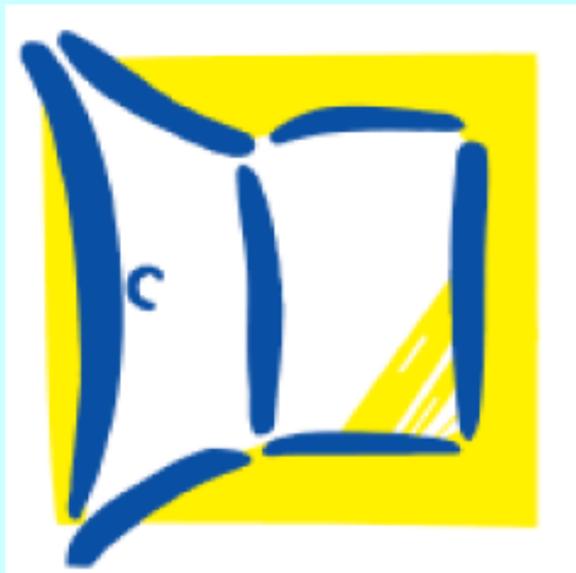


Social Welfare Appeals Office

Annual Report 2014



**Report by the Chief Appeals Officer on the activities
of the Social Welfare Appeals Office in 2014**



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

March 2015

Dear Tánaiste,

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 2014.



Yours sincerely,

Geraldine Gleeson
Chief Appeals Officer

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Introduction

This is my final annual report to the Minister for Social Protection as I am due to retire in March 2015. My tenure started in January 2010, which coincided with the start of a very difficult few years for the Social Welfare Appeals Office. During this period, the number of appeals received rose dramatically and peaked at 35,484 in 2012, a significant increase on the historical average of 15,000 receipts per annum. This proved to be the biggest and most sustained challenge faced by this office since it was established and impacted adversely on the time taken to process appeals.

A number of measures were taken to address the delays being experienced by appellants including the appointment of additional appeals officers, an overhaul of the operating model by which appeals are assigned and decided within the office, the introduction of new technology to support appeals officers and work undertaken with the Department to reduce delays in responding to requests from my office for submissions.

This programme of change and investment has resulted in a very significant improvement in processing times and backlogs over 2013 and 2014. The average processing time for all appeals finalised during 2014 was 24.2 weeks. This compares with 28 weeks in 2010, 32.5 weeks in 2011, 33.1 weeks in 2012 and 29 weeks in 2013. The average time taken to process an appeal which required an oral hearing was 28.6 weeks, a reduction of 24 weeks from the average of 52.5 weeks in 2011. Indeed, in the last three months of 2014, that time had further reduced to 26 weeks. The number of appeals on hands at the end of 2014 also reduced significantly to 9,628, the lowest number since 2008. This represents a 35% decrease on the corresponding figure in 2013 (14,770) and a 55% decrease on the position at the end of 2012 (20,414).

While the speed at which appeals are determined is of course vital to appellants, so is the issue of quality and consistency in decision making. The body of this report details our continued work and focus on this latter aspect during the year. This year we have published 24 case studies which I hope demonstrate not only the quality of decision making but also the respect with which each person's appeal is treated and the understanding and insight which Appeals Officers gain from listening to appellants. Some of the cases featured illustrate the very real benefit of an oral hearing where the impact of a disability may be very obvious when the person is seen in person but not so readily apparent from a review of the claim papers. It

is for this reason that it has been the policy of this office to grant an oral hearing where it is requested and this policy will be clearly reflected in our literature in 2015.

I would like to express my appreciation of the help and support given me by the Secretary General and Deputy Secretary General of the Department not just in terms of the increased resources allocated to this office over the last few years but also in terms of their commitment to receive and act on feedback from this office with a view to improving first instance decision making.

I would particularly like to recognise the support the Appeals Officers and staff of the office gave me over the last five years as well as the compassion, dedication and commitment with which they approach their work. I wish the office well in the future.



Geraldine Gleeson

Chief Appeals Officer

March 2015

Statistical Trends – 2014

Our main statistical data for 2014 is set out in commentary form below and in the "Workflow Chart" and tables which follow.

Appeals Received in 2014

In 2014, the Office received 26,069 appeals. While this represents a reduction of 6,708 on the 32,777 appeals received in 2013, it is significantly higher than the number of appeals being received prior to 2009.

The majority of the reduction relates to appeals in the illness, disability and caring schemes. Appeals in relation to Carer's Allowance reduced by 24.9%, Disability Allowance by 18.8%; Invalidity Pensions by 42.9%; Illness Benefit by 30.3%; and Domiciliary Care Allowance by 22.9%. See page 18 for background to this reduction.

The number of SWA appeals received reduced by 29.3% when compared to 2013.

Clarifications in 2014

In addition to the 26,069 appeals registered in 2014, a further 3,934 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 2014, only 812 (21.0%) of the 3,934 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.

Workload for 2014

The workload of 40,839 for 2014 was arrived at by adding the 26,069 appeals received to the 14,770 appeals on hands at the beginning of the year.

Appeals Finalised in 2014

We finalised 31,211 appeals in 2014.

The appeals finalised were broken down between:

- Appeals Officers (77.2%): 24,081 were finalised by Appeals Officers either summarily or by way of oral hearings (equivalent figure in 2013 was 28,062 or 73%),
- Revised Decisions (17.0%) :5,306 were finalised as a result of revised decisions in favour of the appellant being made by Deciding Officers before the appeals were referred to an Appeals Officer (8,062 or 21% in 2013), and
- Withdrawn (5.8%): 1,824 were withdrawn or otherwise not pursued by the appellant (2,297 or 6% in 2013).

Appeals Outcomes in 2014

The outcome of the 31,211 appeals finalised in 2014 was broken down as follows:

- Favourable (56.5%): 17,636 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 (55% in 2013),

- Unfavourable (37.7%): 11,751 of the appeals finalised were disallowed (39% in 2013), and
- Withdrawn (5.8%): As previously indicated, 1,824 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (6% in 2013).

Determinations by Appeals Officers in 2014

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 (31.2%) 7,523 of the 24,081 appeals finalised in 2014 were dealt with by way of oral hearings, of these 4,868 (64.7%) had a favourable outcome. In 2013, 60.1% of the 7,598 cases dealt with by way of oral hearings had a favourable outcome.
- Summary Decisions (68.8%): 16,558 of the appeals finalised were dealt with by way of summary decisions, of these 7,462 (45.1%) had a favourable outcome. In 2013, 41.6% of appeals finalised by way of summary decision had a favourable outcome.

Processing Times in 2014

During 2014, the average time taken to process all appeals was 24.2 weeks (29.0 weeks in 2013).

Of the 24.2 weeks overall average,

- 13.4 weeks was attributable to work in progress in the Department (18.4 weeks in 2013)
- 0.4 weeks was due to responses awaited from appellants (0.5 weeks in 2013)

- 10.5 weeks was attributable to ongoing processes within the Social Welfare Appeals Office (10.1 weeks in 2013).

It is noted that the average weeks in DSP will include cases that DSP have referred back to the customers for more information/clarification (rather than awaiting action in DSP). A breakdown is not available for the purpose of this report.

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 2014 was 21.1 weeks (25.8 weeks in 2013), while the average time to process an oral hearing was 28.6 weeks (33.9 weeks in 2013). 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
- further investigation by Social Welfare Inspectors where required and
- the logistics involved in arranging oral appeal hearings where deemed appropriate.

Appeals by Gender in 2014

A gender breakdown of appeals received in 2014 revealed that 44.6% were from men and 55.4% from women. The corresponding breakdown for 2013 was 45.5% and 54.5% respectively. In terms of favourable outcomes in 2014, 55.7% of men and 58.2% of women benefited.

Statistical tables:

Table 1: Appeals received and finalised 2014

Table 2: Appeals received 2008 – 2014

Table 3: Outcome of appeals by category 2014

Table 4: Appeals in progress at 31 December 2008 - 2014

Table 5: Appeals statistics 1993 - 2014

Table 6: Appeals processing times by scheme 2014

Table 7: Appeals outstanding at 31 December 2014

SW Appeals Workflow Chart 2014 (Corresponding figures for 2013 are in brackets)

