Neutral Citation: [2013] IEHC 524

THE HIGH COURT

[2012 No. 1037 JR]

BETWEEN:

A.M.

APPLICANT

AND

MINISTER FOR SOCIAL PROTECTION

RESPONDENT

JUDGMENT of Hanna J. delivered on the 25th day of October, 2013

These proceedings arise out of a decision of the respondent to refuse the applicant's application for a Domiciliary Care Allowance ("the DCA"). The applicant in these proceedings is challenging the lawfulness of the respondent's refusal and seeks declaratory reliefs together with an order of *certiorari* in respect of certain decisions of the respondent and, if necessary, an order that the matter be remitted to the respondent for reconsideration.

By notice of motion the following relief are claimed:

> 1. An order of certiorari quashing the decisions of the respondent of 10th May, 2012, 22nd October, 2012 and 26th October, 2012 and the opinion of the respondent's Medical Assessor of 19th October, 2012, refusing to grant the applicant the Domiciliary Care Allowance.
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> 2. A declaration that the respondent was obligated by statute and/or fair procedures, natural and constitutional justice, to carry out a medical examination of the applicant's son, in the premises that there is a conflict of medical evidence and the Social Welfare Consolidation Act, 2005 provides for the said medical assessment by the respondent's medical assessors.
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> 3. A declaration that the respondent, in the decisions 10th May, 2012, 22nd October, 2012 and 26th October, 2012 erred in law and/or breached a statutory duty and/or natural and constitutional justice and caused prejudice to the applicant by refusing to furnish the applicant with proper and adequate reasons, in particular, but not restricted to, failure to disclose how the conflict of medical evidence was resolved, in the premises that the respondent is obligated by *inter alia* the Social Welfare Consolidation Act, 2005 and fair procedures and natural and constitutional justice to furnish such reasons.
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> 4. A declaration that the respondent's decisions 10th May, 2012, 22nd October, 2012 and 26th October, 2012 are unlawful, invalid and/or vitiated for want of proper, intelligible and adequate reasons, in the premises that the respondent is obligated by inter alia the Social Welfare Consolidation Act, 2005 and fair procedures and natural and constitutional justice to furnish such reasons (the original decision is the decision properly subject of judicial review)
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> 5. If necessary, an order pursuant to Order 84, Rule 26(4) of the Rules of the Superior Courts, remitting the matter to the respondent with a direction to reconsider it and reach a decision in accordance with the findings of this Honourable Court.
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> 6. Further or other orders
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> 7. Liberty to Apply
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> 8. Costs

Background

The applicant, A.M., who is a home-maker and nurse, along with her husband is the primary carer of her eight year old son, G., who was officially diagnosed with autism on 28th November, 2011. On 28th March, 2012 the applicant applied to the respondent for the DCA which is a statutory payment payment made in respect of children who need continual care in excess of the care and attention normally required of a child of the same age.

On the Dom Care 1 application form under Part 4 the applicant, Mrs. M., set out the additional care needs of G. under the following headings: Communication; Manual Dexterity; Learning; and Toileting. She also detailed other aspects of G.'s care requirements and personality such as his need for assistance with certain activities, repetition in explaining, constant reassurance and that G. is too trusting and does not recognise danger. G.'s GP, Dr. J., stated on the Dom Care 1 Form that G.'s mental health and behaviour were severely affected by his condition which is permanent. In a letter dated 20th March, 2012 Dr. J. stated that G. required full-time care and support.

On 10th May, 2012 the application for the DCA was refused by the Deciding Officer, Ms. Clarke, on the basis that medical evidence provided did not indicate that the extra care and attention required is substantially in excess of that required for a child of the same age who does not suffer from G.'s condition. The applicant then sought a statutory revision of that decision pursuant to s. 301 of the 2005 Act by letter dated 29th May, 2012. The applicant furnished additional evidence in the form of her own care diary, medical and school reports from the Principal of G.'s National School, and in particular a letter from G.'s GP, Dr. J., dated 29th May, 2012. In that letter Dr. J. details the difficulties encountered by G. and the multiple additional supports required to facilitate, inter alia, his psychological, educational and physical development and his safety. He wrote that "I can certify that in my professional opinion G.M.

