information Board Conference

In October 2007 I accepted an invitation from the Citizens Information Board (formerly Comhairle) to address its Annual Conference of Information Providers which was held in Tullamore. The theme of the Conference was "Information to Advocacy" which was focused on the challenge of providing a high quality information and advocacy service in an environment where change is constant. The main function of the Citizen's Information Board is to support the provision of independent information, advice and advocacy services relating to the broad range of social and civil services.

The audience for my address was information providers working in Citizens Information Centres around the country who are well placed to act as advocates on behalf of people appearing at social welfare appeals. My address concentrated on explaining the process around the hearing of appeals and, particularly, the role which the information provider can play in that process with and on behalf of appellants.

My Office's experience in recent years of representatives from Citizens Information Centres attending appeal hearings was quite low and, in that regard, I urged information providers to think about getting more involved in the appeals process on behalf of their customers. Even if their attendance amounted to nothing more than moral support for an individual who may well feel intimidated by the process itself, it would be well worth while.

The Citizens Information Board has undertaken to follow up on the issue of providing further training for information providers wishing to attend appeal hearings and I have offered my Office's support in that regard.

Legislative Independence

I referred in my annual report for 2005 to the need for consideration to be given to providing statutory independence for the Social Welfare Appeals Office. Appeals Officers attached to my Office are statutory officers who undertake their function of determining appeal cases in an independent manner, a concept which has been endorsed by the courts over the years. However, while the independence of its statutory officers is not in doubt, the fact remains that there is currently no legal recognition of the Social Welfare Appeals Office as a statutory entity in its own right.

I raise this again as an issue because those seeking to avail of our appeals service must have confidence in its independence and its ability to carry out its role independently of those responsible for the decision being appealed. If that confidence is not there, the role of the appeals service is diminished and weakened. The issue of legislative independence is still under discussion with the Department and I am hopeful that progress in this important area will be made in 2008.

Looking to the Future

Research Project

One of the features of the growth in the public service in recent years has been the proliferation of appeal bodies reviewing the decisions of government departments, the health service, local authorities and state agencies. Those bodies often operate as stand-alone entities, with or without statutory support, and utilise ad hoc procedures with varying levels of expertise and best practice. During 2007 my Office availed of an opportunity to provide a 12 week internship to a postgraduate student from the National University of Ireland, Galway. The project assigned to the student was to examine the implications for and the role of the Social Welfare Appeals Office in the event of a single appeals office for all or the majority of public service appeals being introduced. Such a single entity would seek to streamline procedures, reduce costs, improve efficiency and enhance independence and transparency. The study was also to have regard to international experience, specifically in the United Kingdom and in Australia.



The student identified four key characteristics of a best practice appeals system - speed, independence, simplicity and cost efficiency - and applied them to four Irish appeals bodies operating as stand-alone entities and to two international bodies operating as unified appeals systems. In summary, the study found that the Irish appeal bodies scored well under the headings of simplification and cost efficiency whereas the unified international bodies scored well under the headings of speed and independence. The study suggested that a number of appeal systems in Ireland could benefit from the introduction of a unified appeals structure under which separate appeals bodies would be amalgamated under a common administrative structure. However, the study concluded that, given the limitations imposed by the timescale of the study and the lack of data available from some of the Irish appeal bodies, further detailed research would be necessary before definitive policy recommendations relating to a unified appeals system could be framed.

The full text of the study entitled "An analysis of the rationale for the introduction of a unified appeals system in Ireland" is available on our website www.socialwelfareappeals.ie. I would like to take this opportunity to thank the student involved for her work on the project.

Decentralisation

My Office is scheduled to relocate to Drogheda under the Government's decentralisation programme. While no firm date has yet been finalised for the relocation, necessary planning for the move will continue in 2008. The head office of the Department of Social and Family Affairs is also scheduled for decentralisation to Drogheda and included in our planning requirements is the need to preserve our independence as an office outside of the remit of the Department.