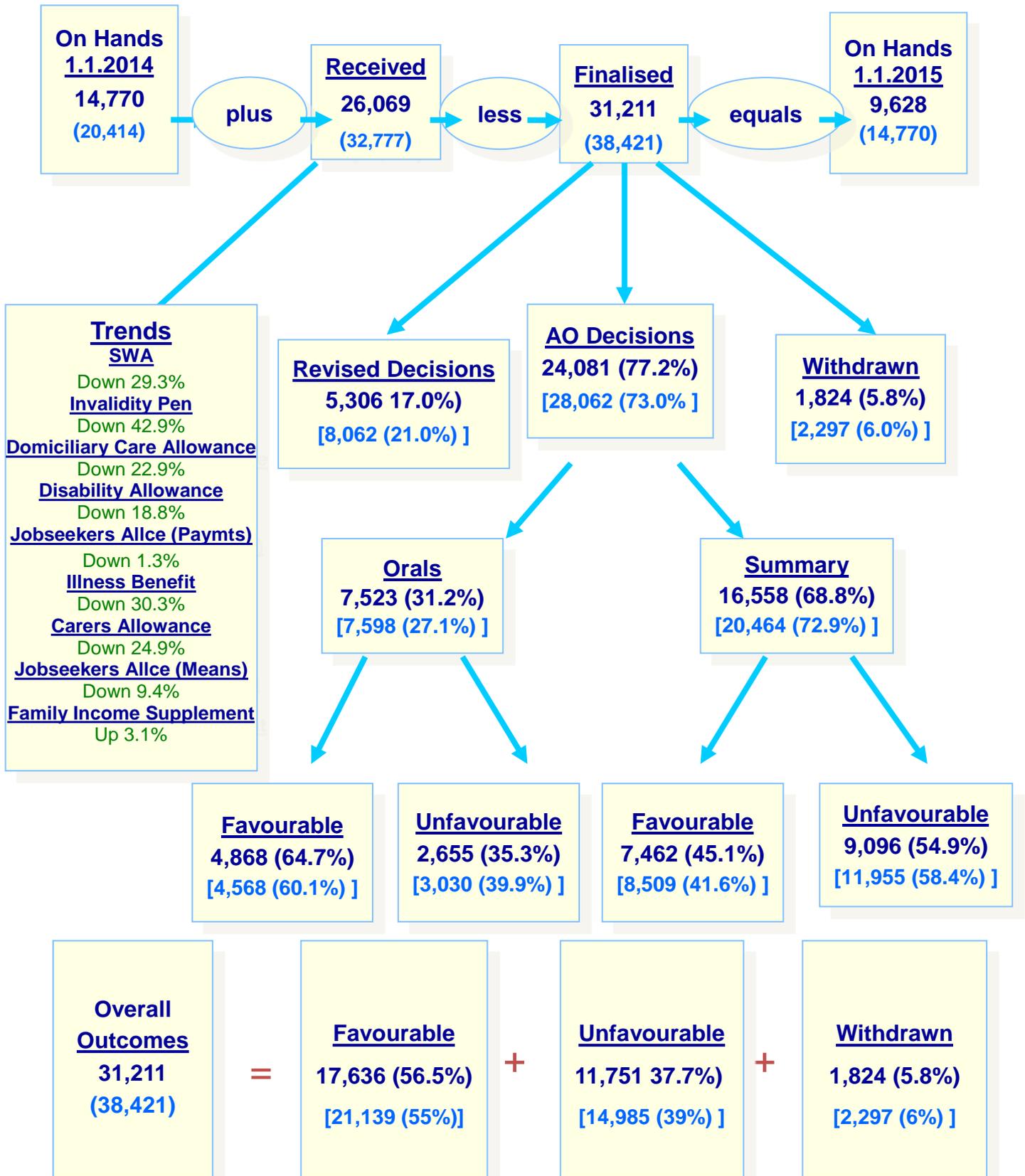


Table 1: Appeals received and finalised 2014

	In progress 01-Jan-14	Receipts	Decided	Revised Decision	Withdrawn	In progress 31-Dec-14
<u>PENSIONS</u>						
State Pension (Non-Contributory)	143	- 323	- 249	- 64	- 19	134
State Pension (Contributory)	74	205	153	22	7	97
State Pension (Transition)	26	13	24	4	2	9
Widows', Widowers' Pension (Contributory)	25	49	54	4	1	15
Death Benefit	0	1	0	0	0	1
Bereavement Grant	40	63	73	12	1	17
TOTAL PENSIONS	308	654	553	106	30	273
<u>WORKING AGE INCOME & EMPLOYMENT SUPPORTS</u>						
Jobseeker's Allowance	1,180	2,610	2,354	395	229	812
Jobseeker's Allowance (Means)	1,453	2,648	2,323	454	295	1,029
One Parent Family Payment	411	573	439	173	141	231
Widow's Widower's Pension (Non-Contributory)	16	24	18	8	5	9
Deserted Wife's Allowance	1	2	1	1	0	1
Supplementary Welfare Allowance	1,221	2,889	2,476	462	295	877
Farm Assist	176	214	200	46	42	102
Pre-Retirement Allowance	1	3	1	1	0	2
Jobseeker's Benefit	391	845	737	173	83	243
Deserted Wife's Benefit	3	7	3	0	2	5
Maternity Benefit	14	19	21	6	0	6
Adoptive Benefit	0	1	1	0	0	0
Homemaker's	1	0	0	0	0	1
Treatment Benefits	2	0	2	0	0	0
Partial Capacity Benefit	81	33	68	17	8	21
TOTAL WORKING AGE – INCOME & EMPLOYMENT SUPPORTS	4,951	9,868	8,644	1,736	1,100	3,339
<u>ILLNESS, DISABILITY AND CARERS</u>						
Disability Allowance	3,121	5,554	5,970	671	90	1,944
Blind Pension	13	19	23	3	0	6
Carer's Allowance	1,913	2,907	2,868	463	55	1,434
Domiciliary Care Allowance	736	1,301	1,059	506	10	462
Respite Care Grant	94	133	126	21	9	71
Illness Benefit	683	1,227	578	596	385	351
Injury Benefit	15	9	13	1	1	9
Invalidity Pension	1,889	2,571	2,895	584	43	938
Disablement Benefit	186	385	342	59	6	164
Incapacity Supplement	16	28	17	8	3	16
Medical Care	18	1	2	2	1	14
Carer's Benefit	45	121	84	42	8	32
TOTAL - ILLNESS, DISABILITY AND CARERS	8,729	14,256	13,977	2,956	611	5,441
<u>CHILDREN</u>						
Child Benefit	311	659	496	184	17	273
Family Income Supplement	277	434	250	289	13	159
Guardian's Payment (Non-Contributory)	7	22	15	3	2	9
Guardian's Payment (Contributory)	24	42	41	7	1	17
Widowed Parent Grant	7	8	14	0	0	1
TOTAL – CHILDREN	626	1165	816	483	33	459
Insurability of Employment	124	91	79	20	17	99
Liabile Relatives	32	33	12	5	33	15
Recoverable Benefits & Assistance	0	2	0	0	0	2
TOTAL – ALL APPEALS	14,770	26,069	24,081	5,306	1,824	9,628

Table 2: Appeals received 2008 – 2014

	2008	2009	2010	2011	2012	2013	2014
<u>PENSIONS</u>							
State Pension (Non-Contributory)	278	319	356	317	231	279	323
State Pension (Contributory)	87	88	256	106	128	136	205
State Pension (Transition)	15	22	7	29	43	38	13
Widow's, Widower's Pension (Contributory)	17	15	20	17	30	40	49
Death Benefit	1	1	-	-	-	-	1
Bereavement Grant	39	46	58	66	71	78	63
TOTAL PENSIONS	437	491	697	535	503	571	654
<u>WORKING AGE INCOME & EMPLOYMENT SUPPORTS</u>							
Jobseeker's Allowance - Payments	2,401	3,179	5,506	3,404	3,050	2,644	2,610
Jobseeker's Allowance - Means	1,901	3,615	4,050	3,465	3,240	2,923	2,648
One Parent Family Payment	758	805	1,109	1,055	938	612	573
Widow's, Widower's Pension (Non-Contributory)	14	19	12	29	39	30	24
Deserted Wife's Allowance	3	-	-	4	1	2	2
Supplementary Welfare Allowance	436	789	1,020	3,129	5,445	4,084	2,889
Farm Assist	61	137	244	220	271	286	214
Pre-Retirement Allowance	10	3	2	1	-	-	3
Jobseeker's Benefit	1,358	1,354	1,307	1,286	1,289	882	845
Deserted Wife's Benefit	13	5	14	20	8	11	7
Maternity Benefit	15	11	29	42	29	26	19
Adoptive Benefit	1	2	2	2	6	-	1
Homemaker's	0	-	1	-	1	1	0
Treatment Benefits	18	10	8	3	3	5	0
Partial Capacity Benefit	-	-	-	-	67	70	33
TOTAL WORKING AGE - INCOME & EMPLOYMENT SUPPORTS	6,989	9,929	13,304	12,660	14,387	11,576	9,868
<u>ILLNESS, DISABILITY AND CARERS</u>							
Disability Allowance	3,522	4,696	4,840	5,472	6,223	6,836	5,554
Blind Pension	9	21	14	21	27	34	19
Carer's Allowance	1,046	1,977	3,025	2,199	2,676	3,869	2,907
Domiciliary Care Allowance	-	836	1,858	2,401	2,186	1,688	1,301
Respite Care Grant	319	262	162	303	278	176	133
Illness Benefit	3,595	4,945	5,471	3,657	2,647	1,761	1,227
Injury Benefit	29	37	23	16	13	21	9
Invalidity Pension	526	642	1,024	2,285	4,765	4,501	2,571
Disablement Benefit	294	263	342	263	409	346	385
Medical Care	40	42	21	5	6	3	28
Incapacity Supplement	7	8	15	6	21	14	1
Carer's Benefit	56	121	182	160	183	115	121
TOTAL - ILLNESS, DISABILITY AND CARERS	9,443	13,850	16,977	16,788	19,434	19,364	14,256
<u>CHILDREN</u>							
Child Benefit	689	1,361	1,051	824	675	663	659
Family Income Supplement	142	170	227	258	301	421	434
Guardian's Payment (Non-Contributory)	25	23	6	13	14	11	22
Guardian's Payment (Contributory)	2	11	28	31	46	42	42
Widowed Parent Grant	-	1	3	7	6	11	8
TOTAL - CHILDREN	858	1,566	1,315	1,133	1,042	1,148	1,165
<u>OTHER</u>							
Rent Allowance de-control of rents legislation)	1	-	-	-	-	-	91
Liability Relative	19	25	16	26	39	23	33
Insurability of Employment	86	102	123	99	79	95	2
TOTAL - ALL APPEALS	17,833	25,963	32,432	31,241	35,484	32,777	26,069

