

DISABILITY APPEALS OFFICER

Determination and Reasons for Decision Report

Appeal Reference: AP0005

19th March 2009

Redacted and Anonymous Version

1. Background:

- 1.1. On 17.08.2007, Ms X made an application on behalf of Y (DOB: November.2004) for an Assessment of Need pursuant to section 9(1) of the Disability Act 2005 (“the Act”). The assessment was sought because of concerns regarding Y’s lack of speech and communication difficulties. The application was accompanied by a report of a Speech and Language Therapist, Ms O’F, HSE, Bray, dated 18.05.2007 where Y was then attending for therapy.
- 1.2. In a letter dated 21.08.2007, Ms N, an appointed Assessment Officer under the Act, of the Local Health Office, Wicklow, HSE, Dublin Mid Leinster, acknowledged receipt of Ms X’ application and advised that *“If Y is eligible for this assessment it will commence on the 19th November. I will be in touch with you shortly to advise of the next steps.”*
- 1.3. By letter dated 07.11.2007, Ms N informed Ms X that *“Y is eligible for assessment”* and advised that *“This assessment will begin no later than November 19th 2007.....under the Disability Act 2005, the Assessment of Need must begin no later than 3 months after receipt of your completed application and be completed no later than 3 months after the date it begins”*.
- 1.4. In a report dated 21.11.2007 which was copied to Ms N, Ms H, Senior Speech and Language Therapist, expressed the opinion that *“A full team assessment is a matter of extreme urgency in order to make a differential diagnosis between severe language disorder, autism and learning disability in order to ensure that the most appropriate intervention is accessed for Y.”*
- 1.5. Amongst other requests for assistance in carrying out the assessment of need upon Y, Ms N forwarded a letter to Dr M of the Lucena Clinic dated 26.11.2007 requesting the carrying out of a multidisciplinary assessment.

- 1.6. In a letter dated 11.12.2007, Dr M declined to provide the requested multidisciplinary assessment for Y upon the basis that *“Assessment of Need of children who have disabilities is not within the remit of specialist Child and Adolescent Mental Health Services but rather of Primary Care/Community Care Services. This position is in keeping with the document A Vision for Change, report of expert Group on Mental Health Policy.”*
- 1.7. By letter dated 18.12.2007, Ms N Assessment Officer forwarded a letter to the Director of Services of Beechpark Services requesting assessments of Y’s Speech and Language Therapy, Occupational Therapy and Psychological needs. In an email dated 10.01.2008, the Director of Beechpark Services advised that she was not in a position to carry out the requested assessments upon Y as a result of staff shortages arising from unfilled posts.
- 1.8. By letter dated 29.01.2008, Ms N forwarded a letter to Dr C, National Children’s Hospital, Tallaght requesting a multidisciplinary assessment for Y. An appointment was subsequently made for Y to be seen at a “dual clinic” at the National Children’s Hospital on 21.04.2008.
- 1.9. On 03.03.2008 Ms X made a complaint pursuant to section 14(1)(b) of the Act upon the grounds that *“.....the assessment under section 9 was not commenced within the time specified in section 9(5) or was not completed without undue delay.”*
- 1.10. Y was seen at the Developmental Clinic at the National Children’s Hospital on 21.04.2008. In a report dated 22.04.2008, the Specialist Registrar to Dr C stated relevantly that *“It is apparent that he (Y) needs urgent further assessment and intervention appropriate to his needs...”*
- 1.11. In an investigation report dated 05.06.2008, Mr S, an appointed Complaints Officer under the Act, found that *“...the HSE has not successfully completed an assessment within the relevant timescale. In accordance with my statutory functions under the Disability Act, 2005 and Statutory Instrument No.263 Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007, I therefore uphold the complaint.”*
- 1.12. As a consequence of his above finding, Mr S made a recommendation that *“..an Assessment of Need be completed for Y by 27th June 2008 and a Service Statement issued within one month of that date. It will require the HSE Local Health Manager to intervene and implement the directive issued by the HSE PCCC Directorate on 16th November 2007 to ensure that the Lucena Clinic, where Y is on a waiting list as a result of the referral from his GP complete the Assessments within the timeframe specified in this recommendation”.*

1.13. By Notice dated 25.06.2008, Ms X made an Appeal to the Disability Appeals Officer on behalf of her son Y pursuant to section 18(1) of the Act in respect of the HSE's failures to implement the above recommendation of the Complaints Officer.