is suffering from a disability so severe that he requires continuous care and attention/supervision substantially in excess of another child of the same age". An opinion was given by the Chief Medical Advisor, Dr. Leech, on 19th October, 2012 that, following his review of the matter, a medical examination was not necessary and by letter dated the 22nd October, 2012 Mr. Baldrick Assistant Principal Officer, confirmed the opinion of the Medical Advisor and stated that the Department had provided reasons for its decision which was neither irrational nor unreasonable. On the 26th October, 2012 the Deciding Officer, Mr. Martin, confirmed the grounds of refusal and refused a revision of the earlier decision. He added that there is an appeal registered against the decision and that G.'s file is being forwarded to the Social Welfare Appeals Office. In each case the decision or opinion in question was in the same terms, namely that the applicant had failed to satisfy the statutory criteria for DCA; she had failed to show that her son required extra care and attention which is substantially in excess of that required by a child of the same age who does not suffer from his condition.

The applicant submits that adequate reasons were not furnished for those decisions (of the 10th of May and the 22nd and 26th of October) or for the Medical Assessor's opinion of 19th October, 2012 despite repeated requests in particular due to the conflict of medical evidence. The applicant further submits that due to conflicting medical reports and opinions the respondent was obliged to carry out a medical examination of G. in order properly to determine whether or not the criteria for receipt of the DCA were met.

Decision
The DCA is a statutory payment pursuant to Chapter to 8A of the Social Welfare Consolidation Act, 2005 ("the 2005 Act") as inserted by s.l5 of the Social Welfare and Pensions Act, 2008 and amended by s.26 of the Social Welfare (Miscellaneous Provisions) Act 2010. Section 186C(l) provides that a person is deemed to be a qualified child where:

> "(a) the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age,
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> (b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months."

Section 186C(2) provides that a Department of Social Protection medical assessor shall:

> "(a) assess all information provided to him or her in respect of an application for domiciliary care allowance, and
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> (b) provide an opinion as to whether the child satisfies paragraphs (a) and (b) of subsection (1)."

Section 186C(3) provides that:

> "In determining whether a child satisfies paragraphs (a) and (b) of subsection (1), a deciding officer shall have regard to the opinion, referred to in subsection (2)(b), of the medical assessor."

The Court notes that prior to the 2010 amendment, the disability and extent of care required was certified by a medical practitioner.

In essence this case comes down to three issues:

> 1. Were the reasons given by the Department of Social Protection adequate?
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> 2. The issue of statutory interpretation: as to whether or not there is an obligation to undertake a medical examination in certain circumstances.
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> 3. The issue of alternative remedy.

Adequacy of Reasons
Counsel for the applicant, Mr. Shortall, submits that the respondent is obliged by s. 300 of the 2005 Act and art. 191(2) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 ("the 2007 Regulations"), to furnish written reasons for the decision given in relation to the applicant's son. Mr. Shortall argues in particular that the respondent has not addressed at all, or adequately, the serious conflict of medical evidence. Counsel acknowledges that it is open to the applicant to seek a further statutory revision of the decision and/or to engage with the Social Welfare Appeals Office in an appeal, however, the applicant is seriously prejudiced in this regard by the respondent's failure to provide an adequately reasoned decision.

Mr. Shortall stated in Court that 52.5% of negative decisions are overturned by the social welfare appeals office and in his opinion this showed a flawed system. However, this suggests to me, assuming that this figure is accurate, that there is an independent and integrated system of appeal. The waiting time for the appeals office is 55 weeks according to Mr. Shorthall.

The first Deciding Officer's decision, dated 10th May, 2012, states that:

> "It is clear from your application that your child requires additional support: however, while the diagnosis of your child's disability is not in question, the medical evidence provided does not indicate that the extra care and attention required is substantially in excess of that required for a child of the same age who does not suffer from your child's condition."

The Chief Medical Advisor, Dr. Leech, by opinion dated 19th October, 2012, states that:

> "Having reviewed this application, I concur with the previous assessment in this case, that on the basis of the medical evidence provided, G.M. does not, at this time, satisfy the medical conditions of eligibility for Domiciliary Care Allowance...The evidence provided, to date, does not indicate that the extra care and attention required by G. is substantially in excess of that required for a child of the same age, on a continuous basis, for a period of 12 months, in comparison to a child without a disability."

It is submitted by the applicant that this decision lacks proper or adequate reasons and that as a consequence the applicant was unable to determine how the decision was reached. The language used in the decision of the second Deciding Officer reflects that of the first Deciding Officer and of the Medical Adviser. The applicant considers this language a "bald" statement and claims that there is an absence of any explanation as to how Dr. J.'s report and the Chief Medical Assessor's opinion were resolved.