Table 3: Outcome of Appeals by category 2014

	Allowed	Partially Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
<u>PENSIONS</u>						
State Pension (Non-Contributory)	64 19.3%	23 6.9%	64 19.3%	162 48.8%	19 5.7%	332
State Pension (Contributory)	36 19.8%	5 2.7%	22 12.1%	112 61.5%	7 3.8%	182
State Pension (Transition)	4 13.3%	1 3.3%	4 13.3%	19 63.3%	2 6.7%	30
Widow's/Widower's Pension (Contributory)	17 28.8%	4 6.8%	4 6.8%	33 55.9%	1 1.7%	59
Bereavement Grant	2 2.3%	0 0%	12 14.0%	71 82.6%	1 1.2%	86
TOTAL PENSIONS	123	33	106	397	30	689
<u>WORKING AGE INCOME/EMPLOYMENT SUPPORTS</u>						
Jobseeker's Allowance – Payments	775 26.0%	129 4.3%	395 13.3%	1,450 48.7%	229 7.7%	2,978
Jobseeker's Allowance – Means	439 14.3%	176 5.7%	454 14.8%	1,708 55.6%	295 9.6%	3,072
One Parent Family Payment	165 21.9%	29 3.9%	173 23.0%	245 32.5%	141 18.7%	753
Widow's/Widower's Pension (Non-Contributory)	6 19.4%	4 12.9%	8 25.8%	8 25.8%	5 16.1%	31
Deserted Wife's Allowance	0 0%	0 0%	1 50.0%	1 50.0%	0 0%	2
Supplementary Welfare Allowance	852 26.4%	128 4.0%	462 14.3%	1,496 46.3%	295 9.1%	3,233
Farm Assist	57 19.8%	30 10.4%	46 16.0%	113 39.2%	42 14.6%	288
Pre-Retirement Allowance	0 0%	0 0%	1 50.0%	1 50.0%	0 0%	2
Jobseeker's Benefit	218 22.0%	46 4.6%	173 17.4%	473 47.6%	83 8.4%	993
Deserted Wife's Benefit	2 40.0%	0 0%	0 0%	1 20.0%	2 40.0%	5
Maternity Benefit	5 18.5%	0 .0%	6 22.2%	16 59.3%	0 0%	27
Adoptive Benefit	0 0%	0 0%	0 0%	1 100.0%	0 0%	1
Homemaker's	0 0%	0 0%	0 0%	0 0%	0 0%	0
Treatment Benefits	0 0%	0 0%	0 0%	2 100.0%	0 0%	2
Partial Capacity Benefit	27 29.0%	4 4.3%	17 18.3%	37 39.8%	8 8.6%	93
<u>TOTAL WORKING AGE – INCOME/EMPLOYMENT SUPPORTS</u>	2,546	546	1,736	5,552	1,100	11,480

Table 3: Outcome of Appeals by category 2014 (Cont'd)

	Allowed	Partially Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
<u>ILLNESS, DISABILITY AND CARERS</u>						
Disability Allowance	3,860 57.3%	100 1.5%	671 10.0%	2,010 29.9%	90 1.3%	6,731
Blind Pension	7 26.9%	1 3.8%	3 11.5%	15 57.7%	0 0%	26
Carer's Allowance	1,240 36.6%	177 5.2%	463 13.7%	1,451 42.9%	55 1.6%	3,386
Domiciliary Care Allowance	701 44.5%	24 1.5%	506 32.1%	334 21.2%	10 0.6%	1,575
Respite Care Allowance	61 39.1%	1 0.6%	21 13.5%	64 41.0%	9 5.8%	156
Illness Benefit	247 15.8%	20 1.3%	596 38.2%	311 19.9%	385 24.7%	1,559
Injury Benefit	4 26.7%	0 0%	1 6.7%	9 60.0%	1 6.7%	15
Invalidity Pension	2,133 60.6%	15 0.4%	584 16.6%	747 21.2%	43 1.2%	3,522
Disablement Benefit	111 27.3%	19 4.7%	59 14.5%	212 52.1%	6 1.5%	407
Incapacity Supplement	10 35.7%	1 3.6%	8 28.6%	6 21.4%	3 10.7%	28
Medical Care	2 40.0%	0 0%	2 40.0%	0 0%	1 20.0%	5
Carer's Benefit	37 27.6%	4 3.0%	42 31.3%	43 32.1%	8 6.0%	134
<u>TOTAL – ILLNESS, DISABILITY AND CARERS</u>	8,413	362	2,956	5,202	611	17,544
<u>CHILDREN</u>						
Child Benefit	110 15.8%	40 5.7%	184 26.4%	346 49.6%	17 2.4%	697
Family Income Supplement	94 17.0%	15 2.7%	289 52.4%	141 25.5%	13 2.4%	552
Guardian's Payment (Non-Contributory)	9 45.0%	1 5.0%	3 15.0%	5 25.0%	2 10.0%	20
Guardian's Payment (Contributory)	16 32.7%	2 4.1%	7 14.3%	23 46.9%	1 2.1%	49
Widowed Parent Grant	3 21.4%	0 0%	0 0%	11 78.6%	0 0%	14
<u>TOTAL – CHILDREN</u>	232	58	483	526	33	1,332
<u>OTHER</u>						
Insurability of Employment	13 11.2%	4 3.4%	20 17.2%	62 53.4%	17 14.7%	116
Liable Relative's	0 0%	0 0%	5 10.0%	12 24.0%	33 66.0%	50
TOTAL APPEALS	11,327 36.3%	1,003 3.2%	5,306 17.0%	11,751 37.7%	1,824 5.8%	31,211

Table 4: Appeals in progress at 31 December 2008 – 2014

	2008	2009	2010	2011	2012	2013	2014
<u>PENSIONS</u>							
State Pension (Non-Contributory)	141	169	230	165	127	143	134
State Pension (Contributory)	47	62	110	91	106	74	97
State Pension (Transition)	12	9	11	22	39	26	9
Widow's, Widower's Pension (Contributory)	8	9	14	14	20	25	15
Death Benefit	1	1	0	0	0	0	1
Bereavement Grant	13	19	30	35	41	40	17
TOTAL PENSIONS	222	269	395	327	333	308	273
<u>WORKING AGE INCOME/EMPLOYMENT SUPPORTS</u>							
Jobseeker's Allowance - Payments	773	2,095	3,318	1,498	1,247	1,180	812
Jobseeker's Allowance - Means	875	2,269	2,496	1,866	1,522	1,453	1,029
One Parent Family Payment	383	469	819	618	575	411	231
Widow's' /Widower's Pension (Non-Contributory)	7	12	13	18	23	16	9
Deserted Wife's Allowance	1	0	0	4	1	1	1
Supplementary Welfare Allowance	114	140	343	1,833	1,955	1,221	877
Farm Assist	34	98	163	121	161	176	102
Pre-Retirement Allowance	4	0	1	2	1	1	2
Jobseeker's Benefit	415	667	766	583	519	391	243
Deserted Wife's Benefit	4	3	14	12	10	3	5
Maternity Benefit	2	6	21	20	21	14	6
Adoptive Benefit	1	2	2	2	1	0	0
Homemaker's	1	0	0	0	1	1	1
Treatment Benefits	8	6	4	1	1	2	0
Partial Capacity Benefit	-	-	-	-	67	81	21
TOTAL WORKING AGE - INCOME & EMPLOYMENT SUPPORTS	2,622	5,767	7,960	6,578	6,105	4,951	3,339
<u>ILLNESS, DISABILITY AND CARERS</u>							
Disability Allowance	1,550	2,846	3,046	2,958	4,030	3,121	1,944
Blind Pension	6	8	7	14	8	13	6
Carer's Allowance	594	1,339	2,145	1,147	1,766	1,913	1,434
Domiciliary Care Allowance	-	776	1,386	1,385	1,113	736	462
Respite Care Grant	119	185	114	166	153	94	71
Illness Benefit	1,404	2,420	2,658	2,021	1,460	683	351
Injury Benefit	16	21	18	9	11	15	9
Invalidity Pension	310	467	612	1,582	4,356	1,889	938
Disablement Benefit	201	169	334	278	254	186	164
Medical Care	28	43	49	27	25	18	14
Incapacity Supplement	3	7	15	14	23	16	16
Carer's Benefit	24	74	73	61	75	45	32
TOTAL - ILLNESS, DISABILITY AND CARERS	4,255	8,355	10,457	9,662	13,274	8,729	5,441
<u>CHILDREN</u>							
Child Benefit	573	1,420	1,187	603	403	311	273
Family Income Supplement	51	73	105	104	147	277	159
Guardian's Payment (Non-Contributory)	1	16	9	10	4	7	9
Guardian's Payment (Contributory)	16	9	26	32	26	24	17
Widowed Parent Grant	-	-	1	5	5	7	1
TOTAL - CHILDREN	641		1,518	1,328	585	626	459
<u>OTHER</u>							
Liable Relative's	15	22	22	31	21	32	15
Insurability of Employment	77	77	112	136	96	124	99
Recoverable Benefits and Assistance	-	-	-	-	-	-	2
TOTAL - ALL APPEALS	7,832	16,008	20,274	17,488	20,414	14,770	9,628

Table 5: Appeals statistics 1993 – 2014

APPEALS STATISTICS 1993 - 2014					
Year	On hands at start of year	Received	Workload	Finalised	On hands at end of year
1993	7,053	18,285	25,338	20,021	5,317
1994	5,317	13,504	18,821	14,971	3,850
1995	3,850	12,353	16,203	12,087	4,116
1996	4,116	12,183	16,299	11,613	4,686
1997	4,686	14,004	18,690	12,835	5,855
1998	5,855	14,014	19,869	13,990	5,879
1999	5,879	15,465	21,344	14,397	6,947
2000	6,947	17,650	24,597	17,060	7,537
2001	7,537	15,961	23,498	16,525	6,973
2002	6,973	15,017	21,990	15,834	6,156
2003	6,156	15,224	21,380	16,049	5,331
2004	5,331	14,083	19,414	14,089	5,325
2005	5,325	13,797	19,122	13,419	5,703
2006	5,704	13,800	19,504	14,006	5,498
2007	5,498	14,070	19,568	13,845	5,723
2008	5,723	17,833	23,556	15,724	7,832
2009	7,832	25,963	33,795	17,787	16,008
2010	16,008	32,432	48,440	28,166	20,724
2011	20,274	31,241	51,515	34,027	17,488
2012	17,488	35,484	52,972	32,558	20,414
2013	20,414	32,777	53,191	38,421	14,770
2014	14,770	26,069	40,839	31,211	9,628