1.14. This is my determination in respect of the Appeal made on behalf of Y in accordance with section 18(5) of the Act.

2. Issues raised by the Appeal:

2.1. The Notice of Appeal lodged by Ms X seeks to appeal against the alleged non-implementation by the HSE of the Complaints Officer's recommendation in relation to the time for the completion of Y's Assessment of Need and the issue of his Service Statement. It was stated in Part 4 of the Appeal Notice that:

"We the parents of Y have been trying since August 2007 to obtain an appointment with somebody capable of assessing his needs. Following all channels provided by Wicklow HSE. Nearly 11 months later we have still no idea when our son will receive an assessment date."

3. Mediation

3.1. Following an assessment of the Appeal Notice, the material furnished with the appeal and the documentation and information provided by the HSE in response to the Appeal, I formed the opinion that the Appeal might be resolved by mediation. In accordance with section 19(2) of the Act, I informed Ms X on 19.11.2008 of my opinion in this regard and of my intention to refer the Appeal to mediation.

3.2. Ms X did not object to her Appeal being dealt with by way of mediation and I accordingly referred the matter to mediation on 27.11.2008.

3.3. Following a pre-mediation meeting on 08.12.2008 between Ms D, Mediation Officer, Office Disability Appeals Officer; Ms X and her husband, Mr X, I was informed in a letter dated 09.12.2008 that an Assessment of Need and a Service Statement in respect of Y had at that stage been received. As Ms X remained very dissatisfied with the length of time over which she had been attempting to obtain an assessment of Y's needs, I concluded that pursuing Mediation at that stage was not likely to resolve the Appeal or to be of any significant benefit to the Applicant. I accordingly determined on 05.01.2009 that the Appeal should be investigated and determined.

4. The Investigation:

- 4.1. With the Appeal Notice, the Applicant furnished the following documents relevant to the Appeal:-
 - 4.1.1. Speech and Language Report of Ms H, Senior Speech and Language Therapist dated 21.11.2007;
 - 4.1.2. Letter from J H to Ms R C, Clinical Psychologist dated 03.03.2008;
 - 4.1.3. Report of Dr. W, Sp R to Dr C, Consultant Community Paediatrician dated 22.04.2008;
 - 4.1.4. Report of Mr S, Complaints Officer under section 14 and 15 of the Act dated 05.06.2008.
- 4.2. By letter dated 16.09.2008, I requested the HSE, as the Respondent to the appeal, to furnish the following further documents and/or information:
 - 4.2.1. Copy of Y's Assessment of Needs Report under section 8 (5) of the Act;
 - 4.2.2. 4.2.2 Copy of the Y's Service Statement issued under section 11(2) of the Act

In the same letter, I also invited the HSE to provide any other information and documents which it considered to be relevant to or which it wished to rely upon in response to the appeal.
- 4.3. By letter dated 02.10.2008, Ms F, General Manager, Local Health Office, Wicklow, HSE - Dublin Mid Leinster, furnished me with the documents which are listed in Appendix A to this determination.
- 4.4. Following my decision to investigate and determine this Appeal, I received a letter from Mr X and Ms X dated 18.01.2009 which summarised how they felt; "*Y has been let down*".
- 4.5. By letter dated 21.01.2009 I requested the Assessment and Liaison Officers concerned with this case respectively to furnish me with a copy of the completed Assessment of Need Report and the Service Statement for Y
- 4.6. By letter dated 23.01.2009, Ms. N Assessment Officer provided a copy of Y's Assessment of Need Report together with the accompanying letter sent to Ms X dated 12.11.2008 and a copy of a letter from Ms B, Case Manager, dated 12.11.2008 acknowledging receipt of the Assessment Report.