The reason of the first Deciding Officer on the 10th May, 2012 (and that of the second Deciding Officer) as set out above reflects the language of the governing statutory criteria for qualification, as set out above in s. 186C(1) of the 2005 Act as amended and it complies with the requirements of s. 186C(2)(b) and of art.l91(2) of the 2007 Regulations. In this regard the reasoning appears to me to be sufficiently detailed and adequate to disclose how the applicant's son did not qualify under s. 186C(1) of the 2005 Act. It does not in any way prejudice the applicant from pursuing an appeal. It enables the applicant to request a revision under s. 301 of the 2005 Act, to appeal in accordance with the provisions of s. 311 *et seq* of the 2005 Act and to seek relief by way of judicial review.

The applicant also claims that there was a failure to respect fair procedures by reason of the failure of the respondent to give reasons as to how the conflict of medical evidence was resolved. In the present case the respondents submit that there was no material or relevant conflict of medical evidence as between the GP of the applicant's son and the respondent's medical assessors. As there was no conflict of medical evidence to be resolved, no detailed explanation of the respondent's decision was required. I find favour with this analysis.

There are recent and most helpful authorities dealing with the giving of reasons by administrative decision makers. In the Supreme Court in *FP v Minister for Justice* [2002] I I.R. 164 (a deportation case) Hardiman J. referring to a decision of Evans L.J. in *MJT Securities Ltd. v Secretary of State for the Environment* [1998] J.P.L. 138, says as follows:

> "Dealing with statutory obligations to give reasons, the trial judge said at p. 144 that:-
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> > "The Inspector's statutory obligation was to give reasons for his decision and the courts can do no more than say that the reasons must be 'proper intelligible and adequate', as had been held. What degree of particularity is required must depend on the circumstances of each case..."
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> In the case of administrative decisions, it has never been held that the decision maker is bound to provide a "... discursive judgment as a result of its deliberations"; see *O'Donoghue v. An Bord Pleanála [*1991] I.L.R.M. 750 at p. 757.
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> Moreover, it seems clear that the question of the degree to which a decision must be supported by reasons stated in detail will vary with the nature of the decision itself."
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> Hardiman J. continues at p. 175:
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> "Where an administrative decision must address only a single issue, its formulation will often be succinct. Where a large number of persons apply, on individual facts, for the same relief, the nature of the authorities' consideration and the form of grant or refusal may be similar or identical. An adequate statement of reasons in one case may thus be equally adequate in others. This does not diminish the statements essential validity or convert it into a mere administrative formula."

In another Supreme Court case, *Rawson v The Minister for Defence* (2012) I.E.S.C. 26, Clarke J. at p. 14 states as follows:

> "While, as already pointed out, this is not a "reasons" case per se nonetheless the underlying rationale for the case law on the need to give a reasoned but not discursive ruling, while not strictly speaking applicable, seems to me to have a bearing on a case such as this where the issue is as to whether the decision maker addressed the correct question."

In this case I find the reason of the 10th May, 2012 for refusal to grant the DCA is clear and unambiguous. The threshold simply has not been reached in light of the evidence submitted. It has not been established that the extra care and attention required by the applicant's son, G., was not substantially in excess of that required by a child of the same age who does not suffer from G.'s condition. Furthermore the reasons given were sufficient to enable the applicant to request a revision of the decision (s.301 of the 2005 Act), to appeal the decision under s. 311 *et seq* of the 2005 Act and/or to seek relief by way of judicial review. This language was reflected in the decision on the 22nd and 26th October, 2012 and I am satisfied that adequate and identifiable reasons were given. There is not an obligation on the Department to explain its decisions in detail but rather to inform applicants of the grounds for the decision so that the appeal is not impaired. Decision makers should not have to provide reasons that are extremely detailed explaining every step of the decision as this would render the process unworkable.

Was the Minister obliged to have G. medically examined in certain circumstances?
The applicant relies on s. 186(G)(1) of the 2005 Act read in conjunction with art. 140 of the 2009 Regulations (as outlined below) and submits that there was a dispute as to the medical evidence and in these circumstances the respondent was obligated by fair procedures, natural and constitutional justice to carry out a medical examination of G. The applicant contends that there was a failure to respect fair procedures by reason of the failure of the respondent to carry out a medical examination of the applicant's son in circumstances where there was a conflict of opinion as between the applicant's GP and the Department's Chief Medical Advisor whose opinion is based upon a desk assessment. The applicant contends that a desk assessment in light of Dr. J.'s medical report was not sufficient. It is argued by the applicant that, even though the legislation uses the word "may" in the sense of a discretionary as opposed to a mandatory process, there are circumstances, as arise in this case, where considerable apparent conflict in opinion require undertaking a medical assessment.