Table 6: Appeals processing times by scheme 2014

	SWAO (weeks)	¹ Dept. of Social Protection (weeks)	Appellant (weeks)	Totals
<u>PENSIONS</u>				
State Pension (Non-Contributory)	12.8	13.8	0.1	26.8
State Pension (Contributory)	12.4	17.6	0.7	30.7
State Pension (Transition)	13.8	29.4	0.3	43.5
Widow's, Widower's Pension (Contributory)	10.4	21.4	0.2	32.0
Bereavement Grant	12.2	8.7	-	20.9
<u>WORKING AGE INCOME SUPPORTS</u>				
Jobseeker's Allowance	11.0	13.1	0.1	24.3
Jobseeker's Allowance (Means)	12.6	16.4	0.2	29.1
One Parent Family Payment	14.3	18.6	0.1	33.0
Widow's, Widower's Pension (Non-Contributory)	10.5	17.5	-	28.0
Deserted Wife's Allowance	17.7	6.3	-	24.0
Supplementary Welfare Allowance	9.3	11.5	0.2	21.0
Farm Assist	13.1	18.1	0.4	31.7
Pre-Retirement Allowance	6.1	4.0	-	10.1
Jobseeker's Benefit	10.7	14.4	0.1	25.3
Deserted Wife's Benefit	25.3	11.8	-	37.1
Maternity Benefit	16.2	7.6	-	23.8
Adoptive Benefit	8.2	8.9	-	17.1
Treatment Benefits	10.6	10.1	-	20.8
Partial Capacity Benefit	13.0	37.1	-	50.1
<u>ILLNESS, DISABILITY AND CARERS</u>				
Disability Allowance	9.6	11.1	0.1	20.7
Blind Pension	18.7	11.2	-	29.9
Carer's Allowance	8.8	19.3	0.4	28.6
Domiciliary Care Allowance	9.3	11.9	0.2	21.4
Respite Care Grant	10.8	9.6	0.2	20.6
Illness Benefit	9.4	14.1	4.4	27.8
Injury Benefit	12.0	35.1	0.4	47.5
Invalidity Pension	9.4	17.4	0.1	27.0
Disablement Benefit	13.3	14.4	-	27.7
Incapacity Supplement	10.4	23.8	-	34.2
Medical Care	6.8	72.9	2.1	81.7
Carer's Benefit	15.1	6.8	0.1	22.0
<u>CHILDREN</u>				
Child Benefit	11.7	11.7	0.2	23.6
Family Income Supplement	9.6	18.1	-	27.8
Guardian's Payment (Non-Contributory)	11.5	10.1	-	21.7
Guardian's Payment (Contributory)	11.0	8.6	-	19.6
Widowed Parent Grant	15.1	7.1	-	22.2
<u>OTHER</u>				
Insurability of Employment	29.9	31.0	-	60.8
Liability Relative's	9.8	28.8	0.5	38.3
TOTAL – ALL APPEALS	10.5	13.4	0.4	24.2

¹ It is noted that the average weeks in DSP will include cases that DSP have referred back to the customers for more information/ clarification (rather than awaiting action in DSP). A breakdown is not available for report purposes.

Table 7: Appeals outstanding at 31 December 2014

Scheme	In progress in Social Welfare Appeals Office	Awaiting Department response	Awaiting Appellant response	Total
Jobseeker's Allowance/Benefit	538	509	7	1,054
JA Means/Farm Assist	567	560	4	1,131
Supplementary Welfare Allowance	341	531	5	877
Disability Allowance	1,183	755	6	1,944
Carer's Allowance	507	905	22	1,434
Domiciliary Care Allowance	166	293	3	462
Invalidity Pension	248	686	4	938
Illness Benefit	128	185	38	351
Child Benefit	169	99	5	273
Other schemes	552	601	11	1,164
Totals	4,399	5,124	105	9,628

Social Welfare Appeals Office 2014

The Business of the office

Appeal receipts

The number of appeals received in 2014 declined by 6,708, a 21% decrease on 2013. The largest decrease in receipts relates to the Illness, Disability and Caring schemes, which decreased by 5,106. This does not reflect a general decrease in the number of people lodging appeals, but rather reflects the fact that the number of appeals received in relation to these schemes in 2012 and 2013 was artificially inflated because of a build of arrears of processing claims within the Department, the majority of which had been processed by end 2013.

Appeal processing times

While processing times have improved significantly, there is scope to reduce them further, in particular that part of the process during which the Department reviews the original decision, prepares the file for appeal and makes a submission on the contentions of the appellant. The time taken by Appeals Office during its phase of the process is now the same as before the surge in appeal receipts, although balanced differently as between summary and oral hearing cases. The time taken by the Department is still significantly higher than it was although there was a welcome improvement in 2014. My office will continue to work with the Department in 2015 to improve the overall process. Table 6 of this report gives a breakdown of the processing times for 2014 as between the Department's activities and those of this office. I consider this will be helpful in focusing on all aspects of the processing both within the Department and within this office.

Oral hearings.

There is a requirement under law to hold an oral hearing of a case where there are any disputes, doubts or controversies which must be resolved by way of an oral hearing of the case. All such cases must be and are taken to oral hearing.

There is no corresponding requirement to take a case to oral hearing simply to afford an appellant the opportunity to present their case in person. Nonetheless, it is our policy to ensure as far as possible that each and every appellant who wishes to be heard in person is given that opportunity. For this reason it has been the policy of this office to accede to any request for an oral hearing, unless the hearing would be manifestly unwarranted.

This policy has not to date been advertised on our website or in our literature. Therefore I am happy to report that at the time of writing, the website has been amended to include this information, and the leaflet which is issued to all appellants now makes reference to this policy.

Litigation

During 2014, there were three High Court challenges in relation to the procedure followed by this office in determining appeals, particularly appeals relating to the illness, disability and caring schemes. What was notable about these challenges is that they challenged procedures which favoured the appellant.

The social welfare appeals system is designed to ensure that appellants can make their case in an atmosphere which is considerably less formal than a court hearing and which is not intimidating in any way. Those who appeal to this office may be quite vulnerable for a variety of reasons and the social welfare system can be quite complex.

For this reason the system is operated with a significant degree of flexibility in relation to the making of an appeal, in relation to the submission of new evidence by the appellant at any point in the appeal process and in relation to re-opening appeals where it appears that the appellant considers they have further evidence to give.

The assiduous pursuit of cases through the courts which may undermine aspects of procedures which favour those who appeal to this office has implications for the flexibility and informality which are the cornerstone of the current system.

Appeals Officer Training

During 2014, the Appeals Office worked with Accenture to develop a new comprehensive training programme for Appeals Officers. This was part of a Department wide project to develop comprehensive training for all roles which impact on decision making.

The new programme has built on and developed previous training programmes, adding to their content, improved their structure and accessibility. There is now a more complete and easily accessible training support suite for Appeals Officers. The programme consists of a mix of e-learning and direct trainer delivered learning modules, with easy staff access to soft copy versions of the content of each module. The modules have been devised so that each module should build on the learning of the previous module and the training will equip Appeals Officers to efficiently and effectively build their capacities and knowledge base.

The three learning modules cover, inter alia, the role and responsibilities of an Appeals Officer, how to manage an appeal including oral hearings and the legal aspects of an Appeals Officers role.

Meetings with the Decisions Advisory Office

Feedback to the Department on issues arising in relation to appeals is an important aspect of improving first instance decision making. This office meets regularly with the head of that office and her staff to provide such feedback and highlight issues of concern. The meetings are extremely useful and productive and I would like to express my appreciation for the open and professional spirit in which issues, sometimes contentious, are discussed and advanced.

Court Proceedings

C O'B & the Chief Appeals Officer, Social Welfare Appeals Office and Minister for Social Protection.

Judgement was delivered by Ms Justice Baker on 21st day of October 2014.

The judicial review was sought as the applicant wished to call the Deciding Officer and the Medical Assessor to oral hearing for cross examination and contended that the refusal of the Appeals Officer to do so was in breach of fair procedures.

When the proceedings were lodged, it was made clear to the applicant that the Appeals Officer did not intend to afford any weight to the opinion of the Medical Assessor as that opinion was expressed only as a conclusion that the qualifying conditions were not met. Nonetheless the case proceeded.

The Judge did not agree with the contention of the applicant that the proper conduct of an oral hearing of the case would require that the Medical Assessor be present. She considered there can be no right derived from any principle of fair procedures which would entitle a person to test evidence which has not been adduced and which has been excluded from the decision making process.

With regard to the attendance of the Deciding Officer, the Judge found that the Chief Appeals Officer is not bound to compel the attendance of the Deciding Officer. She considered that the entitlement of the Deciding Officer to appear at the appeal connotes an entitlement to argue or process the appeal on behalf of the Department and not one to give evidence on oath as to the reasons for the decision under appeal.

L.D. & Chief Appeals Officer, Social Welfare Appeals Office and Minister for Social Protection.

Judgement was delivered by Mr Justice Peart on 19th December, 2014.