- 4.7. By letter dated 26.01.2009 Ms B, Case Manager Local Health Office Wicklow, provided a copy of Y's Service Statement together with a copy of the accompanying letter sent to Mr X and Ms X.
- 4.8. Having regard to the issues raised by the Appeal and to the information and documents which were able to be obtained without the exercise of my coercive powers, I did not consider it necessary or proportionate to seek to obtain further documents or information through the exercise of my powers under section 18(6), 18(7) or 18(8) of the Act.
- 4.9. Following consideration of the issues raised by the Appeal and the evidence, information and documents obtained during my investigation, I also decided that it was not necessary or appropriate to hold an oral hearing in relation to this Appeal. In this regard, I took into account that neither party requested an oral hearing nor there were not any disputed and material issues of fact which could not fairly be determined without an oral hearing.
- 4.10. In addition to the opportunities provided to the HSE to submit any evidence and to make representations in answer to the Appeal as referred to above, prior to concluding my investigation I invited Ms F General Manager HSE Dublin Mid Leinster by letter dated 05.01.2009 to furnish any additional material or submissions which she wished me to take into account before deciding this Appeal. By letter dated 14.01.2009 Ms F General Manager, acknowledged my correspondence and stated that she was aware Y had now received his Assessment of Need and Service Statement. Ms F advised that she had no further submissions or representations to make in relation to this Appeal.

5. The Case of the Applicant:

- 5.1. It is the Applicant's case in respect of this appeal that:
 - 5.1.1. Y was entitled to an Assessment of Need within the timeframe specified by section 9(5) of the Act and Clauses 9 and 10 of the Regulations.
 - 5.1.2. Following the lodgement of an application for an Assessment of Y's needs on 17.08.2007, Ms. N, Assessment Officer, confirmed in a letter dated 07.11.2007 that Y was eligible for an assessment of need and that this assessment would begin no later than 19.11.2007 and would be completed no later than three months from this date.
 - 5.1.3. Y's Assessment of Need was not completed until 12.11.2008. This was almost nine months beyond the timeframe notified to Ms. X in Ms. N's letter of 07.11.2007 and was in breach of the requirements of the Act.

- 5.1.4. Ms. X' complaint in respect of the HSE's failure to complete Y's assessment was upheld by the Complaints Officer, Mr. S, on 05.06.2008 and his recommendation fixed a further timeframe of 27.06.2008 for the completion of Y's Assessment of Need and for the Service Statement to be issued by 25.07.2008. These further timeframes were also not complied with.
- 5.1.5. Y's parents were concerned about the continued failures to complete Y's Assessment of Need. They have particularly drawn attention to the long waiting lists which Y was placed upon in order to obtain psychological and multidisciplinary assessments and to the HSE's inability to arrange any private assessments for Y. As a consequence of the long delays experienced, his parents assert that Y has "*missed out on ten months (of) intensive input at a critical time in his development and early intervention has proven to be critical*".
- 5.1.6. Mr X and Ms X further expressed in a letter dated 18.01.2009 their feeling *of let down* with the length of time involved with the complaints procedure and the Office of the Disability Appeals Officer.

6. The Case of the HSE:

- 6.1. Whilst the HSE has not responded directly to the issues raised by this Appeal, the documents which it has furnished indicate that there is no dispute regarding the extent of the delays which occurred in the completion of Y's Assessment of Need.
- 6.2. The documents provided confirm the substantial efforts made by the Assessment Officer, Ms. N, to arrange necessary assessments for Y within appropriate timeframes. In addition the material provided from the HSE confirms that Ms N engaged with Ms X continuously throughout the entire process. Her attempts in this regard were frustrated by the refusal of some HSE funded bodies to provide assessments for Y or by the long waiting lists of these bodies. It would appear to be the position of the Local Health Office that the delay in carrying out Y's Assessment of Need was regrettable but largely unavoidable due to the lack of adequate resources and/or funding to provide the necessary multidisciplinary assessment for Y within the required timeframes.

