

Guide to Making a Social Welfare Appeal

FLAC has produced this guide to simplify & explain the social welfare appeals process for claimants who wish to appeal a decision on a social welfare payment. In the current economic climate people are more reliant on the social welfare system, as evidenced by the increase to 53,191 live appeals in 2013. According to the Appeals Office, in 2013 it took 33.9 weeks on average to process an oral hearing and 25.8 week for a summary decision on the written evidence only.

Appealing a Refusal

If a person is refused a payment from the Department of Social Protection (DSP) then he or she entitled to appeal this refusal. In order to use the appeals system it is necessary to get a written refusal from the decision-maker which he or she is obliged to provide. The written refusal has to set out the reasons for the refusal which should be written in language which the claimant can understand.

See Article 191 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007

An application may be refused if the decision-maker in the Department of Social Protection (DSP) does not think the person making the appeal (the appellant) has satisfied the qualifying criteria or is not eligible for the payment.

At this point a person can ask for a review of the refusal by the decision-maker or a more senior person in the relevant payment section as this will take less time than making an appeal. A person can still submit an appeal even if he or she has asked for a review. If the review is successful and the negative decision is overturned then the appeal will be withdrawn. The appellant should submit any new or additional material that he or she feels may be relevant for the decision-maker to reconsider his or her decision.

In order to appeal a refusal it is necessary to state the reasons why the appellant thinks the decision was wrongly made. An appeal may be made on the grounds that the decision-maker made an error in the facts or circumstances of the case or made an error in law.

There is no cost to the appellant in submitting an appeal. The appellant should keep copies of all documents submitted in support of the appeal.

Please note that the functions of the Community Welfare Service were transferred to the Department of Social Protection in January 2011 and the appeals function of the HSE was incorporated into the Social Welfare Appeals Office on 1 October 2011. Appeals against refusals of Supplementary Welfare Allowance (SWA) scheme and its related supplements should now be made directly to the Social Welfare Appeals Office as there is no longer a right of appeal to the Health Service Executive. However, it should also be noted that there is no right of appeal at all to refusals of Exceptional or Urgent Needs payments and Back to School Clothing and Footwear Allowance.

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Making a Freedom of Information request

- ★ When appealing a social welfare decision it is useful for the appellant to have all of the information held on his or her file so that he or she has the same information as both the Appeals Officer and the original decision-maker. Under the Freedom of Information (FOI) Acts the appellant is entitled to get copies of his or her own personal records held by public bodies or government departments, including his or her social welfare file, free of charge.

See Freedom
of Information
Acts
1997-2003

Applications must be made in writing and should be marked for the attention of the Freedom of Information Officer in the relevant payment section. Records include documents held in both paper and electronic format.

The FOI form for the Department of Social Protection can be accessed at bit.ly/DSP_FOI. Alternatively, the appellant can write a letter which must say that he or she is making the application under the Freedom of Information Acts, and must include:

- ★ The appellant's name and address, including any former address if he or she has moved since first applying for the payment
- ★ His or her Personal Public Service (PPS) number
- ★ the type of payment for which he or she applied
- ★ the date on which the appellant first made the application for the benefit or allowance and
- ★ any other details which may be relevant to the application, such as a reference to specific documents required and those in electronic format also.

The FOI application should be made at the earliest possible stage after a payment is refused, as it will take a number of weeks to process. You can submit an appeal at the same time as making an FOI request. The appeal can then be supplemented afterwards if the FOI reveals information relevant to the case.

The appellant should receive an acknowledgment of the FOI request within two weeks and a decision on the request should be issued within four weeks. The request for documents may be granted in part or in full. A lack of response may be treated as a refusal and the appellant may ask for a review of the decision. Some documents may be withheld for particular reasons. If a request is refused or information is withheld, the appellant can request a review by a more senior member of staff in the relevant section and this should be completed within three weeks. If the review is unsuccessful then the decision may then be appealed to the Information Commissioner who is quite independent of the body that is refusing to produce the documents. See www.oic.gov.ie/en/ for more details.

The Social Welfare Appeals Office

The **Social Welfare Appeals Office** (SWAO) is described as an independent body set up to decide on appeals relating to decisions of Deciding Officers from the Department of Social Protection. Social Welfare Appeals Officers including the Chief Appeals Officer are appointed by and serve at the pleasure of the Minister for Social Protection.

An applicant who is not satisfied with a refusal of a payment may appeal this decision to the SWAO by completing the ' Notice of Appeal' form which can be obtained from the SWAO, local offices of the Department of Social Protection or it can be downloaded and printed from bit.ly/DSP_applform.

The appellant should include a copy of the letter of refusal when posting his or her appeal. The appeal should be made within **21 days of receiving the refusal** but the SWAO may decide to accept applications outside of this time period at the discretion of the Chief Appeals Officer. There is a section on the form where the appellant may outline the reasons why he or she believes the decision was wrongly made or where he or she can give reasons why the payment should be granted.

However, refusals of Exceptional or Urgent Needs Payments and Back to School Clothing and Footwear Allowance cannot be appealed at all.