The statutory scheme in respect of the DCA provides for a power, not a duty, to require medical or other examinations. Section 135(1) of the 2007 Regulations, as amended, is permissive as opposed to mandatory in its terms. The section provides as follows:

> "An officer of the Minister may, on giving not less than 3 days notice in writing, require a relevant person to submit himself or herself to medical or other examination at such time and place as may be specified in the notice."

This section gives the deciding officer the power to have the relevant person examined medically if he/she deems it appropriate or necessary for the purposes of making the decision. Following from s. 186G(1) of the 2005 Act any decision in this regard is a matter of discretion. Section 186G(1) provides as follows:

> "A qualified child in respect of whom domiciliary care allowance is in payment shall attend for or submit to such medical or other examinations as are required in accordance with regulations."

This discretionary character of the power to order a medical examination is confirmed by art. 140F(2) of the 2007 Regulations, as inserted by art. 3 Social Welfare (Consolidated Claims, Payments and Control) (Domiciliary Care Allowance) (Amendment) (No. 3) Regualtions 2009 ("the 2009 Regulations"). It provides that:

> "An officer of the Minister may, giving not less than 7 days notice in writing, require that a qualified child shall attend for or submit to such medical or other examination at such time and place as may be specified in the notice."

The Court notes that this article regarding medical examination refers to a qualified child.

There was no conflict or contest to the degree of care in fact required by G. but there was a difference of opinion in relation as to whether or not he would require care that was substantially in excess of the care and attention normally required by a child of the same age. This latter issue is a qualitative judgement which is the decision maker's role to fulfil. Medical exams are only required in rare situations where there is a difference of medical opinion. In *Kenny t/a Denture Express v The Dental Council & Ors* [2009] 4 I.R. 321 Gilligan J. discusses the statutory powers and duties of the Dental Council and whether there was an obligation under the Dentists Acts to bring in a scheme in respect of denturists. Gilligan J. in dismissing the claim states at para. 36 that:

> "A literal reading of the relevant sections (ss. 53 and 55) indicates that the powers bestowed are discretionary. The plaintiff however argues that "may" is to be read as "shall" and further that there is a mandatory obligation on the defendants to introduce such a scheme specifically in respect of denturists (clinical dental technicians). The principles of legislative interpretation are well established; in interpreting a statute the starting point for the courts is the text of the legislation itself. The courts adopt the literal rule of interpretation and will only depart from this approach where to construe the text literally would lead to an absurdity. In *Howard v. Commissioners of Public Works* [1994) 1 I.R. 101 at p. 151, Blayney J. cited Craies on *Statute Law* (1971, 7th ed.) at p. 65:-
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> > "The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver."

In *South Bucks District Council v Porter (No 2)* [2004] UKHL 33 Lord Brown of Eaton-under-Heywood summarises the law at paras. 35 and 36 as follows:

> "35. It may perhaps help at this point to attempt some broad summary of the authorities governing the proper approach to a reasons challenge in the planning context. Clearly what follows cannot be regarded as definitive or exhaustive nor, I fear, will it avoid all need for future citation of authority. It should, however, serve to focus the reader's attention on the main considerations to have in mind when contemplating a reasons challenge and if generally its tendency is to discourage such challenges I for one would count that a benefit.
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> 36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

The respondents state that there is no material conflict of evidence as between Dr. J. and the Medical Assessor. There is no conflict as to the disability but there is a difference of opinion regarding the effect of the disability. It is recognised that G. had an additional care need and each opinion was based upon the same agreed disability and the same agreed care need. The respondent's deny that there is any material conflict of fact that is required to be independently resolved by reference to further medical examination. Accordingly this difference of opinion does not give rise to an obligation to carry out a medical examination of G. The respondent had regard to the opinions of G.'s GP and its own medical assessors and remained free to exercise its decision-making power by reference to all the material before it.