7. Relevant legal principles applied:

- 7.1. I have approached my determination upon the basis that the Applicant bears the onus of proof in respect of any disputed matters which were material or relevant to his Appeal. The standard of proof which I have applied is the civil standard on the balance of probabilities.
- 7.2. In determining any disputed issues of fact, I have directed myself that it may be unsafe to make positive findings by reliance upon a single item of evidence. I have accordingly attempted wherever possible to identify independent support or corroboration for any disputed statements made or materials submitted by either party from other evidence obtained during the investigation.
- 7.3. In considering the probative value and weight to be given to any documents and records obtained during this investigation, I have taken into account the apparent author of the relevant document, the qualifications of the author, the extent of the author's actual knowledge of the subject matter addressed in the document, whether the document is contemporaneous with the events described, whether the document is genuine or authentic, whether the contents of the document are credible and whether the contents are consistent with other evidence which the parties have agreed to be or which I have independently found to be reliable.
- 7.4. This Appeal concerns the entitlement of eligible applicants to an independent assessment of their health and education needs. The Act confers not only an entitlement to such an assessment but also imposes an obligation on the HSE to provide such an assessment in a prompt manner. The provisions of section 9(5) of the Act establish a dual obligation upon the HSE to:
 - 7.4.1. commence an assessment within three months of the date of the receipt of an application or request for an assessment; and to
 - 7.4.2. complete the assessment without undue delay.

- 7.5. The nature and extent of these obligations are further elaborated by the provisions of clause 9 and 10 of the Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007 (“the Regulations”). Clause 9 requires the HSE to “*commence the assessment process as soon as possible after the completed application form has been received but not later than three months after that date*”. In respect of the completion of the assessment, clause 10 of the Regulations provides that the assessment shall be completed and the Assessment Report shall be forwarded to the Liaison Officer within three months from the date upon which the assessment commenced save for exceptional circumstances. Where exceptional circumstances do exist, the assessment is required to be completed “*without undue delay*” and the HSE must specify in writing to the Applicant before the expiration of the three month period the reasons why the assessment will not be completed and must also provide a time frame within which the assessment is expected to be finalised.
- 7.6. The provisions of clause 9 of the Regulations make it clear that it is not appropriate to delay the commencement of an assessment until the three (3) month deadline is due to expire. In the absence of some special circumstances, a delay of almost three (3) months in commencing the assessment will not constitute commencing the assessment “as soon as possible”. Further, it would be contrary to the legislative scheme for the HSE to artificially fix the commencement of the assessment on a date about three (3) months after receipt of the application so as to effectively extend the time available to complete the assessment. The date upon which an assessment has commenced should be determined objectively upon the individual factors of the case and not by the date which may be said by the HSE to be when the assessment was commenced.
- 7.7. The obligation to complete the assessment without “undue delay” under section 9(5) must be considered separately. The term “undue” in this context normally means “excessive” or “inordinate” delay. The consideration of whether a delay is “undue” requires an objective evaluation of whether the time within which the assessment is completed is longer than would usually be regarded as acceptable. Clause 10 of the Regulations mandates that apart from exceptional circumstances, a period of longer than three months to complete the assessment and to forward the Assessment Report will be regarded as “undue delay”. This however does not mean that a three month time frame for the completion of an assessment will generally be regarded as acceptable. Clause 10 indicates that such a delay will almost inevitably be viewed as unacceptable but does not establish the length of time which will be viewed as appropriate. This must be determined in the individual circumstances of each case. In unexceptional circumstances, a failure to complete an assessment of need well within a period of three months may well constitute “undue delay” for the purposes of section 9(5).

- 7.8. Section 11(8) provides that a Service Statement shall also be prepared and furnished to the Applicant by the HSE “without undue delay”. Clause 19 of the Regulations provides that a Service Statement shall be completed within one month of the Liaison Officer’s receipt of the Assessment Report and clause 20 requires that both the Assessment Report and Service Statement shall be sent together to the Applicant and HSE within this one month period.

