

## **DISABILITY APPEALS OFFICER**

### **Determination and Reasons for Decision Report**

#### **Redacted and Anonymous Version**

#### **Appeal Reference: AP0046**

**20<sup>th</sup> May 2011**

#### **Summary**

*(Please note that this Summary is not an official part of my Determination and is not intended to have legal effect. Rather, it is provided to assist the reader to quickly understand the issues in the appeal and the appeal outcome. Please read the Determination & Reasons for Decision Report in full)*

This appeal investigated whether the HSE had delayed in providing an Assessment of Need for the Applicant's son. It also investigated whether the HSE failed to carry out his assessment in conformity with the standards referred to in section 10 of the Disability Act.

The Applicant had applied for that Assessment on 02.02.2010. Under the scheme of the Disability Act 2005 and its supporting Regulations, the Assessment application had been acknowledged and confirmed as a valid application. The Assessment of Need process did commence no later than 3 months from receipt of the application, however the final Assessment Report and Service Statement, which should have been furnished to the Applicant within a further three months, was not provided for some seven (7) months outside the time set under the Disability Act 2005.

My Determination in this case was to allow the appeal, and affirm the findings of the Complaints Officer's Report of the 06.09.2010, which required that the Applicant's Assessment of Need be completed and issued in conjunction with his Service Statement without delay no later than 18.11.2010. This Appeal determines that the HSE did not meet its statutory timelines and did not conform to the HIQA Standards in the co-ordination of the Assessment of Need process for this child.

## **Determination and Reasons for Decision Report**

### **1. Background & Appeal Issues:**

- 1.1 This appeal concerns the alleged failure of the HSE in two respects. Firstly the Applicant alleges failure by the HSE Dublin West to implement the Complaints Officer's recommendations in relation to the timeframe for commencement and completion of an Assessment Report in respect of Y (hereafter referred to as Y) and the timeframe for issuing a Service Statement in respect of Y. The Complaints Officer had recommended that Y's outstanding assessments be completed no later than 18.10.2010 and that if he was entitled to a Service Statement that this statement should be completed and issued with his final Assessment Report to his family no later than 18.11.2010.
  
- 1.2 Secondly, the Applicant alleges that the HSE did not conform to the HIQA standards when co-ordinating Y's Assessment of Need process. The Applicant, submitted a valid application on or about 08.02.2010. This application was not acknowledged until 30.03.2010, and the parents were not contacted by the HSE until 20.08.2010, some five (5) months after the acknowledgement letter from the Assessment Officer. In her letter of 12.10.2010, Y's mother enquired from the Assessment Officer, what were the exceptional circumstances that delayed the completion of her

son's assessment. The HSE acknowledged by letter dated 27.10.2010 that they had failed to meet the timeframes, but they did not advise her in regard to any exceptional circumstances. However, the HSE did acknowledge her frustration with the delay and assured her that Y's assessments...  
*"would be arranged as quickly as possible"...*

- 1.3 On 28.06.2010 Ms X made a complaint to the HSE (received on 02.07.2010) pursuant to section 14(1) (b) of the Act upon the grounds that: *The fact if it be the case that the Assessment under section 9 was not commenced within the time specified in section 9(5) or was not completed without undue delay.* Ms X also made a second complaint in respect of a Service Statement; however on further examination this was not validated.
  
- 1.4 A Complaints Officer, Ms A K, was assigned, and she issued her Report on the 06.09.2010. The Complaints Officer found that *"... from examination of this case it is clear that the HSE has failed to carry out an Assessment of Need within the relevant timeframes. In accordance with my statutory functions under the Disability Act, 2005 and the Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007 (Statutory Instrument No. 263) I would therefore uphold this complaint".*
  
- 1.5 As a consequence of this finding the Complaints Officer made the following recommendations:

1.5.1 That the Assessment Officer take this matter up formally with the Local Health Manager for the Dublin West area for immediate attention to ensure that the HSE's legal obligations under the Act are met.

1.5.2 That Y's **psychological** assessment is completed no later than the **18 October 2010** unless there are clinical indications identified during this process that shows an extension to this time period is required.

1.5.3 That Y's **speech & language therapy** assessment is completed no later than the **18 October 2010** unless there are clinical indications identified during this process that shows an extension to this time period is required.

1.5.4 That Y's **occupational therapy** assessment is completed no later than the **18 October 2010** unless there are clinical indications identified during this process that shows an extension to this time period is required.

1.5.5 That Y's **paediatric** assessment is completed no later than the **18 October 2010** unless there are clinical indications identified during this process that shows an extension to this time period is required.

1.5.6 Should Y be entitled to a service statement it is to be issued in conjunction with his Final Assessment Report no later than the 18 November 2010.

