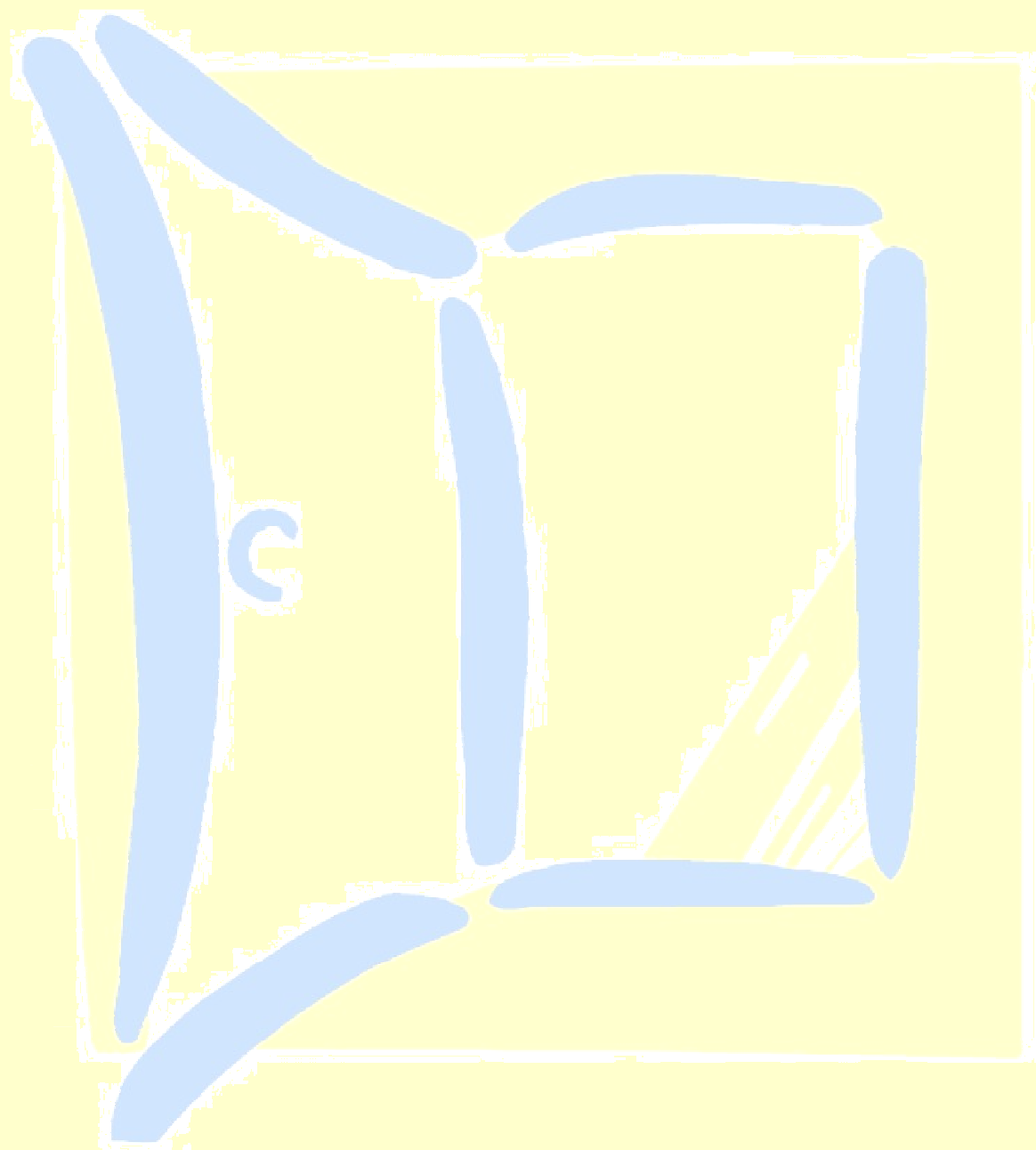


Social Welfare Appeals Office

Annual Report 2009



**Report by the Chief Appeals Officer on the activities
of the Social Welfare Appeals Office in 2009**



Éamon Ó Cuív T.D.
Minister for Social Protection
Áras Mhic Dhiarmada
Dublin 1

June 2010

Dear Minister,

In accordance with the provisions of section 308 (1) of the Social Welfare Consolidation Act 2005, I hereby submit a report on the activities of the Social Welfare Appeals Office for the year ended 31 December 2009.

Yours sincerely,

Geraldine Gleeson
Chief Appeals Officer

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INTRODUCTION

I took up office in January 2010 and I am in the unusual position of reporting on a year overseen by my predecessor, Mr Brian Flynn, who retired on the last day of 2009. Mr Vincent Long, the Deputy Chief Appeals Officer, moved to another area of the Department earlier in the year. I would like to pay tribute to both Brian and Vincent for their contribution during 2009 and many other years.

Continuity has been achieved in the form of Mr Dan Kavanagh, the current Deputy Chief Appeals Officer, who took up his current position in February 2009.

2009 was an exceptionally difficult year. 25,963 appeals were registered in 2009 which was 46% higher than in 2008.

As the number of appeals increased substantially and a number of experienced Appeals Officers retired, this presented enormous challenges for the Office, the administration staff and the Appeals Officers. The number of appeals finalised was 13% higher than in 2008 (17,787 in 2009 compared with 15,724 in 2008) which is a tribute to all involved.

At the end of 2009 we had 16,008 appeals on hands. This is a challenge we have carried into 2010 and one which will be exacerbated by the continuing high levels of receipts.

