AN ARD-CHÚIRT
THE HIGH COURT

[2024] IEHC 148

THE HIGH COURT

[2022 No. 219 SP]

IN THE MATTER OF THE SOCIAL WELFARE CONSOLIDATION ACT 2005

BETWEEN:

P.F.

APPLICANT

AND

THE MINISTER FOR SOCIAL PROTECTION

CHIEF APPEALS OFFICER

SOCIAL WELFARE APPEALS OFFICE

RESPONDENTS

JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 12th day of March 2024.

1. The plaintiff is executor of the will of MW who died in April 2015.

2. A review by a social welfare deciding officer of her means which concluded in January 2006 determined she continued to be eligible to receive non-contributory pension at a weekly rate which reflected means assessed at €37.00 per week.

3. From November 2006, increases in her means reduced the weekly amount of pension which she was eligible to receive. In July 2009, she ceased to qualify for receipt of this pension.

4. She was obliged to advise social welfare authorities of changes in her means which affected eligibility to receive pension. She failed to do so. She continued to receive pension by reference means assessed in January 2006 until her death.

5. This appeal to the High Court on a question of law under s.327 of the Social Welfare Consolidation Act 2005 (the 2005 Act) relates to a decision by a social welfare appeals officer which affected quantification of liability of her estate to repay pension overpaid during the period when she received pension in excess of her means-based entitlement.

6. An appeals officer decided on 22 June 2021 that from 19 July 2013 MW ceased to have sufficient mental capacity to advise social welfare authorities that changes in her means had affected her eligibility to receive this pension. The appeals officer determined "…that a revised decision under section 302(b) of the Social Welfare Consolidation Act 2005 should be effective from 10/11/2006 to 19/07/2013."

7. The effect of this decision was to reduce liability of her estate to repay from €72,166.50 to €51,749.50.

8. Section 317(1)(a) of the 2005 Act provides that: "An appeals officer may at any time revise any decision of an appeals officer - (a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given".

9. On 7 October 2022, the plaintiff's solicitors requested a revision of the decision of 22 June 2021. They contended that "new medical evidence" showed that MW lacked mental capacity to advise social welfare authorities of her change in financial circumstances from 2009. The plaintiff relied on the content of a letter dated 4 October 2022 from MW's GP.

10. On 9 November 2022, the appeals officer decided that this material did not demonstrate that the decision of 22 June 2021 was factually erroneous. The question of law identified by the plaintiff in her appeal to this Court is whether that appeals officer acted irrationally in so concluding.

11. In written legal submissions, and at the hearing before this Court, the plaintiff sought to challenge the validity of the decision dated 22 June 2021 on grounds that it was irrational and disregarded medical evidence which compelled the appeals officer to conclude that MW was unfit to advise social welfare authorities of her change in circumstances prior to 19 July 2013.

12. My conclusion is that that the appeals officer did not err in law.

13. The appeals officer was entitled to conclude that the letter dated 4 October 2022 did not demonstrate that the finding of fact in the decision of 22 June 2021 that MW

ceased to have mental capacity to advise social welfare authorities of her change of circumstances after 19 July 2013 was erroneous.

14. This letter did not supply anything new which addressed that issue of fact in a meaningful way.

15. Section 317(1)(a) of the 2005 Act does not empower an appeals officer to reopen an earlier decision of an appeals officer on grounds of mistake of law or revisit earlier findings of fact which are not demonstrated to be erroneous in light of new facts or evidence.

16. The plaintiff did not challenge the validity of the decision of 22 June 2021 by applying for judicial review or by bringing a statutory appeal. The Minister did not challenge the validity of this decision either. The Minister did not bring an appeal on a point of law against a subsequent decision of the Chief Appeals Officer not to revise the decision of the appeals officer: see ss.318 and 327A (1)(b) of the 2005 Act.

17. It follows that the lawfulness of these decisions cannot be challenged now. They are immune from appeal and judicial review. This finality arises from application of general law and the effect of s.320 of the 2005 Act.

18. The plaintiff was precluded from arguing in her appeal to this Court that the appeals officer erred in law in reaching his decision of 22 June 2021.

