



STATUTORY INSTRUMENTS.

**S.I. No.    of 2023**



**SOCIAL WELFARE (APPEALS) REGULATIONS 2023**

S.I. No. of 2023

SOCIAL WELFARE (APPEALS) REGULATIONS 2023

I, HEATHER HUMPHREYS, Minister for Social Protection, in exercise of the powers conferred on me by sections 4 (adapted by the Employment Affairs and Social Protection (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 447 of 2020)), and 310, 311 and 330(b) of the Social Welfare Consolidation Act 2005 (No. 26 of 2005), hereby make the following Regulations:

**PART I General**

**Citation, construction and commencement**

1. These Regulations may be cited as the Social Welfare (Appeals) Regulations 2023. These Regulations will come into operation on 3rd April 2023.

**Definitions**

2. In these Regulations—

“designated person” has the meaning assigned to it in section 2(1);

“hearing” means oral hearing;

“Office of the Chief Appeals Officer” means all functions, staff and facilities that report to and are under the direction of the Chief Appeals Officer including Appeals Officers, Deputy Chief Appeals Officers, and other staff necessary to the performance of Chapter 2 of Part 10 of the Social Welfare Consolidation Act 2005 (No. 26 of 2005) and these Regulations;

“the Principal Act” means the Social Welfare Consolidation Act, 2005.

**Interpretation**

3. In these Regulations, any reference to a section refers, unless otherwise specified, to a section of the Principal Act.

**Revocation of Regulations**

4. The Social Welfare (Appeals) Regulations, 1998 (S.I. No. 108 of 1998) and Social Welfare (Appeals) (Amendment) Regulations 2011 (S.I. No. 505 of 2011) are hereby revoked.

## **PART II Functions of Chief Appeals Officer**

### **Functions of Chief Appeals Officer**

5. The Chief Appeals Officer shall be responsible for:

(1) the assignment amongst Appeals Officers of references to them under section 311;

(2) directing the appeals function and specifying procedures and policies to be followed by Appeals Officers and other staff working in the appeals function consistent with the provisions of the Principal Act and these Regulations;

(3) nominating an Appeals Officer, including a Deputy Chief Appeals Officer, to consider revising a decision of an Appeals Officer in accordance with section 317;

(4) nominating an Appeals Officer, including a Deputy Chief Appeals Officer, to review and submit to him or her a recommendation in respect of a decision of an Appeals Officer in accordance with section 318;

(5) ensuring the application of effective systems of quality assurance with regard to the operation of the appeals function with specific regard to timeliness and consistency in the determination of appeals;

(6) arranging for the preparation and issuing of guidance to the Minister, on the appropriate interpretation and application of statutory provisions with respect to decisions made in accordance with section 300;

(7) providing advice and guidance, at the request of any officer of the Minister at Principal Officer level or higher, with respect to the interpretation of statutory provisions applying to any decision or class of decisions;

(8) reviewing and reporting the activities and performance of the appeals function, in accordance with Section 308.

### **Reference by a Deciding Officer to Appeals Officer**

6. (1) A reference to an Appeals Officer by a Deciding Officer under section 303 shall be in the form, for the time being, approved by the Chief Appeals Officer or in any other such manner as the Chief Appeals Officer may accept as sufficient in the circumstances.

(2) Where a reference to an Appeals Officer is made by a Deciding Officer under section 303, the manner for dealing with it shall, with any necessary modifications, be the same as if the reference were an appeal made under section 311.

### **PART III Procedure on Appeal**

#### **Submission of appeal and information to be supplied by appellant**

7. (1) Any person (in these Regulations referred to as the appellant) who is dissatisfied with the decision of a Deciding Officer or the determination of a Designated Person and who wishes to appeal against such decision or determination, as the case may be, shall give notice in that behalf, in writing, to the Chief Appeals Officer.

(2) The time within which an appeal may be made shall be any time up to the expiration of 60 days from the date of the notification of the decision of a Deciding Officer or determination of a Designated Person, as the case may be, to the appellant.

(3) Notwithstanding sub-article (2), a notice of appeal received after the expiration of 60 days may be accepted, at the sole discretion of the Chief Appeal Officer, if he or she is satisfied that the delay in submitting the appeal is due to exceptional circumstances and, in addition, that there are strong *prima facie* grounds for appeal. Appeals will not be accepted by the Chief Appeals Officer any time after the expiry of 180 days from the date of the notification of the decision of a Deciding Officer or determination of a Designated Person, as the case may be, to the appellant.