There is no doubt this is the single biggest challenge ever faced by this Office.

Our primary concern is to minimise the effect on our customers in terms of waiting times. This is our major priority for 2010. Two additional Appeals Officers were appointed in 2009 and five officers who retired were replaced. However, we must also create capacity by achieving a more effective throughput of appeals. Our objective is to achieve this in a way that does not undermine fair procedure or conflict with due process in terms of the rights of appellants and adherence to the requirements of natural justice.

Finally, I would like to thank all the Appeals Officers and the administrative staff for their commitment and dedication in a very demanding environment.

Geraldine Gleeson

Director and Chief Appeals Officer

June 2010

Statistical Trends – 2009

Our main statistical data for 2009 is set out in commentary form below and in the "Workflow Chart" and tables which follow.

Appeals Received in 2009

We registered a total of 25,963 appeals in 2009 which was an increase of 46% on 2008. This is the highest number of appeals ever received. Receipts in 2008 increased by 27% on 2007. The average number of appeals received each year since the establishment of my Office in 1992 until 2007 was in the region of 15,000. The magnitude of the number of appeals received in 2009 is better appreciated when looked at in this context.

Clarifications in 2009

In addition to registering 25,963 appeals, we also received a further 2,657 appeals where it appeared to us that the reason for the adverse decision may not have been fully understood by the appellant. In those circumstances, the letter of appeal was referred to the relevant scheme area of the Department requesting that the decision be clarified for the appellant. We informed the appellant accordingly and advised that if they were still dissatisfied with the decision following the Department's clarification, they could still appeal the decision to my Office. During 2009, only 422 (16%) of the cases identified as requiring clarification were subsequently registered as formal appeals. This is considered to be a very practical way of dealing with such appeals so as to avoid unnecessarily invoking the full appeals process.

Appeals Types in 2009

The number of appeals regarding unemployment claims has increased again in 2009. The increase is most evident in unemployment claims where means were at issue with an increase of 90% on 2008. Unemployment means appeals had already increased by 110% in 2008 on receipts in 2007. Again, the bulk of that increase is likely to be self-employed construction industry workers.

Appeals against the disallowance of illness benefit and disability allowance have also increased significantly; up by 38% and 33% respectively on 2008. Supplementary welfare allowance claims have also increased by 80% in 2009 over 2008.

Appeals in relation to child benefit claims also showed a significant increase in 2009; up 97%

on 2008 although the numbers involved are not very high; increased from 689 in 2008 to 1,361 in 2009. Carer's allowance and carer's benefit appeals showed a 90% increase from 1,901 in 2008 to 2,098 in 2009.

Workload for 2009

The workload of 33,795 for 2009 was arrived at by adding the 25,963 appeals received to the 7,832 appeals on hands at the beginning of the year. That total workload was 43% higher than the workload of 23,556 for 2008.

Appeals Finalised in 2009

We finalised 17,787 appeals in 2009 which represented a 13% increase on 2008. This is particularly creditable considering the loss to my Office of 5 experienced Appeals Officers on retirement during the year. The appeals finalised were broken down between:

- Appeals Officers (56.4%): 10,027 were finalised by Appeals Officers either summarily or by way of oral hearings (9,423 or 59.9% in 2008),
- Revised Decisions (27.4%): 4,873 were finalised as a result of revised decisions being made by deciding officers before the appeals were referred to an Appeals Officer (4,235 or 27% in 2008), and
- Withdrawn (16.2%): 2,887 were withdrawn or otherwise not pursued by the appellant (2,066 or 13.2% in 2008).

Appeals Outcomes in 2009

The outcomes of the 17,787 appeals finalised in 2009 were broken down as follows:

- Favourable (48.2%): 8,568 of the appeals finalised had a favourable outcome for the appellant in that they were either allowed in full or in part or resolved by way of a revised decision by a deciding officer in favour of the appellant (47.8% in 2008),
- Unfavourable (35.6%): 6,332 of the appeals finalised were disallowed thus giving rise to an unfavourable outcome for the appellant (39% in 2008), and
- Withdrawn (16.2%): As previously indicated, 2,887 of the appeals finalised were withdrawn or otherwise not pursued by the appellant (13.2% in 2008).

Determinations by Appeals Officers in 2009

The following gives a statistical breakdown on the outcomes of determinations by Appeals Officers by reference to whether the appeal was dealt with summarily or by way of an oral hearing.

- Oral Hearings (59%): 5,914 of the 10,027 appeals finalised in 2009 were dealt with by way of oral hearings, of which 2,876 (48.6%) had a favourable outcome. In 2008, 45.4% had a favourable outcome out of 59.4% dealt with by way of oral hearings.
- Summary Decisions (41%): The balance of 4,113 of appeals finalised were dealt with by way of summary decisions of which 819 (19.9%) had a favourable outcome for the appellant. In 2008, 19.5% had a favourable outcome out of 40.6% dealt with summarily.

Processing Times in 2009

The average time taken in 2009 to process all appeals was 24 weeks (22 weeks in 2008). However, if allowance is made for the 25% most protracted cases on our books, the average time taken falls to 15.8 weeks (14.5 weeks in 2008).

The time taken to finalise appeals reflects all aspects of the appeals process which includes:

- seeking the Department's submission on the grounds for the appeal,
- further medical assessments by the Department in certain illness related cases,
- affording the appellant the opportunity to respond or submit any additional medical evidence where there is an unfavourable outcome following further medical assessments by the Department,
- further investigation by Social Welfare Inspectors where required and
- the logistics involved in arranging oral appeal hearings where deemed appropriate.

