

Is the Social Welfare Appeals System Accessible and Fair?

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- Overview of Social Welfare Appeals System,
- Survey,
- Qualitative Interviews,
- Community and Voluntary Organisations.

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Social Welfare Appeals Office.

- Established in 1990.
- Mission is to *"provide an independent, accessible and fair appeals service for entitlement to social welfare payments and to deliver that service in a prompt and courteous manner"*.
- Operates separately from the Department of Social and Family Affairs with separate premises and staff – however, does come within remit of Department.

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Appeals Process

- Initial decision made by a "Deciding Officer" within the Department of Social and Family Affairs.
- Appeal should be made in writing within 21 days of receiving decision.
- Case referred back to Department - may be revised or put forward for consideration by Appeals Officer.
- Appeal is heard *de novo* by Appeals Officer.

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Oral Hearing

- Mandatory unless the *"case is of such a nature that it can be determined without an oral hearing, that is, summarily. An appeal is of such a nature that it can be determined summarily if a determination of the claim can be fairly made on a consideration of the documentary evidence"*.
- Informal and Private – attended by Appeals Officer, Applicant (and any representative/advocate) and relevant witnesses. Assessors may also be present.

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Representation

- Appellants not entitled as of right to have legal or other representation present. However *"failure on the part of the Appeals Officer to permit representation in an appropriate case would probably amount to an unreasonable exercise of his discretion"*.
- In practice representatives/support persons allowed attend.

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Constitutional Right to Fair Procedure

Appellant has the right to:

- Know the information upon which a decision has been made,
- See any reports or other documentation which may be relied on in coming to a decision on the case.
- Know the reasons for a decision to refuse the claim.

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Case-law:

When hearing the case the Appeals Officer must:

- Come to a decision based on the evidence before him/her,
- Not take into account irrelevant matters,
- Decide the case in a manner independent of ministerial and other interference,
- Observe fair "pre-termination procedures".

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Publication of Decisions.

- Working within a vacuum – no system of *stare decisis*/precedence.
- Applicants had a right to know what factors were considered when cases were appealed, publication of such records would enhance "*the openness and transparency of the SWAO's operations*".
- SWAO do not provide reason when appeal is successful.

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International Context – Australia, Security Appeals Tribunal.

- Staff do not participate in appeals hearings. Tribunal Members appointed on basis of expertise and knowledge. Panel of 2/3 Tribunal Members conduct hearing.
- Appeals can be lodged by telephone, in person, electronically or in writing.
- Video/Phone conferencing available where geographical or other considerations.
- Further appeal mechanism available.
- Service Charter published.

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International Context – UK, Appeals Service.

Appeals Tribunal:

- Judicial Tribunal – bound by procedural rules.
- Tribunal Members independent of relevant agencies.
- Panel of Members hear appeal. Expertise relevant to particular case being heard.
- Service First Statement (Charter).

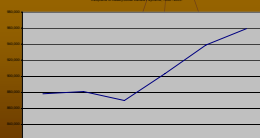
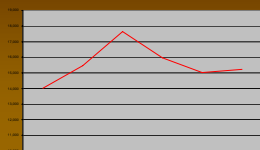
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International Context – Denmark, National Social Appeals Board.

- Administrative Staff and Board (Ministerial Appointees).
- 2/3 Board Members at hearings (dependent on case-type),
- "Lay-judges" with relevant expertise attend hearings and advise Board Members.
- No oral hearings – case heard entirely on basis of written evidence and expert opinion.

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Appeals Received.



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Outcome of Appeals

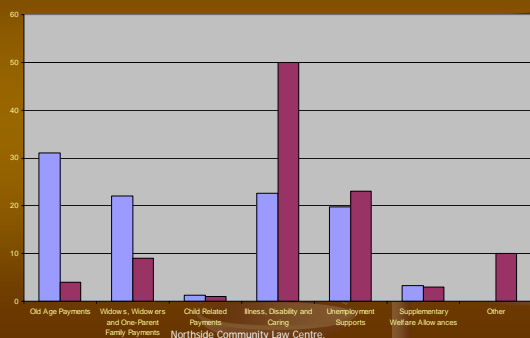
Outcome of Appeals by Category, 1998 - 2003

	Allowed	Partly Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
1998	2,351 17%	845 6%	3,245 23%	5,850 42%	1,699 12%	15,988 100%
1999	2,671 19%	711 5%	3,516 24%	5,661 39%	1,838 13%	14,397 100%
2000	2,956 17%	604 4%	3,788 22%	7,111 42%	2,601 15%	17,060 100%
2001	3,166 19%	505 3%	3,822 23%	6,779 41%	2,253 14%	16,525 100%
2002	2,757 17%	485 3%	3,854 24%	6,902 44%	1,836 12%	15,834 100%
2003	2,798 17%	498 3%	3,738 23%	6,612 41%	2,403 15%	16,049 100%

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Recipients v. Appeals

% of Weekly Recipients v. % of Appeals Received, 2003.



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Disability Allowance - Appeals 2003.