1.6 By notice dated 22.10. 2010 and received by my office on 29.10.2010, Ms X made an Appeal to the Disability Appeals Officer on behalf of her son Y pursuant to section 18(1) of the Act. The grounds for her appeal related to the alleged failure by the HSE to implement the recommendations of the Complaints Officer's Report and that the HSE failed to carry out Y's assessment in conformity with the standards referred to in section 10 of the Act.

1.7 By letter dated 04.11.2010 Ms X applied, pursuant to section 18(4) of the Act for an extension to the time period within which she could submit her Appeal. By letter dated 11.11.2010 I granted Ms X's extension request and validated her Appeal.

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

**2. Statutory Considerations ( Mediation, Oral Hearing, Documents) and Approach to this Appeal:**

2.1 Following my assessment of the Appeal Notice, the material furnished with the Appeal and the documentation and further information obtained from the Applicant (see Appendix A) and the HSE (Appendix B) concerning this Appeal I did not form the opinion that the Appeal could be resolved by mediation. In this regard, I particularly took account of the fact that the Assessment of Need process had progressed before this Appeal was validated as indicated in the initial documentation from the HSE received on the 09.12.2010 by my office. Furthermore, by email dated 20.12.2010 sent at 14:09, Ms B, Assessment Officer, on behalf of the HSE, Dublin West LHO advised that three (3) out of the four (4) outstanding assessments in respect of Y were completed or under way at that stage. (Appendix B).

2.2 I did not consider it necessary to hold an oral hearing in this case. In reaching this view, I took into account both the views of Ms X and of the HSE that they did not consider an oral hearing was necessary.

2.3 I set out in paragraph 3 below and more specifically in Appendices A, B, C, D the documents which were furnished voluntarily to me in response to this Appeal and my investigation of it. In light of the documents furnished, I did not consider it

necessary to exercise my powers under section 18(6), (7) or (8) of the Act.

- 2.4 I have approached my determination upon the basis that the Applicant Ms X bears the onus of proof in respect of any disputed matters which were material or relevant to her Appeal. The standard of proof which I have applied is the civil standard on the balance of probabilities.
- 2.5 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.
- 2.6 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.

2.7 In accordance with the obligations imposed by Section 18(20) of the Act, I have considered the Notice of Appeal, supporting materials, evidence and representations submitted by the Applicant; all documents, information, evidence and representations furnished by or on behalf of the HSE; and all evidence, information and other material obtained in the course of my investigation of this Appeal. I have also considered each of the matters prescribed by Section 11(7) of the Act where relevant, including:-

(i) The Assessment Report concerned in respect of Y dated 25.03.2011;

(ii) The Service Statement concerned in respect of Y dated 21.04.2011;

(iii) Y's eligibility under the Health Acts 1947 – 2004; and

(iv) The approved standards in relation to the provision of an Assessment of Need (further referred to below).

### **3. Investigation & the Investigation Findings:**

3.1 I set out in Appendix A, B,C, and D the documents and information which were furnished to me with the original Appeal Notice, together with the other documents and information which were furnished to me by the parties in the course of my investigation and which I considered as part of this Appeal. I summarise contents of the documents and information where appropriate within these attachments.

3.2 I commenced an examination of this Appeal after being informed by the Applicant within her Appeal Notice 22.10.2010 and subsequent letter requesting an extension to appeal dated 04.11.2010 ( received on the 09.11.2010) that Y's Assessment Report and Service Statement had not yet been completed. Following the submission by the HSE on the 09.12.2010, of the relevant documents as referred to in Appendix B, I commenced an investigation into Ms X's Appeal.

3.3 Having evaluated all of the documents and information furnished as part of my investigation, I find that the chronology of events relevant to this Appeal was as follows:-

3.3.1; Ms X made an appropriate and complete application for an Assessment of Need pursuant to section 9(5) of the Act on behalf of her son Y, signed and dated 02.02.2010 and date stamped as received by the HSE on 08.02.2010.

3.3.2; By letter dated 26.03.2010, Ms A D an appointed Acting Assessment Officer, Dublin West LHO wrote a letter addressed to ... "**Dear Parents & Guardians**", advising that ... "due to maternity leave the Dublin West Office , are currently without the resources of our Assessment Officer". See Appendix C for full details of this correspondence.

3.3.3; By letter dated 30.03.2010, the Acting Assessment Officer acknowledged Ms X's Application and advised within this correspondence relevantly... "*If Y is eligible for this assessment it will commence no later than 8<sup>th</sup> February 2010*".

