

Office of the Disability Appeals Officer
Oifig an Oifigigh Achomhairc um Míchumas

Office of the Disability Appeals Officer
Block 1,
Miesian Plaza,
50-58 Lower Baggot Street,
Dublin 2,
D02 XW14.

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Bloc 1,
Plaza Miseach,
50-58 Sráid Bhagóid Íochtarach,
Baile Átha Cliath 2,
D02 XW14

Annual Report of the Disability Appeals Officer 2021

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17 June 2022

Ms Anne Rabbitte T.D.
Ministry for Disabilities
Department of Health
Block 1
Miesian Plaza
50 – 58 Lower Baggot Street
D02 XW14

Dear Minister Rabbitte,

In accordance with the provisions of Section 17 of the Disability Act 2005, I hereby submit the report on the activities of my Office for the year ended 31st December 2021.

Yours sincerely

John Harraghy
Disability Appeals Officer

Purpose:

"To deliver an independent, accessible, transparent and fair Disability Appeals service in a timely and courteous manner."

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Foreword by the Disability Appeals Officer

I am submitting herewith the 14th Annual Report of the Office of the Disability Appeals Officer to the Minister for Disabilities. As the Disability Appeals Officer I am mandated under Part 2 of the Disability Act 2005 to decide, or to mediate, Appeals lodged as a result of a finding, or the non-implementation of a recommendation made by the independent Complaints Officers of the Health Service Executive (HSE).

The purpose of the Disability Appeals Officer is to determine Appeals submitted by an applicant or by the HSE. A person or specified person s.8(2) may apply for an Assessment of their Disability related needs under the Disability Act 2005 if they are of the opinion that they have a disability and were born on or after the 1st June 2002.

One Hundred and fifty-nine (159) Appeal applications were received in 2021. This represents a decrease of 40% when compared with 2020. Fifty - four (54) further Appeal applications were carried over from 2020. The majority of new Appeal applications relate to the HSE's failure to complete the Assessment of Need process within the specified timeframes.

An analysis of the location of the appellants in 2021 shows that 117 cases (74% of all cases) were from parents in the Cork region (CHO4) and Kildare West Wicklow (CHO7). Many of these applicants continue to experience significant delays having their Assessment of Need completed.

In 2021 the Disability Appeals Officer was the subject of two legal proceedings. These HSE High Court proceedings related to the requirements of s.18(20) of the Disability Act 2005, to give any, or any adequate consideration, to the matters referred to in s.11(7) of the Disability Act 2005. These were dealt with by way of consent, and this resulted in a new Appeal in each case. At the end of 2021 there was a considerable increase in the number of legal cases taken against the Disability Appeals Officer. These will be the subject of High Court proceedings throughout 2022.

Since the COVID-19 Pandemic, the Office of the Disability Appeals Officer has been working remotely and attending the office when necessary. The structures and systems implemented have proven to be effective and efficient.

John Harraghy
Disability Appeals Officer

Chapter 1: Introduction

Who is the Disability Appeals Officer?

The Disability Appeals Officer is appointed by the Minister for Health (or Minister of State as delegated) to consider and determine Appeals under Part 2 of the Disability Act 2005 ("the Act"). The Disability Appeals Officer is independent in the performance of his/her functions under the Act. The Disability Appeals Officer and his/her staff are collectively referred to as the Office of the Disability Appeals Officer. The Commencement Order S.I. 234 of 2007 fixed the 1st June 2007 as the date on which the provisions of Part 2 of the Disability Act 2005 ("the Act") came into operation in relation to persons under 5 years of age. This includes children who were born on or after the 1st June 2002.

The relevant legislative context

Part 2 of the Act confers the following substantive rights upon persons who may have a "disability" as defined in Section 2 of the Act:

- (a) an entitlement to an independent assessment of health and educational needs (Section 9 of the Act). The Assessment should be carried out without regard to cost or capacity to provide any services identified in the assessment as being appropriate to meet the needs of applicant concerned
- (b) an entitlement to a Service Statement specifying the health and education services which will be provided to the applicant (Section 11 of the Act) and the period of time within which such services will be provided
- (c) access to a complaint's procedure for the determination and enforcement of the statutory entitlements conferred by the Act (Sections 14 to 20)
- (d) The right to Appeal (Sections 18, 19 and 20 of the Act).