8. Matters required to be taken into account:

- 8.1. In accordance with the obligations imposed by section 18(20) of the Act, I have considered the following matters before making my determination with respect of this Appeal:
- 8.1.1. The Notice of Appeal and supporting materials submitted by the Applicant as referred to above together with all documents and information furnished by or on behalf of the HSE in response to this Appeal.
- 8.1.2. Whilst for the reasons set out above it has not been considered necessary or proportionate to exercise my powers under section 18(6), 18(7) or 18(8) of the Act to require the furnishing of information or records, I have considered all of the evidence, information and other material obtained during the course of my investigation of the Appeal.
- 8.1.3. Whilst for the reasons set out above it has not been considered necessary or appropriate to hold an oral hearing for the purposes of this appeal, I have considered all of the evidence submitted and representations made by or on behalf of the Applicant and by the HSE in determining this Appeal.
- 8.1.4. I have considered each of the matters prescribed by section 11(7) of the Act where relevant including:
- The Assessment Report of 12.11.2008;
 - Y’s eligibility for services under the Health Acts 1947 to 2004
 - The approved standards in relation to the provision of an assessment of need;
 - The practicability of providing assessment of need services

9. Findings of the Investigation:

- 9.1. The following facts relevant to the appeal are not the subject of any dispute between the parties:

- 9.1.1. Ms. X made an appropriate application for an assessment of Y's needs on 17.08.2007.
- 9.1.2. The material furnished by the HSE demonstrates that its Assessment Officer, Ms N, commenced to engage with Ms X from on or about 28.08.07 when she obtained permission to obtain existing reports in relation to Y. Ms N also carried out a home visit upon Ms X and Y on 18.10.2007.
- 9.1.3. On 07.11.2007 the Assessment Officer Ms N notified Ms. X that Y was eligible for an assessment of his needs. In this same letter, Ms. X was also advised that Y's assessment would begin no later than 19.11.2007 and that the assessment must be completed *"no later than 3 months after the date it begins"*.
- 9.1.4. In an updated report dated 21.11.2007, Ms. H, Senior Speech and Language Therapist, HSE, Bray, who had been seeing Y since May 2007 advised in light of her assessment of Y that *"a full team assessment is a matter of extreme urgency (for Y) in order to make a differential diagnosis between severe language disorder, autism and learning disability in order to ensure that the most appropriate intervention is accessed for Y"*. File notes of the Assessment Officer Ms N indicate that following consultation with Ms. H, it was agreed that Y required an urgent multidisciplinary assessment and that a referral to the Lucena Clinic, a specialist Child and Adolescent Mental Health Service, was required.
- 9.1.5. It would appear that on or about 26.11.2007, Ms. X obtained a referral from her General Practitioner for Y to be assessed at the Lucena Clinic.
- 9.1.6. By letter dated 26.11.2007, Ms. N forwarded a letter to Dr. M of the Lucena Clinic requesting a multidisciplinary assessment for the purposes of completing an Assessment of Need in respect of Y under the Act.
- 9.1.7. In a letter dated 11.12.2007, Dr. M, Consultant Child & Adolescent Psychiatrist of the Lucena Clinic declined to provide a multidisciplinary assessment for Y noting that *"Assessment of Need of children who have disabilities is not the remit of specialist Child and Adolescent Mental Health Services but rather of Primary Care/Community Care Services. This position is in keeping with the document "A Vision for Change", report of the Expert Group on Mental Health Policy. It is my understanding that Assessments of Need under the Disability Act are undertaken by multidisciplinary teams within the HSE, Community Care Service in Co. Wicklow"*.