19. MW was born in 1925. She lived alone on a small farm in County Leitrim. She was a widow with no children. Her nearest living relations were cousins. She suffered from cognitive decline from 2009 and was looked after by friends and neighbours. A nurse's note after an assessment in April 2010 described her as having obvious cognitive impairment and stated that she had recently stopped driving.

20. She had very modest means. She was in receipt of widow's non-contributory pension since 1991. This became old age pension. She was aware that this pension was means-tested. Social welfare officers carried out periodical reviews of her means. The last of these reviews prior to her death was carried out in 2005. Her sole source of income was farm income, assessed at €37 per week. At that time, her Ulster Bank current account was overdrawn.

21. MW participated in this review. She was helped by a local social welfare official who prepared a letter which she signed in late November 2005. In January 2006, a deciding officer determined that her weekly pension should not be cut by €5.

22. MW personally collected her pension at the local post office until April 2014 and on each occasion signed a confirmation that her financial circumstances had not changed.

23. After her death it emerged that five bank, building society and State savings accounts were opened in her name between December 2005 and March 2010.

24. These accounts were disclosed when the plaintiff sought to extract probate. Social welfare officials investigated. On 9 November 2016, a social welfare officer demanded that her estate repay €72,166.50. This was the total amount of pension which MW received between 10 November 2006 and her date of her death in excess of her entitlement based a retrospective revision of her means which took her savings into account.

25. A social welfare officer prepared a table which shows credit balances at various intervals during the period between December 2005 and her date of death. This table tells a remarkable story of increase in her means and careful management of her finances.

26. Substantial funds were lodged to these accounts. Regular payments were made into two savings accounts during a period of five years up to her death. Her current account remained active through much of this period. Her savings were, for the most part, untouched.

27. At some point in the period between 19 December 2008 and 9 April 2009 her current account began to hold credit balances. On the latter date it held a credit balance of €8,519. In the following years, these credit balances fluctuated and were usually well in excess of €2000. A social welfare official noted that cheques were drawn on this account to make payments. Credits for payments of EU farm subsidies were received into this account. This account was not active between May 2009 and June 2011.

28. The first new account was opened in EBS in December 2005. As of 1 January 2006, this account held a credit balance of €14,086. In April 2015, the credit balance in this account was €14,438.

29. The second new account was opened in Danske Bank between 1 January 2006 and 15 August 2006. On the latter date this account held a credit balance of €5,382. In April 2015, the credit balance on this account was €5,459.

30. The third new account was a State savings account, opened in the Post Office between 15 August 2006 and 8 November 2006. On the latter date this account held a credit balance of €11,817. Between 9 November 2006 and 19 December 2008 €4,852 was credited to this account. Between 20 December 2008 and 22 May 2009 €14,927 was credited to this account. Between 3 March 2010 and 25 August 2010 €2,607 was credited to this account. Between 18 August 2014 and April 2015 €7,002 was credited to this account. In April 2015, the credit balance on this account was €41,205.

31. The fourth new account was opened in Ulster Bank between 9 April 2009 and 22 May 2009. On the latter date this account held a credit balance of €14,367. Social welfare officials noted that this account received a further credit of €52,649.26 by CHAPS transfer on 15 July 2009. In April 2015, the credit balance on this account was €68,143.

32. The final new account was a State savings account opened in the Post Office between 15 July 2009 and 3 March 2010. The credit balance on this account as of the latter date was €1,495. On 25 August 2010, this balance was €8,525. On 6 August 2011, it was €18,017. On 30 December 2011, it was €21,573. On 8 January 2013, it was €33,757. On 22 July 2013, it was €38,228. This progression of savings continued until 18 August 2014 and in April 2015 the credit balance on this account was €48,913.

33. Means-tested old age pension is granted to those who, because of lack of means, require weekly payments to maintain a reasonable basic living standard. In the period between 3 March 2010 and April 2015 amounts totalling €47,418 were credited into one of MW's State savings accounts. In the same period amounts totalling €9,609 were credited to her other State savings account. During this period she received €60,985.40 in pension. Her only other source of income was modest farm income.

34. As of 3 March 2010, her six accounts held credit balances totalling €125,834. As of April 2015, this total had increased to €179,771.

35. Section 300 of the 2005 Act specifies "questions" which may be decided by a deciding officer. These "questions" include every question arising under Part 3 of the 2005 Act which deals with social assistance. Part 10 of that Act provides for appeals of decisions of deciding officers to appeals officers and permits revision of decisions in defined circumstances.