The scheme of Part 2 of the Act is to provide an entitlement to a person who believes that he or she may have a disability, or a specified person on his/her behalf, to apply to the Health Service Executive (HSE) for an Assessment of Need [Section 9(1) of the Act]. The HSE is required to complete such an assessment within six months of receipt of an application (Section 9(5) of the Act). Where the resulting Assessment Report includes a determination that the Applicant requires the provision of health services or education services or both, a Liaison Officer appointed by the HSE is required to prepare a Service Statement in respect of the Applicant [Section 11(2)] within one month.

In preparing Service Statements, a Liaison Officer is required to have regard to the specific criteria set out in Section 11(7) of the Act, and Service Statements are required to specify the health or education services which will be provided to an Applicant [Section 11(2) of the Act and Clause 18(a) of the Disability (Assessment of Needs, Service Statement and Redress) Regulations 2007 – (“the Regulations”). The Liaison Officer is also required to arrange for the delivery of the services specified in the Service Statement at such times and in such manner as he or she may determine [Section 11(12)].

An applicant is given a right to complain to the HSE in respect of the outcome of his or her assessment, the manner in which the assessment was undertaken, regarding the contents of his or her Service Statement or in relation to the subsequent failure of the HSE or an education service provider to provide a service specified in his or her Service Statement (Section 14 of the Act). Such a complaint, if not frivolous or vexatious, is required to be addressed by a “Complaints Officer” authorised by the HSE. The Complaints Officer may seek to informally resolve the complaint and must carry out an investigation if informal resolution is unsuccessful or is otherwise inappropriate. Following an investigation, the Complaints Officer must furnish a report to the HSE and to the Applicant concerned setting out his or her findings and recommendations [Section 15(6) of the Act].

An applicant is then afforded a right of Appeal to the Disability Appeals Officer, appointed by the Minister under the Act, against a finding or recommendation made under Section 15(8) in a Complaints Officer’s report or in respect of the non-implementation of a recommendation made by the Complaints Officer [Section 18(1) of the Act]. The HSE or an education service provider can submit an Appeal against a finding of a complaints officer that they failed to provide a service, or against a recommendation of a complaints officer that they provide a service in full [Section 18 (2) of the Act]. The Disability Appeals Officer is required to provide an opportunity to be heard to both parties to the Appeal and may conduct an oral hearing where appropriate and is given various coercive powers in relation to requiring the production of documents and records and/or to enter premises occupied by public bodies or the providers of health or education services. With the exception of Appeals which are resolved by mediation under Section 19 of the Act, the Disability Appeals Officer is required to make a determination in writing in relation to the Appeal affirming, varying or setting aside the findings or recommendations which are the subject of the Appeal [Section 18(5) of the Act]. There is a right of Appeal to the High Court on a point of law in respect of the determination of the Appeals Officer.

Chapter 2: The Appeal Process

The specific requirement of the Disability Appeals Officer is outlined below. This list covers both the functions that are expressly stated within Part 2 of the Act and those which are necessary corollaries to be implied from/by the performance of the expressly stated functions.

- To validate the application to Appeal
- To gather relevant information concerning the Appeal
- To clarify and inquire further regarding each Appeal with the relevant parties
- To examine in detail each Appeal
- If appropriate, to refer Appeals to mediation
- To investigate Appeals
- To conduct oral hearings if required
- To consider and determine Appeals in accordance with the Disability Act 2005
- To enforce implementation under Circuit Court Rules

Grounds for Appeal

- An applicant can issue an Appeal (Section 18 (1)) against a finding or recommendation of a Complaints Officer
- Against the non-implementation by HSE or an education service provider of a Complaints Officer's recommendation (Section 15 (8))

The HSE or an education service provider (Section 18 (2)). (The HSE /Education Service provider is referred to as the appellant within the ODAO) against the recommendation of a Complaints Officer relating to the provision of a service specified in the Service Statement (Section 15 (8) (f) of the Act).

Investigating Appeals

The powers and functions of the Disability Appeals Officer in dealing with Appeals are set out in Section 18 and 19 of the Act. The Disability Appeals Officer has extensive powers to require the provision of information and to request the production of documents and records for the purposes of any Appeal under Sections 18(6), 18(7) and 18(8).