3.3.4; Y's Assessment of Need process commenced on or about the 30.03.2010, when the Acting Assessment Officer wrote by separate letters to the following Service Providers requesting existing reports held in respect of Y:

- Aras Rualach, Health Centre
- Sr L, Audiology Clinic
- Ms C C, PHN
- Dr Q, GP.

Within these letters she stated relevantly... *"I understand that you may be in possession of reports which are relevant to the new statutory Assessment of Need..."*

The Assessment Officer requested that any relevant reports be submitted to her **by 30<sup>th</sup> April 2010**.

3.3.5 On the 28.06.2010, Ms X lodged a complaint to the HSE as referred to previously at paragraph 1.4 and 1.5 of this Report.

3.3.6 The Complaints Officer having received the complaint on the 02.07.2010 commenced her examination of Ms. X's complaint as of 08.07.2010.

3.3.7 A letter (undated) was received by Ms X (Appendix A) from the Acting Assessment Officer, providing an appointment for Ms X to meet with Ms G F, an Assessment Officer, on 20.08.2010 at 12 noon at Cherry Orchard Hospital in regard to Y's Assessment of Need.

3.3.8 Ms X met with the Assessment Officer on the 20.08.2010, and completed a questionnaire in regard to Y's needs, (*Additional Information about Your Child*). Ms X's concerns in respect of her son were Speech and Language development and Social Skills. Within this questionnaire the Assessment Officer records relevantly that the following assessments were requested: ... "*Paeds; SLT; OT and Psychology*". This meeting was also recorded within the Case Notes of the Assessment Officer. In addition she recorded that Y had a visual assessment scheduled for November 2010 in Crumlin Hospital. Relevant to this Appeal the Assessment Officer recorded... "*Mum aware she will be contacted in 3 mths with an update*".

3.3.9 By letters dated 27.08.2010, the Acting Assessment Officer (Ms D), formally wrote to the following clinicians seeking relevant assessments for Y:

- Ms M C, Principal Psychologist;
- Ms M N, Senior Speech & Language Therapist;
- Mr Z K, Occupational Therapist; and
- Dr J B, Consultant Paediatrician, National Children's Hospital.

The Acting Assessment Officer requested that the clinicians' reports were to be completed and returned to her ... "*no later than November 13<sup>th</sup>, 2010 in order that the*

*final assessment report is completed within the statutory timeline”.*

3.3.10 The appointed Complaints Officer issued her report on 06.09.2010 recommending that all outstanding components of Y’s assessments be completed no later than **18.October 2010** and that if he was entitled to a Service Statement this was to be issued in conjunction with his Final Assessment Report no later than **18 November 2010.**

3.3.11 By letter dated 12.10.2010, Ms X wrote to Ms E B appointed Assessment Officer seeking information in regard to her son’s assessment dates. Within this correspondence Ms X refers to a number of times she had been in contact with the Assessment Officer or her office. Ms X attached a *Dates of contact* list with this letter. This is summarised as follows:

**27.09.2010:** left a message asking that AO return her call

**28.09.2010:** the Assessment Officer returned her call, and advised that “she would look at Y’s file”

**30.09.2010:** left message to return her call

**04.10.2010:** left message to return her call

**05.10.2010:** spoke with Assessment Officer who advised that she would revert back to her after she

speaks with the Occupational Therapist and the Speech & Language Therapist

**05.10.2010:** Assessment Officer returned her call and advised that Rowlagh Clinic was going to complete Y's Speech & Language Therapy Assessment. In addition she further advised that Y's Occupational Assessment should be completed by Dec-Jan.

Within her letter Ms X seeks an explanation as to why there had been no contact with her from the Assessment Officer with answers to her queries. Further she advises the Assessment Officer that she had received a letter from the Tallaght Developmental Clinic advising that as of the 29.09.2010, there was a six (6) month waiting list, and that she had completed their questionnaire and returned it to the outpatient clinic and therefore was waiting an appointment for Y. In addition she informed the Assessment Officer that as of the 07.09.2010 ... *"Y started speech and language therapy in the Rowlagh clinic, not part of his assessment but from when I applied for this for him almost 1 year previous"*. Ms X also wanted to know .... *"why the 3 month guidelines are put in place and the complaints procedure if when I go through all the procedures I still hear nothing regarding the assessments"* ..... and she also expressed... *"her frustration at the services for her son...."*

3.3.12 The Case Notes of the Assessment Officers commenced on the 20.08.2010 and end on the 08.12.2010. In all

there are 22 entries which describe the actions taken by the Assessment Officers in seeking the completion of Y's assessments. Relevantly on the 27.10.2010 the Assessment Officer recorded that she had forwarded a letter to Ms X updating her on the status of Y's assessments. This letter which was furnished to me by the HSE for my consideration, and outlined the expected timeframes for the completion of Y's Multidisciplinary assessments from October to December 2010. Within this letter the Assessment Officer acknowledges that the HSE had failed to meet the timeframes required and advised the applicant that both the complaints and appeals redress processes were open to her. From the material made available to me in the consideration of this Appeal, it is evident that Ms X had already lodged a complaint to the HSE as of 02.07.2010 and the decision in regard to her complaint was issued on the 06.09.2010.

