



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

Your Ref: HD5/08/1870  
14<sup>th</sup> December 2009

**Mr. Pat Whelan,  
Director General,  
Office of the Ombudsman,  
18 Lower Leeson Street,  
Dublin 2**

**Re: Ombudsman Investigation – Nursing Home Subventions – Failure to Implement Appeal Decision.**

Dear Mr Whelan,

I wish to thank you for the opportunity to comment on the letter of Ms Anna Marie Lanigan, Interim Assistant National Director, South, PCCC Directorate on the Ombudsman's Investigation into Nursing Home Subventions and the failure to implement appeal decisions.

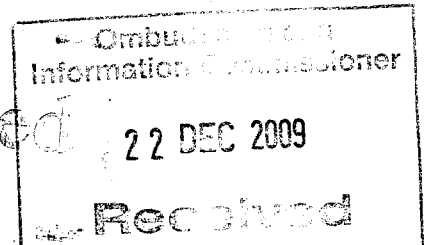
Firstly, on the point made that the HSE must treat equitably decisions regarding enhanced subvention made on foot of an application which may not have gone through the appeals process, versus one which was the outcome of an appeal and the fact that a decision made by an appeals officer, without taking the resource issue into consideration, could effectively disadvantage those applicants already on the waiting list. I find this to be an extraordinary statement given that I as appeals officer was never notified of the existence of a waiting list for applicants for support through enhanced or alternative subvention in the Carlow / Kilkenny PCCC area or indeed in any PCCC area in the South East area of the HSE. I was, however, aware of the existence of such a waiting list in the Cork and Kerry area. Given that I have been dealing with appeals in the South East for almost nine years now I am amazed to discover that such a waiting list was in existence and that I was never informed about it, nor have I ever seen any mention of such a waiting list in a letter to any applicant for enhanced subvention on files that I have examined on appeal. I wish to state that if I had been made aware of the existence of such a waiting list I would have sought sight of it and would have taken this into consideration in my deliberations of appeals. I am aware that the HSE did have a policy of placing people on a waiting list for a public long stay bed.

I do concur, however, that it must be the objective of the HSE to treat equitably decisions regarding "enhanced" subventions, but my experience is that while there was a policy in operation in relation to enhanced subventions it was implemented across and within each individual PCCC area differently. However, I do agree that with the introduction of "Fair Deal", the HSE has focused on a policy that can be operated in a way that will treat all applicant's equitably throughout the HSE, regardless of where they live in the country.

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Consumer Affairs Office,  
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Acknowledged



Secondly, there seems to me to be an implication in the letter from Ms Lanigan that where an appeals officer is a HSE staff member that they should not be as independent as if they were not a staff member. I take my role as appeals officer very seriously and defend the independence of that function. It is my role to hear both sides and then to take a decision that is in keeping with the legislation, I do not see it as my function to rubber stamp HSE policy where it may be at variance with the law. In relation to the contention that I as appeals officer did not take account of resource implications, I wish to point out that in every case where an appeal was made I sought a report from the relevant office and a copy of the file. I wish to reiterate again that the HSE in most cases did not make a report available to me and there was never a mention of lack of resources on any file. It is my view that it was incumbent on the HSE to provide me with all the information but it failed to do so. I am well aware of my obligations under the legislation and it is my contention that the failure was with the relevant HSE manager for not advising me.

When this issue was raised with me by one Local Health Manager (copy of correspondence enclosed, marked 'A') in November 2008 I responded by advising what I expected of the Local Health Office (copy enclosed, marked 'B'). When your office raised the issue of non implementation of appeal decisions with the HSE in the Carlow / Kilkenny area I also advised through the Liaison Officer what I expected of the Local Health Office (copy enclosed, marked 'C'). In Carlow / Kilkenny PCCC area there was action taken on foot of this and in May 2009 I did receive correspondence from South Tipperary PCCC Area to the effect that due to scarce resources they would not be paying any enhanced subventions, but also in a follow up discussion advised that while they would keep names on a file that it was not an official waiting list as they did not wish to go down that route. You should note that in the South East each individual PCCC Office area was responsible for administering the Nursing Home scheme for their areas. In other parts of the HSE the administration was centralised. It is my contention that it was the Appeals Office that was trying to bring equity to the way that enhanced payments were dealt with across the four PCCC Offices.

