

**Submission to the Joint Committee on Education and Social Protection on Medical Eligibility Criteria for Illness and Disability Related Payments.**

**Disability Federation of Ireland**

**24rd April, 2015**

**Introduction**

The Disability Federation of Ireland represents the rights and expectations of those who live with disabilities to be fully included in Irish society. It is an umbrella organisation that acts on behalf of more than 130 voluntary disability bodies that provide services to people who live with any of the following disabilities and disabling conditions: Hidden; Physical; Intellectual; Mental Health; Sensory; Neurological; Emotional. DFI works through their membership and other relevant actors to ensure that people with disabilities are enabled and empowered to be equal citizens in Ireland.

The vision of DFI is that Irish society is fully inclusive of people with disabilities and disabling conditions so that they can exercise fully their civil, economic, social and human rights and that they are enabled to reach their full potential in life. DFI’s mission is to act as an advocate for the full and equal inclusion of people with disabilities and disabling conditions in all aspects of their lives. DFI also works with a growing number of organisations and groups around the country that have a significant disability interest, mainly from the statutory and voluntary sectors. DFI works on the basis that disability is a societal issue and so works with Government across the socio-economic spectrum of disability related matters.

DFI welcomes the opportunity to submit this paper and make a presentation to the Joint Committee on Education and Social Protection on the issues for people with disabilities with regard to medical eligibility criteria for disability and illness payments. The two departments represented at this committee, Education and Social Protection, can play a key role in protecting people with disabilities’ access to income and access to necessary social supports and services.

**Background**

The Disability Federation of Ireland’s member organisations raised their concerns with eligibility and assessment procedures for disability payments and instigated an initiative on eligibility for disability and illness payments in December 2013. Following on from that a sub-committee of the Department of Social Protection’s Disability Consultative Forum was established, the main aim of which was to explore how to maximise the number of qualified applications that are awarded on the basis of their initial application – rather than following a review or an appeal.

The first meeting of the sub-committee was held on the 17th February 2014, where DFI hosted a roundtable discussion on the issues arising. The second meeting on the issue of medical assessments for eligibility to disability and illness related payments was held on the 1st December 2014.

This submission will present the key issues that have come to DFI’s attention over the past number of years, relating to problems/obstacles faced by people with disabilities accessing disability and illness related payments.

**Context**

People with disabilities represent 595,000 Irish citizens[[1]](#footnote-1), not including family, friends and neighbours. When we talk about ‘the disabled’ we need to be clear who it is we are referring to: they are our parents, our children, our neighbours. One in ten adults of working age have a disability. We understand disability therefore to be a societal issue, not just a sectoral one.

People with disabilities experience a considerable level of disadvantage. In terms of educational attainment for example, only 25 per cent of disabled people aged 15 – 49 were educated to third-level, compared with 39 per cent for the general population[[2]](#footnote-2). Data from 2010 showed that over 40% of people with a disability left school after primary education (versus 19% of people without disabilities).[[3]](#footnote-3) In terms of employment, just 21% of people with disabilities, aged 15 or over, were at work, compared with 50% of the general population aged 15 or over[[4]](#footnote-4). Looking at deprivation measures, 53% of people who are not at work due to disability or illness experience deprivation, which has risen from 36% in 2008.[[5]](#footnote-5)

**Policy Context**

Ireland has a National Disability Strategy Implementation Plan (NDSIP), published in July 2013, which is an over-arching strategy with the high level goals of equal citizenship, independence and choice, participation and maximising potential. Key objectives of relevance to this topic are that people with disabilities enjoy access to information and have an adequate income. The NDSIP is key in that it should provide a planned framework to advance the social, cultural and economic rights of the - yet to be ratified - UN Convention on the Rights of People with Disabilities (UN CRPD).

**Disability Payments**

The disability allowance is a weekly allowance paid to people with a disability who are aged between 16 and 65 years. A means-tested payment, eligibility can be affected by a number of factors including the income of a spouse or cohabiting partner and a medical assessment. It is also worth noting that Disability Allowance is a “contingency payment” that does not take into account the extra costs accrued by people living with a disability such as medication and therapy costs.