The overall average of 24 weeks may be broken down as follows:

- 10.5 weeks attributable to necessary action required to be done by the Department,
- 5 weeks attributable to responses awaited from appellants, and
- 8.5 weeks attributable to ongoing work and processes in my Office.

Appeals by Gender in 2009

A gender breakdown of appeals received in 2009 revealed that 48.4% were from men and 51.6% from women. The corresponding breakdown for 2008 was 48% and 52% respectively. In terms of favourable outcomes in 2009, 47.3% of men and 59.8% of women benefited.



Workflow Chart - 2009
(Corresponding figures for 2008 are in brackets)

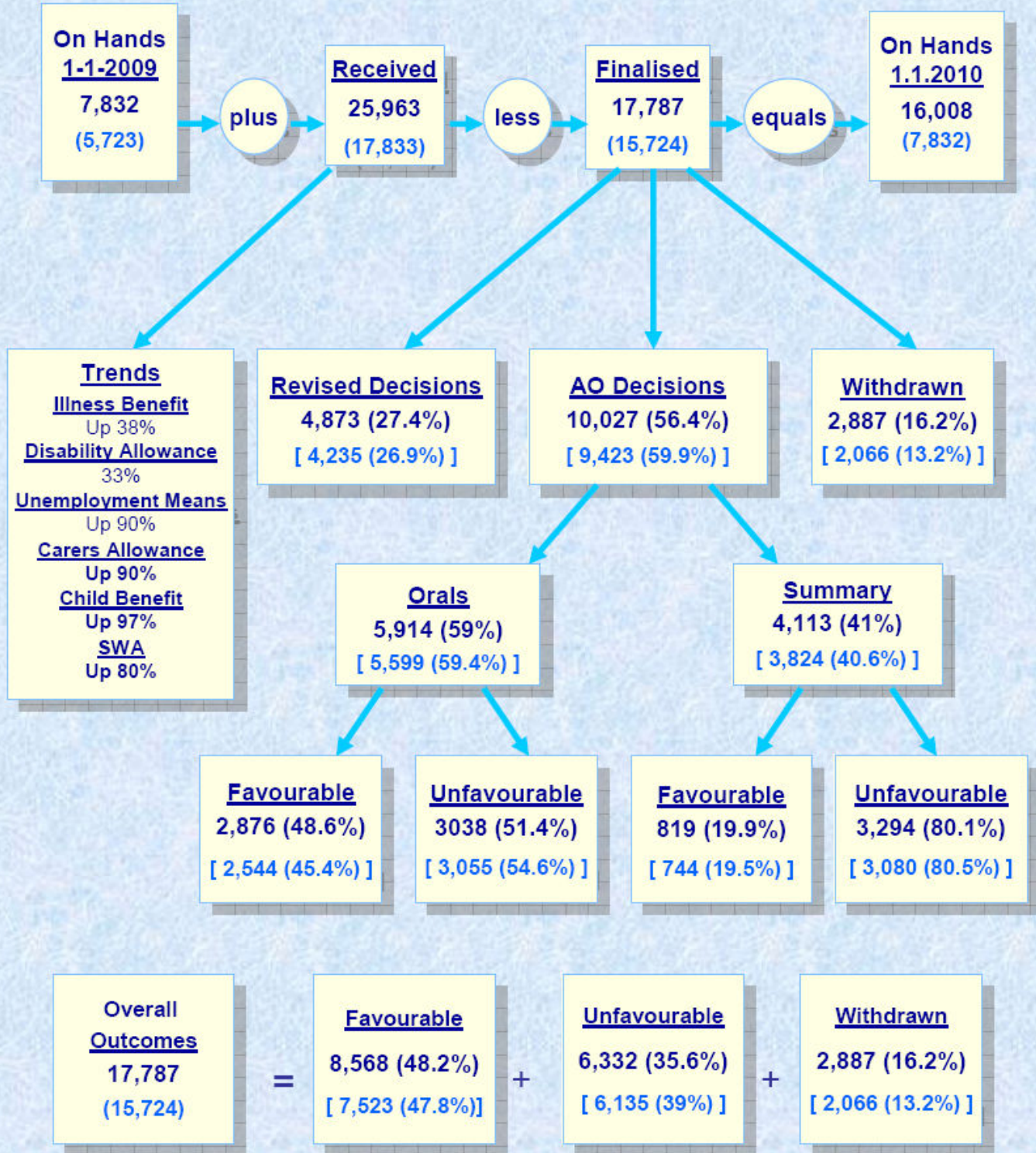


Table 1. Appeals received and finalised 2009

	In Progress 01-Jan-09	Receipts	Decided Appeals Officer	Revised Decision Deciding Officer	Withdrawn	In Progress 31-Dec-09
State Pension (non-contributory)	147	340	206	85	19	177
State Pension (Transition)	12	22	16	4	5	9
Pre-retirement Allowances	4	3	5	0	2	0
State Pension (contributory)	47	88	43	22	8	62
Illness Benefit	1,404	4,948	952	1,605	1,374	2,421
Invalidity Pension	317	642	380	82	23	474
Disability Allowance	1,550	4,696	1,546	995	859	2,846
Occupational Injuries Benefits	258	396	332	38	28	256
Treatment Benefit	8	10	9	2	1	6
Jobseekers Benefit	448	1,354	724	289	97	692
Jobseekers Allowance - Payments	755	3,179	1,479	277	93	2,085
Jobseekers Allowance - Means	859	3,615	1,603	479	139	2,253
Widows/Widowers and Guardians Payments	32	69	42	8	5	46
One-Parent Family Payment	388	810	446	202	78	472
Maternity Benefit	2	11	6	1	0	6
Child Benefit	573	1,361	272	204	38	1,420
Carers Benefit and Allowances	618	2,098	862	388	53	1,413
Domiciliary Care Allowance	0	836	11	47	2	776
Respite Care	119	262	139	53	4	185
Family Income Supplement	51	170	89	54	5	73
Farm / Fish Assist	34	137	50	13	10	98
Supplementary Welfare Allowances	114	789	730	5	29	139
Liability relatives (contributions)	15	25	13	2	3	22
Insurability of Employment	77	102	72	18	12	77
Totals	7,832	25,963	10,027	4,873	2,887	16,008