- 9.1.8. On 18.12.2007, Ms. N forwarded a letter to Ms. B, Director of Services, Beechpark Services, requesting assessments of Y's Speech and Language Therapy, Occupational Therapy and Psychological needs. In an email dated 10.01.2008, the Director of Beechpark Services advised that she was not in a position to carry out the requested assessments upon Y as a result of staff shortages arising from a number of unfilled posts.
- 9.1.9. By letter dated 29.01.2008, Ms. N forwarded a letter to Dr. C of the National Children's Hospital, Tallaght, requesting a multidisciplinary assessment for Y. An appointment was subsequently made for Y to be provided with a Paediatric Assessment at the National Children's Hospital on 21.04.2008.
- 9.1.10. Y was seen at the Developmental Clinic at the National Children's Hospital on 21.04.2008. In a report dated 22.04.2008, the Specialist Registrar to Dr. C stated relevantly that *"It is apparent that he (Y) needs urgent further assessment and intervention appropriate to his needs....."*.
- 9.1.11. Following a complaint made by Ms. X in respect of the failure to complete Y's assessment without undue delay as required under section 9 of the Act, the Complaints Officer, Mr. S, upheld the complaint and made recommendations that *"an Assessment of Need be completed for Y by 27th June 2008 and a Service Statement issued within one month of that date. It will require the HSE Local Health Manager to intervene and implement the directive issued by the HSE PCCC Directorate on 16th November 2007 to ensure that the Lucena Clinic, where Y is on a waiting list as a result of the referral from his GP complete the Assessments within the timeframe specified in this recommendation"*.
- 9.1.12. Following receipt of the Complaint's Officer's report and following the advice of Dr. G, Consultant Psychiatrist, that a Psychological Assessment was needed, arrangements were made for Y to be assessed by Dr. K, Clinical Psychologist, HSE Greystones, on 22.07.2008. In a report which was forwarded under a covering letter dated 22.08.2008, Ms. K stated that it was difficult to ascertain whether Y's behaviours were as a consequence of *"functioning in the exceptionally low range of ability/learning disability with learnt behavioural responses or due to having an Autistic Spectrum Disorder. In my opinion, a Multidisciplinary Team assessment is warranted to determine the nature of difficulty and establish the most appropriate therapeutic interventions and services for Y"*. This report was duly forwarded to the Lucena Clinic by Ms.N by letter dated 02.09.2008.

- 9.1.13. A Multidisciplinary Assessment was eventually carried out upon Y at the Lucena Clinic on 9th and 10th October 2008. In a subsequent report dated 28.10.2008, Y was diagnosed with Atypical Autism. It was recommended that Y be referred to St. Catherine's Special Pre-School for Autism in Barnacoyle and that he also be referred to Beechpark Services for Children with Autistic Spectrum Disorder.
- 9.1.14. The Assessment Report in respect of Y was ultimately issued on 12.11.2008 by Ms N Assessment Officer. Accordingly, there was a delay of nine (9) months between the dates that Y's Assessment of Need was to begin (19.11.2007) and when Y's Assessment Report was completed (12.11.2008).
- 9.1.15. The Service Statement in respect of Y was completed and forwarded to the X family on 01.12.2008 by Ms B, Case Manager.

9.2. In addition to the above, I am satisfied to the required standard of proof of the following further facts:

- 9.2.1. At the time of the events the subject of this complaint, it had been recognised that there were difficulties in obtaining the cooperation of Child & Adolescent Mental Health Services in accessing Assessments of Need for children under the Act with potential Autism Spectrum Disorders(ASD). Indeed, as a consequence of knowledge of these difficulties, a Memorandum had been issued by the HSE's PCCC Directorate on 16.11.2007 which stated relevantly:

“Given the legal obligation on the HSE to provide an Assessment of Need under the Disability Act within specific timeframes, I am requesting that you ensure that clear direction is issued from relevant Local Health Managers to Child and Adolescent Mental Health teams. This direction should include absolute clarity about the following:

- *The requirement on all HSE and HSE funded Child and Adolescent Mental Health Services to comply with requests from Assessment Officers for an Assessment of Need under the Disability Act.*
- *The need to comply with such requests within the specified timeframes, regardless of existing waiting lists.*
- *The need to supply whatever reports are requested by the Assessment Officer and in the format requested”.*