3.3.13 Between 21.10.2010 and 27.10.2010, the Assessment Officer sent to and/or received from the clinicians four (4) emails in respect of Y's Multidisciplinary Team Assessments, (to the clinicians) as referred to in paragraph 3.3.9 of this Report with a view to seeking definitive timeframes for Y's assessments.

3.3.14 By email dated 27.10.2010 sent at 13:41, Ms X requested an update in respect of her son's assessment process. Ms X requested from the HSE an explanation as to why his

assessment was yet not completed. She stated relevantly... *"I need to know what the exceptional circumstances are that have delayed Y's assessment."* Ms X made reference to the fact that she had lodged an Appeal under section 18(1) of the Act and also stated that she was... *"very upset, shocked, appalled and horrified that something so important to my child's development can be left so long"* . Ms X also advised that she was meeting with her local TD and did not accept *"the cut backs"* as an excuse.

3.3.15 By letter dated 02.11.2010, Mr J C TD wrote to Ms E S, General Manager, HSE Dublin West LHO Area ("the General Manager"), seeking the date by which Y would have his assessments completed. This letter was referred to the Assessment Officer on the 05.11.2010 seeking a response.

3.3.16 On the 11.11.2010 the Assessment Officer emailed a report to the General Manager in response to Deputy C's letter. Within this report she advised that due to the fact that no psychologist was available to the Early Services Team in Dublin West, this resulted *in significant waiting times*.

3.3.17 On or about 04.11.2010, Y's Speech and Language Therapy Assessment was completed and submitted to the Assessment Officer by Ms S C, Senior Speech and Language Therapist. Noted within the HSE Summary Form

the therapist records that this assessment was requested as of 02.02.2010.

- 3.3.18 On or about 10.12.2010 Y's Occupational Therapy Assessment was received by the Assessment Officer.
- 3.3.19 On or about 27.01.2011 Y's Psychology Assessment was completed and was received by the Assessment Officer on the 21.03.2011
- 3.3.20 On or about the 25.03.2011 Y's Final Assessment Report was completed, some four (4) months outside the timeframe recommended by the Complaints Officer and some six (6) months outside the timeframe required of the Act.
- 3.3.21 As advised by Ms X in a telephone conversation on the 06.04.2011, Y was seen by Dr B at the Paediatric Developmental Clinic on the 05.04.2011. However, his Final Assessment Report was completed without this aspect of his assessments. Ms X had agreed with the Assessment Officer that this outstanding component of Y's assessment would be included at a later date.
- 3.3.22 By letter dated 10.05.2011 received in my office on the 12.05.2011, Ms L O the assigned Liaison Officer ("the Liaison Officer"), furnished me with a copy of Y's Service Statement which was issued as of 21.04.2011.

3.3.23 By letter dated the 11.05.2011 and received in my office on the 17.05.2011, the Assessment Officer furnished me with a copy of Y's Psychological Assessment Report dated 27.01.2011 Occupational Therapy Assessment Report, dated 10.12.2010 and, his Final Assessment Report dated the 25.03.2011 Relevantly within his Assessment Report , reference to the outstanding component of his assessments as recommended by the Complaints Officers Report the Assessment Officer states "*Mum has consented to the completion of the Assessment Report based on assessments completed to date. The Assessment Report will be amended on receipt of the Paediatric report*"

#### **4. The Case of the Applicant:**

4.1 It is the Applicants case in respect of this Appeal that:

4.1.1; Y was entitled to an Assessment of Need within the timeframe specified by section 9(5) of the Act and further supported by Clauses 9 and 10 of the Regulations.

4.1.2 ;it was her view that once she had made a full application for an Independent Assessment of Need under the Act, she expected that this assessment would have been completed without delay, and within the timeframe as set by the Act.