Personal Advocacy Service

My Office has been given legislative authority to determine appeals by people who are dissatisfied with the decision on their application for a personal advocate under the Personal Advocacy Service administered by the Citizen's Information Board. This new service aimed at people with disabilities is due to commence in 2008 and my Office will be working closely with the Citizen's Information Board to ensure that the appeals process runs smoothly.

Transfer of Supplementary Welfare Allowance

The transfer of the supplementary welfare allowance scheme and a number of other income support schemes from the Health Service Executive to the Department of Social and Family Affairs was approved by Government in 2006. Necessary preparatory work to implement the Government decision is ongoing in the Department and my Office is also planning for the additional work in terms of extra appeal cases which will arise for us.

This section of the report deals with cases in which Appeals Officers' decisions or procedures have been challenged in the courts.

Judgment in 2007

Unemployment Assistance (now Jobseekers Allowance) – High Court

On 10 July 2007 judgment was delivered in the High Court by Mr Justice Murphy in judicial review proceedings initiated by an appellant who was seeking to have an Appeals Officer's decision disallowing his unemployment assistance appeal quashed. The appellant contended that the social welfare appeal hearing which took place in September 2000 was improperly constituted in that assessors had not been called to sit with the Appeals Officer and that he had been coerced into giving his written consent to proceed in their absence.

Mr. Justice Murphy rejected the application for judicial review on the grounds of delay on the part of the appellant in bringing the proceedings and, also, that the case itself did not provide sufficient grounds for judicial review.

The appellant has appealed the judgment to the Supreme Court.

Court cases pending

PRSI status of contract meter readers - Supreme Court

I reported in the 2006 report that Mr. Justice Gilligan delivered a judgment in the High Court in February 2006 affirming the decision of an Appeals Officer in relation to the employment status and PRSI position of approximately 300 contract meter readers engaged by the Electricity Supply Board. The Appeals Officer had decided that the contract meter readers were employees of the company and that the PRSI Class A or J rate, as appropriate, applied.

The Board has lodged a notice of appeal to the Supreme Court in relation to this case and developments on this are awaited.

Disability Benefit – Supreme Court

In September 2000 an Appeals Officer decided that the appellant was "capable" of work and, consequently, disallowed his appeal for disability benefit (now called illness benefit). The appellant sought a judicial review in the High Court of the Appeals Officer's decision on a number of grounds which were mainly procedural. The judicial review application was dismissed by Mr. Justice Roderick Murphy in May 2004. The appellant has sought leave to appeal to the Supreme Court and a date for the Supreme Court hearing has been fixed for early 2008.

Unemployment Assistance (now called Jobseekers Allowance) – High Court

There have been no further developments in relation to plenary proceedings against the Minister for Social and Family Affairs taken by an applicant whose claim for unemployment assistance was disallowed on the grounds that he was "not unemployed" while attending a course of education. The social welfare appeals process was not finalised when the High Court proceedings were initiated. The proceedings are being taken on a number of grounds which are mainly procedural and a full defence has been filed.

This section of the report contains a selection of case studies which serve to clarify the process by which appeals are determined, whether by way of a summary decision or following an oral hearing. The basis for the Appeals Officer's decision is outlined in each case as are issues in relation to current legislative provisions or the requirement of natural justice and fair procedures.

A larger selection of case studies is available on our website www.socialwelfareappeals.ie

Family Income Supplement

Question at issue: Whether hours worked in addition to contracted hours may be taken into consideration for family income supplement purposes.

Background: The appellant's family income supplement claim was disallowed on the grounds that he did not work a minimum of 19 hours per week / 38 hours per fortnight. He is a part-time teacher employed under contract for 11 hours per week. He maintains that his work involves additional hours in excess of those contracted and that they should be reckoned for the purpose of qualifying for family income supplement.

Oral Hearing: The appellant attended alone. The deciding officer and a representative from the relevant Vocational Education Committee also attended.

The appellant made the point that the 11 hours he worked each week was, in effect, the time he spent in front of pupils. That did not include additional time he spent on class preparation and correction of work. He felt it was unfair to regard him as only working 11 hours per week. The deciding officer pointed out the legislative position i.e. entitlement to family income supplement is based on the actual number of paid hours worked and no account is taken of additional unpaid hours. The VEC representative confirmed that the appellant was employed on an 11 hour per week contract and she was not aware of any allowances payable for preparation / correction

work. She suggested that, if required, additional information should be sought from the Department of Education.