Ms Clarke, the deciding officer in the first instance, in her affidavit, filed 13th March, 2013, avers that there was no substantial deviation as between the respective assessors and doctors on the character and extent of G.'s particular care needs. She states at para. 7 of her affidavit that she obtained the opinion of Medical Assessor Tom Quinlan and at para. 11 she adds that "there was no disagreement about G.'s diagnosis or prognosis" and so there was no need to have him medically examined. Ms. Clarke also states that such an examination is only undertaken where there is a difference of clinical opinion. This view is echoed in the affidavit of the deciding officer in the second instance, Mr Martin, filed 13th March, 2013.

The eligibility for the DCA is not based on a medical or psychological condition. It is concerned with the resulting lack of function and with this in mind it is important to note the following. In the report of Dr. R., a Clinical Psychologist in a Therapy Centre, Dr R. at p. 9 observes that the profile of G. given by the parents is consistent with the autism spectrum "namely High Functioning Autism." Part 7 of the application form as filled out by the GP, Dr. J., shows a "high degree of normality". All of the boxes are ticked normal bar mental health behaviour (severe), learning/intelligence (moderate) and balance/co-ordination (mild).

It is not disputed that G. had autism it is not disputed that he requires care above that normally needed for a child of the same age. It follows that there was no requirement in law in the present case that the respondent have G. medically assessed. Medical examinations are only ordered in rare situations where there is a material conflict.

Alternative Remedy
It is accepted that the original decision is the decision which is properly subject to judicial review.

Just because an issue of fair procedures and constitutional justice is raised does not mean that judicial review is the preferred route. The respondent submits that the applicant is not entitled to any relief by reason of the existence of a more appropriate available remedy, being the statutory appeal under s. 311 of the 2005 Act and that the within proceedings constitute an impermissible attempt to circumvent the statutory appeals process. The applicant is not appealing the decision of the 26th October but rather the first instance decision of 10th May, 2012. As Counsel for the respondent correctly points out, in the present case there exists a parallel

appeal mechanism, and the consideration that the consequence of any finding of invalidity of the decision will be the remittal of the matter back to the Department for a decision with the preservation of the right of appeal intact. Thus the respondent submits that the appeal mechanism available to the applicant is sufficient and effective.

Counsel for the respondent states that s.311 of the 2005 Act is the proper and appropriate route of challenge and this still remains open to the applicant. Counsel for the respondent, Mr. Dillon Malone, assured the Court that Social Welfare deciding officers, despite the 21 day deadline, routinely consider appeals that are out of time and that there is no question of Mrs. M. being caught out and is still entitled to appeal.

Mr; Baldrick in his affidavit at paras. 3 and 4 says that Mrs. M. has incorrectly characterised the appeals system, that she believes that the appeal route lacks any independence and will not give adequate reasons as to why she was refused. He avers at para. 4 that 1) the appeals process involves a *de novo* consideration of the entire material, it will involve a different medical assessor and the appeals officer approaches the matter in a wholly independent manner, 2) the applicant knows the reason for the refusal and is fully equipped to contest this in the appeal, 3) the appeals officer has an independent power to require a medical examination, 4) the appeals process is the complete remedy for a dissatisfied applicant at first instance and has established itself to be a most effective remedy with full procedural safeguards and autonomy and 5) that this challenge by the applicant is a more limited avenue than the appeals process. Mr. Baldrick avers at para. 5 that the applicant reveals a fundamental misconception of the statutory appeals system that has been put in place to allow persons in the position of the applicant to pursue a complete remedy by way of appeal and that it is the logical and preferred route.

Hedigan J. at pp. 7 - 8 in *O'Connor v The Private Residential Tenancies Board* [2008] I.E.H.C 205 states:

> "It is clear to me that the entirety of the case made herein by the applicant could have been made by way of an appeal under s. 123, using a procedure specifically designed for that purpose by the legislature and, in this particular case, capable of dealing with each and every one of his complaints. This being so, even were I to have extended the time, I would still have refused the reliefs sought on the basis that there existed an alternative remedy of which the applicant did not avail himself."

In *Nova Colour Graphic Supplies Ltd. v The Employment Appeals Tribunal* [1987] I.R 426 Barron J. at p. 429 states:

> "Whether there has been a continuity of service bringing the second respondent within the provisions of the Unfair Dismissals Act, 1977, is a question of fact which the Tribunal has jurisdiction to determine and this it has exercised. If it is wrong in its determination, then this can be remedied by appeal, which is clearly the appropriate manner in which its decision should be challenged. An appeal lies under s. 10, sub-s. 4 from any determination of the Tribunal in relation to a claim for redress under this Act. So, even if it had been that there was no basis in fact for the decision of the Tribunal on the evidence before it, nevertheless an appeal would lie, in the course of which the appellant would not be limited to such evidence. In these circumstances, no useful purpose would be served in any event by granting discretionary relief since ultimately the matter could always be heard afresh on appeal."