4.1.3; the HSE did not fulfil their role and function under the Act. Ms X made several references within the material furnished to me in the course of my investigation of this Appeal that she was dissatisfied with the level of contact by the HSE throughout the process. This evidenced in her emails: (excerpts) as follows:

*\*E mail dated 15.03.2011 sent at 12:01 ..." I am just wondering if you have received any updates regarding my son's assessment? I have tried contacting the assessment officer on numerous occasions, but am still waiting for a reply. do you know if there is anything else I can do in order to try get this assessment complete?"*

*\*Email dated 16.03.2011 sent at 10:41.... "Thanks you for contacting me yesterday, its great when someone actually replies to my emails".*

Notably in a telephone conversation with me on the 15.03.2011 she advised me that she left several messages on the Assessment Officers telephone, but no one responded. She stated relevantly .... *"the HSE were not returning my calls and that no one was keeping in contact with me"...* *"It was February 2010 when I applied and I am just frustrated with the ongoing delays".*

## **5. The Case of the HSE:**

- 5.1 The HSE who were responsible for Y's Assessment Report and Service Statement did not seek generally to dispute the issues raised by Ms X in response to this Appeal.
- 5.2 It would appear from the material submitted to me in the consideration of this Appeal that the Dublin West LHO Area experienced unforeseen delays in relation to the Assessment of Need process as evidenced from the Assessment Officers letter addressed to **Parents and Guardians** dated 26.03.2010, which stated "*....I am writing to inform you that due to maternity leave the Dublin West Office are currently without the resources of our Assessment Officer..... Unfortunately a delay in processing applications and assessments will result in a delay meeting target deadlines*".
- 5.3 The outstanding components of Y's assessments were not received by the Assessment Officer until March 2011
- 5.4 The Assessment Report was completed on the 25.03.2011 and the Liaison Officer issued Y's Service Statement on the 21.04.2011. The five (5) month delay in issuing Y's Service Statement was outside the control of the Liaison Officer

## 6. Relevant legal principles applied:

6.1 This Appeal concerns the entitlement of eligible applicants to an independent assessment of their health and education needs. The Act and its supporting Regulations [*Statutory Instrument No 263 of 2007; Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007 ("the Regulations")*], confer not only an entitlement to such an assessment but also impose an obligation on the HSE to provide such an assessment in a prompt manner. The specific obligations placed on the HSE which are relevant to this Appeal are as follows:-

6.1.1 The HSE must acknowledge receipt of a completed assessment application within fourteen (14) days of its receipt. The acknowledgement must specify the date of receipt by the HSE, and the date on which the assessment is to commence (Clause 6(1) of the Regulations).

6.1.2 The HSE must commence an assessment of eligible applicants within **three months** of the date of receipt of an assessment application/request; and must complete that assessment **without undue delay** (Section 9(5) of the Act).

6.1.3 Clause 9 & 10 of the Regulations underpin the obligations under Section 9(5): Clause 9 requires the HSE to commence the

assessment process "*as soon as possible*" after receipt of the completed application, and no later than three months from that date; Clause 10 requires that the assessment be completed within three months of commencement of the assessment save for exceptional circumstances; where exceptional circumstances do exist, the assessment process must be completed "*without undue delay*" and the Applicant must be informed in writing of the reasons for non-completion of the assessment within the original deadline and must be provided with a time-frame within which the assessment is expected to be finalised.

6.1.4 It is the responsibility of the Assessment Officer, under (*Section 8(2) of the Act*) to carry out assessments or to arrange for them to be carried out by other HSE employees or by other persons with appropriate experience. Under Section 8(5) of the Act, assessments are to be carried out without regard to the cost of, or the capacity to provide, any service identified in the assessment as being appropriate to meet the needs of the applicant concerned. Also the Assessment Officer can seek any existing documents from the applicant for the purposes of carrying out an assessment (Section 8(8) (a) of the Act).

6.2 Section 10 of the Act also provides that the HSE is to conduct assessments in conformity with any relevant HIQA standards. HIQA has published standards relevant to this area, *Standards for the Assessment of Need*, dated May 2007.

- 6.3 Clause 9 of the Regulations clarifies 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 does 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 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 on the individual factors of the case and not by a date chosen by the HSE for the assessment to commence.
- 6.4 The scheme of the Act requires that necessary assessments are to be carried out as part of the assessment process so that an Applicant's needs can be fully identified.
- 6.5 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 by 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) of the Act.

- 6.6 Section 11(8) of the Act provides that a service statement shall also be prepared and furnished to the applicant and 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 at the same time to the Applicant and HSE within this one month period.
- 6.7 Section 18(1) of the Act requires that "*An applicant or a person referred to in section 9(2) may appeal to the appeals officer in the prescribed manner against a finding or a recommendation under section 15(8) or against the non-implementation by the Executive or a head of an education service provider of a recommendation of a complaints officer and, if he or she does appeal the appeals officer shall give the parties an opportunity to be heard by him or her and to present to him or her any evidence relevant to the appeal*

## **7. Findings in respect of the issues raised by this Appeal:**

7.1 As a consequence of the investigation findings set out in section 3 above and the evidence gathered during my investigation of this Appeal, I make the following findings in respect of the issues raised by this Appeal:

7.1.1; Y's Assessment Report and Service Statement were not issued in accordance with the statutory requirements under the Act.