It is important that the applicant indicate on this form if he or she would like an oral hearing. Otherwise the Appeals Officer may make a decision based only on the written evidence before him or her. In the Chief Appeals Officer's Annual Report for 2013 (bit.ly/SWAO2013), in 60.1 per cent of cases where there was an oral hearing, the Appeals Officer found in favour of the appellant. This is in contrast to a 41.6 per cent success rate where no such hearing took place.

After a form is submitted, the SWAO should acknowledge receipt of the notice of appeal. If this is not done then the applicant should follow up by phone or by letter within two weeks. It may take some time for a date to be set for hearing as there is currently a backlog within the appeals system so it is not unusual to have to wait several months for an appeal date to be set.

The SWAO will contact the decision-maker and ask for his or her reasons for making this decision. The file will be sent to the SWAO from the Department of Social Protection therefore this may also contribute to the length of time an appellant may have to wait for a hearing date.

An appeal will be held in a venue which is close to where the appellant lives, such as a local hotel unless the appellant resides in or around Dublin in which case the hearing will be held in the headquarters of the SWAO in D'Olier Street. The appellant will be informed by letter of the time, date and venue of the hearing. The appellant may also request an interpreter be provided if he or she requires one.

The Oral Appeal Hearing

The hearing is held in private, usually in a conference room in a hotel if it does not take place in the headquarters in Dublin. The setting is quite informal and is unlike a courtroom. The appellant him or herself **must** attend the hearing and may be reimbursed for reasonable travel expenses.

It is not necessary to have a solicitor or representative present but an appellant may wish to bring someone with them for support. In certain cases an advocate from a **Citizens Information Centre** (CIC – see a full list at <http://centres.citizensinformation.ie/>) or another representative from an organisation may attend the hearing with the applicant but this is not a requirement. Alternatively an appellant may wish to bring a friend or family member for support. It is usual to ring the SWAO to inform them that there will be another person attending the hearing. If an interpreter is required then the appellant or his or her representative should contact the Social Welfare Appeals Office to make this request in advance of the hearing.

The appeal hearing focuses on reasons for refusal of a payment by Deciding Officer or Community Welfare Officer. The Appeals Officer will examine the background information from the file. This is also an opportunity for the appellant to put forward his or her case and provide any supporting documentation or present the evidence of relevant witnesses. Such relevant documentation may include information on the appellant's circumstances including information concerning the appellant's residency status.

An appellant may seek legal advice on a civil matter from the State's network of law centres run by the **Legal Aid Board** (<http://bit.ly/LABsite>), provided he or she passes a financial means and a merits test. Please note, however, that the Legal Aid Board will not represent appellants as civil legal aid is **not** available for social welfare appeals. However, if an appellant engages a private solicitor or representative then the Appeals Officer may, at his or her discretion, grant limited costs (up to €50) to cover expenses on the day of the appeal hearing. You can also read more at FLAC's guide to applying for civil legal advice at bit.ly/CLAFacsheet.

The Decision of the Appeals Officer

There is no set timeframe for when a decision of the Appeals Officer will be issued, but it should be a number of weeks after the hearing. However, this may take longer in some cases due to the complexity of the case or the delays currently being experienced by the Social Welfare Appeals Office because of the increase in the number of appeals it has received.

The Appeals Officer will give a reason in writing if he or she has refused the appeal. The reason given is usually quite succinct although the Appeals Officer writes a more detailed report. If the appellant receives a negative decision he or she should make an FOI request for a copy of the Appeals Officer's

report which may contain further reasons for the refusal. This report is usually kept on the appellant's file within the relevant payment section where the initial application was made so the Freedom of Information Officer in that section should be contacted.

The decision of the Appeals Officer is usually final but in some circumstances the appellant may ask the Chief Appeals Officer to review the decision. In the case of a positive decision of the Appeals Officer, the Department of Social Protection also has the right to ask for a review of the Appeal Officer's decision although this has only been done in a limited number of cases.

The Chief Appeals Officer's Review Mechanism

The appellant may ask the Chief Appeals Officer to review a decision of the Appeals Officer under s318 of the Social Welfare (Consolidation Act) 2005 if:

- there is new evidence to be considered, or
- it is believed the Appeals Officer made a mistake in relation to the facts of the case or an error in law

A letter may then be sent to the Chief Appeals Officer requesting a review and again setting out the case in as much detail as possible. There will not usually be an oral hearing in this situation as the Chief Appeals Officer will review the information in front of her and decide whether the Appeals Officer's decision should stand or be overturned. Note that in any correspondence with the Appeals Office the appeal number should be quoted.

In the event of a negative decision of the Appeals Officer being upheld by the Chief Appeals Officer, this may be challenged in the High Court on a point of law but the appellant should seek legal advice and secure legal representation.

FLAC is a human rights organisation which exists to promote equal access to justice for all. FLAC's work addresses inequities in the administration of the social welfare system through strategic casework and political lobbying. This information leaflet is aimed at practitioners and advocates working with disadvantaged people or members of the public who wish to appeal a social welfare decision.

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