Consideration of the Appeals Officer: Following enquiries made by the Appeals Officer, the Department of Education confirmed that part-time teachers are contracted to work between 11 and 22 hours per week and there is nothing in the contract to require them to work any additional time outside of the contracted hours. Furthermore, there is nothing in the contract to imply that additional work is required in order to fulfil the duties and responsibilities associated with the required contracted hours. The appellant did not provide any evidence that he was obliged to work the additional hours claimed by him or that he would be in breach of his contract if he failed to do so.

In the light of the available evidence, the Appeals Officer concluded that appellant was obliged to work the number of contracted hours only and that any additional work he put in outside of those hours was purely at his own discretion.

Outcome: Appeal disallowed.

State Pension (Non-contributory)

Question at issue: Whether appellant has attained pension age, in the absence of a birth certificate, for the purpose of claiming state pension (non-contributory).

Background: The appellant's claim to state pension was disallowed on the grounds that he was unable to provide evidence of his age.

Oral hearing: The appellant attended alone. The Social Welfare Inspector and a Health Service Executive official were also in attendance.

At the outset, the Appeals Officer clarified the issue before her, namely, whether or not the appellant had attained pension age for the purpose of his pension claim.

The appellant outlined his background indicating that he was born and raised in an Asian country, moved to the United Kingdom some 40 years ago and came to live in Ireland in 1978. His passport was stolen shortly after arriving in this country. The HSE official said she had been in contact with the relevant embassy with a view to getting a birth certificate for the appellant but had been told he would need a current passport in order to get a birth certificate. In order to get a current passport, he would need a birth certificate. Consequently, he was caught in a "Catch 22" situation with regard to his documentation.

The Social Welfare Inspector presented the Appeals Officer with a copy of legal advice from the Office of the Attorney General to the effect that the best evidence as to a date of birth is a birth certificate and there is no obligation to accept sworn affidavits as proof of dates of birth.

The Appeals Officer noted that the appellant had been awarded a free travel pass by the Department (normally available only to persons aged 66 years or over) and also that the date of birth cited by him had been accepted by the HSE for the purpose of his supplementary welfare allowance claim.

Consideration of Appeals Officer: The Appeals Officer clarified the position regarding the formal decision in this case indicating that the question of what documentation may be required as proof of age is, under the relevant legislation, a matter for decision by the Minister for Social and Family Affairs and is not properly a deciding officer or Appeals Officer function. However, given that the matter had been submitted to the Social Welfare Appeals Office for adjudication, the Appeals Officer deemed that

the issue for determination in this case was whether the appellant attained pension age for the purpose of qualifying for state pension.

The Appeals Officer noted the advice received from the Attorney General's Office but concluded that, while clearly a birth certificate would be desirable, the advice did not preclude the acceptance of sworn affidavits or other appropriate evidence in the absence of an official birth certificate. The Appeals Officer also noted that the HSE had accepted a date of birth for the appellant for the purpose of his supplementary welfare allowance payments which would render him of pension age. She considered that from the written submissions on file and the oral evidence given at the appeal hearing that the HSE was satisfied as to the appellant's bona fides. In addition, the Pensions Services Office of the Department had issued a free travel pass to the appellant on the basis that he had attained the relevant age. Having regard to those circumstances and taking account of the appellant's presentation of his case and his generally aged appearance, she was satisfied that he had attained pension age.

Outcome: Appeal allowed.

State Pension (Non-contributory)

Question at issue: Whether appellant should be assessed with means derived from an assurance policy payable to his wife's children.

Background: The appellant was in receipt of the state (non-contributory) pension. He reported a change in his circumstances to the Department and, following a review of his means by the Social Welfare Inspector, he was assessed with means from the value of property and also capital from a life assurance policy payable to his wife's children. His weekly means exceeded the weekly rate of pension payable in his case and, consequently, his claim was disallowed by a deciding officer.