7.1.2; The Complaints Officer's Report findings on the 06.09.2010 were very reasonable given the delay that Y had experienced to that point.

7.1.3; From the material made available to me from the HSE for my consideration of this Appeal, I am satisfied that Y's Assessment of Need process commenced on or about the 30.03.2010, when the Acting Assessment Officer wrote to the Service Providers as referred to under paragraph 3.3.4 of this Report.

7.1.4; Contrary to the requirements of clause 6 of the Regulations, the application made on behalf of Y for an Assessment of Need was not acknowledged within fourteen (14) days of receipt of application. An acknowledgement was only forwarded in a letter

dated 30.03.2010, some five (5) weeks outside the period prescribed by clause 6 of the Regulations. The Assessment Officer acknowledged Ms X's application and further advised that if her son was eligible his assessment would commence as of the 08.02.2010. This I can only infer was a typographical error and that the Assessment Officer meant to state 08.04.2010 which is in keeping with section 9(5) of the Act i.e. within three (3) months of the date of the receipt of the application.

7.1.5; The next contact which Ms X appears to have had with the HSE was an undated appointment letter inviting her to a meeting on the 20.08.2010 in relation to her application for An Assessment of Need for Y. It would have been reasonable for Ms X to assume, in the absence of confirmation that Y was not eligible, that his assessment had been progressing in the interim.

7.1.6; The material submitted to me clearly indicates that the Complaints Officer notified the HSE ( General Manager and the Assessment Officer) via email on the 08.07.2010, sent at 15:37 that she had received a complaint from Ms X in regard to a timeline issue and sought a copy of Y's file. Relevantly the Complaints Officer had to reissue the request for Y's file by email dated 25.08.2010 sent at 16:01. One could infer that the HSE took action to progress Y's application after they became aware that the Complaints Officer was examining Ms X's complaint.

7.1.7; The failure to involve Ms X in the assessment process between the 30.03.2010 and the meeting arranged for the 20.08.2010 is

in breach of the HIQA standards as referred to in section 10. of the Act. Significantly the Assessment Officer's Case notes commenced as of the 20.08.2010 and I can only infer that Ms X's application was not in fact being progressed between March and August 2010.

7.1.8; Apart from the absence of an Assessment Officer (due to maternity leave) it is not obvious that there were any further exceptional circumstances which contributed to the subsequent delay in completing the outstanding components of Y's assessment. On the 27.08.2010 the Acting Assessment Officer sought the appropriate assessments from the relevant clinicians and requested that they be completed and submitted to her *no later than November 13 2010 in order that the final assessment report is completed within the statutory timeline..* However, the statutory timeline for the completion of Y's assessments, which was on or about the 08.08.2010 (6 months after the receipt of Ms X's application) had already been breached. However the new timeline of 13.11.2010 meant that the timeline set by Complaints Officer of 18.10.2010 was inevitably going to be breached and therefore the recommendations within the Complaints Officers report would not be complied with.

7.1.9; Although the new timeline had been set by the Acting Assessment Officer for November 2010, it was another four (4) months before these assessments were completed. Specifically the Speech and Language Assessment was received by the Assessment Officer on 05.11.2010, the Occupational Therapy

Assessment was received on 05.01.2011 and finally the Psychological Assessment was received on 21.03.2011.

7.1.10; As advised by letter dated 29.09.2010 Y had been placed on a waiting list for a Paediatric Developmental assessment and the letter advised there was approximately a six (6) month waiting list for such appointments. By telephone conversation Ms X advised me that Y was reviewed by the Paediatrician as of the 05.04.2011. To avoid a further delay in the issuing of Y's Final Assessment Report it was agreed with Ms X that the Report would issue without this component of the assessment. This outstanding component was to be included when Dr B's Report was issued. This was referred to within Y's Final Assessment Report, see Appendix D.

7.1.11; There was a distinct lack of involvement by the Dublin West LHO Area involved in this case until the Complaints Officer sought relevant information to examine in regard to the complaint lodged by Ms X. A number of explanations have been provided for the failings in this case. I accept that the Acting Assessment Officer endeavoured to source the appropriate assessments for Y as of the 27.08.2010, however, as his assessment process should have commenced on or before the 08.04.2010, this delay is not acceptable. The early communication failures following the receipt of the Assessment of Need application were no doubt contributed to by the absence of an Assessment Officer on maternity leave. However, adequate contingency measures should be in place within the HSE Dublin West LHO Area for such absences to ensure that the statutory

obligations under the Act are met. It appears that no adequate procedures were in place in this instance.