Figures provided by the Department of Social Protection showed that of as of November 2014, there was 111,552 recipients of the disability allowance. Of the 27,608 disability allowance eligibility decisions made in 2014, 13,732 applications were turned down on the basis that they did not satisfy the qualifying criteria on initial assessment. That is almost half of the applications for DA in 2014 were refused on first application.

Decisions were made on 5,970 disability allowance appeals last year, and of these, 3,860 were granted while 100 were partially allowed. 81 disability allowance payments were terminated in 2014 following a medical review.

In reviewing these figures, it is clear that there is a disproportionate number of people being refused Disability Allowance at the initial assessment stage. It goes without saying, that the application process for DA causes considerable stress for people with disabilities and their families.

DFI is also concerned that overly stringent medical eligibility criteria are being used to reduce the numbers of people with disabilities being granted Disability Allowance. Living on Disability Allowance is not an enviable situation for people to be in. Recent data demonstrated that 53 per cent of those not at work due to sickness or disability experience enforced deprivation. In addition, there have been concerns about the high number of people with disabilities who have been ‘parked’ on Disability Allowance to keep the figures on the live register low (OECD, 2008). While the numbers people on disability payments have increased, there are a number of legitimate reasons for this including a change in eligibility criteria and diagnosis, migration between social welfare payments, and demographic changes.

**Concerns with the Eligibility Criteria / Assessment Process**

To be eligible for the Disability Allowance, an applicant as a result of their disability must be substantially restricted in undertaking work that would otherwise be suitable for a person of their age, experience and qualifications. This is ascertained through the information provided by the applicant on their medical condition in the application form, and how it impacts on their daily lives and ability to work, their GPs report, and any other reports from health professionals submitted.

Eligibility for Disability Allowance is predicated on a capacity to work. Yet decisions are made which are largely based on a medical assessment. A medical diagnosis of itself does not give an accurate assessment of a person’s ability / capacity to work in many instances.

Medical assessments are carried out by medical assessors through a desk based review, rather than in person. DFI believes that this process does not support a proper assessment for all people with disabilities, including those with episodic conditions / disabilities. A person should be given the opportunity to describe how their disability impacts on their daily life. In DFI’s view, the current eligibility procedure / system does not provide an accurate assessment of people with disabilities. People are complex, and we do not live lives that can be reduced to one single aspect of our functioning, whether it is our physical or mental health, our education, our family circumstances or our capacity to work. Good education has the potential to lead to better job opportunities, just as an encouraging home environment can support us to go out and contribute to the workforce and the economy regardless of a medical diagnosis or physical limitation.

**Recommendation:** The assessment process should be more holistic, and not rely solely on medical criteria. The Department should work in conjunction with the disability movement and voluntary disability providers and with their expertise develop a comprehensive and fair way of assessing people’s capacity to work. This should have the trust and ‘buy in’ of all stakeholders in order to be effective.

DFI has become aware of a perception among people with disabilities in contact with our member organisations that their applications for illness and disability social welfare payments are typically refused at the application stage. This perception is also held by GPs, psychiatrists, and other health professionals[[6]](#footnote-6). Given this perception, claimants feel that it is better to withhold relevant information including information relevant to the medical assessment, until the appeals stage, to strengthen and substantiate their claim, rather than submitting all the information at the application stage, and have their claim dismissed. The Appeals Office is perceived as being more independent, and therefore, more likely to provide an accurate assessment.

**Over-Reliance on Department of Social Protection’s Medical Assessors’ Opinions**

With regard to the Domiciliary Care Allowance, another issue that has emerged in case law is the assessment not giving enough weight to the applicant’s medical and multidisciplinary team’s reports. The conclusion in B. v Minister for Social Protection (2014), was that the medical evidence submitted by the claimant was not given the weight that it should have been and that the DSP’s mindset was that the views of these professionals was coloured in favour of applicants, and therefore the views of its own medical assessors were to be preferred.