Oral hearing: The appellant attended accompanied by his wife and the Social Welfare Inspector was also in attendance.

The Social Welfare Inspector outlined her reports in the case. Following a review of the appellant's means after he had contacted the Department to report a change in his circumstances, he was assessed with means from the letting of land and capital held in an account in his name and that of his wife. The capital in question arose as a result of a settlement paid to the appellant's wife's children from her first marriage. The children's father had died in a road accident and the compensation arising



from that had been invested. The capital accumulated over the years and was initially kept in the wife's sole name but later the appellant's name was added as a precaution. The Social Welfare Inspector was satisfied as to the bona fides of the capital, that it had not been personally used by the appellant or his wife over the years as there had been no withdrawals, and that on the basis of evidence produced it had since been transferred to the wife's two daughters. However, as capital had been in the appellant's name, there was nothing to preclude him from its use and, therefore, it fell to be assessable as means. The deciding officer, however, continued to assess the capital against the appellant with the result that his means remained in excess of the limit for pension purposes.

In reply, the appellant and his wife confirmed the facts as outlined by the Inspector and stated that they had no issue in relation to the assessment of means against them except in relation to the capital. The appellant's wife maintained that the money in question was not hers, that neither herself nor the appellant had ever used the money for personal purposes, even during hard times over the years, and that she was merely holding the money in trust for her daughters. The appellant's name had been added to the account as a precaution should anything happen to her. She added that her daughters were now in their thirties and were of an age when they would use the money wisely. She submitted a deed of transfer under the terms of which the money was transferred to the daughters without any reservations in favour of the appellant or his wife. Her sole motivation in doing so was to give her daughters what was properly theirs at a time in their lives when it would be of most benefit to them.

Consideration of the Appeals Officer: The Appeals Officer considered the case under the provisions of the relevant legislation which states that the any property belonging to the person calculated in the prescribed manner shall constitute the weekly means of the person. He was of the view that, although the appellant stated that he was not the owner of the capital, it was held in a joint account and consequently there were no legal limitations on the appellant or his wife as to how the capital might be used. They were free to use the money as they chose and, therefore, could be regarded as the legal owners of the money. The fact that they viewed the money as belonging to the daughters was a personal choice and, therefore, the decision to assess the capital as means against the appellant was correct.

The Appeals Officer then considered the decision of the deciding officer to continue to assess the capital as means after it had been transferred for the benefit of the two daughters. The relevant legislation provides that in

such circumstances capital can only be continued to be assessed if it is considered that the claimant disposed of the capital in order to qualify for a pension. The Appeals Officer considered all the evidence before him and was satisfied that that was not the case. In the circumstances, he found that there were no grounds for the continued assessment of the capital subsequent to the date of transfer to the daughters.

In summary, the Appeals Officer determined that appellant's means were in excess of the prescribed limits for the duration of the period that the capital was in joint names but that means from capital should not apply after the date of transfer.

Outcome: Appeal partly allowed.

Disablement Benefit

Question at issue: Whether the appellant's claim to disablement benefit under the occupational injuries benefit scheme should be disallowed on the grounds that his accident did not arise out of and in the course of his insurable employment.

Background: The appellant was insurably employed as an amateur jockey. He attended a race meeting at which he was due to ride for his employer. Prior to his employer's race, he accepted a 'chance ride' for another owner. He had a fall and was severely injured. He is now confined to a wheelchair. His employer declined to complete an accident form in respect of disablement benefit as the appellant was not riding for him when the accident occurred nor was he acting under his instruction. The claim was subsequently disallowed on the grounds that accident did not arise out of and in the course of his insurable employment.

The appellant appealed against the decision. It was decided on a summary basis and the Appeals Officer upheld the deciding officer's decision. In arriving at the decision, account was taken of the failure of the employer to complete the relevant accident form and the Social Welfare Inspector's report which suggested that the appellant had secured the other ride without his employer's knowledge and in so doing was not acting within his employer's instructions.