- 9.2.2. It was also recognised that the justification provided by some Child & Adolescent Mental Health Services for declining to provide assessments and/or ongoing intervention to children with ASD included reliance upon the report “*Vision for Change*”. The support which had been placed upon that report was considered by the PCCC Directorate in its above Memorandum (16.11.2007) in the following terms: “*While Vision for Change states that the majority of assessments for autism should not require the input of psychiatry, this needs to be seen in the context of a strategy which will be implemented over a number of years. In particular, alternative arrangements need to be in place for the provision of assessments and ongoing interventions to children with autism before existing arrangements can be altered. In some of these cases, Child & Adolescent Mental Health Services were funded specifically to provide autism services and the reallocation of this funding to fund alternative services for children with autism may need to be considered....*”.
- 9.2.3. The material furnished by the HSE does not indicate that significant steps were taken by the Local Health Manager (Wicklow) within the mandated timeframe of the Act to complete an Assessment of Need, to address the approach adopted by the Lucena Clinic in this case which appeared to be in conflict with the above PCCC Directorate’s Memorandum. It is apparent that the Lucena Clinic initially declined to provide a multidisciplinary assessment to Y when requested in November 2007 by reference to the “*Vision for Change*” report, an approach which had been disapproved of by the PCCC Directorate in its Memorandum of 16.11.2007. Further, when Y was re-referred to Lucena Clinic through Ms. X’ General Practitioner, his assessment was accommodated only within the context of the existing waiting list of the Lucena Clinic. Again this approach was contrary to the directions provided within the above Memorandum of the PCCC Directorate.
- 9.2.4. There is also no clear evidence amongst the material furnished by the HSE of any significant intervention by the Local Health Manager of Wicklow LHO following the Complaints Officer’s report of Mr. S which specifically referred to the above Memorandum of the PCCC Directorate and to the need for intervention by the Local Health Manager to ensure that the Lucena Clinic completed Y’s assessment regardless of its existing waiting list.

10. Findings in respect of the issues raised by the Appeal:

- 10.1. As a consequence of the investigation findings set out above, I make the following findings in respect of the issues raised by this Appeal:
- 10.1.1. I am satisfied to the required standard that the HSE failed to comply with the recommendation of the Complaints Officer, Mr. S that the Assessment of Need in respect of Y be completed by 27.06.2008 and that Y's Service Statement be issued within one month of that date (ie. by 25.07.2008)
- 10.1.2. As a consequence of these failures, Y was denied an Assessment of his Needs for a further four months. This delay must also be seen in the context of the undue and objectively inexcusable delay which Ms. X and her son had experienced in obtaining an Assessment of Y's needs to that point.
- 10.1.3. The delay in providing an Assessment of Need to Y constituted a breach of the obligation under section 9(5) of the Act to complete an assessment without "undue delay". Failure to complete the assessment and to issue an Assessment Report within three months of the purported commencement date of 19.11.2007 was also in clear breach of clause 9 of the Regulations. The fact that this delay continued from February 2008 until November 2008 makes this a serious breach of statutory duty.
- 10.1.4. The difficulties which occurred in this case in obtaining an Assessment of Need for Y were those specifically addressed by the PCCC Directorate in its Memorandum of 16.11.2007. It would appear that failures by the Local Health Office Wicklow to comply with the directions given in that Memorandum, either initially when the Lucena Clinic in December 2007 declined to provide a multidisciplinary assessment to Y or subsequently when specifically asked to intervene by the Complaints Officer in his report of 05.06.2008, were significant contributing factors to the breach of statutory duty which occurred in this case.
- 10.1.5. The unacceptable overall delay in this case is aggravated by the fact it was known to the HSE at an early stage that there was a significant degree of urgency in obtaining an assessment of Y's needs because of the absence of any diagnosis for his condition and the resulting inability to provide appropriate interventions to Y (see report of J H dated 21.11.2007). The very substantial delay which Y has experienced in obtaining an adequate assessment of his needs may well impact upon the effectiveness of therapeutic interventions which have now been identified as necessary. Certainly the delay has also added unnecessarily to the stresses upon Y's family associated with his diagnosis.