Table 2: Appeals received 2002 – 2009

	2002	2003	2004	2005	2006	2007	2008	2009
State Pension (non-con), Blind Pen	433	376	328	339	413	347	287	340
State Pension (Transition)	33	46	39	35	28	30	15	22
Pre-retirement Allowances	28	24	21	23	21	11	10	3
State Pension (con)	239	155	104	126	71	86	87	88
Illness Benefit	3,284	3,634	3,071	2,742	2,674	2,564	3,597	4,948
Invalidity Pension	509	529	519	443	446	535	526	642
Disability Allowance	1,832	2,257	2,252	2,392	2,622	2,938	3,522	4,696
Occupational Injuries Benefits	575	503	470	434	440	423	409	396
Treatment Benefit	4	9	50	52	41	17	18	10
Jobseekers Benefit	1,588	1,626	1,421	1,243	1,028	1,139	1,358	1,354
Jobseekers Allowance - Payments	1,983	1,874	1,956	2,274	2,375	2,296	2,401	3,179
Jobseekers Allowance - Means	1,511	1,167	907	843	848	903	1,901	3,615
Widows/Widowers and Orphans Pensions	106	64	64	63	62	31	58	69
One-Parent Family Payment	840	1,348	1,271	1,034	931	701	774	810
Maternity Benefit	9	10	14	16	20	10	15	11
Child Benefit	46	41	324	357	236	269	689	1,361
Carers Benefit and Allowance	1,376	812	598	586	630	736	1,102	2,098
Domiciliary Care Allowance	0	0	0	0	0	0	0	836
Respite Care	0	0	0	206	361	457	319	262
Family Income Supplement	72	43	47	57	65	92	142	170
Farm / Fish Assist	134	127	107	114	71	66	61	137
Supplementary Welfare Allowances	289	433	370	327	329	323	437	789
Liabile Relatives (contributions)	6	7	5	12	3	9	19	25
Insurability of Employment	120	139	145	79	85	87	86	102
Totals	15,017	15,224	14,083	13,797	13,800	14,070	17,833	25,963

Table 3: Outcome of appeals by category 2009

	Allowed	Partly Allowed	Revised DO Decision	Disallowed	Withdrawn	Total
State Pension (non-contributory) and Blind Pensions	33 11%	21 7%	85 27%	152 49%	19 6%	310
Illness Benefit	433 11.0%	14 0.4%	1,605 40.8%	505 12.8%	1,374 35.0%	3,931
Invalidity Pension	243 50.1%	1 0.2%	82 16.9%	136 28.0%	23 4.7%	485
Disability Allowance	719 21.1%	43 1.3%	995 29.3%	784 23.1%	859 25.3%	3,400
Occupational Injuries Benefits	137 34.4%	32 8.0%	38 9.5%	163 41.0%	28 7.0%	398
Jobseekers Benefit	169 15.2%	34 3.1%	289 26.0%	521 46.9%	97 8.7%	1,110
Jobseekers Allowance - Payments	326 17.6%	39 2.1%	277 15.0%	1,114 60.2%	93 5.0%	1,849
Jobseekers Allowance – Means	454 20.4%	191 8.6%	479 21.6%	958 43.1%	139 6.3%	2,221
Widows/ers Pensions and Guardians Payment	12 21.8%	1 1.8%	8 14.5%	29 52.7%	5 9.1%	55
One-Parent Family Payments	102 14.0%	20 2.8%	202 27.8%	324 44.6%	78 10.7%	726
Carers Allowances	244 18.7%	48 3.7%	388 29.8%	570 43.7%	53 4.1%	1,303
Domiciliary Care Allowance	6 10.0%	0 0.0%	47 78.3%	5 8.3%	2 3.3%	60
Respite Care	38 19.4%	1 0.5%	53 27.0%	100 51.0%	4 2.04%	196
Family Income Supplement	24 16.2%	- 0.0%	54 36.5%	65 43.9%	5 3.4%	148
Farm / Fish Assist	12 16.4%	8 11.0%	13 17.8%	30 41.1%	10 13.7%	73
Supplementary Welfare Allowances	157 20.5%	50 6.5%	5 0.7%	523 68.5%	29 3.8%	764
Insurability of Employment	18 17.6%	2 2.0%	18 17.6%	52 51.0%	12 11.8%	102
Other Appeals - State Pension (Contributory), Child Benefit, Treatment Benefit, etc.,	48 7.3%	15 2.3%	235 35.8%	301 45.9%	57 8.7%	656
Totals	3,175 17.9%	520 2.9%	4,873 27.4%	6,332 35.6%	2,887 16.2%	17,787

