

Appendix 1

Oifig an Ard-Runai,
An Roinn Gnóthaí Sóisialacha
agus Teaghlaigh,
Áras Mhic Dhiarmada,
Sráid Stórais,
Baile Átha Cliath 1.



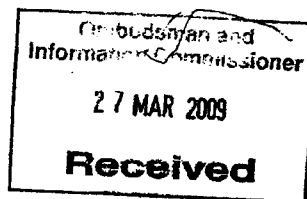
Office of the Secretary General,
Department of Social and
Family Affairs,
Áras Mhic Dhiarmada,
Store Street,
☎: (01) 7043000 Fax: (01) 7043721

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

Your Reference C22/08/1305

Our Ref. 69-7697031N

27 March 2009



Re. 7+ ...

Dear Mr. Whelan,

I refer to your letter dated 12 March 2009 regarding a complaint made to the Ombudsman by Deputy [redacted] on behalf of [redacted] in connection with the suspension of his Disability Allowance payment and in particular to your request for copies of all records, including records on the matter with the Department of Finance, which deal with extra-statutory arrangements catering for situations where recipients of Disability Allowance retain their payment while they are resident outside the State.

Section 249(6) (b) of the Social Welfare Consolidation Act 2005 provides that a person shall be disqualified from receipt of ...disability allowance ...while he or she is resident, whether temporarily or permanently, outside the State.

We have operated an administrative exception to this disqualification in cases where claimants have been absent from the State to seek medical treatment which is subject to three conditions - the treatment is not available in the State, the person was sent for this treatment by the HSE and written confirmation is received that the person is in the institution receiving medical treatment.

While medical treatment is not defined in the Social Welfare Consolidation Act 2005 or the enabling Regulations we would see the phrase "absent from the State for medical treatment" would have a meaning for the ordinary citizen that the treatment would be carried out by a medical doctor or similarly qualified person and that the provision of such treatment is not incidental but is the primary reason for absence from the State.




Each case is examined on its merits to see if the conditions are fulfilled before a decision is made to allow the payment. As a record of such cases is not maintained we are unable to say how many are currently in payment.

We did not consult with the Department of Finance on these administrative arrangements.

A full and comprehensive written report on . case will be sent to you shortly.

Yours sincerely,


Bernadette Lacey
Secretary General

Appendix 2

Oifig an Ard-Runai,
An Roinn Gnóthai Sóisialacha
 agus Teaghlaigh,
 Áras Mhic Dhiarmada,
 Sráid Stórais,
 Baile Átha Cliath 1.



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

Your Reference C22/08/1305

Our Reference 69-7697031N

3 April 2009

Ombudsman and
Information Commissioner

07 APR 2009

Received

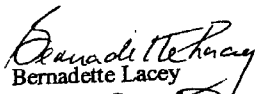
Re.

Dear Mr. Whelan,

I refer to your letter dated 12 March 2009 regarding a complaint made to the Ombudsman by Deputy _____ behalf of _____ in connection with the suspension of his Disability Allowance payment for a period he was in residential care in the North of Ireland.

As requested in your letter I am attaching a submission on the Statement of Complaint.

Yours sincerely,


Bernadette Lacey
Secretary General



SUBMISSION RE. STATEMENT OF COMPLAINT MADE

On behalf of

first applied for Disability Allowance on 21/03/2001 and he was awarded this Allowance from 16 May 2000, the Wednesday following his 16th birthday. In October 2004 due to his disability, his parents sought to have him admitted to a suitable care institution in this State but failed to find him one. They were forced to seek suitable accommodation in Northern Ireland where he resided in residential care from 01/10/04 to 19/05/2006. This accommodation was provided at the behest of the HSE. The care facility was run by the who were contracted by Intellectual Disability Services to provide a similar service in in which would later be placed.

Clients's mother returned her son's DA allowance book in October 2004 when he went to live in NI.

A new application for DA was received from clt. on 21/07/06 with a request that the claim be backdated to 19 May 2006 the date returned to live in On 20/11/2006 he was awarded DA with effect from 24/05/06.

On 18/05/07 a letter was received from the on behalf of asking that his DA claim be backdated to October 2004 on the grounds that because there was no suitable residential accommodation in the Republic for him at the time he was placed in supported residential care in Co. Fermanagh.

His application was refused as he was not resident in the State for the period in question.

Section 249(6) (b) of the Social Welfare Consolidation Act 2005 provides that a person shall be disqualified from receipt of ...disability allowance ...while he or she is resident, whether temporarily or permanently, outside the State.

We have operated an administrative exception to this disqualification in cases where claimants have been absent from the State to seek medical treatment which is subject to three conditions - the treatment is not available in the State, the person was sent for this treatment by the HSE and written confirmation is received that the person is in the institution receiving medical treatment.

It was considered at the time that the care provided for in Northern Ireland would not come under the heading of medical treatment.

Origin of administrative practice to pay DA outside the State for medical treatment

Under the Disabled Person's Maintenance Allowance (DPMA) Regulations 1995, Section 4 (1), payment of the allowance could be made where the person was ordinarily resident in the functional area of the Health Board (provided the other conditions were met). Prior to the takeover in 1996 by this Department of DPMA (renamed Disability Allowance) the Health Boards allowed payment to persons who went abroad on approved educational courses. They also regarded DPMA recipients who went abroad on a temporary basis for specialist medical treatment as ordinarily resident in their functional area.

Under the transitional provisions (Section 14 of SW Act 1996) existing DPMA recipients could not be made worse off as a result of the transfer to Disability Allowance. Consequently the arrangements re. temporary absence were continued for them and extended on an administrative basis to relevant new claims for Disability Allowance.

Under the Back to Education Allowance (BTEA) Scheme, payment can continue while pursuing further education outside the State, provided the Scheme conditions are met. This applies to Disability Allowance clients who participate in the Scheme.

There is a reference in the FOI Disability Allowance Guidelines (Part 1 Absence from State) to payment of DA while abroad for medical treatment, copy attached for information.

Investigation by Office of Ombudsman

Following the investigation by the Office of the Ombudsman the circumstances of the case were reviewed. Cognisance was taken of EU legislation which allows for free movement and for medical treatment to be provided in other member states, if not available in the home country, and of the fact that the HSE had said in a letter dated 16/05/07 that the type of care required was not available here and recommended that it be provided in Northern Ireland. It was decided to award Disability Allowance from 06/10/2004 to 23/05/2006. A decision to this effect was made on 27/03/09. The amount of arrears due to him came to E13,089.60 and a cheque for this amount was issued to him on 31/03/2009.

Arrangements are being made to reimburse him in respect of loss of purchasing power due to delay caused in paying him for the period in question.

Provision is now being made to provide a statutory basis for the payment of DA outside the State for clients getting medical treatment. The exact details are being worked out.

Anne O'Donnell, P SEC

From: Denis Galvin, PO
Sent: 03 April 2009 14:00
To: Maureen Waldron, DIRECTOR; Anne O'Donnell, P SEC
Cc: Marie Cullen, AP
Subject: Complaint - Ombudsman Query



Letter to
Ombudsman



Guidelines for
Disability Allo...



Statement of
Response to Compl..

Anne,

This refers to complaint by Ombudsman in case of
An interim reply was sent last week when we undertook to give a
comprehensive reply by to-day.

There 3 attachments to this message.

1. A covering letter for signature by SG
2. Guidelines for DA
3. Statement of Response to complaint
- 4.

Maureen asked me to send this direct to you for signature of SG.

If you are happy with it perhaps you would confirm to Marie
Cullen that reply was issued so that we can send an email copy
to Ombudsman Office.

Denis