11. Determination:

- 11.1. As a consequence of the above findings, I have determined that:
- 11.1.1. the Appeal should be allowed.
 - 11.1.2. the recommendations of the Complaints Officer be affirmed.
 - 11.1.3. the HSE failed to comply with the recommendations of the Complaints Officer communicated in his investigation report of 05.06.2008 in that the HSE failed to provide Y with an Assessment of Need Report by 27.06.2008 and also failed to issue a Service Statement in respect of Y to his family by 25.07.08.
- 11.2. The facts of this case emphasise the importance of the directions given by the PCCC Directorate in its Memorandum of 16.11.2007 and the consequences which are apt to occur if this advice is not fully implemented. This case also highlights the necessity for the relevant Local Health Manager to ensure that the HSE or HSE funded Child and Adolescent Mental Health Services comply with requests for Assessments of Need under the Act.

12. Publication:

- 12.1. Pursuant to section 18(22) of the Act, I propose to make a duly anonymised copy of this Determination, redacting all identifying information in relation to Y, Ms X and any other member of the X family, available for public inspection. In the absence of any objections received from either party regarding the form of the anonymised Determination which I propose to make available to the public within 21 days of the date hereof, I shall thereafter make the said anonymised copy of this Determination available for public inspection between the hours of 10am and 4.30pm on working days at the:

Conference Room: Office of the Disability Appeals Officer, 1st Floor, Dolcain House, Monastery Road, Clondalkin, Dublin 22.

Dated: 19th March 2009

**Teresa Dykes
Disability Appeals Officer**

APPENDIX A

DOCUMENTS FURNISHED BY THE HSE:

1. Summary of Case Notes between 21.08.2007 and 16.09.2008, author Ms. N, Assessment Officer;
2. Application for Assessment of Need dated 17.08.2007;
3. Letters from Ms. N to Ms. X dated 21.08.2007 and 07.11.2007;
4. Reports of assessments completed prior to the Assessment of Need process
 - Speech & Language Report of Ms. O'F dated 08.05.2007
 - Public Health Nurse Assessment letter of Ms. S dated 19.10.2007
 - Speech & Language Report of Ms. H dated 21.11.2007
5. Letters from Ms N requesting Assessments under the Disability Act 2005 addressed to:
 - 5.1 B S, PHN dated 12.10.2007
 - 5.2 R M B, Speech & Language Manager, dated 14.11.2007
 - 5.3 S S-J, Psychologist dated 14.11.2007
 - 5.4 Dr M, Lucena Clinic dated 26.11.2007
 - 5.5 G B, Director, Beechpark Services dated 18.12.2007
 - 5.6 Dr C, Paediatrician, National Children's Hospital, Tallaght, dated 29.01.2008
 - 5.7 H C, St Catherine's Services, Newcastle, dated 27.05.2008
6. Letters received by the HSE from:
 - 6.1 Dr M dated 11.12.2007
 - 6.2 G B dated 10.01.2008 (email timed at 16.49)
 - 6.3 J S, Complaints Officer, HSE, dated 11.04.2008
 - 6.4 Dr G, Consultant Child & Adolescent Psychiatrist, HSE, dated 27.05.2008
 - 6.5 P C, Director, Lucena Clinic dated 21.06.2008

- 6.6 J McG, Psychologist dated 10.09.2008
- 7. Reports completed for the Assessment of Need;
 - 7.1 Dr W dated 21.04.2008
 - 7.2 Dr K Psychologist dated 22.08.2008
- 8. Memorandum dated 16.11.2007 from S McN, HSE Assistant National Director, PCCC West, addressed to P H, Assistant National Director, Primary Continuing Community Care (PCCC), T O'B, Assistant National Director and J B, Assistant National Director.
- 9. Collection of HSE meeting notes between 30/11/2007 and 30/04/2008 concerning difficulties with accessing assessment appointments for Y
- 10. Collection of Emails and other correspondence authored by Ms N