36. The plaintiff's solicitors requested referral of the demand dated 9 November 2016 to a deciding officer for formal decision. They made the case that MW suffered cognitive impairment as a result of Alzheimer's disease since 2010 and was "incapable of understanding complex financial matters such as means-calculations." They forwarded copies of referral letters dated 30 March 2010, 12 August 2010, 26 April 2011, 14 November 2013, 30 October 2014 and 20 November 2014 from MW's GP to consultants.

37. The letter dated 30 March 2010 was addressed to a psychiatrist in Sligo. It stated that MW showed signs of cognitive impairment. A clock test in September 2005 was 4/5. The letter dated 12 August 2010 described her as suffering from Alzheimer's disease. It stated that she was beginning to see "visual hallucinations" and that she was calling her carers late at night and alleging that there were men in her house.

38. The letter dated 14 November 2013 stated that MW was suffering from "severe cognitive impairment and depression". The letter dated 30 October 2014 recorded that she was still living alone in a remote house and that she suffered from cognitive impairment. The consultant was asked to provide "…your expert opinion on her capacity to deal with her own affairs."

39. The plaintiff's solicitors noted that s.302 of the 2005 Act gives a deciding officer discretion as to the date from which overpayment will be sought. They suggested that the Revenue Commissioners may have alerted social welfare authorities, and that the latter had some responsibility for what occurred.

40. By s.301(1) of the 2005 Act: "A deciding officer may at any time – (a) revise any decision of a deciding officer – (i) where it appears to him or her that the decision was erroneous – (I) in the light of new evidence or new facts which have been brought to his or her notice since the date on which the decision was given, or (II) by reason of some mistake having been made in relation to the law or the facts, or (ii) where- (I) the effect of the decision was to entitle a person to any benefit within the meaning of section 240, and (II) it appears to the deciding officer that there has been any relevant change of circumstances which has come to notice since that decision was given, …"

41. In this case the decision which required revision was made by a deciding officer on 5 January 2006. That decision followed the review of MW's means in 2005.

42. The deciding officer decided on 4 July 2019 to revise retrospectively the decision dated 5 January 2006 with effect from 10 November 2006. The plaintiff's solicitors were advised that this decision was made pursuant to s.302(b) of the 2005 Act. The

deciding officer demanded payment of the full €72,166.50, which was calculated in accordance with a schedule provided to the plaintiff's solicitor.

43. The deciding officer referred to MW's savings. He pointed out that in 2006 MW had in excess of €31,000 in her accounts and got the payment by CHAPS transfer in July 2009. He referred to medical evidence from 2010 which showed signs of cognitive impairment. He pointed out that lack of mobility was given as the reason she could not collect pension in person in 2014. He pointed out that her current account was active and showed numerous cheque withdrawals and also lodgements from the Department of Agriculture and Food. He pointed out that the State savings account in the Post Office received continual lodgements. He took the view that there were no reasons to review the overpayment.

44. It is difficult to fault this conclusion. The deciding officer was provided with incomplete medical information. Financial information showed that MW's affairs were conducted in a highly organised fashion up to her death. This was unexplained and was at odds with loss of capacity to disclose her increased means to social welfare officials. Her accounts held substantial credit balances before there was any issue of cognitive impairment.

45. The plaintiff appealed this decision to an appeals officer. The grounds were that MW suffered severe cognitive impairment and depression; that no social welfare means assessment had been carried out since 2006 and that the "Department failed to exercise its jurisdiction properly in terms of reducing the sum being demanded." The solicitors provided further copies of the referral letters dated 30 March 2010, 26 April 2011, 30 October 2014 and 20 November 2014.

46. The plaintiff requested an oral appeal hearing. This took place in May 2021. The plaintiff was legally represented. She made the case the MW was in poor health and would not have had the capacity to understand or report her change of circumstances due to cognitive impairment, as supported by evidence on file going back to 2010. MW's involvement in activities which pointed to her being competent to engage in financial decisions remained unexplained.

47. Social welfare officials pointed out that MW's bank accounts were active up to her date of death, and her health "was not so poor that she should have been able to notify the Department of her increase in means and that she was in receipt of a means tested payment that is only payable to people in need of same."