Following the summary decision, further papers were submitted by the employer indicating that the appellant had been engaged in an activity authorised and/or permitted for the purpose of his work. The relevant accident form was completed by the employer. Representations were also received from the appellant's social worker who had discussed the case with the

employer. During those discussions, the employer indicated that he had actively encouraged the appellant to take spare rides whenever the occasion arose.

In the light of the additional evidence submitted, the case was reopened by way of an oral hearing.

Oral hearing: The appellant attended accompanied by his mother and employer. The deciding officer and two Social Welfare Inspectors from the Department also attended.

In giving his evidence, the employer stated that the Social Welfare Inspector's report indicating that he had declined to complete the relevant claim form for disablement benefit did not fully reflect his position. He stated that, had he been at the race meeting in question, he would have encouraged the appellant to take the chance ride offered to him as it would have added to his experience and would have been of benefit to him. He also made it clear that he had never forbidden the appellant from taking chance rides and, consequently, the appellant was not acting contrary to his instructions on this occasion. He surmised that his decision to decline to complete the disablement benefit form initially was because he considered it irrelevant given that when the accident happened the appellant was not riding on his 'direct' instructions. The relevant form had since been completed by him.

The social worker said that information he had obtained from the Irish Turf Club suggested that the taking of chance rides was the means by which jockeys gained experience and advanced their careers. It was essentially a natural part of a jockey's career progression.

The deciding officer was asked for his view in the light of the evidence adduced by the employer and the social worker. He considered that there were grounds for allowing the claim but, as the case was before an Appeals Officer, he felt it was not open to him to revise his original decision.

Consideration of the Appeals Officer: In considering the circumstances of this case, the Appeals Officer had before him oral evidence from the employer and the view of the Department's deciding officer. He also had regard to a decision of the UK Appeals Commissioners which he felt was of relevance. The case concerned a farm worker who was injured while assisting a mechanic unload a tyre. While the farm worker was waiting for his employer's machinery to be repaired, he went to assist a mechanic in unloading a tractor tyre and was injured in the process. The outcome was that it had been considered there had been no interruption of employment, that the worker's action in assisting the mechanic was not unreasonable in

the context of the employment concerned and that it was incidental to and within the scope of his employment. It was deemed, therefore, that the accident arose in the course of his employment.

The Appeals Officer considered all the evidence before him and was of the view that the practice of chance rides is common in the career of amateur jockeys and is accepted and not discouraged. Consequently, the taking of the chance ride could be regarded as coming within the scope of and incidental to the appellant's employment. He, therefore, revised the summary decision and allowed the appeal.

Outcome: Appeal allowed.

One Parent Family Payment

Question at issue: Whether appellant's claim to one parent family payment should be disallowed on the grounds that she was co-habiting giving rise to an overpayment.

Background: The appellant claimed and received the maximum rate of one parent family payment since 1991. Her claim was reviewed in 2001 and again in 2005. The Social Welfare Inspector who carried out the review reported that the appellant held an SSIA account after initially denying she had such an account. The issue of co-habitation also arose as the appellant's former partner's name appeared on the rent assessment. When asked the reason for that, the appellant replied that she had asked the Council to have his name removed but, as he failed to provide them with proof of a new address, the amount of rent remained unchanged. When questioned as to why she continued to pay an excessive amount of rent, she did not reply. She denied any form of employment but stated that she had done some voluntary work in respect of which she was asked to produce documentary evidence.

The Social Welfare Inspector concluded that on the grounds that the appellant had failed to prove that co-habitation was not an issue she no longer satisfied the conditions for receipt of one parent family payment. Before giving a decision on the case, the deciding officer sought details of the tenancy from the Council and was informed that the appellant's former partner's name was included on the rent assessment but not on the tenancy agreement. The appellant had submitted evidence that he was no longer resident at the address but the evidence was deemed insufficient by the Council and the rent remained unchanged.

The deciding officer wrote to the appellant outlining the case before her for decision and inviting any comments



before making a decision. The appellant failed to reply. Consequently, the claim was disallowed and an overpayment assessed against the appellant.