(4) The notice of appeal shall contain a statement of the facts and contentions upon which the appellant intends to rely. This shall include the details of the original claim submitted to the Minister together with grounds of appeal and any additional information that the appellant considers is relevant to the consideration of his or her appeal.

(5) The appellant shall send to the Chief Appeals Officer, along with the notice of appeal, such documentary evidence as the appellant wishes to submit in support of his or her appeal, and the notice shall contain a list of any such documents.

(6) Any person wishing to withdraw an appeal may do so by sending a written notice to that effect to the Chief Appeals Officer.

#### **Notification of appeal to Minister and information to be supplied.**

8. (1) In the case of an appeal against the decision of a Deciding Officer or the determination of a Designated Person under section 311, the Chief Appeals Officer shall cause notice of the appeal together with the grounds submitted for the appeal to be sent to the Minister who shall, as soon as may be but not later than 21 days thereafter, either revise the original decision in favour of the appellant and advise the Chief Appeals Officer accordingly, or furnish or make available to the Chief Appeals Officer all claim forms or other documentation submitted by the appellant and such other evidentiary information considered by the Deciding Officer or the Designated Person, as the case may be, including reports of any assessors or inspectors, when making the decision that is being appealed.

(2) The date fixed for furnishing the information requested may be extended on application, subject to a valid reason being submitted by the Minister, and at the discretion of the Chief Appeals Officer. An application for extension shall only be considered if it is received within 18 days of the date of notice.

(3) Where the Minister does not provide the documentation and information within 21 days from the date of notice by the Chief Appeals Officer (or such date as may be specified under sub-article (2)), the Chief Appeals Officer shall arrange for the appeal to be determined on the basis of the information provided by the appellant and such further information as may be provided under article 10 of these Regulations.

### **Notice of appeal to other persons**

9. The Chief Appeals Officer shall cause notice that an appeal has been submitted to be furnished or made available to any other person appearing to be concerned.

### **Further information to be supplied and amendment of pleadings**

10. (1) The Appeals Officer to whom an appeal is referred may in considering the appeal—

- (a) require the appellant or any other person appearing to the appeals officer to be concerned, to furnish to him or her, in writing, further particulars regarding the appeal,
- (b) allow the amendment of any notice of appeal, statement, or particulars at any stage of the proceedings, and
- (c) fix the return date for furnishing any such statement and this return date to be no more than 21 days from the notice requesting further particulars or upon such terms as he or she may think fit.

(2) (a) Notwithstanding sub-article (1)(c) of this article, and subject to paragraphs (b) and (c), the date fixed for furnishing further particulars may be extended at the discretion of the Appeals Officer.

(b) An application for extension shall only be considered if it is received at least 3 days prior to the return date specified in the notice for further particulars from the person to whom the notice was directed.

(c) In exercising their discretion, the Appeals Officer shall consider if the reason sought for the extension is in all the circumstances reasonable.

(3) Where the notice for further particulars was directed to the appellant (or a person representing the appellant) and a response is not received by a date 7 days after the designated return date, the appeal will be deemed to be withdrawn and all parties to the appeal shall be notified accordingly.

(4) Where the notice for further particulars was directed to a person other than the appellant (or a person representing the appellant) and a response is not received by the designated return date, the Appeals Officer shall proceed to determine the appeal in the absence of the information requested.

### **Determination of appeals**

11. An appeal, in accordance with section 311(3), shall be determined by an Appeals Officer as if it was being decided for the first time on the basis of the information submitted by the appellant and the Minister (which shall include reports of inspectors and assessors working on behalf of the Minister), and taking due account of any opinion provided by any assessor who may be assigned, in accordance with Section 309.

### **Decision involving an assessment of capacity to work or requirements for care**

12. (1) In any appeal where the question to be decided relates to a person's capacity to work under Sections 40, 46A , 74 and 118, or to whether or not they are substantially restricted in undertaking employment under Section 210, or to a relevant person's requirement for full-time care and attention under Sections 100, 179 and 186C, the Appeals Officer shall, if they are not themselves a registered medical practitioner, have regard to the opinion of a medical assessor to assist them in determining any question that may arise from consideration of any new medical information or opinion provided as part of the appeal.

(2) If an Appeals Officer, required in accordance with sub-article (1), to seek the advice of a medical assessor, makes a decision contrary to the medical opinion of the medical assessor, he or she shall advise and set out in writing to the appellant, and any other parties concerned, the rationale for his or her making a determination contrary to the advice of the medical assessor.