7.1.12; I do not however consider that the absence on maternity leave alone provides a sufficient explanation for the continued delay in completing the required Assessment of Need for Y. The Acting Assessment Officer requested Y's Assessments in August 2010 and advised the assessors she required their reports by the 13<sup>th</sup> November 2010. This deadline was also not complied with. I consider that the HSE Dublin West LHO Area needs to reassess the Assessment of Need process as a matter of urgency to identify the failures that occurred in this case. The statutory independent Assessment Officer must have the adequate supports required to process the applications for the children concerned. Statutory timeframes identified by Assessment Officers must be adhered to under the Act.

7.1.13; In summary, this case identifies a substantial breach of the obligations to complete Y's assessment without "*undue delay*", within the material made available to me there are no exceptional circumstances which justify or provide an adequate explanation for that delay. This delay must also be seen in the context of the overall delay which Ms X experienced in obtaining an Assessment Report for her son and the stress this caused to him and his family.

## **8. Determination:**

8.1 As a consequence of the above findings, I have determined that:

8.1.1 the Appeal of Ms X in respect of the non implementation of the recommendations within the Complaints Officer's Report should be allowed.

8.1.2 the recommendations of the Complaints Officer's Report in respect of Y's Final Assessment Report be affirmed.

8.1.3 As a result of the significant delay in completing Y's Final Assessment Report I consider that the Liaison Officer could not have complied with the recommendations of the Complaints Officer. I therefore vary this aspect of the Complaints Officer's findings as the Liaison Officer issued Y's Service Statement as soon as was reasonably possible in compliance with clause 19 of the Regulations to the Act.

## **9 Additional Comments**

9.1 The substantive issues of this Appeal require me to determine the appeal according to the grounds under section 18(1) of the Act. From the material made available to me for consideration it was very reasonable that Ms X raised the issue that her son's assessment process was not in compliance with the standards as prescribed under section 10 of the Act when she lodged her Appeal. However, the original complaint by Ms X was not in relation to this issue and the subsequent decision by the Complaints Officer on the 06.09.2010 could not make a finding in this regard. Therefore I cannot make a determination on this matter. However, the lack of communication, explanations and ongoing delays experienced by Ms X was never envisaged by the HIQA Standards 2007.

9.2 Under section 8(4) and section 15(2) of the Act, both Assessment Officers and Complaints Officers respectively are required to be "*independent in the performance of his or her functions*". These important provisions are intended to ensure that Assessment and Complaints Officers exercise their functions, including their decision making powers, independently of the HSE. This case highlights that the HSE Dublin West Area did not comply with a request for Assessments of Need for an eligible applicant under the Act and did not comply further with the recommendations of the Complaints Officer. There was a lack of support for the Assessment Officer in meeting his/her obligations under the Act.

## **10. Publication:**

10.1 Pursuant to section 18(22) of the Act, I propose to make a duly anonymised copy of this Determination and Reasons for Decision Report, redacting all identifying information in relation to Y, to Ms X and any other member of the X family, available for public inspection. I also propose to redact the names of the HSE personnel involved in the Assessment of Need process and Service Statement preparation. In the absence of any objections received from either party regarding the form of the anonymised Report which I propose to make available to the public within twenty one (21) days of the date hereof, I shall thereafter make the said anonymised copy of this Determination available for public inspection on the ODAO website [www.odaio.ie/Determination](http://www.odaio.ie/Determination) and also between the hours of 10am and 4.30pm on working days by appointment at the:

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

**Dated: 20<sup>th</sup> May 2011**

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**Teresa Dykes**

**Disability Appeals Officer**

## **Appendix A: Submission from Applicant in regard to this Appeal;**

- 1 Appeal Application form (Form A1) dated 22.10.10 and received by my office on 29.10.10.
- 2 Letter dated 08.07.10 from Complaints Officer to Applicant
- 3 Copy of Complaints Officer's Report dated 06.09.2010 with covering letter.
- 4 Copy of letters dated 26.03.10, 30.03.10 and an undated letter from the Assessment Officer to Parents.
- 5 Copy of report dated 20.08.10 from C McC Honeybears Creche, Quarryvale Community and family Resource Centre
- 6 Copy of letter dated 27.08.2010 from S C, Senior Speech & Language Therapist to Parents
- 7 Copy of letter dated 14.09.10 from Dr G M. S P. Registrar to Dr T M, to Parents.
- 8 Copy of letter dated 29.09.10 from Ms B F, Developmental Appointments Secretary, to Parents.
- 9 Copy of letter dated 12.10.10 from X to Assessment Officer
- 10 Copy of letter dated 27.10.10 from Assessment Officer to X.