Table 4: Appeals in progress at 31 December 2002 - 2009

	2002	2003	2004	2005	2006	2007	2008	2009
State Pension (non-contributory), Blind Pension	212	139	138	149	195	143	147	177
State Pension (Transition)	18	13	15	13	21	19	12	9
Pre-retirement Allowances	4	5	10	13	8	5	4	0
State Pension (contributory)	179	117	128	90	95	55	47	62
Illness Benefit	1,374	1,272	1,068	997	1,007	1,015	1,404	2,421
Invalidity Pension	227	234	276	260	268	297	317	474
Disability Allowance	857	802	803	1,040	1,127	1,311	1,550	2,846
Occupational Injuries Benefits	358	259	306	268	272	239	258	256
Treatment Benefit	2	2	11	23	7	3	8	6
Jobseekers Benefit	432	388	360	390	277	317	448	692
Jobseekers Allowance - Payments	541	318	468	668	576	681	755	2,085
Jobseekers Allowance - Means	405	268	290	347	322	382	859	2,253
Widows/ers and Guardians payments	62	29	31	41	31	14	32	46
One-Parent Family Payment	658	950	765	642	461	296	388	472
Maternity Benefit	6	4	4	8	9	4	2	6
Child Benefit	23	14	165	136	104	131	573	1,420
Carers Benefit and Allowances	514	275	249	311	371	353	618	1,413
Domiciliary Care Allowance	0	0	0	0	0	0	0	776
Respite Care	0	0	0	69	166	221	119	185
Family Income Supplement	31	26	25	36	29	40	51	73
Farm / Fish Assist	57	61	39	65	32	31	34	98
Supplementary Welfare Allowance	42	38	65	54	43	79	114	139
Liabile relatives (contributions)	28	6	6	10	2	2	15	22
Insurability of Employment	126	111	103	73	75	85	77	77
Totals	6,156	5,331	5,325	5,703	5,498	5,723	7,832	16,008

Meetings and Consultations

Decisions Advisory Office

Regular meetings, usually once a month, were held with the Decisions Advisory Office (DAO) during 2009 as a means of providing feedback to the Department, and vice versa, as regards issues arising in the course of appeal cases. As in previous years, a wide range of issues were discussed during the year and the following represents the main ones:

- The assessment of means from self-employment and from the capital value of second properties in the current economic climate;
- Issues surrounding the operation of the legislation governing the Habitual Residence Conditions;
- Backdating and what represents 'good cause'.
- The churn created by persons being disallowed for JA, appealing and receiving SWA, disallowed again on appeal and then re-starting the process with a fresh JA claim.

Appeals Officers are conscious of the fact that their decisions may ultimately be challenged in the High Court and that any shortcomings or deficiencies at the initial decision making stage in the Department have the potential to undermine the entire decisions and appeals process.

Consequently, from my Office's perspective, one of the DAO's most important functions is the formal training of deciding officers and we obviously have an interest in ensuring that the training provided is targeted and focused on our own particular needs. To that end, my Office contributed an appeals module to 6 training courses involving some 188 deciding officers of the Department during 2009. This brings the respective totals for the years 2006 – 2009 to 32 training courses and 816 participants. We are committed to continuing that level of commitment to the DAO's training programme into the future.

Appeals Officers

Meetings of Appeals Officers were held in April and in October 2009 in line with the Chief Appeals Officer's statutory responsibility to convene such meetings for the purpose of discussing matters relating to the discharge of the functions of Appeals Officers and achieving a level of consistency in the application of the legislative provisions. Other more informal meetings were held during the year to discuss issues as they arose from specific appeals and also to consider new or amending legislation. Among the more significant matters discussed were the following -

- The introduction of the new Domiciliary Care Allowance scheme, including presentations by the Chief Medical Adviser and staff of the Domiciliary Care Allowance section.
- Changes to the social welfare code brought about by recent changes to Social Welfare legislation.
- The realistic assessment of the capital value of second properties, given the current difficulties in the property sector.
- The assessment of pension funds as means, particularly where the fund is inaccessible until pension age.
- Feedback to the DAO in relation to assessing means of those formerly self-employed. It was considered that some Deciding Officers were sticking too rigidly to their guidelines and were basing means projections for the coming year on earnings from the 'good times'. This matter was subsequently addressed with the introduction of an information leaflet for Social Welfare Inspectors and Deciding Officers.

Organisational and Operational Matters

Staffing Resources

The number of staff serving in my Office at the end of 2009 was 64 which corresponds to 56.5 full-time equivalents. The corresponding staffing levels for 2008 were 62 and 54.5 respectively.

The staffing breakdown for 2009 is as follows:

1 Chief Appeals Officer	1.0
1 Deputy Chief Appeals Officer	1.0
1 Office Manager	1.0
19 Appeals Officers (3 work-sharing)	18.4
3 Higher Executive Officers (1 work-sharing)	2.8
10 Executive Officers (4 work-sharing)	8.9
7 Staff Officers (4 work-sharing)	5.0
22 Clerical Officers (6 work-sharing)	<u>18.4</u>
	56.5

During 2009 we lost 5 experienced Appeals Officers on retirement.

The structure of my Office is set out in the Organisation Chart at Appendix 1 to this report.

Parliamentary Questions

During 2009, 744 Parliamentary Questions were put down (362 in 2008) in relation to the work of my Office. Of that number, replies were given in Dáil Éireann to 356 and the remaining 388 were withdrawn when the current status of the appeal case which was the subject of the Question was explained to the Deputy.

Correspondence

A total of 4,251 enquiries and representations were made by public representatives on behalf of appellants in 2009 (2,756 in 2008).