The judicial review was sought on the basis that the applicant submitted she was entitled to an oral hearing prior to the determination of her appeal. Her appeal had been decided on a summary basis and she had not requested an oral hearing of her case. The Appeals Officer in the case offered to set aside her summary decision in order that the applicant could have an oral hearing of her case but the applicant contended that the Appeals Officer did not have the power under statute to do this.

The judge considered that there is power to do this within the terms of the legislative scheme and considered that "*There is certainly nothing absurd about permitting the applicant an opportunity to put her best foot forward in this way. She has the opportunity to have the refusal reversed in the light of what she wishes to say or in the light of what evidence or new facts she wishes to adduce. Whilst that takes place within the revision jurisdiction, it must be borne in mind that it is a revision of the appeal, and not some free standing procedure labelled "revision".*

In view of his conclusion the Judge did not have to decide on whether the applicant was entitled as of right to an oral hearing. Nonetheless he went on to say, "*However, I would just say on this point that in so far as it has been asserted that there were clear conflicts arising on the materials put before the appeals officer which required an oral hearing, I have struggled to identify what those conflicts are, even in the light of the Medical Assessor's opinions which the*

appeal officer has stated she did not have any regard to. I accept that there is a divergence of views as between the applicant on the one hand, and the Assessor, the deciding officer and the appeals officer on the other as to whether her son qualifies for DCA. But this will arise in every case where a negative decision is arrived at by a deciding officer. That is not the sort of conflict or divergence of views that requires an oral hearing, otherwise any appeal which is being refused could not be refused without holding an oral hearing. That is not what is provided for by the Act. While the letters from the Mater Hospital and the applicant's GP support the applicant's application, those do not amount to medical evidence as such."

A.S. and Chief Appeals Officer, Social Welfare Appeals Office and Minister for Social Protection.

Judgement was delivered by Mr Justice Peart on 19th December 2014.

The judicial review was sought in this case on the basis that the decision had been made on a summary basis and the applicant had a right to an oral hearing. A review of the appeal by the Chief Appeals Officer found that the applicant had in fact requested an oral hearing of their case and this request had been overlooked by the Appeals Officer and that, in any event, there was doubt about a factual matter which ought to have been resolved at oral hearing. An oral hearing of the case was offered but the applicant considered the Chief Appeals Officer did not have power under statute to do this.

The Judge found that she did indeed have the power to do so and stated "*In so far as the applicant ought to have been granted an oral hearing of his appeal, and this is accepted by the respondents, there is provision for a revision of the summary decision, and as I have found, this can be done by way of oral hearing. The Act*

contemplates that where a mistake is made in the manner in which an appeals officer decides an appeal, the matter can be corrected where a mistake is identified by the Chief Appeals Officer either as to fact or the law."

Meetings and Consultations

Consistency in decision making

Consistency in decision making continues to be a major focus of the appeals office particularly in relation to those questions which require a high degree of judgement and legislative interpretation. These would include questions relating to care and attention or fitness for work, cohabitation, whether means have been disclosed or where substantial overpayments are raised against people. What the Social Welfare Appeals Office strives for, through all our discussions and conferences, is a common understanding of the issues involved and the effect these have on people's lives, the weight to be given to various types of evidence, where the burden of proof lies and the interpretation of the various legislative provisions. This is vital if people are to be confident of receiving the best possible decision we can make on their case.

Habitual residence/ Right to reside

Since the 21st of December 2009, a person applying for certain social welfare payments cannot be considered to be habitually resident in the State unless they have the right to reside in the State. Section 246 of the Social Welfare Consolidation Act, 2005 was amended to provide *"(5) Notwithstanding subsections (1) to (4) and subject to subsection (9), a person who does not have a right to reside in the State shall not, for the purposes of this Act, be regarded as being habitually resident in the State."*

Whether an EEA national has the right to reside is governed by the European Communities (Free Movement of Persons) Regulations 2006 and 2008 (S.I. No. 656 of 2006 as amended by S.I. 310/2008) which gave effect to Directive 2004/38/EC. In my

2010 annual report I referred to the complexity of this issue and described the making of a decision based on this legislation as quite problematic. In the intervening period this question has become more even more difficult extending as it does to the question of the right of dependant family members to reside.

There is evidence of inconsistency and poor understanding of the legislation in decisions relating to the right to reside coming on appeal, and given that the question must be determined by reference to immigration law and EU law which is very complex, this is not at all surprising.

For appellants, other than EEA nationals, who have come to this State, the question of whether they have the right to reside is determined by the Irish Naturalisation & Immigration Service (INIS). Unfortunately, the prevailing legislation does not seem to provide for the determination by INIS of right to reside for EEA nationals. There is provision to apply to the Minister for Justice for a certificate of permanent residency, but not otherwise. This makes it far more difficult for a person to demonstrate, for the purposes of access to a social welfare payment, that they have the right to reside in this State.

Geographic separation

From time to time appeals are received where a person's application for a one parent family payment is refused or entitlement is withdrawn on the basis that, although the person is geographically separated from their spouse, the marriage tie is not broken.

The governing legislation for one-parent family payment refers to a qualified parent.

A qualified parent is defined as; inter alia, a widow, a widower, a separated spouse, or an unmarried person. The legislation goes on to provide that a person will be regarded as a separated spouse where the couple have lived apart for at least three months prior to the claim and continue to live apart. The legislation does not refer to a marriage tie being broken, and indeed, in times when co-parenting is the norm rather than the exception, it is not at all clear how that term might be defined if it were to be referred to in legislation. Evidence of ongoing contact between the couple is taken as evidence that they are not separated notwithstanding that they have lived apart (sometimes on different continents) over many years.

In the case of an unmarried person, they will be disqualified for receipt of the payment if they are a cohabitant. A cohabitant is defined as a person who, inter alia, lives together with another in a committed and intimate relationship. Therefore an unmarried person who is in a relationship with another but is not living with that person, is not disqualified from receipt of the payment on the basis of having a relationship with a person with whom they do not live.

Therefore there appears to be no basis on which to find that a married couple who live apart are not separated for the purposes of the scheme simply because some residual relationship may subsist.

Overpayments where fraud is alleged.

Another issue which was discussed is the number of cases where decisions are revised by Deciding Officers in accordance with section 302(a) of the Social Welfare Consolidation Act, 2005. Section 302(a) relates to cases where the decision which is revised was erroneous by reason of any statement or representation which was to the knowledge of the claimant false or misleading

in a material respect or by reason of the wilful concealment of any material fact.

Where a decision is revised under this section of the Act, the implications for the person are quite punitive. Firstly, there is no discretion for the decision maker as to the date from which the revised decision must take effect. Secondly, the overpayment which results from the revised decision may not be reduced by the amount of any other payment to which the person would otherwise have been entitled in the period, whereas, if fraudulent intent is not established such offset is allowed. Thirdly, the case will be considered for prosecution.

Because of the punitive nature of this provision, there is a high hurdle of proof required that a person knowingly made a false or misleading statement or that they wilfully concealed any fact. It is the experience of Appeals Officers that the requirement for significant evidence of fraudulent intent is not fully appreciated by first instance decision makers. This matter has been raised with the Department and is under consideration.

Disablement Benefit

Where a disablement benefit has been awarded to a person, and he or she suffers another accident, there is provision to aggregate the loss of faculty provided that the aggregated percentage cannot exceed 100%.

However, in order to receive disablement benefit a person must have suffered a loss of faculty of at least 15%. Therefore a person could suffer several accidents, none of which on their own would exceed 15%, but these cannot be aggregated under the current provisions.

The Department have undertaken to examine this matter.

Organisational and Operational Matters

Staffing Resources

The number of staff serving in my Office at the end of 2014 was 96 which equates to 90.3 full-time equivalents. Staff numbers were unchanged from 2013.

The staffing breakdown for 2014 is as follows:

1 Chief Appeals Officer	1.0
1 Deputy Chief Appeals Officer	1.0
*40 Appeals Officers (2 work-sharing)	39.6
3 Higher Executive Officers (1 work-sharing)	2.8
12 Executive Officers (3 work-sharing)	11.2
7 Staff Officers (2 work-sharing)	6.0
31 Clerical Officers (9 work-sharing)	<u>28.1</u>
	90.3

**includes the Office Manager*

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

Parliamentary Questions

During 2014, 912 Parliamentary Questions were put down (1,087 in 2013) in relation to the work of my Office. Of that number, replies were given in Dáil Éireann to 897 questions and the remaining 15 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 5,296 enquiries and representations were made by public representatives on behalf of appellants in 2014 (8,051 in 2013).

Freedom of information

A total of 134 formal requests were received in 2014 (110 in 2013) under the provisions of the Freedom of Information Acts. All of these requests were in respect of personal information.

Case Studies of the Appeals Officers' Decisions

Introduction

The purpose of including the case studies set out in this report is to assist future appellants and their representatives in understanding the process by which these appeals are determined and, more importantly, the matters which an Appeals Officer takes into account in determining their appeal. This will hopefully assist applicants in making their case either at first instance or on appeal. In this report we have focused entirely on Disability Allowance cases.

This scheme accounted for 21% of appeals received in 2014. Of the appeals determined in 2014, (6,641) some 70% were allowed (60% by Appeals Officers and 10% by Deciding Officer on revision) and 30% were disallowed. The ratio of allowed to disallowed in the cases studies included reflects those percentages.

While 70% allowance rate may seem high, this is not necessarily a reflection on first instance decision making. As pointed out elsewhere in this report, it is quite usual for additional evidence to be offered at review or appeal stage, and it is often this additional evidence that tips the balance.

Case studies: These case studies refer to appeals made in relation to Disability

Allowance. They have been edited so as to anonymise personal information but the text of the Appeals Officer's decision, as it was issued to the appellant, is outlined.