**Appendix B; Submission from HSE received on the 09.12.10 in response to this Appeal:**

1. Copy of Application for Assessment of Need for a Child Under 5 Years and Consent Form dated 02.02.10 from X
2. Copy of Additional Information About Your Child form dated 20.08.10 from X
3. Copy of letter dated 30.03.10 from Assessment Officer to X
4. Copy of letter dated 30.03.10 from Assessment Officer to Aras Rualach
5. Copy of letter dated 30.03.10 from Assessment Officer to Sr L Audiology Clinic.
6. Copy of letter dated 30.03.10 from Assessment Officer to Ms C C, PHN Rowlagh Health Centre.
7. Copy of letter dated 30.03.10 from Assessment Officer to Dr Q GP.
8. Copy of email dated 08.07.10 from Complaints Officer to Assessment Officer.
9. Copy of Case Notes dated 20.08.10 to 08.12.10 from Assessment Officer.
10. Copy of letters dated 27.08.10 from Assessment Officer to Ms M C, Principal Psychologist, Ms M N, Senior Speech & Language Therapist, Mr Z K, Rosse Court Resource Centre and Dr J B, National Children's Hospital
11. Copy of letter dated 12.10.10 from Ms X, to Assessment Officer

12. Copy of email correspondence dated 21.10.10 between Assessment Officer and M C, Psychologist, S K, Occupational Therapist, M N, Speech & Language Therapist.
13. Copy of email dated 27.10.10 from X, to Assessment Officer
14. Copy of letter dated 27.10.10 from Assessment Officer to X
15. Copy of email correspondence dated 27.10.10 between X, and Assessment Officer.
16. Copy of email correspondence dated 27.10.10 from S C, Speech & Language Therapist to Assessment Officer
17. Copy of email correspondence dated 05.11.10 from S C to Assessment Officer
18. Copy of email correspondence dated 09.11.10 from Assessment Officer to M C, Psychologist
19. Copy of email correspondence dated 11.11.10 from Assessment Officer to S B

**Appendix C; Letter from Assessment Officer dated  
26.03.2010 to Parents & Guardians:**



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

Local Health Office Dublin West  
Cherry Orchard Hospital  
Ballyfermot  
Dublin 10

Tel: (01) 620 6300  
Fax: (01) 620 6358

Dear Parents & Guardians

26<sup>th</sup> March 2010

RE: Assessment of Need.

On behalf of the Health Service Executive, I am writing to inform you that due to maternity leave the Dublin West Office, are currently without the resources of our Assessment Officer.

We have initiated an interim solution and we will endeavour to have your child's assessment completed within the time frame specified in section 9:5 of the Disability Act. Unfortunately a delay in processing applications and assessments will result in a delay meeting target deadlines.

Your patience in this regard would be very much appreciated and I assure you that everything possible is being done to ensure that your application for assessment is completed as efficiently as circumstances will permit.

If you have any concerns please contact S [redacted] B [redacted] secretary for the General Manager) On 01 6206300 and S [redacted] will direct your concerns to the appropriate personnel.

Yours sincerely

A [redacted] D [redacted]  
Acting Assessment Officer  
Dublin West



In addition, the following needs have been identified and have been referred to the appropriate statutory body as listed.

1. Ms. M. S. Special Educational Needs Organiser, National Council for Special Education, Belgard Square North Town Centre, Tallaght, Dublin 24: Following completion of assessments, the need for educational supports / resources has been indicated. Referral made on 25/03/11 with Mum's consent.
2. Dr. J. B. Consultant Paediatrician, Community Child Health, AMNCH: A Paediatric assessment has been schedule with Dr. B. for 05/04/11 in AMNCH. Referral made and relevant reports forwarded with Mum's consent on 25/03/11. The Paediatric Assessment was requested under Assessment of Need. Mum has consented to the completion of the Assessment Report based on assessments completed to date. The Assessment Report will be amended on receipt of the completed Paediatric report.
3. Ms. G. B. Director of Services, Beechpark Services, Bryan S. Ryan Building, Main Road, Tallaght, Dublin 24: Following completion of assessments, the need for referral to Beechpark Services is indicated. Initial referral letter sent on 16/03/11. Relevant reports sent with Mum's consent on 25/03/11.
4. Ms. E. O'H. Social Worker, LHO Dublin West, Cherry Orchard Hospital, Ballyfermot, Dublin 10: Following completion of assessments and discussion with Mum, referral made on 25/03/11 for Social Work Support.

