

Ombudsman Investigation Report – Mobility Allowance

Appendix 3

Correspondence with Department of Health and Children

Our Reference: HC8/08/2204

3 February 2009

Ms. Bairbre Nic Aonghusa
Director
Office for Disability and Mental Health
Department of Health and Children
Hawkins House
Dublin 2.

Dear Ms. Nic Aonghusa,

The Ombudsman is examining a complaint received from Mr. John Browne, Athlone, Co. Roscommon on behalf of his sister Ms. Mary Browne, Athlone, Co. Roscommon concerning the refusal of the HSE West to award her a Mobility Allowance.

Ms Browne was advised by the HSE West that her application for the Allowance was rejected because she was not considered eligible under the Mobility Allowance scheme, on age grounds, as she is over 66 years of age. As you are aware, a Mobility Allowance is payable, under Section 61 of the Health Act 1970, and in accordance with the terms of an administrative scheme drawn up under Department of Health Circular 15/79, to persons with a severe disability who are resident at home or in a long stay facility. Payment of the Allowance is subject to a means test. The scheme specifies that applicants must be aged 16 years or older and under 66 years and recipients can continue to receive payment after they reach the age of 66 provided they were in receipt of the allowance prior to their 66th birthday. An issue of concern to the Ombudsman is whether the eligibility criteria for Mobility Allowance, as set out in the Minister's "directions" (Circular 15/79), might be deemed to be improperly discriminatory in two respects. The first and most fundamental concern is that the Allowance is not available at all to a person who applies after the age of 66 years. It is clear that the Allowance discriminates against applicants over the age of 66 years and, on the face of it, it would seem that this restriction is "improperly discriminatory" in the sense in which this term is used in section 4(2) of the Ombudsman Act 1980. A related concern is that the restriction may not comply with the provisions of the Equal Status Act 2000. You will be aware that in August 2008 the Equality Authority found that a woman had been discriminated against when it ruled in her favour in a case she had brought to the Authority, against the HSE, when she was refused a grant under a similar scheme (Motorised Transport Grant) on the grounds that she was over 66 years of age (see details attached). The second concern is

that the Allowance discriminates within the over 66 age group in that a person already benefiting from allowance before age 66 will continue to get the Allowance after 66 years whereas a person over 66, not already benefiting, is excluded from the scheme. Again, this restriction would seem, on the face of it, to be "improperly discriminatory" in the sense in which this term is used in section 4(2) of the Ombudsman Act 1980.

In light of the above, and to assist the Ombudsman in her consideration of the options as to how to progress her examination of this complaint, I would be grateful for the views of the Department on whether it is appropriate to continue to retain a qualifying upper age limit for eligibility under the Mobility Allowance scheme.

If you would like to speak to me about the matter, you are welcome to ring me at 01-6395650.

Yours sincerely

Fintan Butler
Senior Investigator



Your reference - [REDACTED]

Fintan Butler
Senior Investigator
Office of the Ombudsman
18 Lower Leeson St.
Dublin 2

Dear Mr Butler

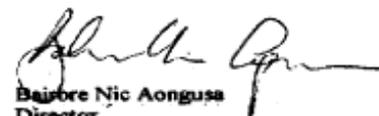
I refer to your correspondence regarding your examination of a complaint on behalf of [REDACTED] regarding a Mobility Allowance.

The Mobility Allowance was established in 1979 by way of Departmental circular. The purpose of the allowance is to provide financial support to severely disabled people who are unable to walk or use public transport in order to finance the occasional taxi journey. There are in excess of 4,500 recipients of mobility allowance at a total cost in excess of €11m.

The Government has decided that income support schemes operated by the HSE should transfer to the Department of Social and Family Affairs. Mobility allowance is one of the allowances scheduled for transfer to the Department of Social and Family Affairs. As part of this process it is intended to review the policy and operation of the mobility allowance prior to transfer. In the interim, the Health Services Executive will continue to operate the allowances in accordance with the circular. It is not envisaged that any changes will be made to the allowance prior to the review.

While the Department appreciates the issues raised in your correspondence it is not feasible to amend the scheme to remove the upper age limit in the current economic circumstances. However, the Department is committed to reviewing the scheme in the context of planning for its transfer to the Department of Social and Family Affairs and the matter will be considered further in that context.

Yours sincerely


Bairbre Nic Aongusa
Director
Office for Disability and Mental Health

Current file name from filelog at 10:06am

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Our Reference : HC8/08/2204

14 July 2009

Mr Michael Scanlan
Secretary General
Department of Health and Children
Hawkins House
Dublin 2

Dear Mr Scanlan,

The Ombudsman is currently examining a complaint received from Mr. John Browne, Athlone, Co. Roscommon. The complaint was made on behalf of his sister, Ms. Mary Browne, Athlone, Co. Roscommon concerning the refusal of the HSE West to award her a Mobility Allowance.