Question at issue: All the case studies featured in this report address the question as to whether the appellant may be regarded as substantially restricted in undertaking suitable employment, by reason of a specified disability, which has continued or may reasonably be expected to continue for a period of at least one year. The relevant legislative provisions are outlined in the Social Welfare (Consolidation) Act, 2005 and the Social Welfare (Consolidated) Claims, Payments and Control) Regulations, 2007, S.I. 142 of 2007.

Index: The index provides a short reference to the case studies featured, and indicates whether the appeal was made following a decision in relation to a new claim or a claim which had been in payment and was discontinued following a review of entitlement.

Index of Case Studies

- **2014/01** Age 16: Dyspraxia, DCD – new claim, oral hearing
- **2014/02** Age 16: ASD – new claim, oral hearing
- **2014/03** Age 16: Hearing Loss – new claim, oral hearing
- **2014/04** Age 19: Psychosomatic Paralysis – new claim, summary
- **2014/05** Age 22: Learning Disability – new claim, oral hearing
- **2014/06** Age 22: Hepatitis C, ADHD – new claim, summary
- **2014/07** Age 27: Ulcerative Colitis – new claim, oral hearing
- **2014/08** Age 29: Hip Dislocation – revised decision, summary
- **2014/09** Age 32: Knee Injury – review, oral hearing
- **2014/10** Age 32: Pernicious Anaemia – new claim, oral hearing
- **2014/11** Age 32: PTSD – new claim, oral hearing
- **2014/12** Age 36: Back Pain, Depression – new claim, oral hearing
- **2014/13** Age 43: Epilepsy – new claim, oral hearing
- **2014/14** Age 43: Back Injury – new claim, oral hearing
- **2014/15** Age 44: Depression – new claim, oral hearing
- **2014/16** Age 44: Diabetes, Hypertension – new claim, oral hearing
- **2014/17** Age 45: Cerebral Aneurysm, Hearing Loss – review, oral hearing
- **2014/18** Age 49: Back Pain, Depression – new claim, oral hearing
- **2014/19** Age 49: Back Pain, Depression – new claim, oral hearing
- **2014/20** Age 50: Dystonia – new claim, oral hearing
- **2014/21** Age 54: Back Pain, Hearing Loss – new claim, oral hearing
- **2014/22** Age 56: Hernia, Palpitations – new claim, oral hearing
- **2014/23** Age 56: Osteoarthritis (Knee) – new claim, oral hearing
- **2014/24** Age 58: Cardiac Stent, Lumbar Prolapse – new claim, oral hearing

2014/01

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

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

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

The appellant gave a short account of his interests, which include watching sport. He gave an outline of the work experience programme he had participated in when he was in Transition Year and said that the experience had been a positive one. His parents said that they considered the appellant had significant challenges, making reference to points outlined in his written submission. At her

request, and with the agreement of the appellant, the Appeals Officer spoke with the appellant's mother and the appellant and his father left the hearing room.

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

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

by way of the medical reports and his parents' submissions.

The Appeals Officer noted the details outlined in the medical reports which accompanied the appellant's claim form, including the specialist reports referring to speech and language therapy and occupational therapy, and the Paediatrician's and Psychologist's reports. He noted also that in completing the ability/disability profile on the claim form, his G.P. had assessed the appellant as follows:

- Mental Health/Behaviour – affected to a moderate degree
- Learning/Intelligence – affected to a moderate degree
- Balance/Co-ordination – affected to a moderate to severe degree
- Manual Dexterity – affected to a moderate degree
- Speech – affected to a mild degree

The Appeals Officer noted that the appellant was reported to have difficulties functioning in social settings, challenges with concentration and memory, and problems with co-ordination and motor skills. He noted his G.P.'s report and assessment and his statement that the appellant requires assistance and supervision at home and in school, although he had not been approved for Special Needs Assistant (SNA) support. The Appeals Officer noted also that Domiciliary Care Allowance had been paid in respect of the appellant until he reached 16 years of

age and, in this, that it had been accepted that his medical condition was such that he required substantially more care and attention than persons of his own age, who did not have a disability.

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

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

held to be substantially restricted in line with the governing legislative provisions.

Decision of the Appeals Officer: The appeal is allowed.

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

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

2014/02

Specified Disability: Autism Spectrum Disorder

Background: The appellant, aged 16 years, attends secondary school and is in Transition Year. Following the rejection of his Disability Allowance claim, the appellant's father made an appeal on his behalf. He stated that his son was incapable of communicating on this matter, referring to his diagnosis of Autism at 3 years of age and submitting reports from the local Child and Adolescent Mental Health Services, the Educational Psychologist who assessed the appellant, and the School Principal. He also included an outline of typical school day which had been compiled by his son's full-time Special Needs Assistant (SNA).

His father submitted that the appellant has required constant adult supervision to

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

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

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

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

need to see the appellant and stated that his behaviour and demeanour at the oral hearing was actually very good with reference to his usual behaviour.

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

Decision of the Appeals Officer: The appeal is allowed.

2014/03

Specified Disability: Bilateral Hearing Loss

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

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

The Appeals Officer asked the appellant about his current situation. He advised that he had completed the Junior Certificate last year and would sit the Leaving Certificate examination in 2015. He said he would like to pursue third level studies after that. The Appeals Officer asked if he had ever taken a summer job and he replied that he had worked for three days stacking shelves at a local supermarket as part of a work experience placement in Transition Year. In response to the question as to how his hearing loss was affecting him at school, the appellant advised that he did not always hear what was said but would ask the teacher to repeat it. He said that he felt that his level of hearing was stable at present and that he was managing reasonably well. He stated that his biggest difficulty was being outdoors as he cannot hear what is happening behind him and needs to be careful.

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

when he was not at school and that there was constant friction regarding homework and staying up late at night. He went on to express concern that the appellant could get up at night and go outside to play football if he could not sleep.

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

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

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

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

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

2014/04

Psychosomatic Paralysis

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

Comment/Conclusion: The Appeals Officer noted that the medical evidence indicated that the appellant had lost the use of her left arm as a result of a fall, and that

she had been unable to move her arm at all since then. No explanation had been found for this condition and the view had been taken that it was not physiological and that she might benefit from psychiatric and psychological follow-up. Accordingly, the Appeals Officer examined the questions as to whether the loss of the use of her left hand/arm could be held to be a substantial restriction in carrying out suitable employment and, if so, whether this had continued or might reasonably be expected to continue for a period of at least one year. He concluded that the appellant was suffering from a substantial restriction in carrying out suitable employment and that, as this condition had lasted for approximately eight months at the time of the application and that the medical profession was at a loss to explain it, it could be reasonably expected to continue for the foreseeable future. In the circumstances, the appeal was allowed and the Appeals Officer observed that it was to be hoped that the appellant's condition would resolve in due course.

Decision of the Appeals Officer: The appeal is allowed.

2014/05

Learning Disability

Background: The appellant, aged 22 years, has a diagnosis of Learning Disability. Evidence on file indicated that

she was the victim of domestic violence as a young child and sustained significant head injury. In completing the ability/disability profile, her G.P. assessed her as follows:

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

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

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

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

The appellant's father referred to the trauma and head injury she had sustained as a young child and he outlined the background to his request to secure custody and his experience as a lone parent. He said that the appellant had attended mainstream schools, receiving learning support all the way along. He

reported that she had attended a number of courses run by the National Learning Network and that she had been allowed to participate and receive an allowance, as though she were in receipt of Disability Allowance. He said that he hoped that his daughter could obtain employment ultimately, perhaps on a part-time basis initially, with a view to becoming more independent.

The appellant said that she had done a course in animal care for two years, followed by one in crafts. She reported having nothing to do at the moment, and said she watches television and spends time with her dogs. Her father referred to the friends she had made through the social club established by the National Learning Network, and to events and outings that they attend. The appellant agreed that she enjoyed spending time with her friends.

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

Decision of the Appeals Officer: The appeal is allowed.

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

2014/06

Hepatitis C, ADHD, Drug Abuse

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

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

Decision of the Appeals Officer: The appeal is allowed.

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

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

2014/07

Ulcerative Colitis/Crohn's Disease and Hearing Loss

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

Oral hearing: The appellant attended alone. She reported that she had been working in supermarkets and retail outlets but had not worked recently. She said that her hearing is very limited and that she generally needs to lip read. She referred to a recent assessment in her local hospital and advised that she had an appointment to have hearing aids fitted in six weeks. She went on to report that she had been feeling very bad for weeks on end, having had to use the bathroom very frequently and having rectal bleeding. She had attended doctors and the Accident and Emergency departments of her local hospital and a hospital in Dublin, where she visited family,

and had been sent home with painkillers. During a visit to Dublin in 2013, she had collapsed and was taken to hospital where Ulcerative Colitis was diagnosed. She said the doctors seemed unsure as to whether she had Ulcerative Colitis or Crohn's Disease, and she said that she also had stomach ulcers.

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

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

Decision of the Appeals Officer: The appeal is allowed.

2014/08
Congenital Bilateral Hip Dislocation

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

Appellant's contentions: The appellant sought to have Disability Allowance awarded with effect from the date of her initial application and she submitted a detailed account of her medical history in support of that request. This referred to her diagnosis, surgery and pain management. In addition, she submitted that her extensive medical issues had led to a diagnosis of Depression for which she had been referred to a Psychiatrist. Having been awarded Disability Allowance in 2013 and having regard to the appellant's request to have payment backdated to her initial application in 2009, the question at issue was whether the Appeals Officer's

decision in 2011 was erroneous in the light of new evidence or new facts, as provided for under Section 317. This question was examined by a second Appeals Officer.