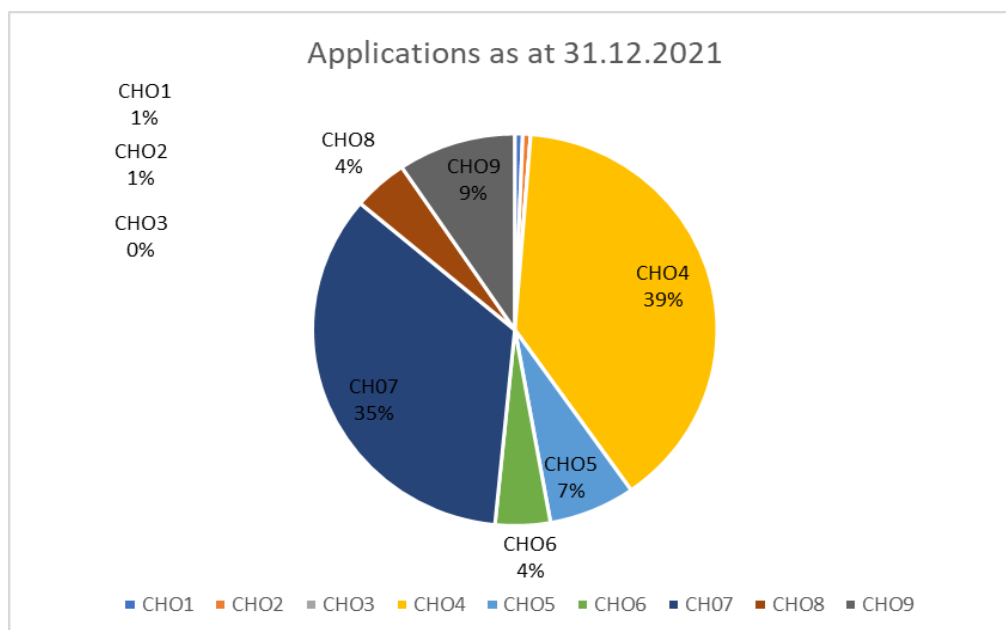
Table 1 - Analysis of Appeal Cases Processed in 2021

Number of New Applications Received in 2021	159
Number of Applications carried forward from 2020	48
Total Cases for Processing in 2021	207
Number of Determinations made in 2021 (That were carried over from 2020 applications)	47
Number of Determinations made in 2021 (That were 2021 applications)	126
Of the number of Determinations made in 2021 (That were 2021 applications), how many were upheld?	101
Of the number of Determinations made in 2021 (That were 2021 applications), how many were NOT upheld?	25
Number of applications withdrawn by applicant or closed as not requiring a Determination	14
Number of Appeal applications deemed invalid	1
Number of applications carried over into 2022	22

Invalid Appeals

Only one Appeal application examined in 2021 was deemed invalid. This occurs when (a) an Appeal application is submitted outside of the eighteen-week statutory timeframe for receipt of Appeals or (b) where inadequate information is provided by the Appellant such as no application form completed and/or failure to provide a complaints officers report.

Table 2: Appeal Applications received in 2021 by Community Health Organisation.



CHO Applications as at 31.12.2021	
CHO1	1
CHO2	1
CHO3	0
CHO4	62
CHO5	11
CHO6	7
CHO7	55
CHO8	7
CHO9	15
Total	159

CHO's:

Area 1: Donegal, Sligo/Leitrim/West Cavan, and Cavan/Monaghan

Area2: Galway, Roscommon, and Mayo

Area 3: Clare, Limerick, and North Tipperary/East Limerick

Area 4: Kerry, North Cork, North Lee, South Lee, and West Cork

Area 5: South Tipperary, Carlow/Kilkenny, Waterford, and Wexford

Area 6: Wicklow, Dun Laoghaire, and Dublin South East

Area 7: Kildare/West Wicklow, Dublin West, Dublin South City, and Dublin South West

Area 8: Laois/Offaly and Meath

Longford/Westmeath, Louth,

Area 9: Dublin North, Dublin North Central, and Dublin North West

An analysis of the location of the appellants in 2021 shows that 74% were from parents or representatives in the Cork region [CHO 4] and Kildare West Wicklow (CHO7). Significant delays continue to be experienced by some parents in having the Assessment of Need process completed in these regions.

