

Office of the Disability Appeals Officer

Leaflet B1

Guidelines for an appeal by the Health Service Executive or the head of an education service provider under section 18(2) of the Disability Act 2005 against a finding or recommendation specified in paragraph (f) of section 15(8) of that Act.

Please note that a reference to “applicant” in these guidelines refers to the person who is the subject of an application to the Executive for an assessment.

Under section 18(2) of the Disability Act 2005 (“the 2005 Act”), the Health Service Executive (“HSE”) or the head of an education service provider (“ESP”) may appeal to the appeals officer against a report of a complaints officer that contains:

- (a) a finding that the HSE or an ESP failed to provide or to fully provide a service specified in the service statement; or
- (b) a recommendation that the service be provided in full by the HSE or the ESP or both as may be appropriate within the period specified in the recommendation.

The appeal must be made within 6 weeks of the date that the finding or recommendation of the complaints officer is communicated to the HSE or the head of the ESP concerned. The six-week timeframe should be calculated from the date on the communication (letter or e-mail) from the complaints officer concerned, not from the date it is received.

In some cases, the Appeals Officer may extend this 6-week timeframe by a period not exceeding a further 12 weeks, if the Appeals Officer is satisfied that the HSE / the head of the ESP has given reasonable cause for the extension.

How to make an appeal:

The appeal should be made using Form B1. In order for the appeal to be valid, it **must** be made within the six-week timeframe as set out above and **must** specify the grounds of appeal.

However, it is useful if you also include:

- all the information that the form invites you to give,
- the report of the complaints officer concerned; and
- any other relevant documents, information or evidence.

In particular, as regards information or evidence, you might like to include a signed and dated statement from relevant personnel within the HSE / ESP, or any other person (such as a doctor, for example) that contains relevant facts, opinions or information that assists your appeal.

We will generally accept as true and accurate the contents of any written statement, document or information that you give to us, unless:

- we have reasonable grounds to believe that this may not be the case,
- it conflicts with anything the complaints officer or the applicant submits to us; or
- the complaints officer or the applicant objects to our treating the materials, or any aspect of them, in this way.

If this happens, it might be necessary to have an oral hearing to resolve any issues in this connection.

For most purposes, we will accept photocopies of documents.

The completed form should be signed and dated on behalf of the HSE or by head of the ESP and sent FREEPOST to

**Office of the Disability Appeals Officer
Ground Floor, Block D,
Abbey Court,
Irish Life Centre,
Lower Abbey Street, Dublin 1.**

What happens next?

When we receive your completed appeal form we will do the following:

- We will send you a letter, usually within 14 days, either to say that the Appeals Officer is considering your appeal, or to let you know if your appeal is invalid.
 - If it is invalid, we will let you know of the reason for its invalidity and what you should do to make a valid appeal.
 - This acknowledgement will contain your Appeal Reference Number which should be quoted in all future communications with the Appeals Officer;
- We may ask you to give us some further information to help us understand, process and decide on your appeal;
- We will give to other parties to the appeal, such as the complaints officer or the applicant, copies of your appeal form and, to the extent necessary, copies of any documents you submit;
- We will ask such parties to provide us with any representations, information, documentation or evidence that they might wish to provide in response to your appeal;
- We may request further inquiries to be carried out, and information relating to your appeal to be given by relevant persons within the HSE (or the ESP). The personnel in question must comply with any such request;
- We may request any person who might have information, records or papers that are relevant to the appeal to provide them to us; and

What happens next? *(continued)*

- We may take, examine or take copies of any records or papers that, in our opinion, are relevant to your appeal.

We can also go to the premises of any public body or the provider of a health or education service and require any person there to provide to us any information that they have or records or papers that might be relevant to your appeal.

If you wish to meet with us to provide us with information, or further information, this can be arranged in appropriate circumstances. As above, please note that any information you provide at a meeting with us may also have to be given to other parties to the appeal.

What is the process after this?

When we have your papers and the information requested from any other party, we will consider your appeal. If we ask you for any other information, you must provide it if you wish to go ahead with the appeal.

When the Appeals Officer examines the materials submitted and obtained in an appeal, he/she decides the best way for the appeal to go ahead.

An appeal can be handled in a number of ways. The Appeals Officer may, at any time in the process, consider that the appeal could be resolved by mediation. Alternatively, if he/she is of the view that the appeal cannot be resolved by mediation, he/she shall commence (or re-commence) the 'Investigation', as described below.

Mediation:

Mediation means that the applicant and/or their representative, a mediation officer (a neutral person from the staff of the office of the Disability Appeals Officer) and officials from the HSE or the education service provider, meet. At the meeting, the mediation officer will help you discuss your differences and see if they can be resolved.

You can withdraw from mediation at any time. This will not affect your appeal.

Mediation is conducted in private, and the process and the discussions involved, are confidential.

If mediation is to proceed a mediation officer will contact you, generally within 14 days, to arrange the mediation session or sessions.

Generally speaking, no more than 30 days will pass from the time the appeal is referred to mediation to the time you reach agreement or decide you cannot agree. However, if, for example, the mediation is very involved or if it has not been possible to have a sufficient number of sessions in that time, the mediation may take longer.

If an agreement is reached, the parties will sign a resolution document. The terms of a signed resolution document are legally enforceable. This means that the parties accept the contents of the document, and the HSE or the education service provider must do what the resolution document says. A copy of the signed document will be provided to all of the parties.

Mediation: *(continued)*

Please note that if the HSE or the education service provider concerned fails to implement the terms of a resolution arrived at through mediation

- within three months from the date on which the signed resolution document is sent to you; or
- within three months of the date specified in the resolution document for the provision of a service,

the applicant (or his/her representative) or the Appeals Officer may apply to the Circuit Court for an enforcement order.