Thirdly I note that Ms Lanigan states that the appeals office in the HSE South East is at variance with the approach in other offices. From my discussions with other appeals officers I note that some were of the opinion that they had no role as the payments were discretionary and in other cases most were advised of the resource issues by the respective managers in the Nursing Homes Sections. As is acknowledged in your report a person who was dissatisfied with a decision on alternative subventions did have a right of appeal and as I have already pointed out the relevant HSE managers did not advise me of the lack of resources and therefore it was not possible for me to take the lack of resources into consideration. Instead, they chose to ignore the issue on the basis that I was only making recommendations until it was raised by your office. I was never informed by the HSE that the decisions were not been implemented.


You should also note that appeals officers used to meet on a regular basis to discuss on a case study basis how a person's entitlements were administered by the HSE taking into consideration the legislative and policy basis for decisions and tried to agree a consistent equitable approach across the HSE in relation to how appeals would

be dealt with. Unfortunately over the last two years there have been very few meetings or opportunities for appeals officers to discuss consistent approaches to decisions on appeal.

I do not wish to comment on the other items contained in the letter but again wish to thank you for affording me the opportunity to respond.

Should you wish to have any issue clarified please contact me.

Yours sincerely,

A handwritten signature in cursive script that reads "Greg Price". The signature is written in black ink and is positioned above a horizontal line.

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**Greg Price,  
Appeals Officer**



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

HSE South,  
Waterford Community Services,  
Cork Road,  
Waterford,  
Ireland.

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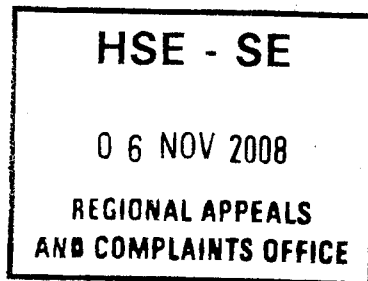
Local Health Office

Telephone: 051-846766/846776

DH/POK

5<sup>th</sup> November 2008

Mr. Greg Price,  
Appeals Officer,  
Health Service Executive,  
Consumer Affairs Office,  
8, O'Connell St.,  
Clonmel,  
CO. TIPPERARY



RE: Nursing Home Subvention decisions

Dear Greg,

I note from a recent letter issued through your office regarding an appeal relating to a nursing home subvention case. In your reply it states as follows:

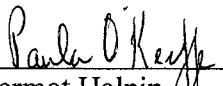
*"I decide a discretionary payment should be made payable to the appellant to meet the balance of the current nursing home fees not covered by her assessable income and current nursing home subvention up to a maximum of €650.00 per week"*

I feel this statement is misleading in that as you are aware the total paid by the Health Service Executive is a total of €650.00 and relates to the client's own contribution plus the level of subvention approved including enhanced subvention. The interpretation some individuals place on this wording is that the Health Service Executive will fund a further €650.00 in addition to the contributions made by the patient themselves. I feel this needs to be amended in future cases.

On a different but related issue I also note that the wording indicates that a decision is made by you rather than a recommendation based on the appeal. As you are aware local officers are required to operate within the overall financial framework of the Health Service Executive, including funding limits for nursing home subvention.

There are requirements to operate within available budget and consequently the Health Service Executive must consider whether it is in a position to pay discretionary payments over and above the statutory basic entitlement for nursing home subvention. In this regard, I feel the statement is again misleading as your assessment of the appeal can, surely, only be a recommendation rather than as it appears an ultimate decision by the Health Service Executive to actually make such discretionary payments. I would welcome your consideration of the above.