Table 3: Trend in New Appeal Applications Received 2011-2021

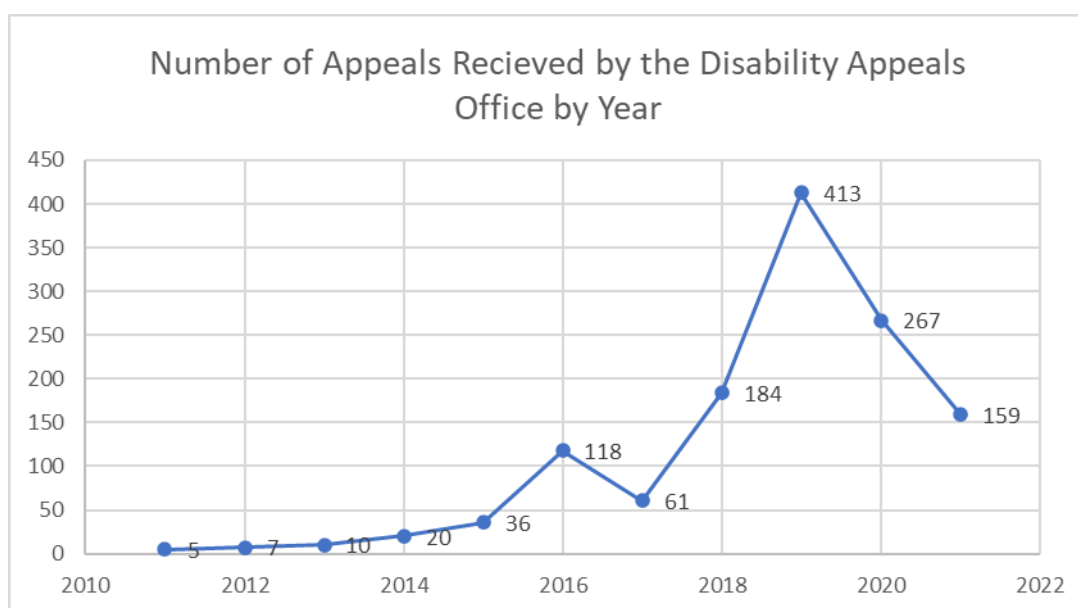


Table 3 shows the trend in the number of Appeal applications received between 2011 and 2021. The trend shows a change in the annual increase in the number of Appeal applications being received. There was a significant increase in the number of Appeals received between 2017 and 2019. This increase reflected the increase in the number of complaints being processed by the HSE's Complaint's Officers, due to lack of resources in the HSE. There was a significant decrease in applications from 2019 to 2022. There are a few reasons for this:

1. Parents awaiting appointments and therefore not submitting Appeals.
2. Delays due to the COVID 19 Pandemic
3. Current Court cases
4. The HSE Standard Operating Procedures quickening up the processes.

Oral Hearing

During the course of an investigation, it may become apparent that an oral hearing is necessary or desirable in order to determine the Appeal. Oral hearings are held in private. They are also held in a location and at a time that is as convenient as possible for the individuals concerned.

There were 2 Oral Hearing requests in 2021, both with regards to Standard Operating Procedures but were not upheld.

Determining Appeals

The Disability Appeals Officer completes the "Determination and Reasons for Decision Report" after a full and comprehensive review of all material submitted by both parties compliant with Section 16-20 of the Act. The issues which were vital to the Disability Appeals Officer's conclusion are identified and the manner in which s/he considered them explained.

In accordance with Section 18(22) of the Disability Act 2005 anonymised copies of Determination and Reasons for Decision Reports are made available for public inspection.

Chapter 3: Operational and Organisational Matters

Financial Report:

Table 4 – Expenditure Report 2021

Expenditure	Amount €
Pay Costs *	Disability Appeals Officer €27,510.08 Executive Officer €30,069.04
Lo Call Telephone Number	€287.87
Stationery and Other Postage	€1047.47
Legal	€11,685.00
Total	€70,599.46

Table 4 above outlines the expenditure by the ODAO for the year 2021.

** **Gross** Pay costs for the staff working part-time for the Disability Appeals Office have been provided on the tax year 2021 basis.*

Following the decision of the Department of Health to reconfigure the ODAO, as of the 1st January 2012, all financial transactions for the Office are accounted for in the Appropriation Account of the Department. Therefore, the ODAO is not required to submit separate accounts for audit to the Comptroller and Auditor General.

The Comptroller and Auditor General performs the audit of the Department of Health under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993. In the course of the audit of the Department of Health, samples of transactions reported are selected under the various subheads of the Department of Health (for which expenditure incurred by the Disability Appeals Officer is reported from 1 January 2012 onwards) to enable the C&AG to form an opinion on the Department of Health's appropriation account for the year in question.

Human Resources Report:

In 2021 there were two part-time personnel attached to the ODAO; one Disability Appeals Officer (two days per week) and one Executive Officer (four days per week).

Appendix 1: ODAO Appeals Process Pathway