Freedom of Information

A total of 81 formal requests were received in 2009 (66 in 2008) under the provisions of the Freedom of Information Acts. All of these requests were in respect of personal information.

Case Studies of Appeals Officers' Decisions

This section of the report contains a selection of case studies which serve to clarify the process by which appeals are determined, whether by way of a summary decision or following an oral hearing. The basis for the Appeals Officer's decision is outlined in each case as are issues in relation to current legislative provisions or the requirement of natural justice and fair procedures.

A larger selection of case studies is available on our website

www.socialwelfareappeals.ie

Supplementary Welfare Allowance (Mortgage Interest Supplement)

The Mortgage Interest Supplement scheme is intended to provide short-term income support in circumstances where a person is unable to meet the interest portion of their mortgage repayments in respect of a house which is their sole place of residence. The qualifying conditions which apply include the following:

- the loan agreement was entered into at a time when the person was in a position to meet the repayments;
- the mortgage interest payable is considered reasonable having regard to the person's residential needs, with the levels of rent supplement which are specified in legislation being used by the Health Services Executive (HSE) as a guide, and
- it is reasonable to award a supplement having regard to the amount of any arrears outstanding on the loan.

The number of appeals to the SWAO in relation to Supplementary Welfare Allowance increased by over 50% in 2009 (from 437 to 789), and many of these related to Mortgage Interest Supplement. The issues which were raised in these cases were difficult, and many were unique to the current economic climate. The first four cases which follow give a flavour of the type of issues which were dealt with.

1. Supplementary Welfare Allowance (Mortgage Interest Supplement)

Question at issue: Decision by the Health Service Executive (HSE) to refuse the appellant's application for Mortgage Interest Supplement on grounds that the weekly interest payable exceeds the amount deemed reasonable to meet his needs.

Background: The appellant took out a variable rate mortgage of €350,000 in August 2006 at a time when he was employed as a site foreman by a construction company. He and his wife bought a 3 bed-roomed house. He was in receipt of a salary of some €85,000 per annum, while his wife had earnings of some €26,000. In late 2008, he was made redundant and has not worked since. His wife became ill and is in receipt of Illness Benefit. His claim for Mortgage Interest Supplement was refused, a decision which was upheld on appeal to the HSE.

Oral hearing: The appellant was accompanied by his wife. The Superintendent Community Welfare Officer attended for the HSE, and he outlined the decision and the grounds for determining that the appellant did not have an entitlement to Mortgage Interest Supplement. He stated that the interest payable on the loan was certified as €387.00 per week. He referred to the legislation (S.I. 412 of 2007) which specifies maximum rent limits, above which no rent supplement is payable. He stated that the HSE regards these limits as being indicative of what is adequate to meet individual needs. In the area where the appellant and his wife live, the maximum rent limit is €140 per week in the case of a couple with one child. He went on to say that, as the interest payable is above that limit, it was considered to be in excess of the amount reasonable to meet the appellant's housing needs.

The appellant stated that since becoming unemployed he had used the services of the Money Advice and Budgeting Service (MABS) to deal with his financial situation. He advised that he had been paying €400 per month while in receipt of Jobseeker's Benefit. When that payment ceased, he offered to pay the building society €140 per

month. In addition to the mortgage, he outlined other loans he had taken out that he was not now in a position to repay.

For the HSE, it was acknowledged that the provisions of the legislation do not define what is reasonable to meet a person's residential needs. However, it was held that the maximum rent levels represented a reasonable measure of those needs.

Consideration: The Appeals Officer noted that there is no provision in legislation which requires the use of the maximum rent limits in determining what is reasonable for purposes of the Mortgage Interest Supplement. He took the view that the purpose of the supplement is to assist a homeowner to remain in their home if they find themselves, through no fault of their own, to be unable to meet the mortgage repayments when confronted with unemployment or illness. He considered that this should apply where the evidence indicates that at the time the mortgage was taken out, the person was in a good financial position and able to meet the repayments and that the house purchase and mortgage represented a reasonable undertaking given the circumstances and prospects at the time. In this case, the appellant took out the mortgage at a time when he was in employment and had the means to repay the mortgage. However, the downturn in the construction trade radically altered his position. The Appeals Officer concluded that the mortgage repayments in this case constituted a reasonable way of meeting housing need.

Outcome: Appeal allowed.

2 Supplementary Welfare Allowance (Mortgage Interest Supplement)

Question at issue: Decision by the Health Service Executive (HSE) to refuse the appellant's application for Mortgage Interest Supplement on grounds that, at the time the loan was taken out, she could not have afforded to meet the repayments.

Oral hearing: The appellant was accompanied by her mother. The HSE Appeals Officer attended, as requested, and he outlined the basis for the decision under

appeal. He stated that the appellant's application for Mortgage Interest Supplement in January 2008 was in respect of a mortgage taken out in 2006 when her only known income was Disability Allowance and one week's work. He stated that the loan at issue was a 'buy to let' mortgage, which he was satisfied the appellant was not in a position to repay at the time she took out the mortgage. In addition, he stated that the amount of the interest, at €1,470 per month, was in excess of the amount provided for in the legislation to meet her housing needs – the maximum rent limit in the case being €1,000 per month for a lone parent with one child.

The appellant reported that she had bought a house initially for €360,000 but found it too small for her needs. She decided to sell it but came across another house before a sale was achieved. The second house cost some €450,000, and she secured a mortgage of €360,000. The first property did not sell; it is now let and the rent just about covers the mortgage.