Appeals Issue	Allowed	Disallowed	Partially Allowed	Total
Date of Awards	1	7	2	10
Means Assessment	48	277	29	354
Overpayment	17	11	1	29
Medical Condition	285	369	7	661
Other	15	37	6	58
Total	366	701	45	1,112

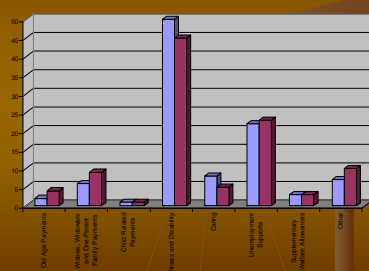
Carer's Allowance - Appeals 2003.

Appeals Issue	Allowed	Disallowed	Partially Allowed	Total
Means	25	97	12	134
Not providing Full-time Care	35	72	9	116
Overpayment Recovery	0	3	0	3
Full time Care Not Required	170	231	18	419
Date of Awards	2	1	1	4
Other	24	27	0	51
Total	256	431	40	727

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Survey

Breakdown of Appeals by Category.



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Survey

- 55% had their appeal allowed/partially allowed:
 - New information/evidence most commonly believed to be reason for appeal being allowed.
 - Lack of understanding most commonly believed to be reason for appeal being disallowed.

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Survey – Key Findings:

- A majority (56%) understood the initial decision, but a minority (38%) understood the reason for the decision,
- 85% stated they had been informed in writing of right to appeal, 41% stated they were informed verbally (only 48% of sample responded to question).
- 44% sought information and advice. Of those who didn't, 62% had not known information/advice was available. Sources of Advice included CIC's, NCLC, Doctors and local T.D.'s
- 59% attended an oral hearing.
 - 29% did not understand everything during the oral hearing,
 - 84% of those who did not understand everything had their appeal disallowed.
- 10% had a representative/advocate during the oral hearing.

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Survey – Suggested Changes

- Medical Assessors and Examinations,
 - More thorough medical examination,
 - Independent medical assessor,
 - Greater consideration given to other medical evidence and history,
 - Clarify why appellants medical evidence/history not accepted.

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Survey – Suggested Changes

- Communication and Accessibility,
 - Improvements in communications and updates from SWAO,
 - Explanation for rationale of Appeals Officer decision,
 - Assistance for people with literacy difficulties,
 - Information available in other languages,
 - Helplines,
 - Right to Representation,
 - Automatic Right to Oral Hearing,
 - Greater opportunity to speak and be listened to during oral hearing.

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Survey – Suggested Changes

- Delays,
- Location,
- Interpersonal Skills,
- Less bureaucracy and red-tape.

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Qualitative Interviews

- 6 Interviewees
 - Disablement Benefit,
 - Disability Allowance,
 - Disability Benefit (x 2),
 - One Parent Family Payment (x2).
- All had attended an oral hearing, all had representation, all had their appeal allowed/partially allowed.

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Qualitative Interviews – Issues.

- Representation of significant impact,
- Medical Assessors:
 - Cursory examinations,
 - Reports regarded as binding, same weight not given to other medical evidence,
 - Not specialised,
 - "Fitness to Work"
- Accessibility of Appeals System,
 - Familiarity,
 - Difficulty in Accessing Information,
 - Right to Access File (through FOI),
 - Lodging of Appeal – Literacy and Language Barriers.
- Delays,
- Interpersonal Skills and Cultural Issues,
- Independence.

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Suggested Changes.

- Appeals to be lodged verbally by phone/in person,
- Accessibility to be improved for those with literacy difficulties and language barriers,
- Appellants to be informed of right to access file/file be forwarded automatically,
- Onus to be on DSFA to ensure all information understood,

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Suggested Changes

- Automatic referral to information and advice organisation,
- Automatic right to representation,
- Panel of independent experts, separate from administration of appeals system. Appeals to be heard by 3 panelists with relevant expertise,
- Decisions (and rationale) be published.

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Community and Voluntary Organisations.

- City Centre (Dublin) Citizens Information Service,
- Free Legal Advice Centers (FLAC),
- Irish National Organisation for the Unemployed (INOUE),
- Northside Community Law Centre,
- Northside Centre for the Unemployed (Glin Centre),
- Larkin Centre for the Unemployed.
- All provided information, advice and advocacy.
- Two organisations had taken strategic decisions to limit case-load and were therefore able to deal with demand. Others had referral systems – had been occasions when clients had not had representation.

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Community and Voluntary Organisations – Barriers to taking an Appeal.

- Not a “user-friendly system”:
 - Knowledge of System and Procedural Issues,
 - Access to Information and Files,
 - Communication Abilities,
 - Literacy Skills and/or Language Barriers,
 - Reasons for initial refusal not always stated clearly,
 - Ineffective informing of “Right to Appeal”,
 - Interpersonal Skills and Cultural Issues.

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Community and Voluntary Organisations – Issues.

- Representation influences the outcome of the hearings,
- Independence lack of independence inherent within structure rather than working practice,
- Working in vacuum:
 - Decisions not being published,
 - No rationale/reason for successful appeal given.

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Community and Voluntary Organisations – Issues.

- Delays,
- Role of Assessors,
- Literal Interpretation of legislation/regulations by Appeals Officers,
- Lack of Case-law/judicial review,
- Medical Assessors,
 - Cursory nature of examination,
 - “Fitness to Work”,
 - Report taken as conclusive.

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