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

1. An appeals officer may at any time revise any decision of an appeals officer—

(a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given, or

(b) where—

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

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

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

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

1. The initial application was refused on grounds that the appellant did not meet the qualifying condition, a decision which was based on the opinion of the Medical Assessors that her existing restriction was not expected to last for more than one year – implying an acceptance that she was substantially restricted at

the time, albeit that the condition was expected to be of short duration.

2. Subsequent events made clear that the appellant's medical condition, and consequent restriction, had been continuous since the period from her first application. In particular, she had provided evidence of ongoing problems following surgery in 2009 and the requirement for a revision of that surgery in 2012.
3. Since her initial claim in 2009, the appellant had experienced significant pain management issues which would have substantially restricted her ability to engage in employment.
4. The appellant's medical condition at the time of her second application included Depression, which had not been certified in the original application. However, the medical evidence confirmed that this was something she had been dealing with since at least 2011, although no reference had been made to the fact in the report of the oral hearing in 2011.
5. The report of the Consultant Psychiatrist stated that the impact of the appellant's physical condition had been significant and had reduced her confidence and her ability to work.

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

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

REVISED DECISION: The appeal is allowed.

Decision reason(s): I find that, with effect from [specified date] 2009, the appellant was suffering from a medical condition which was reasonably expected to last for at least one year and as a result of this condition, was substantially restricted in undertaking work which would otherwise be suitable having regard to the her age, experience and qualifications. Having examined all of the evidence in this case (and with the benefit of hindsight in relation to the long-standing restrictions imposed on the appellant as a result of her medical conditions), I am revising the appeal decision in this case under Section

317 (1) (a), Social Welfare Consolidation Act 2005.

2014/09

Specified Disability: Knee Injury following road traffic accident

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

Oral hearing: The appellant was unaccompanied at the hearing. He advised that he had worked as a cleaning supervisor for a large cleaning company until 2006, when he was laid off and had made a claim for Jobseeker's Allowance. He referred to the road traffic accident in

2007 in which he had sustained a knee injury and which had resulted in the death of another passenger. He stated that, following the accident, he had spent six weeks in hospital. He attended a programme of physiotherapy subsequently and continues to attend an Orthopaedic Consultant once a year. He said that he has been prescribed sleeping medication and anti-inflammatory medication, to be taken as required.

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

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

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

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): Disability Allowance is a payment for persons who are confirmed to be substantially restricted in undertaking any suitable employment having regard to their age, education and work experience. This medical restriction must be medically certified as having continued, or as being expected to continue for at least 12 months. The term “suitable employment” applies to a wide variety of employment types and not just to the person’s usual or preferred type of work.

I have carefully reviewed all medical and other evidence provided in this case including that adduced at the oral hearing. The evidence indicates that the appellant suffered significant injury in 2007 and at that time was deemed eligible for Disability Allowance. I have concluded that the evidence now suggests that the appellant has made progress in recovering from the effects of the accident.

I have concluded that while the appellant’s knee injury will be longstanding and will restrict him in carrying out some types of employment, it has not been established that the appellant is now substantially restricted in carrying out any suitable employment as referred to above. I have concluded that the appellant does not meet the required criteria for receipt of Disability Allowance. In the circumstances I regret that the appeal does not succeed.

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

2014/10

Specified Disability: Pernicious Anaemia, Gilbert's Syndrome

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

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

Oral hearing: The appellant provided a written statement pertaining to his circumstances. He outlined the background to his difficulties, which began in childhood, where he experienced regular stomach pains, nose bleeds, dizziness and weight loss. His condition was wrongly diagnosed initially as Gastroenteritis. He reported that he had worked for a few months in an apprenticeship after leaving school but was forced to give up due to extreme tiredness. He said that he had done some work in construction about six years ago, when he had been employed as a general labourer for about five months. The work tended to

be of a casual nature which he said allowed him to recover somewhat between assignments. He said that, after a considerable time spent at home, and following a range of diagnostic testing, he had been diagnosed as having Pernicious Anaemia in his mid-twenties. He was treated with B12 injections and returned to studying. He was accepted on a degree course and moved close to the college to minimise the impact of travel. Having completed the first two years of the course, he had deferred his studies during the third year as a consequence of ill health. He reported having experienced burnout and constant headaches, hair-loss and exhaustion, allied to the financial stress of not being able to work to supplement his studies.

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

towards the end of the day, and an inability to eat much.

In conclusion, the appellant stated that he was attending the Migraine Clinic at his local hospital, with a view to obtaining a diagnosis and treatment related to recurring migraines. He said that he had already had a Computerised Tomography (CT) scan.

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

The Appeals Officer noted that the appellant had commenced a degree course and had completed over two years in college. While he had deferred his studies in the third year, he had recently recommenced those studies and the

Appeals Officer considered that this suggested that the appellant felt well enough to commit to full participation in his course. He noted that the appellant had referred in his appeal submission to undertaking his current studies with a view to moving into an area with a self-defining schedule, and that he was hopeful that he would qualify with credentials which might allow him to become self-employed.

The Appeals Officer accepted that the evidence clearly indicated that the appellant struggles in sustaining effort and is adversely affected by his condition.

However, he considered that his return to college with a view to gaining qualifications which might allow him to become self-employed in the future was indicative of an ability to apply himself to work. On that basis, he concluded that the appeal could not succeed.

Decision of the Appeals Officer: The appeal is disallowed.

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

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

2014/11

Specified Disability: Post-Traumatic Stress Disorder, Visual Impairment

Background: The appellant is 32 years of age and applied for Disability Allowance in 2013. He submitted a report from his G.P. which stated that he had lost his sight in one eye and suffered Post-Traumatic Stress Disorder, following an assault. His G.P. stated that he had been referred to the local psychiatric service. In completing the ability/disability profile, he assessed the appellant as being severely affected in the area of mental health/behaviour, affected to a mild degree in terms of his hearing, and normal in the other categories outlined. He indicated that the appellant should be accompanied if he was asked to attend an in-person medical assessment. He submitted a letter on the appellant's behalf and this was accepted as an appeal. In that letter, he made reference to the appellant's ongoing mental health difficulties and advised that he had become homeless.

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

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

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

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

said that when depressed, he had self-harmed.

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

Decision of the Appeals Officer: The appeal is allowed.

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

2014/12

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

Background: The appellant, who is 36 years of age, came to Ireland in 2007. She

made a claim for Disability Allowance in 2014 and, following the decision to disallow that claim, she made an appeal.

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

The appellant reported that she had worked as a cleaner in hotels for a number of years until she was involved in a road traffic accident. She stated that she experienced pain in her back, right hip and right leg. She outlined the medication she had been prescribed, as confirmed by her G.P. in a report submitted, including a Non-Steroidal Anti-Inflammatory Drug (NSAID) and other pain relief. She said that she finds walking difficult and that she has difficulty lifting things. She said also that she does not sleep very well at times due to pain. She advised that she can drive but finds it difficult sometimes. She said that she can do housework but that her sister has to help her at times.

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

Comment/Conclusion: The Appeals Officer observed that the up-to-date medical

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

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must have continued for or be expected to continue for at least one year. Having examined all the evidence in this case, and taking account of the medical evidence available, I have concluded that while there may be some restriction to the appellant in undertaking suitable employment it does not constitute substantial restriction under the meaning of the legislation. In the circumstances, I regret that the appeal cannot succeed.

2014/13

Specified Disability: Epilepsy

Background: The appellant, aged 43 years, had been in receipt of Disability Allowance between 2005 and 2011 when

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

- o Consciousness/Seizures – affected to a moderate degree

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

Oral Hearing: The appellant was represented by his solicitor and accompanied by his son, who assisted with interpretation. The question at issue was explained. The appellant's solicitor provided a copy of his written submission. A recent medical report was not available but the appellant's solicitor undertook to provide one for the Appeals Officer. He submitted that the appellant has suffered from Epilepsy since birth and that he is prone to frequent seizures, one of which had resulted in a fall where he fractured his arm. He referred to the medical evidence which suggested that there was still some residual incapacity arising from that injury. It was pointed out that the appellant was

semi-literate and that he had been receiving Disability Allowance up to 2011. The Appeals Officer advised that he had no evidence to indicate the basis on which the medical qualifying conditions for Disability Allowance had been deemed to have been met previously.

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

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

Comment/Conclusion: The Appeals Officer noted that the appellant had qualified previously for Disability Allowance from 2005 to 2011. He concluded that his medical condition was unchanged in that time, with medical evidence confirming that he continues to suffer frequent seizures.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): This appellant had previously been granted Disability Allowance from 2005 to 2011. The

appellant's medical condition is unchanged in that time. Medical reports confirm that appellant continues to suffer frequent seizures.

2014/14

Specified Disability: Back Injury

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

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

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

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

occasion and walk, using a crutch, during the course of the hearing.

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

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

Decision of the Appeals Officer: The appeal is allowed.

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

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

2014/15

Specified Disability: Depression

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

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

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

Decision of the Appeals Officer: The appeal is allowed.

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

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

2014/16

Specified Disability: Diabetes (Type 2), Hypertension

Background: The appellant, aged 44 years, had been in receipt of Illness Benefit and was in receipt of a Diet Supplement of €6.50 per week under the Supplementary Welfare Allowance scheme. He had an in-person assessment with a Medical Assessor of the Department of Social Protection. In the opinion made available to the Deciding Officer following that

assessment, it was stated that while the medical evidence did indicate a level of incapacity, it was not consistent with substantial disability/restriction. In terms of the ability/disability profile, the appellant's G.P. had reported as follows:

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

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

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

been attending his G.P. recently due to shoulder pain, that he attends the Diabetic Clinic every two months, and that he was hospitalised for one night last year because of low blood sugar. He advised that he is monitored by the clinic nurse and that his Diabetes is controlled by means of diet. He does not attend a Consultant.