The appellant stated that she had been able to meet the mortgage repayments from 2006 until 2008 with assistance from her family, especially her mother. Her mother advised, however, that she has since become unemployed. The appellant referred also to shares and savings which had helped her in the initial months. She stated that her savings were gone, mainly used to finance the second property. She accepted that the house had been purchased as a buy to rent property but that it was never actually rented as she has lived there since it was purchased. Documents on file were examined in relation to the information given about the appellant's income at the time of the mortgage application. These documents appeared to overstate the appellant's income. The appellant outlined her concerns and stated that she was faced with the prospect of losing her home.

Consideration: The Appeals Officer noted that the appellant had taken out a 20 year interest only mortgage of some €360,000 on her current home in 2006. At that time, she already had a mortgage on another property of €320,000. The appellant indicated that both mortgages were 'buy to let' and as such

did not require her to have an income. The Appeals Officer noted, however, that on the mortgage application form, her basic annual gross salary was stated to be €35,000. In addition, gross annual rental income was estimated to be €16,800, whereas the net rental income appeared to have been substantially less than that. He considered that the evidence available indicated that the income declared at the time of the mortgage application was unrealistic and, furthermore, that the appellant was not in a position to take on and discharge the mortgage in respect of her main place of residence on her known income in March 2006. In all the circumstances, he concluded that the appellant was not in a position to meet the repayments in respect of the mortgage she entered into in March 2006, when the mortgage was in respect of her main residence.

Outcome: Appeal disallowed.

3 Supplementary Welfare Allowance (Mortgage Interest Supplement)

Question at issue: Decision of the Health Services Executive (HSE) to reject the appellant's application for a Mortgage Interest Supplement on grounds that the amount of interest payable exceeds that which it considered reasonable to meet his residential and other needs and that he had entered into a mortgage agreement at a time when he was not in a position to meet the loan repayments.

Oral hearing: The appellant attended alone. The Superintendent Community Welfare Officer attended for the HSE, as requested, and he outlined the basis for the decision under appeal.

The appellant reported that he had secured a mortgage of €210,000 from a sub-prime lender in October 2007. This mortgage had been granted on the basis of documentary evidence he had submitted for 2006 (his P60) which showed earnings of some €47,000. The sum borrowed was used to clear an existing mortgage of €150,000 from another lender as well as a personal bank loan of €20,000. He intended to finish his newly constructed house and borrowed €40,000 in respect of his own labour.

The appellant stated that in 2006, he had been working for a company owned by a friend of his. He went to work subsequently for another company between August 2007 and April 2008. He had earnings of €10,748 for the four months of 2008, according to the copy of the P45 on file.

The appellant reported that he had been building his own house in 2006 and 2007. He gave up work towards the end of 2008 in order to care for his parents, both of whom were ill at the time. He advised that he was an only child and had applied for Carer's Allowance. He stated that he was making interest only repayments of €300 per month, which he had been able to do by selling some of his possessions and drawing on savings, all of which had now been used up.

Consideration: The Appeals Officer noted that the appellant's work record was unclear and that he had been unable to clarify specific dates. He noted also that the copy of the P60 on file showed 52 Class S1 (self-employed) PRSI while he had submitted on his mortgage application that he was a salaried employee. In addition, in his mortgage application of 2007, the appellant had stated that he had a guaranteed income of €47,000 per annum and that he had been with the company for over two years. The Appeals Officer noted that the documentary evidence did not support these assertions. The Appeals Officer considered that there was doubt as to the validity of the information supplied in support of the mortgage application. While the appellant would have sought to maximise his potential earnings in support of his mortgage application at the time, he observed that he should have been mindful of the contract into which he was about to enter. Furthermore, the appellant sought and was granted over €60,000 more than the mortgage which he had held with the other lender and there was no supporting evidence to show that this additional borrowing was a necessary element of his home construction. Finally, the appellant had acknowledged that the mortgage was not in arrears and that he was still managing to make interest only repayments. The Appeals Officer considered that it was difficult to conclude other than that the appellant behaved imprudently when he

re-mortgaged, as his earnings for 2007 did not reflect the level of earnings he had submitted for 2006. He concluded that it was reasonable for the HSE to conclude that the mortgage had been entered into at a time when the appellant could not be regarded as having been in a position to meet the repayments.

Outcome: Appeal disallowed.

4 Supplementary Welfare Allowance (Mortgage Interest Supplement)

Question at issue: Whether, exceptionally, a Mortgage Interest Supplement can be awarded for a period of one year notwithstanding the fact that the mortgage interest payable by the appellant exceeds what is considered reasonable to meet his residential and other needs.

Background: The appellant, having secured employment in Ireland, moved here with his wife and two children in 2008. Before he moved, he had put their house in the UK on the market but could not sell it even at a reduced price. When the family arrived in Ireland, they moved into rented accommodation and the appellant sought to fund both the rent and mortgage repayments from his salary. When the house in the UK still did not sell, he decided to rent it out and secured a tenant for £850 per month. However, this left a balance to be paid of £250. The appellant also bought a house in Ireland for €340,000, with weekly mortgage interest payable of €335.00. When the appellant was made redundant in 2008, he applied for Jobseeker's Benefit and for Mortgage Interest Supplement. He was refused the Mortgage Interest Supplement on the basis that the interest per week exceeded the maximum allowed for his family composition. His appeal to the Health Services Executive (HSE) against that decision was disallowed.