A letter of appeal was received from the appellant's solicitors contending that the deciding officer had failed to take account of all the circumstances and evidence in making her decision. On foot of that letter, the deciding officer referred the case again for review by the Social Welfare Inspector. The Inspector reported that she had delivered a letter to the appellant requesting her to provide a detailed SSIA account statement and a letter confirming her voluntary work. A letter regarding the voluntary work and birth certificates in respect of the appellant's two older children were received. It transpired that the birth certificates had recently been amended to include her former partner as the putative father of the two children and giving them his surname. The appellant failed to furnish the detailed SSIA account statement requested.

Oral hearing: The appellant attended accompanied by her solicitor. The deciding officer and two Social Welfare Inspectors were also in attendance.

In relation to the tenancy rent assessment, the appellant stated that she had sent a letter to the Council in 2001 informing them that her former partner had moved out. She said that he had only resided with her for 4 to 6 weeks following the birth of their daughter. She said that she provided the Council with a copy of her daughter's birth certificate which gave his address as the same as hers and, therefore, he was included on the rent assessment. She said that the Council had sought proof that he had moved out, such as a utility bill for another address, but he was living in rented accommodation and was unable to supply same. She said that she had contacted the Council on numerous occasions to have the rent reduced, but to no avail.

The appellant was asked if he could have produced other evidence acceptable to the Council, such as a bank statement or driver's licence, but she didn't know the situation in that regard.

In relation to the appellant's SSIA account, the deciding officer contended that the appellant had failed to furnish full details of the account as requested on a number of occasions. As a result, the account details could not be established such as whose name or names were on the account. The appellant's solicitor indicated that he had responded to a request for details of the SSIA account. The deciding officer contended that what had been supplied, namely, an account balance, was not what had been asked for. The solicitor said that if what had

been supplied was not what was required he would have expected the Department to follow it up with further correspondence. The appellant confirmed that she held a SSIA account in her own name. Her solicitor confirmed that such accounts cannot be held in joint names. It was noted that the appellant's bank account indicated a monthly payment of €200 into the SSIA account. She said she was saving the money for her daughter. She said she had been receiving between €25 and €50 per week maintenance from her former partner.

In relation to the amended birth certificates, the appellant said that her former partner was not the natural father of her two eldest children. His name was included on the respective birth certificates as he had agreed that he would take on responsibility for the three children and she wanted all her children to have the same surname. The appellant admitted that her partner moved back in with her for 4 to 6 weeks in 2000 and she did not inform the Department at the time. The relationship didn't work out and the appellant decided that he should leave. She said that he has not lived with her since then.

The appellant was questioned as to why she returned her payment book in 2005 stating that she had secured employment when departmental records showed that it was some months later before she actually commenced employment. She replied that her second child had an accident and she was not able to continue working. She said she did not reapply for the one parent family payment because her family would not let her and helped to support her at that time. She also got some assistance from her former partner.

Consideration of Appeals Officer: Having considered all of the available evidence, including that adduced at the oral hearing, the Appeals Officer considered that there was a major credibility issue surrounding the appellant's evidence. It had been established to his satisfaction that the appellant and her partner have had long standing contact over 8 years and he has been included as a member of her household for local authority rent purposes for a number of years. By his own admission, he is the father of the appellant's youngest child and, by virtue of the amendment to the birth certificates of the appellant's two other children, he had agreed to take on responsibility for all three children. The appellant indicated she wanted all of her children to have the same surname.

The Appeals Officer concluded on the basis of the evidence before him that the appellant was cohabiting for the period under review.

Outcome: Appeal disallowed

Rent Supplement

Question of issue: Whether the appellant vacated housing provided by the local authority without just cause.

Background: The appellant lived in a local authority housing estate which was subsequently taken over by a local housing association. Due to a medical condition, she was unable to access the upstairs of the house and it was her understanding that, prior to the housing association taking over responsibility for the estate, the local authority had approved a grant for the installation of a downstairs bathroom. However, it transpired that the housing association had planned to carry out large scale improvements to the entire estate which could take up to two years to complete and they indicated that no grant had been approved in respect of the appellant's house. The housing association were aware of the appellant's medical condition and sought to assist her in finding alternative accommodation. As a result, she moved to private rented accommodation on the understanding that her rent would be paid. Her claim to rent supplement was subsequently disallowed on the grounds that she vacated her local authority accommodation without just cause.