48. The plaintiff's solicitor asserted that signs of her ill-health since 2009 were obvious and stated that that he would furnish copies of her medical records to the appeals officer. This extra material was provided by email later that day.

49. These documents included a record which showed that in October 2012 her GP considered that she was incompetent to make a will. The GP records also noted a conversation between this GP and a solicitor in July 2015: "Early Cog(native) impairment since 2009 unable to sign affidavit in respect. She may have been of testamentary capacity." It can be inferred from this that MW made a will on some date between 2009 and 2015. These records also included replies and reports of assessments provided by doctors in Sligo Hospital which has not been provided in advance of the oral hearing.

50. The appeals officer issued a determination of the result of this appeal on 22 June 2021. This decision was based on the evidence on file and further medical records provided by the plaintiff's solicitor following the hearing.

51. The appeals officer stated that he was "cognisant of the fact that appellant (sic) was in possession of substantial savings in 4 different banks/State Savings that she did not declare for her pension payment down through the years and that she failed to disclose her full means on review of her means in 1997 and 2005 when in relatively good health and able to conduct her own financial affairs. However, I am satisfied that appellant fell into deteriorating health and had cognitive issues in the latter years of her life."

52. The appeals officer referred to the fact that the means of MW were in excess of threshold conferring any entitlement to qualify for non-contributory pension from 17 September 2009. He noted that the Department had failed to review pension entitlement of MW since 2006 and that Revenue would have notified social welfare authorities of receipt of deposit interest retention tax relating to deposit accounts but there was no record on file of such notification.

53. The appeal was partially allowed. The relevant part of the determination reads as follows: "in summary I find that a revised decision under section 302(b) of the Social Welfare Consolidation Act 2005 should be effective from 10/11/2006 to 19/07/2013. (MW's) means are derived from her capital and farm income for this period. It is considered that appellant suffered from cognitive impairment from this time that would render her unfit to notify the Department of any increase in her means."

54. In the course of argument in this appeal the plaintiff asserted that the appeals officer ought to have determined that MW lacked sufficient capacity to advise of her change

of means from 2009 or 2010 and that pension received by her subsequently should be excluded from the obligation to refund.

55. Sections 302(b) and (c) and 319(b) and (c) of the 2005 Act give discretion to deciding officers and appeals officers to take "the circumstances of the case" into consideration in fixing the date when a revision of a previous decision relating to the award of a benefit "shall take effect". Revised decisions take effect from these dates. Any liability to make repayment is then calculated in accordance with s.335 of the 2005 Act by reference to the period when excess benefit or allowance was received after that date.

56. These discretions relate to fixing of revision dates and not to fixing or remission of amounts of underpayments or overpayments. The appeals officer was not empowered to determine that that his revised decision disentitling MW to pension should run to 19 July 2013 and then cease to have effect. Her means on 19 July 2013 and thereafter rendered her ineligible to receive pension.

57. On 14 July 2021, the plaintiff referred the decision of the appeals officer dated 22 June 2021 to the Chief Appeals Officer with a request that it be revised on grounds that it was erroneous by reason of some mistake having been made in relation to the law or the facts.

58. Section 318 of the 2005 Act confers power on the Chief Appeals Officer to "…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 been made in relation to the law or the facts."

59. The letter seeking this review asserted that oral and medical evidence showed that cognitive impairment existed since 2009/2010 and that the revised decision should run from 2006 to a date in 2009 or 2010, rather than 19 July 2013. The plaintiff claimed that the appeals officer had erred in law or fact in concluding that the latter date should be used.

60. The Chief Appeals Officer refused to revise the decision of the appeals officer. She did not consider that the decision of the appeals officer was erroneous by reason of some mistake having been made relating to the law or facts. She gave reasons for her conclusion in a written determination dated 12 August 2021. In essence, she found that the appeals officer's conclusion that MW suffered from cognitive impairment from 19 July 2013 which rendered her unfit to notify the Department of any increase in her means was "based on the medical evidence and all other evidence on the file". She considered that the medical evidence covering the period

up to July 2013 did "not support a conclusion that the late (MW) suffered from cognitive impairment such that she was rendered unfit to notify the Department of any increase in her means."