Oral Hearing: The appellant stated that he had had a very good salary before the recession and was therefore well able to afford the mortgage he had secured. He argued that it was inequitable that he appears not to qualify for any relief by way of Mortgage Interest Supplement. He reported that his mortgage was not yet in arrears as he had arranged with the lender to take a repayment holiday. He stated also that

he had been actively seeking employment and had attended a third interview for a job and was very hopeful about his prospects.

Consideration of the Appeals Officer: The Appeals Officer noted the efforts the appellant had made in order to continue to meet the repayments and, in particular, the fact that he had negotiated a repayment holiday and was actively seeking employment. In the circumstances, the Appeals Officer concluded that a supplement could be awarded on an exceptional basis for a period of one year, notwithstanding the fact that the amount of mortgage interest payable exceeds the appropriate rate for his family composition.

Outcome: Appeal allowed.

5 Occupational Injuries Benefit

Question at issue: Whether the appellant's incapacity for work was caused by a prescribed disease developed due to the nature of his insurable employment.

Background: The appellant was employed by a local authority for four years. He and two others were responsible for the maintenance of a number of graveyards, which involved grass cutting. In the first year, he used a hand scythe and had no problems. In the second year, he used a power strimmer which made dust of the grass and created a fog. He developed a respiratory illness, diagnosed as 'Farmer's Lung', which he regards as being brought on by the nature of his insurable employment. He made a claim for Occupational Injuries benefit and his case was referred to the Chief Medical Adviser, who was of the opinion that the illness was not due to the nature of his insurable employment. On the basis of that advice, the Deciding Officer disallowed his claim.

Oral hearing: The appellant attended accompanied by his Solicitor. He stated that he had contracted 'Farmer's Lung' during his employment with a local authority. He recounted that during two rainy summers when the grass was wet, there was a constant damp spray hitting him in the face. He was later informed that there were fungi in the lower part of the wet grass and that he had inhaled the particles as they were disturbed and made airborne by the action of the strimmer.

The appellant had worked on family farm since he was 16 years old. The Appeals Officer

asked him why he believed that he had developed the illness from his work for the local authority, rather than from the farm work. The appellant explained that it was not until he started using the power strimmer in his insurable employment that he developed respiratory problems. He advised that he was supplied with a protective mask in 2003 and that no new symptoms developed. He reported that he had attended a consultant respiratory physician who was of the opinion that he was suffering from a rare type of 'Farmer's Lung' disease which was due to hypersensitivity to fungi, where symptoms develop after working with damp silage or hay.

Consideration of the Appeals Officer: The Appeals Officer had no doubt that appellant had contracted 'Farmers Lung'. The question to be determined was whether –

- a) it was as a result of his occupation, and
- b) his occupation could be regarded as a prescribed occupation as laid down in the legislation.

The Appeals Officer noted that the opinion from the Chief Medical Adviser was in respect of cutting fresh growing grass rather than mouldy rotting material. The consultant physician had confirmed that the condition would not be caused by the inhalation of fresh grass, but by the inhalation of any decomposing matter such as disturbed soil or fungi. The evidence available indicated that the graveyards were not cut on a regular basis; therefore, the grass being cut was often more akin to hay which could be mouldy at the base. The Appeals Officer considered it probable that the actions of the strimmer would have disturbed this mould and caused it to be airborne. As the evidence indicated that the appellant did not have a mask, he would undoubtedly have inhaled the airborne particles.

With regard to the first question, the Appeals Officer considered that while it is possible that the appellant may have contracted the condition from farming, the evidence as to the timeframe of onset and development of the disease meant it could equally have arisen from his work in the graveyard. On the second question, the Appeals Officer considered that the appellant's employment could come under the broad heading of agriculture or horticultural work.

Outcome: Appeal allowed.

6 Invalidity Pension

Question at issue: Whether a late claim may be backdated on the basis of information given to the appellant.

Background: The appellant was awarded an Invalidity Pension from the date she applied in November 2006. Subsequently, she sought to have the claim backdated to August 2002 as she had been in receipt of Illness Benefit at that time and considered that she had been misinformed by the Department regarding her options.

In November 2002, following a review of her Illness Benefit claim, the appellant was found to be capable of work and payment of Illness Benefit ceased. She appealed this decision and was informed by the Deciding Officer that she could make a claim for Jobseeker's Benefit while her appeal was being processed. In the event, she won her appeal and payment of Illness Benefit was restored.

In relation to the decision to refuse her request for backdating the claim for Invalidity Pension, the appellant argued that the Deciding Officer's advice was misleading in that it led her to conclude that she could not claim Invalidity Pension at that time.

Having identified no dispute as to the facts of the case, the Appeals Officer determined the appeal on a summary basis.

Consideration of the Appeals Officer: The Appeals Officer noted the appellant's contention that the advice given to her was misleading and that she should have been advised to apply for Invalidity Pension. He noted also the Deciding Officer's statement that it is standard practice to inform persons found capable of work to claim Jobseeker's Benefit and that it would be inappropriate in such circumstances to advise someone to claim Invalidity Pension.

The Appeals Officer concluded that the advice given to the appellant was not such as to mislead or prejudice her in any way and that it was reasonable advice in the circumstances. He accepted that it would be inappropriate to advise a person who has been assessed as being capable of work to claim a pension which requires that person to be incapable of work. He noted also that it was open to the appellant to claim Invalidity Pension when payment of Illness Benefit was restored in 2003 or at any intervening stage before the claim of November 2006. **Outcome:** Appeal disallowed

Appendix 1

Social Welfare Appeals Office Organisation Chart