### **Summary appeals**

13. Where the written information, including grounds for appeal and supporting material or other documentation and supplementary material requested by, and available to, the Appeals Officer, is, in his or her view, sufficient to enable an informed decision, the Appeals Officer shall set out his or her rationale accordingly, and determine the appeal based on this information and without recourse to a hearing.

### **Hearings**

14. Where an appellant or any other party who stands to be directly affected by the appeal decision requests a hearing of the appeal (such request to be provided in writing), the Appeals Officer shall consider this request and, if he or she decides not to proceed with a hearing, the Appeals Officer shall advise the appellant and other parties concerned setting out the reasons why he or she considers a hearing of the appeal to be unnecessary.

**Notice where hearing required**

15. Where either on their own volition or upon receipt of a request by a party to the appeal, an Appeals Officer determines that a hearing is required they shall, having consulted with a Deputy Chief Appeals Officer, and as soon as may be, fix a date and place for the hearing, and give reasonable notice of the said hearing to the appellant, the Minister and any other person appearing to the Appeals Officer to be concerned in the appeal.

**Persons who may appear at hearing**

16. (1) The appellant shall ordinarily attend at the hearing and he or she may be accompanied by a member of his or her family, or, with the consent of the Appeals Officer, any other person.

(2) The appellant may, with the consent of the Appeals Officer, be represented at the hearing by any other person.

(3) Any officer designated by the Minister may, on giving written notice, represent the Minister at the hearing.

(4) Any other person, appearing to the Appeals Officer to be concerned, may, on being given written notice, also attend at the hearing.

**Failure to attend hearing**

17. Where, after notice of a hearing has been duly given, any of the parties so notified fails to attend at the hearing, such order or decision may be made, and such steps may be taken with a view to the determination of, or in reference to, the appeal as the Appeals Officer considers appropriate, including determining the appeal on a summary basis.

**Failure to comply with Regulations**

18. An Appeals Officer may decide any question duly referred to him or her, notwithstanding the failure or neglect of any person to comply with any requirement of these Regulations.

**Procedure at hearing**

19. (1) The procedure at the hearing shall be as determined by an Appeals Officer on the day of the hearing.

(2) An Appeals Officer shall make best efforts to expedite the conclusion of an appeal, and postponements or adjournment of hearings shall only be granted in exceptional circumstances.

(3) An Appeals Officer may admit any duly authenticated written statement or other material as *prima facie* evidence of any fact or facts, in any case, in which he or she thinks it appropriate.

**Decision of Appeals Officer**

20. (1) The decision of an Appeals Officer, together with the reasons for this decision, shall be recorded and notified, in accordance with such procedures as may be specified from time to time by the Chief Appeals Officer, to all parties to the appeal. Notices shall issue no later than 15 working days (working day to exclude Saturdays, Sundays and Public Holidays) after the appeal is determined.

(2) Decisions of Appeals Officers will, as appropriate, be given practical effect in accordance with such procedures as may be specified from time to time by agreement between the Chief Appeals Officer and the Secretary General of the Department.

**Method of sending documents**

21. Any notice or other document required or authorised to be sent to any person for the purpose of these Regulations shall be deemed to be duly sent, if sent by post addressed to him or her at his or her ordinary address or at his or her place of business or by electronic means.

GIVEN under my Official Seal

January 2023.

---

HEATHER HUMPHREYS,  
Minister for Social Protection.

## EXPLANATORY NOTE.

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

These Regulations prescribe the functions of the Chief Appeals Officer and set out the procedures to be followed in social welfare appeals.

These Regulations replace the Social Welfare (Appeals) Regulations, 1998 (S.I. No. 108 of 1998) and the Social Welfare (Appeals) (Amendment) Regulations 2011 (S.I. No. 505 of 2011) both of which are revoked.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
BÓTHAR BHAILE UÍ BHEOLÁIN,  
CILL MHAIGHNEANN,  
BAILE ÁTHA CLIATH 8,  
D08 XAO6

Tel: 046 942 3100  
r-phost: [publications@opw.ie](mailto:publications@opw.ie)

---

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
MOUNTSHANNON ROAD,  
KILMAINHAM, DUBLIN 8,  
D08 XAO6

Tel: 046 942 3100  
E-mail: [publications@opw.ie](mailto:publications@opw.ie)

---

€3.00