In the Supreme Court case of *O'Donnell v Tipperary (South Riding) County Council* [2005] 2 I.R. 483 Denham J. (as she then was) states at pp. 489- 490 as follows:

> "20. In assessing the nature of the alternative right of appeal and judicial review, there are a number of relevant factors. Included in these factors are the following. Firstly, the fact that the applicant has already commenced this alternative remedy and that there has been a hearing of the matter over two days. This appeal now stands adjourned pending this judicial review. While these appeal steps are not a determinative factor, in the circumstances they are a weighty factor. Secondly, the issues which the applicant raises relate to natural justice and to fairness, which relate to the merits of the case also, which issues may be addressed and determined by the Employment Appeals Tribunal. Thirdly, the matters raised do not relate to net issues such as points of law or jurisdiction. Fourthly, the essence of the issue raised relates to evidence as to the...actions of the applicant and this may be dealt with fully by an appeal before the Employment Appeals Tribunal, rather than as a review of procedure. It is manifestly a matter for an appeal process rather than a review of procedure. Fifthly, the applicant seeks reinstatement of his post and he referred to the low statistical figures for reinstatement by the Employment Appeals Tribunal. I have considered this as a factor but I do not give it a heavy weighting given that the tribunal has the jurisdiction to hear an appeal and to reinstate and the applicant may present his full case on the appeal. Sixthly, there is a right of appeal from the Employment Appeals Tribunal to the Circuit Court, then to the High Court and, on a point of law, to this court.
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> 21. Applying the common law as to the position when there is an alternative remedy, I have come to the following conclusions. The issue of fair procedures will be dealt with later in this judgment. As to the consequences to the applicant, there is no doubt they are serious. In assessing the relative merits of the appeal to the Employment Appeals Tribunal as against judicial review, the true question is as to which is the more appropriate in the context of common sense, the ability to deal with the questions raised and the principles of fairness. I am satisfied on each of these grounds that the appropriate remedy is that of the appeal to the Employment Appeals Tribunal. It has the ability to deal with the questions raised and the principles of fairness.
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> 22. Consequently, on this ground I would dismiss the appeal and affirm the view of the High Court that the matter should continue before the Employment Appeals Tribunal."

The respondent submits that given the sophisticated appeals procedure set out in the 2005 Act (see below) the appeal process is more appropriate in all three respects (common sense, the ability to deal with the questions raised and the principles of fairness) than a challenge by way of judicial review.

Under the governing legislative scheme the decision of a deciding officer can be reviewed or appealed as follows:

> i) The decision can be appealed to the Social Welfare Appeals Office under s.311 *et seq.* of the 2005 Act. The appeal is dealt with by an independent Appeals Officer of Assistant Principal Grade. (Arts.14 and 15 of the Social Welfare (Appeal) Regulations 1998 as amended) Any and all additional evidence supplied is examined by a different medical assessor.
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> ii) The applicant may request a revision of the decision of the Deciding Officer and the decision is revised in light of new evidence or facts or by reason of some mistake having been made in law or fact or if there has been a relevant change in circumstances since the decision was made. (s.301(1)(a) of the 2005 Act)

iii) The Chief Appeals Officer may at any time revise any decision of an Appeals Officer where it appears to the Chief Appeals Officer that the decision was erroneous by reason of some mistake having being made in relation to law or fact. (s.318 of the 2005 Act)

iv) The Chief Appeals Officer may at any time revise any decision of an Appeals Officer if it appears that there has been a relevant change in circumstances since the decision was made. (s.301(1)(b) of the 2005 Act)

I have no doubt in my mind that Mr. and Mrs. M. are excellent parents, very concerned about G. and that G. has considerable challenges. However, the legislative framework provides for a comprehensive mechanism for a claimant to challenge the refusal of the DCA. The statutory appeals mechanism is the appropriate route for the applicant to take. The statutory appeals process still remains open to the applicant. It provides an efficacious procedure whereby the applicant can ventilate and, perhaps, remedy her complaints and concerns. The appeal usually must be made within 21 days from the date of refusal but the Court has been assured by the Department of Social Welfare, through Counsel, that Mrs. M. may still, without objection, process an appeal. This is the proper and appropriate route to follow. I therefore dismiss the present judicial review proceedings.