Oral hearing: The appellant attended accompanied by her daughter. Two representatives from the Health Service Executive and a representative from the housing association also attended. The housing association representative confirmed the position as described above and indicated that they had sought to assist the appellant in securing alternative accommodation given the length of time it would take to complete the major improvements planned for the housing estate. There was disagreement between the appellant and the housing association representative as to the advice that she had been given. She stated that she had been told by a staff member of the housing association that her rent would be paid whereas the representative from the housing association indicated that she was advised that her entitlement to a rent supplement was by no means a certainty and that she should have taken that fact into consideration before moving to private rented accommodation.

The representative from the Health Service Executive argued that the appellant's housing needs were primarily a matter for the housing association and that it was unusual in such cases for parties to rent private accommodation and then seek a rent supplement. The normal procedure would be for the local authority to arrange to have the renovation work done with the minimum disruption to the tenant. In any event, the installation of a downstairs bathroom should not involve an absence from the house of some two years. A number of alternative housing options were discussed during

the oral hearing none of which appeared to offer the appellant an immediate solution to her problem.

The appellant indicated that she had received notice to vacate her private rented accommodation due to rent arrears which had accumulated during the period in question. She said that she had never wanted to vacate her local authority house and now found herself in a very difficult position.

Consideration of the Appeals Officer: The Appeals Officer was satisfied that the appellant's local authority house failed to meet her housing needs. The housing association representative had indicated that the appellant was identified as being in a house which did not meet her needs when ownership and management of the estate was taken over by them. Furthermore, the Health Service Executive did not dispute the fact that the appellant was inadequately housed but made the point that responsibility for the appellant's housing needs rested with the housing association. The Appeals Officer also considered the nature of the dispute which had arisen as to the advice given to the appellant, following which she had moved to private rented accommodation and sought assistance with the rent through a rent supplement. She is now in a position whereby she may have to wait two years before returning to her local authority home.

The Appeals Officer had regard to the relevant legislation which provides that a rent supplement may be payable if the Health Service Executive is satisfied that a claimant had just cause for leaving accommodation provided by a housing authority. In the light of the circumstances of the case and all the evidence before him, he concluded that the appellant had just cause for leaving her local authority accommodation.

Outcome: Appeal allowed

Disability Allowance

Question at issue: Whether the appellant's claim for disability allowance should be back-dated for seven years to the date of her 16th birthday when her entitlement to domiciliary care allowance ceased.

Background: The appellant claimed disability allowance when she was 23 years of age having been in receipt of domiciliary care allowance up to 16 years of age. She referred to the Department's information booklet which states that claimants getting domiciliary care allowance will be notified in advance of reaching 16 years of age of their right to claim disability allowance. The appellant claimed that neither she nor her mother received any such notification.



The deciding officer considered that there were not sufficient grounds to support the back-dating of the appellant's claim beyond 6 months but was disposed to back-date it for 6 months as provided for in the relevant legislation. However, the deciding officer noted that the appellant had been employed for 5 of the 6 months back-dating period during which her weekly income would have exceeded the weekly means limit in respect of disability allowance. Consequently, the appellant was awarded the maximum rate of disability allowance from the date she ceased employment. She appealed against that decision and requested that her claim be back-dated for seven years to her 16th birthday.

Oral Hearing: The appellant was accompanied by her mother and her solicitor at the oral hearing of her appeal. The deciding officer also attended.

The deciding officer outlined the procedure followed by the Department in cases where the payment of domiciliary care allowance is due to cease and where there may be an entitlement to disability allowance. The Health Service Executive (HSE) is responsible for the payment of domiciliary care allowance and furnishes to the Department about four times a year detailed lists of all cases reaching 16 years of age. The Department then issues the relevant application forms by post to all those listed. It was not possible to confirm that forms had issued to the appellant as the Department does not retain the lists beyond 5 years. The deciding officer undertook to enquire from the HSE as to whether it would still have a record of the appellant having been included on a list sent to the Department.