The background to the complaint is as follows: Ms Browne was advised by the HSE West that her application for the Mobility Allowance had been rejected because she was not considered eligible under the governing scheme, on age grounds, as she is over 66 years of age. A Mobility Allowance is payable, under Section 61 of the Health Act 1970, and in accordance with the terms of an administrative scheme drawn up under Department of Health Circular 15/79, to persons with a severe disability who are resident at home or in a long stay facility. Payment of the Allowance is subject to a means test. The scheme specifies that to be eligible, applicants must be aged 16 years or older and under 66 years. Recipients of the Allowance can continue to receive payment after they reach the age of 66, provided they were in receipt of it prior to their 66th birthday.

An issue of concern to the Ombudsman, arising from her examination of this complaint, is whether the eligibility criteria for Mobility Allowance, as set out in the Minister's "directions" (Circular 15/79), might be deemed to be improperly discriminatory in two respects. The first and most fundamental concern is that the Allowance is not available at all to a person who applies after the age of 66 years. It is clear that the Allowance discriminates against applicants over the age of 66 years and, on the face of it would seem that this restriction is "improperly discriminatory" in the sense in which this term is used in section 4(2) of the Ombudsman Act 1980. A related concern is that the restriction may not comply with the provisions of the Equal Status Act 2000. In this connection, in August 2008, the Equality Authority found that a woman had been discriminated against when it ruled in her favour in a case she had brought to the Authority, against the HSE, when she was refused a grant under a similar scheme (Motorised Transport Grant) on the grounds that she was over 66 years of age (see details attached).

The second concern is that the Allowance discriminates within the over 66 age group in that a person already benefiting from allowance before age 66 will continue to get the Allowance after 66 years, whereas a person over 66, not already benefiting, is excluded from the scheme. Again, this restriction would seem, on the face of it, to be "improperly discriminatory" in the sense in which this term is used in section 4(2) of the Ombudsman Act 1980.

This Office recently wrote to the Office of the Minister for Disability and Mental Health (OMDMH) in your Department, outlining the Ombudsman's concerns and seeking its views on the question of whether, in light of the above, it was considered appropriate to continue to retain a qualifying upper age limit for eligibility under the Mobility Allowance scheme. In its response, the OMDMH noted that Mobility Allowance is one of the income support schemes, operated by the HSE, scheduled for transfer to the Department of Social and Family Affairs. As part of this process it said that it is intended to review the policy and operation relating to it prior to transfer. However, pending the outcome of this review, it advised that the HSE will continue to operate the Allowance in accordance with the Circular 15/79 and that it is not envisaged that any changes will be made to the Allowance prior to carrying out of the review. In conclusion the OMDMH said that, while it appreciated the issues and concerns raised by the Ombudsman, it was not feasible to amend the scheme to remove the upper age limit in the current economic climate.

Given the contents of the response received from the OMDMH, the Ombudsman had asked that I write to you to express her ongoing disquiet with regard to the potential for unfair discrimination arising from the way in which the Mobility Allowance scheme currently operates. She has asked me to advise that she fully appreciates that the removal of the upper age limit *per se* could, potentially, increase the numbers of those eligible for the Allowance and that any increase in the numbers qualifying for the Allowance could add to the costs of the administration of the scheme. She also acknowledges that your Department is entitled and obligated to regulate eligibility for the Allowance in a manner so as to ensure that the benefits of the scheme are targeted on those with the greatest need, while at the same time ensuring that costs of operating the scheme are maintained at a manageable level, in keeping with the budget allocated for this purpose. Notwithstanding this, the Ombudsman is of the view that the operation of any such regulatory process should be seen to be fair, impartial, reasonable and compliant with existing legislation. Her considered opinion is that the limitations placed on eligibility for the Allowance, through the application of an upper age limit, may be deemed not to meet these standards.

I would welcome your observations on this matter.

Yours sincerely

Pat Whelan
Director General



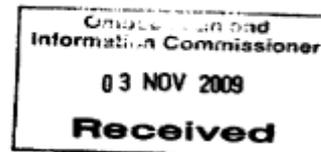
Office of the
Secretary General
Oifig an Ard Rúnai



2nd
November 2009

Your reference [REDACTED]

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



Pat
Dear Mr. Whelan

I refer to your correspondence regarding a complaint on behalf of [REDACTED] regarding the Mobility Allowance. The delay in replying to your correspondence is regretted.

I note your comments that the age limit which applies for this allowance appears, on the face of it, to be improperly discriminatory. I also welcome your acceptance that this Department is entitled and obligated to regulate eligibility in a way which targets the benefits at those in greatest need within the available budget.

This Department is undertaking a review of the Mobility Allowance in the context of overall Government policy regarding supports for people with a disability. The issue you have raised will be taken into account in the review.

I will inform you of the outcome of this Department's review of the Mobility Allowance as soon as possible.

Yours sincerely

Michael
Michael Scanlan
Secretary General

Comhairle Aire (1) Comhairle Aire (2) Comhairle Aire (3) Comhairle Aire (4)

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OP: [REDACTED]