61. She noted that the reason notified for inability of MW to collect her pension personally in April 2014 was that she was immobile and found it difficult to travel. She noted that evidence on file showed that MW was capable of conducting her affairs during the period in question. She considered that having regard to the totality of the evidence, the decision of the appeals officer to make the revised decision effective to a date in 2023 was reasonable.

62. A letter from the plaintiff's solicitors dated 28 September 2021 provided further copies of medical letters drew attention to a reference to "moderately severe cognitive impairment" in a referral letter from the GP dated 15 January 2013. The solicitors quoted from an internet source which described symptoms of "moderately severe cognitive decline" using the Reisberg Scale. They contended that this was irrefutable medical evidence that from at least January 2013 the finding of the appeals officer was incorrect and that he was irrational in not finding that MW was incapable of looking after her affairs thereafter.

63. The Chief Appeals Officer refused to budge. In a letter dated 13 October 2021 she pointed out that the conclusion of the appeals officer was based on the medical evidence and other evidence on file. She repeated what she had already said was her conclusion from the material presented and referred to the fact that in 2014 MW appointed an agent to collect her pension because she was immobile and unfit to travel. She confirmed that copies of the further letters, including the letter dated 15 January 2013, were already available to the appeals officer at the time of his decision.

64. The decisions of the appeals officer and the Chief Appeals Officer in June, August and October 2021 were not challenged. No further step was taken by the plaintiff for nearly a year.

65. On 7 October 2022, the plaintiff sought a revision under s.317 of the 2005 Act on the basis that the original decision was erroneous "in the light of new evidence or new facts" claimed to be contained in a letter from MW's GP dated 4 October 2022. This letter stated that: "I can confirm that she was suffering from cognitive impairment, and this was documented in September 2009. From that time (MW) would have had difficulty in understanding and dealing with financial affairs and official paperwork. Her understanding and ability to deal with tax declarations would have been compromised."

66. This application was referred to the appeals officer who made the decision in June 2021. This appeals officer declined to revise that decision. The reasons are set out in a letter to the plaintiff's solicitor dated 9 November 2022. The relevant extract from this decision states as follows:

"I have noted the medical evidence furnished for this review and all the other evidence on file in making this review decision. It is noted that there was already medical evidence on file stating that appellant (sic) was starting to show signs of cognitive impairment with a referral letter from same G. P. dated 30/03/2010 to Dr McC Consultant psychiatrist with the observation that (MW) was showing signs of cognitive impairment and had a clock test done in September 2009 confirming a 4/5 assessment.

While it is noted that the G. P. is of the opinion that (MW) would have had difficulty in understanding and dealing with financial affairs and official paperwork from September 2009 I was aware of her declining cognitive impairment when making my original decision.

It was noted that (MW) collected her own pension from the post office until 2014 declaring there was no change in her means each-time she collected her pension and the reason given to appoint an agent to collect her pension was because of her mobility and it was difficult to travel. It was also noted she was still engaged in her banking affairs until March 2015. There is no evidence of the agent notifying the Department of any change in (MW) capacity to make informed decisions regarding her financial affairs that may have affected her payment.

The facts remain that appellant (sic) failed to disclose her full means long before her cognitive impairment commenced and that her means were over the limit to qualify for any pension rate from July 2009 and she also failed to inform the Social Welfare Inspector of the substantial savings she had in July 2005.

Having considered the totality of evidence, I conclude it reasonable that (MW's) cognitive impairment was such that she was not rendered unfit to notify the Department of any increase in her means up to July 2013.

The Appeals Officer has determined that the additional evidence that has been provided by (MW's) G. P. does not make the original decision erroneous."

67. The special summons in the appeal to this Court challenges the validity of this decision. The plaintiff contends that this conclusion is manifestly irrational and that the appeals officer was not entitled to disregard medical evidence which demonstrated that there was no rational basis for the decision to select 19 July 2013

as a date from which MW ceased to have mental capacity to advise social welfare authorities of her lack of means.

68. This claim that the appeals officer erred in law in finding that MW ceased to have capacity to advise social welfare authorities of her change of circumstances from 19 July 2013 is the same complaint as that which was made to the Chief Appeals Officer in the request for revision of the appeals officer's decision in 2021.