Such an application must be made on notice to the HSE or the head of the education service provider concerned.

If you do not reach an agreement in the mediation, or if you have withdrawn from mediation, the appeal will then go through the 'Investigation' process described below. The mediation officer will not be involved in the investigation and will not discuss with the Appeals Officer any issues that arose at any mediation.

'Investigations' by the Appeals Officer

In an 'Investigation', the Appeals Officer reviews all the information, documentation and evidence in a case if mediation does not take place or is not successful.

During the investigation, the Appeals Officer may request further information and/or documentation and/or evidence from the parties. The Appeals Officer will give each of the parties concerned an opportunity to be heard before issuing a determination – this

'Investigations' by the Appeals Officer *(continued)*

may or may not involve an oral hearing, which is described further below. The investigation also involves giving parties an opportunity of putting information, documentation and evidence before the Appeals Officer.

Any person who gives false evidence to the Appeals Officer during an investigation is guilty of an offence.

At the end of the investigation the Appeals Officer will issue a written determination. If an oral hearing is not required, this written determination will generally issue within 56 days of the decision not to enter mediation or of the date that the appeals officer is told that mediation was unsuccessful.

Oral hearings

The legislation provides for the holding of oral hearings in appropriate cases. The Appeals Officer decides if it is appropriate to hold an oral hearing; for example, if there is a conflict between the information or evidence given. How soon an oral hearing can be held will depend, for example, on the number of hearings going on, as well as the information/documentation/evidence-gathering required beforehand. Every effort will be made to hold a hearing within 49 days of the date on which the Appeals Officer decides that a hearing is desirable. You will be informed of the exact time, date and venue at least 28 days beforehand.

The Appeals Officer can adjourn or postpone the oral hearing as he/she sees fit, so if you have reasonable grounds for saying that the date or time allocated does not suit you, please let us know.

Attendance at the oral hearing

A number of people, bodies or organisations may attend an oral hearing. They include:

- the appellant
- the applicant, their representative, or both;
- the assessment officer from the HSE;
- the liaison officer from the HSE;
- the complaints officer from the HSE;
- a representative from the HSE / the education service provider concerned (if applicable);
- any other person whose evidence the Appeals Officer requires and who is directed to attend by the Appeals Officer.

The Appeals Officer will make sure that all of the people concerned know about the hearing and can attend.

Any person directed to attend an oral hearing must attend.

Oral hearings are held in private, so nobody other than the persons listed above are permitted to attend.

Legal representatives and the oral hearing

You do not have to use a legal representative for the oral hearing unless you choose to hire one. The oral hearing process is designed so that the parties themselves may make oral representations to the Appeals Officer. Every effort will be made to keep the hearing as informal as possible.

If you hire a solicitor, you are responsible for their costs, even if your appeal is successful. The Disability Act 2005 does not provide for legal costs to be paid.

What happens at the oral hearing?

The Appeals Officer makes an opening statement explaining how the hearing will be conducted. He/She will introduce the people present. He/She will also administer an oath to those giving evidence.

You will also be told if other people have been called to give evidence. The Appeals Officer will then outline the matter in question, the case set out by you in your appeal and the response of the complaints officer and the applicant concerned.

He/She then invites you to make a statement about your appeal.

Next, the complaints officer and the applicant concerned (or his/her representative) is invited to make a statement, whether in person, or through a representative, as the case may be.

Any witnesses appearing generally, or on behalf of any of the parties, then give their evidence in turn.

The Appeals Officer may ask questions of any of the witnesses. If any of the parties wish to do so, and is so permitted by the Appeals Officer, that party can cross-examine witnesses not called by him. Any witness whose evidence has been or is to be given before the Appeals Officer is entitled to the same privileges and immunities as a witness in court.

Each side is then allowed to make a closing statement and the hearing then concludes.

Every effort will be made to keep the hearing as short and informal as possible, and you will be afforded every courtesy when you present your appeal.

Is the Appeals Officer's determination delivered when the oral hearing ends?

No. The Appeals Officer needs to take time to consider what he/she has heard at the hearing and all the other information, evidence and documentation he/she has gathered. He/She then issues a reasoned, written determination at a later date.

Generally speaking, within 56 days of the oral hearing, you will get a letter from the Appeals Officer enclosing his/her determination and the reasons for the determination. A copy of the determination will also be sent to the complaints officer of the HSE and to the applicant concerned.

Anonymised copies of determinations of the Appeals Officer will also be printed and will be made available for inspection by the public at a time and place determined by the Appeals Officer.

You should note that if the HSE or the education service provider concerned fails to implement a determination by the Appeals Officer

- within three months from the date on which the determination of the Appeals Officer was communicated to you; or
- within three months of the date specified in the determination for the provision of a service,

the applicant concerned (or his or her representative) or the Appeals Officer may apply to the Circuit Court for an enforcement order.

Such an application must be made on notice to the HSE and any education service provider concerned.

Is the Appeals Officer's determination delivered when the oral hearing ends? *(continued)*

The HSE/head of the ESP can also appeal the determination of the Appeals Officer to the High Court within 21 days of the giving of notice of the determination to it by the Appeals Officer. This period can be extended by the Court, if it is satisfied that there is good and sufficient reason for extending that period and that the extension of the period would not result in an injustice being done to any other person concerned in the matter.

The Appeals Officer's determination can be appealed on a point of law only.

For further information, telephone our LoCall Information Line on 1850 211 583

THIS LEAFLET IS INTENDED AS A GUIDE ONLY.

It is not a legal interpretation, and ought not to be relied upon as such.