According to Cousins (2014)[[7]](#footnote-7) the judge was undoubtedly correct to take the view that the deciding officer had fettered his discretion by, in effect, abdicating decision-making to the medical assessor. He also noted that this judgement suggested that this was not an isolated case and that this is a general approach in relation to Domiciliary Care Allowance.

Cousins (2014) also noted that a similar process applied to most ‘medical’ decision making. However, the extent to which similar deference was shown in relation to other types of benefit was not considered in this case.

Cousins argues that the decision-making process is flawed as:

1. It does not give equal regard to all evidence.
2. The decision gathering system is inadequate and can lead to a conflict between medical reports and opinions of medical assessors which are based on a desk review of the evidence.

**Recommendation:** More fundamental reform of the initial adjudication system is required.

* The Department of Social Protection pays a fee to GPs for filling out the Disability Allowance forms. There should rightfully be an expectation that the form is completed to an acceptable standard.

**Other Key Issues / Concerns**

* Another issue that has come to DFI’s attention is the extra burden in terms of cost, and of stress on people who may have been recently diagnosed with an illness / condition in having to pay for consultants’ reports to accompany their applications.
* When applicants are transitioning from one payment to another, they should not be required to re-submit extensive medical information where the evidence is conclusive that their condition and circumstances are unlikely to change. This typically occurs at transition periods where a family might move out of the country and then return, or when a person reaches the age of 16, and Disability Allowance and Carers Allowance need to be applied / re-applied for.
* Inadequate Information: some people with disabilities are not aware of the Illness / Disability Schemes available and/or which scheme they might be eligible for despite the objectives and actions set out in the NDSIP.
* DFI is also aware of the situation when a child is approaching 16 years of age, and is transferring to a Disability Allowance payment. There are reports that the Department has become stricter with medical assessments for Disability Allowance in these cases, and are not permitting the family carer to continue to receive Carers Allowance.
* The importance of appeals officers (and deciding officers) giving clear reasons for their decisions has been highlighted following a recent case, L.D. (2014)[[8]](#footnote-8) in which the applicant was a mother and carer of her son, who had been diagnosed with Asperger’s Syndrome. She applied to the DSP for DCA and her initial application was refused. She provided considerable additional evidence at the appeals stage[[9]](#footnote-9), but the appeal was rejected. Cousins (2015)[[10]](#footnote-10) argues that the significant evidence submitted on appeal was sufficient to justify granting DCA. But the judgement did not record the reasons (if any) given by the appeals officer for refusing the decision other than the statement, the child did not ‘require substantially more care on a continuous basis’.

1. Central Statistics Office, Profile 8: Our Bill of Health (Census 2011). [↑](#footnote-ref-1)
2. Central Statistics Office, Profile 8: Our Bill of Health (Census 2011). [↑](#footnote-ref-2)
3. Nolan, B. & Watson, D. (2011) A Social Portrait of People with Disabilities in Ireland. ESRI: 20 [↑](#footnote-ref-3)
4. CSO (2012) Profile 8 Our Bill of Health: 15 [↑](#footnote-ref-4)
5. SILC Data Released 21 January 2015 [↑](#footnote-ref-5)
6. Minutes of the Disability Consultative Forum, 1st December, 2014 [↑](#footnote-ref-6)
7. Cousins, M. (2014) Decisions and appeals in Irish social welfare law: recent case law. Available at: http://works.bepress.com/mel\_cousins/73 [↑](#footnote-ref-7)
8. L.D. v. Chief Appeals Officer [2014] IEHC 641 [↑](#footnote-ref-8)
9. including a detailed letter from the Mater Hospital (from a Consultant Child and Adolescent Psychiatrist and a Senior Speech and Language Therapist) and her own 7 page memorandum setting out her own experience of her child at home and the difficulties which she encountered on a daily basis resulting from his disability [↑](#footnote-ref-9)
10. Cousins, M. (2015) Social welfare appeals, appeal revisions and oral hearings. Available at: http://works.bepress.com/mel\_cousins/85 [↑](#footnote-ref-10)