69. The plaintiff now advances a detailed argument which refers to criteria set out in s.3(2) of the Assisted Decision Making (Capacity) Act 2015. She draws attention to items of information in medical correspondence provided to the appeals officer in 2021. The plaintiff also contends that the appeals officer ought to have sought the opinion of a medical assessor in reviewing material supplied by the plaintiff's solicitor. It was submitted that symptoms recounted in the referral letter dated 12 August 2010 and other medical documents obliged the appeals officer to accept that MW lacked this capacity from then.

70. These detailed submissions were not articulated to either the appeals officer or the Chief Appeals Officer in 2021, However, both of these decision-makers were aware of the issue identified by the plaintiff and of the medical and other evidence.

71. Section 327 of the 2005 Act confers an extensive jurisdiction on the High Court to review decisions of appeals officers: see an analysis in the judgment of Phelan J. in *M.D. v. Chief Appeals Officer* [2023] IEHC 88 at paras. 53 to 59. Questions of law may relate to findings of fact, adequacy of reasoning, unreasonableness, irrationality, or error of law by an appeals officer which would justify intervention. The High Court may consider whether an appeals officer made an identifiable error of law or a finding of fact which was not sustainable: see Gilligan J. in *Brightwater Selection (Ireland) Ltd v. Minister for Social and Family Affairs* [2011] IEHC 510.

72. This appellate jurisdiction does not allow the High Court to entertain arguments on weight of evidence or inferences. This Court may not usurp the fact-finding role of a statutory decision-maker by entertaining new arguments relating to alternative inferences which may be drawn from materials presented to that decision-maker.

73. The power of an appeals officer when considering whether to revise a decision under s.317(1)(a) or (b) of the 2005 Act does not extend to correcting mistakes of fact or law in that decision. Section 318 of the 2005 Act reserves these powers to the Chief Appeals Officer.: see Peart J. in *LD v. Chief Appeals Officer* [2014] IEHC 641 at paras. 35 and 36.

74. Section 320 of the 2005 Act provides that: "The decision of an appeals officer on any question shall, subject to sections 301(1)(b), 317, 318, 324(1)(b) and 327, be final and conclusive." The words "any question" in s.320 of the 2005 Act refer to the question decided and not the grounds for the decision.

75. It follows that, in general, a determination by an appeals officer is final and conclusive on the answer to the "question" submitted for decision. Any issue of law cannot be reopened, except as allowed by s.320 of the 2005 Act, or as a result of a successful application for judicial review.

76. It also follows that, in general, a determination by the Chief Appeals Officer not to revise a decision of an appeals officer on a question maintains the finality of that decision. Any issue of law or fact decided or capable of being canvassed in a request to revise which results in such a determination cannot be reopened, except as permitted by s.320 of the 2005 Act.

77. The power of the Chief Appels Officer to revise a decision of an appeals officer on grounds of mistake of fact or law is outside the appeals process. A person adversely affected by change a result of exercise of this revision power may wish to appeal the result. The Oireachtas has made a special provision for this. An appeal on a question of law from the decision of the Chief Appels Officer under s.327 of the 2005 Act is limited to cases where the Chief Appeals Officer has revised a decision. A similar power of appeal is conferred on the Minister by s.327A of the 2005 Act.

78. In other cases, the statutory appeal on a question of law is always from the decision of an appeals officer: see for example McKechnie J. in *Meagher v. Minister For Social Protection* [2015] 2 I.R. 633 ([2015] IESC 4) at 637 para. [4]. That decision remains effective if it has not been revised or set aside by the High Court.

79. Order 90, rule 4 of the Rules of the Superior Courts specifies the time limit for initiating an appeal on a question of law under s.327 of the 2005 Act. This time limit may be extended under O.122, r.7. Order 84, rule 21(1) of the Rules of the Superior Courts specifies the time limit for initiating an application for leave to apply for judicial review. This time limit may be extended in the limited circumstances specified in O.84, r.21(3).

80. The plaintiff is time-barred from challenging the validity of the decision of the appeals officer on 22 June 2021. Following this decision, social welfare authorities demanded payment of €51,749.50 on 18 August 2021. The validity of this demand has not been challenged and it is now immune from challenge on judicial review grounds.