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

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

some ways but concluded that he had not established that he met the qualifying conditions for receipt of Disability Allowance.

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): The medical qualifying conditions for Disability Allowance require that a person must be substantially restricted in undertaking work which would otherwise be suitable having regard to their age, experience and qualifications and the specified disability must be expected to continue for at least one year.

Having carefully examined the evidence in this case, including that presented at the oral hearing, I have concluded that it has not been established that this condition is met in the appellant's case. In particular, the most recent medical evidence presented was from the appellant's G.P. [on date specified] No specialist medical evidence has been made available in relation to the appellant's Diabetes which appears to be the main health issue spanning the last three years. In the circumstances, I regret that the appeal cannot succeed.

2014/17

Specified Disability: Cerebral Aneurysm, Deafness, Depression

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

suffers from Tinnitus and Panic Disorder. In completing the ability/disability profile, her G.P. assessed the appellant as being mildly affected in most categories, and affected to a moderate degree in relation to hearing.

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

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

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

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

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

had been established that the appellant continued to be substantially restricted in undertaking suitable employment.

Decision of the Appeals Officer: The appeal is allowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would be suitable with reference to their age, experience and qualifications and the specified disability must be expected to continue for at least one year. This substantial restriction must be medically certified as having continued, or as being expected to continue for at least 12 months. I have carefully examined all the evidence in this case including the medical evidence and that adduced at the oral hearing. Taking account of the medical evidence, the appellant's cerebral aneurysm, now stable, combined with further awaited ear surgery, tinnitus, profound hearing loss and depressive features, I have concluded that the appellant has established that she continues to be substantially restricted and there is insufficient evidence to show that she is no longer restricted to the same extent as heretofore. Therefore appellant is deemed to continue to meet the qualifying conditions.

2014/18

Specified Disability: Back Pain and Depression

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

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

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

Oral hearing: The appellant was accompanied by a relative. He asserted that he was not capable of performing any type of employment because of his back complaint and depression. He stated that he had had two operations performed on his back a number of years ago and had been advised by an Orthopaedic Consultant not have 'back fusion' at that stage because of the uncertainty of a successful outcome. Instead, he had been advised to learn to live with his condition. He reported that he had done so but while he has weeks when

his back problem only affects him moderately, there are weeks when he cannot leave the bed/floor and must crawl to get to and from his kitchen/bathroom. He added that he has chronic episodes of pain some ten or fifteen times a year, when he is confined to bed/floor.

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

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

Comment/Conclusion: The Appeals Officer observed that the appellant appeared to walk with some difficulty and was uncomfortable sitting for the period of the hearing. He noted the appellant's age, history of back surgeries, current diagnosis of continued back pain with the possibility of further back surgery and his mental state which had led to him attempting to take his

life by means of an overdose. He noted also his G.P.'s letter of support and the evidence he had given at oral hearing. In addition, he took account of the fact that the appellant had been in receipt of Disability Allowance for ten years and he considered that there was nothing to indicate that his physical or mental state had improved significantly in the meantime. He concluded that the qualifying criteria were met.

Decision of the Appeals Officer: The appeal is allowed.

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

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

2014/19

Specified Disability: Depression, Low Back Pain

Background: The appellant, aged 49 years, made a claim for Disability Allowance in 2014. In completing the ability/disability profile on the claim form, his G.P. assessed the appellant as being moderately affected in eight of the categories outlined and affected to a mild degree in one other area. He stated that the appellant had sustained an accident some years previously, suffering a disc prolapse, and that he had

been experiencing depression for three years. He advised that there had been no specialist referral, and that he had not prescribed medication.

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

Oral hearing: The appellant attended alone. He stated that he was unable to work due to depression and low back pain. He said that the back pain began 18 months ago when he pulled his back while lifting. He went to his G.P. who prescribed pain relief. He said he had been advised that he had a slipped disc and he was referred for an MRI scan. He advised that a slipped disc was ruled out following the scan but that he was still awaiting referral for specialist opinion.

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

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

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

Comment/Conclusion: The Appeals Officer noted that appellant had presented at the oral hearing as relaxed and that he had outlined his evidence clearly and with no sign of reservation. He considered that he had related well and had not displayed any apparent distress. He noted his description of the restrictions he experiences due to back pain and depression. He noted also the medical evidence in relation to the history and treatment of those conditions and concluded that it was not apparent that the

appellant was affected to the extent that would render him substantially restricted from all work suitable to a person of his age and experience.

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must be expected to continue for at least one year. The appellant presented at the oral hearing as relaxed and gave his evidence clearly with no sign of reservation or nervousness; he related well and did not display any apparent distress. He describes restrictions due to back pain and depression. I note the medical evidence in relation to the treatment and history of these conditions and find that it's not apparent the appellant is affected to the extent as to render him substantially restricted from all work suitable to a person of his age and experience. I regret therefore the appeal is disallowed.

2014/20

Specified Disability: Dystonia

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

moderate and lifting/carrying was assessed as severe.

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

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

The appellant reported restricted mobility and limited flexibility and the presence of a tremor in her neck. She said that the

condition has also affected her mental health.

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

Decision of the Appeals Officer: The appeal is allowed.

2014/21

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

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

was successful. Accordingly, he was held to be habitually resident for purposes of his Disability Allowance claim also and the only question to be determined related to the employment test.

Oral hearing: The appellant's daughter accompanied him, and she acted as interpreter throughout the hearing. He advised that he had attended English classes about three years ago but said that he worked with others who spoke the same language as he did, and went shopping where that language was spoken, so that his English remained poor. He said that his wife is still living in [EU country] and that they communicate through skype and phone conversations. The Appeals Officer observed that the appellant walked with the aid of a crutch and wore hearing aids. The appellant said that he was living in private rented accommodation with his daughter and her partner. He advised that they shared the cost of the rent and that he had been in receipt of Supplementary Welfare Allowance (Rent Supplement) towards his portion of the rent since 2010. He said that he had been suffering with back pain for the past ten years but that the pain had become more intense in the past two years. He incurred the injury while stepping out of a car in [EU country] ten years ago. He described how he heard a click and suffered immediate pain. He received a nerve root injection at the time and this brought him pain relief for about

two years. He experienced pain and discomfort after this while working as a mechanic but he said that the pain had been bearable and that he was able to work through it. He reported that he had been less active since losing his employment as a general operative in early 2010 and that his back condition had deteriorated. He attended physiotherapy sessions in 2013 and had also gone swimming but said that he was not doing any exercise programme at this stage.

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

Comment/Conclusion: The Appeals Officer noted that the medical evidence indicated that the appellant had been

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

Decision of the Appeals Officer: The appeal is allowed.

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

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

2014/22

Specified Disability: Inguinal Hernia, Palpitations and Shoulder Pain

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

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

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

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

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

Comment/Conclusion: The Appeals Officer considered that this was a marginal case. He noted that his G.P. had assessed the appellant as affected to a moderate degree across a range of abilities relevant to his diagnosis and that his job was still open to him. He observed that there was no real evidence of major heart problems which might prevent him doing any kind of suitable work. However, he noted that the kind of work the appellant had done had always been of a physical nature and that his record of work since coming to Ireland was good, as well as the fact that he had returned to work within two to three months of bypass surgery. Having regard to the date of his claim, the Appeals Officer considered that the appellant would not be

in a position to return to work within a one year period and he took the view that his current Hernia difficulties would substantially restrict him in undertaking any kind of suitable employment. Accordingly, he allowed the appeal.

Decision of the Appeals Officer: The appeal is allowed.

2014/23

Specified Disability: Osteoarthritis (Knee)

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

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

The appellant reported that her last employment had been three years ago and that she had given it up as it involved standing and she was unable to continue because of pain. She confirmed that she had undergone knee surgery in 2013, and that she had attended her local hospital

subsequently as a day patient. She contended that her knee was worse now than it had been before the surgery. She reported that she was able to drive but that her knee gets sore; that she cannot walk too far; that she used to go dancing but can no longer do this, and that exercise was difficult as she feels her leg is a dead weight.

The appellant stated that she cannot sit with her leg straight and that she is unable to stand for very long. She also finds that bending and stooping is difficult. She said that she takes *Paracetamol* once a day and that she is waiting for physiotherapy. She referred to problems in sleeping as she has to keep her leg outside the bed clothes.

The appellant advised that she can manage to do housework, shopping and cooking and that she continues to provide care for her mother.

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

Decision of the Appeals Officer: The appeal is disallowed.

Decision reason(s): Disability Allowance may be paid where a person is substantially

restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and the specified disability must be expected to continue for at least one year. Having carefully examined all the evidence in this case, and taking account of the medical evidence available, I have concluded that the appellant has not established that she meets the qualifying conditions. In the circumstances, I regret that the appeal cannot succeed.

2014/24

Specified Disability: Cardiac Stent, Prolapsed Lumbar Disc

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

- Mental Health/Behaviour – affected to a mild degree
- Balance/Co-ordination – affected to a mild degree
- Vision – affected to a mild degree
- Manual Dexterity – affected to a mild degree
- Sitting/Rising – affected to a mild degree
- Walking – affected to a mild degree
- Hearing – affected to a moderate degree
- Reaching – affected to a moderate degree
- Lifting/Carrying – affected to a moderate degree
- Standing – affected to a moderate degree

- Climbing Stairs/Ladders – affected to a moderate degree
- Bending/Kneeling/Squatting – affected to a severe degree

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

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

great difficulty bending and stooping and has to bend from the knees, and he requires support to get upright. He is able to drive but finds getting in and out of the car difficult.

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

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

Decision of the Appeals Officer: The appeal is allowed.

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

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

Appendix 1

Social Welfare Appeals Office Organisation Chart