Yours sincerely,

  
\_\_\_\_\_  
Dermot Halpin  
Local Health Manager  
Waterford Local Health Office

'B'

20 November 2008

**Mr Dermot Halpin  
Local Health Manager  
HSE South  
Cork Road  
Waterford**

**Re: Nursing Home subvention decisions**

Dear Dermot,

Your letter dated 5<sup>th</sup> November refers.

In relation to the wording that you feel is misleading I have made amendments and hope that there is no further confusion.

With regard to your second point that the wording indicates that a decision is made by me rather than a recommendation, I wish to confirm that your observations are correct. When making determinations on appeals I always make decisions. The decisions are made on the basis of the information that I have available to me on the file. When an appeal is received it is copied and forwarded to the local office with a request for the file and a report. In practically all cases no report is received and I seldom if ever see anything on the file stating that there is no budget to pay any extra amount towards nursing home fees in addition to the basic subvention. Indeed it appears to me that in some areas people are not even assessed for any extra payments and there is anecdotal evidence to suggest that the decision is left to this office.

In relation to moving forward on this one, I would like to see in place a system whereby applicants are fully assessed for Nursing Home subventions and for any alternative subvention to which they may be entitled. If there is a budgetary problem in relation to paying an alternative subvention this should be clearly stated on the file and notified to the applicants and also any prioritisation that is undertaken to distribute scarce resources. If a person then appeals the decision I will have available to me all the necessary information and my decision will be more informed.

I trust this clarifies the matter for you.

Yours sincerely,



**Greg Price  
Appeals Officer**

**Price, Greg (CCT)**

**From:** Byrne, Sinead  
**Sent:** 04 December 2009 14:57  
**To:** Price, Greg (CCT)  
**Subject:** FW: Advice please

**From:** Gregory Price [mailto:gregory.price@HSE.IE]  
**Sent:** 17 December 2008 17:23  
**To:** Byrne, Sinead  
**Subject:** RE: Advice please

Dear Sinead,

I refer to the memo from Alan Price and would like to point out what I consider to be an inaccuracy in what he states.

Alan indicates that I make recommendations; I wish to point out that when I am dealing with matters on appeal I do not make recommendations but decisions and in my opinion those decisions are binding. If the HSE wish to dispute the decision it is open to them to challenge it. I am very aware that the HSE must live within its allocated budget and I am obliged to take the budgetary position of the HSE into consideration. However, I can only make decisions on the basis of the information available to me on the file and also taking equality of treatment into consideration as distinct from an accident of where a person might be lucky or unlucky to live.

When an appeal is received it is copied and forwarded to the local office with a request for the file and a report. In practically all cases no report is received and I seldom if ever see anything on the file stating that there is no budget to pay any extra amount towards nursing home fees in addition to the basic subvention. Indeed it appears to me that in some areas people are not even assessed for any extra payments and there is anecdotal evidence to suggest that the decision is left to the appeals office.

In relation to moving forward on this one, I would like to see in place a system whereby applicants are fully assessed at local level, (or to achieve consistency, at regional level), for Nursing Home subventions and for any alternative subvention to which they may be entitled. If there is a budgetary problem in relation to paying an alternative subvention this should be clearly stated on the file and notified to the applicants and also any prioritisation that is undertaken to distribute scarce resources. The HSE should also submit a report stating what resources it has or hasn't and how it prioritises hardship cases, for example I note that in the Cork and Kerry area they have a waiting list for enhanced subventions but I am not aware of any such scheme in the former South East Area. If a person decides to appeal a decision, at least they will be in a better position to make their appeal and I will have available to me all the necessary information and my decision will be more informed.

I trust this clarifies the matter for you.

Yours sincerely,

Greg Price.

Greg Price  
Consumer Affairs Office,  
Appeals Section,  
Clonmel,

14/12/2009