81. The plaintiff is precluded by this finality from using this appeal as a vehicle for a collateral challenge to the lawfulness of the decision in 2021 that MW lacked capacity to advise social welfare authorities of her changed circumstances from 19 July 2013.

82. It follows that the plaintiff was confined in her application in October 2022 to making the case that the GP letter dated 4 October 2022 was new evidence which demonstrated that the factual conclusion of the appeals officer of 22 June 2021 was factually erroneous. Amendments to s.343 of the 2005 Act in 2008 do not affect this conclusion.

83. She is also confined in this appeal to attempting to advancing a claim that the appeals officer made some legal error in the decision dated 9 November 2022. I am not permitted to entertain criticisms of the decision of 22 June 2021 on grounds of alleged irrationality or other legal defect.

84. A decision under s.317(1)(a) of the 2005 Act on whether or not to revise a previous decision requires assessment by an appeals officer of the correctness of a decision being reviewed "… in the light of new evidence or new facts which have been brought to his or her notice since the date on which…" that decision was given.

85. The expression "where it appears to him or her that the decision was erroneous" in s.317(1)(a) means a conclusion by an appeals officer that a decision being reviewed was incorrect because of what the new evidence or new facts establish. This assessment is carried out with reference to whatever evidence was relied on in arriving at the original decision. New material may undermine a previous conclusion or an inference which was previously drawn. It may lead to rejection of evidence which was previously accepted or acceptance of evidence which was previously rejected. It may lead to no change of view.

86. The appeals officer was limited to looking at the new material and determining whether or not that information was sufficient to shift the previous conclusion of fact that lack of mental capacity of MW to advise social welfare authorities of her change of circumstances ran from 19 July 2013.

87. The appeals officer was entitled to decide that the information in the letter from the GP dated 4 October 2022 was not sufficient to demonstrate that the original decision of 22 June 2021 was erroneous.

88. The appeals officer has adequately explained his reasoning for this decision. The plaintiff cannot have been left in any doubt about why this decision went against her. There is no basis on which it could be said that the decision of 9 November 2022 was

incapable of being supported by facts, or that it was based on an erroneous view of the law, or failed to give adequate reasons or did not adequately identify matters considered. There is no basis on which I could conclude that this decision was unreasonable or irrational.

89. The letter dated 4 October 2022 was brief and uninformative. It did not offer any date as a plausible alternative to 19 July 2013 or cast further light on when MW ceased to have mental capacity to advise social welfare officials of her change of means. It did not engage with or comment on evidence which showed that MW was operating bank accounts and managing her financial affairs up to the date of her death or with other issues such as lack of clear and unambiguous medical evidence on want of capacity to look after her affairs.

90. I do not accept the submission that the appeals officer should have submitted the medical information provided by the plaintiff's solicitor to a medical assessor.

91. Section 300A(1) of the 2005 Act envisages that deciding officers and appeals officers may seek assistance from a medical assessor in connection in any of the many circumstances where health conditions of applicants or their dependants are relevant to "entitlement" to receive benefit or assistance. Section 300A(1) sets out a non-exhaustive list of questions where an opinion of a medical assessor may be of benefit.

92. MW's lack of entitlement to receive pension arose from increase in her means. It had nothing to do with any medical condition which she suffered. The question of the date from which the retrospective revision should "take effect" under s.319(b) of the 2005 Act did not involve "…determining a person's entitlement… to a benefit, assistance…" within s.300A(1) of the 2005 Act. The appeals officer was not empowered to refer this documentation to a medical assessor.

93. Deciding officers and appeals officers are used to reading medical information, just as courts are, and they may draw inferences and conclusions on what this shows and on what it does not show. This includes power weigh and evaluate such evidence along with non-medical evidence which has a bearing on any issue.

94. The plaintiff has not demonstrated that the appeals officer acted outside discretion in choosing not to obtain an opinion of a medical assessor here. Even if s.300A of the 2005 Act did apply, the appeals officer had discretion not to seek such assistance and the plaintiff has offered nothing which shows that any such discretion was exercised improperly.

95. It follows that this appeal will be dismissed. My provisional view is that the default position under O.90, r.6 of the Rules of the Superior Courts should apply and that there should be no order as to costs. This will become final absent receipt by the registrar of written notice from either party of intention to apply for costs within 21 days of the date of delivery of this judgment.