When asked by the Appeals Officer, the appellant's mother said that she had not made any enquiries as to her daughter's further entitlements when the payment of domiciliary care allowance ceased as she had assumed that the allowance was only payable up to a certain age and, in any event, she was not familiar with the social welfare system. The appellant said she was a college student and generally did not work while at college as she had no energy to do so. She said she became aware of disability allowance when she was on a work experience programme. She had been absent from work due to illness on a number of occasions and enquired at her local social welfare office as to her entitlements. She was advised to claim disability allowance which she subsequently did.

The appellant's solicitor argued that there had been an onus on the Department to invite the appellant to claim disability allowance given that the procedure in place provided that she should have been automatically invited to do so. It was pointed out to the solicitor that the

automatic invitation to claim could be construed as part of the customer service provided by the Department in relation to people moving between schemes and nothing more than that. However, the solicitor felt that the procedures in place went beyond customer service.

The appellant's solicitor then proceeded to address the four criteria, as provided for in the relevant regulations, under which the back-dating of a claim beyond six months can be allowed. Two of those were not being argued i.e. the delay in claiming being due to the claimant being so incapacitated as to be unable to make a claim and being in financial difficulties. However, the solicitor contended that the delay in claiming being due to wrong information having been given by an officer of the Minister was relevant as the lack of information given to the appellant could be equated to wrong information. It was further contended by the solicitor that the "force majeure" criteria (i.e. something which physically prevents a person from making a claim) was relevant on the grounds that the system failure whereby the appellant was not notified about claiming disability allowance effectively prevented her from making a claim at the proper time.

Following further questioning about the issue of back-dating the appellant's claim for 6 months at the time of claim, the deciding officer agreed that there was no reason why it could not be back-dated for 6 months.

Consideration of Appeals Officer: The deciding officer subsequently reported to the Appeals Officer that following contact with the HSE, as agreed at oral hearing, it had been established that the HSE had no records on file relating to the appellant. The Appeals Officer made further enquiries of the HSE and was informed that it was its practice to write to people several months in advance of their entitlement to domiciliary care allowance ceasing letting them know about the disability allowance scheme and the conditions for its receipt. The Appeals Officer then wrote to the appellant's solicitor asking if the appellant or her mother had any recollection of having received such a communication from the HSE. The solicitor responded that no such communication had been received. In the light of the evidence adduced on that point and notwithstanding that the appellant has no recollection of having been notified by the HSE and that the HSE has no record of having notified the appellant, the Appeals officer was satisfied that in the normal course procedures were in place to notify persons in such circumstances. He was of the view that, although the Department's information literature states that domiciliary care allowance recipients will automatically be invited to claim disability allowance on reaching 16 years of age, there was in effect no automatic entitlement to disability allowance for such recipients because it was a different scheme with its own

conditions to be satisfied. He felt it was good customer service on the part of the Department to seek to preserve continuity of payment in circumstances such as this.

The Appeals Officer then considered the arguments put forward for back-dating the claim beyond six months. In relation to the wrong information criteria, he did not accept that giving no information equates with giving wrong information. Providing wrong information could result in a person never claiming an entitlement. In addition, the Department makes use of a variety of methods to disseminate information on entitlements to members of the public, such as information booklets and leaflets, availability of information officers, advertising campaigns, websites, etc. He felt that the appellant had the same access to general information about disability allowance as was available to any other person over 16 years of age. As regards the "force majeure" provision, he was of the view that the solicitor's contention was stretching that provision too far. While it was clear that the appellant had not been invited to make a claim, she had not been prevented from doing so in that it was open to her at the time to make a claim in the same way as anyone else over the age of 16 years who felt they had a possible entitlement to disability allowance.

Having considered all the evidence, including that adduced at and subsequent to the oral hearing, the Appeals Officer decided that the appellant did not meet the criteria, as provided for in legislation, for back-dating her claim beyond 6 months.

Outcome: Appeal disallowed in relation to back-dating beyond 6 months but allowed in relation to back-dating for 6 months which was subject to a means assessment for that period.

Social Welfare Appeals Office Organisation Chart on 31 December 2007

