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THE COURT OF APPEAL

Record Number: 2023/111

[2024] IECA 28

Whelan J.

Power J.

Burns J.

BETWEEN/

MD

APPELLANT

- AND -

MINISTER FOR SOCIAL PROTECTION, CHIEF APPEALS OFFICER & SOCIAL WELFARE APPEALS OFFICE

RESPONDENTS

JUDGMENT of Ms. Justice Tara Burns delivered on the 6th day of February, 2024

1. This is an appeal against the judgment of the High Court (Phelan J.) [2023] IEHC 88, refusing to grant the appellant a wide range of declaratory reliefs which she sought in relation to the decision of an Appeals Officer on 8 November 2021. The Appeals Officer decided to disallow the appellant's appeal against determinations made in two earlier appeals (8 September 2020 and 21 April 2021) to the effect

that the appellant was not entitled to the Domiciliary Care Allowance ("the allowance") in respect of her care of her teenage daughter ("the child") as the statutory conditions governing the grant of the allowance had not been met.

Background

2. The child was born in April 2006 and reached her early development milestones at an appropriate age. However, when the child attended primary school, concerns were raised in relation to a number of different areas. In 2019, the child was diagnosed with Development Co-Ordination Difficulties/Dyspraxia ("DCD"). The following year, the child received a further diagnosis of Autism Spectrum Disorder ("ASD"). The ASD Multidisciplinary Assessment Report suggested that the appellant may be entitled to apply for the allowance. Despite the child's difficulties, she attended mainstream school where she was described by her teachers as "*a hardworking, excellent behaving, diligent and motivated girl*".

3. In February 2020, the appellant applied to the first respondent for the allowance. The application was supported by a medical report from the child's GP; the occupational therapist report diagnosing DCD; and the ASD Multidisciplinary Assessment report confirming the diagnosis of ASD.

4. A Medical Assessor's Report was commissioned and received by the Department of Social Protection on the 20 March 2020. The opinion of the Medical Assessor was that the child did not require substantially more care and attention than another child of her age.

5. By letter dated 30 April 2020, a Deciding Officer refused the application for the allowance on the basis that the qualifying conditions for the allowance were not met.

6. In May 2020, the appellant appealed the Deciding Officer's decision pursuant to s. 311 of the Social Welfare Consolidation Act 2005, as amended ("the 2005 Act"). The appeal was supported by additional information in the form of a detailed family impact statement which set out in greater detail the developmental difficulties encountered by the child and a further letter from the child's GP. In the GP's letter it was noted that the child was suffering from a disability so severe that she required "*continuous care and attention/supervision substantially in excess of another child of the same age in order for her to be able to deal with the normal activities of daily living.*"

7. On 24 July 2020, the appellant was notified that the refusal of the allowance had been upheld by a different Deciding Officer who determined that the qualifying conditions had not been met.

8. In light of the appeal lodged by the appellant, the matter was forwarded to an Appeals Officer.

9. On 8 September 2020, the appellant was notified that the Appeals Officer had disallowed her appeal. The decision of the Appeals Officer refers to all the medical evidence submitted in support of the original application, as well as the additional documentation submitted during the appeals process. The Appeals Officer concluded:-

> *"I acknowledge that the appellant's daughter is diagnosed with autism spectrum disorder and developmental coordination disorder and that she has additional parenting demands because of her disability. However, when I examine the additional support that she requires, particularly in relation to significant functions such as mobility, dressing, bathing, feeding and toileting, I am not satisfied that the appellant's*

daughter requires care and attention substantially in excess of another child of the same age without that disability. For that reason this appeal is disallowed."

This is the first decision which the appellant sought to be revised pursuant to s. 317 of the 2005 Act in the application the subject matter of these proceedings.

10. The appellant engaged a solicitor in respect of this refusal. In February 2021, the appellant's legal representatives wrote to the Social Welfare Appeals Office expressing their astonishment at the decision to refuse the appellant the allowance and requesting the opportunity to make the case for her appeal at an oral hearing. An oral hearing was afforded to the appellant and took place remotely on 2 April 2021.

11. On 21 April 2021, the appellant was informed that following a review by the Appeals Officer of the decision under s. 317 of the 2005 Act, and in light of the information given during the oral hearing, the appellant's request that the decision be revised was refused. In a further written decision the Appeals Officer noted:-

"There was no significant new information or evidence provided at oral hearing which had not already been provided by the appellant on the original application form or in the comprehensive family impact statement that she had submitted in support of her appeal.

…

When I consider the additional support that the appellant's daughter requires it is my opinion that the care and attention that her daughter requires is not substantially in excess of that required by another child of the same age particularly in

relation to significant functions such as mobility, dressing, bathing, feeding and toileting."

This is the second of the decisions which the appellant sought to be revised in the application the subject matter of these proceedings.

12. On 12 May 2021, the appellant requested that the Chief Appeals Officer review the decision under s. 318 of the 2005 Act. Further information was provided in relation to the child's habits and actions and the impact the diagnosis had on the appellant and her family in terms of the care and attention which the child required. On 28 May 2021, the appellant was informed that the Chief Appeals Officer had declined to revise the decision under s. 318 of the 2005 Act. The decision letter referred to all the evidence submitted in support of the application since it was first made, including matters submitted during the oral hearing and supplementary letters submitted in the process. The Chief Appeals Officer found that no specific error of law or fact had been identified, and that all the evidence submitted by the appellant had been evaluated in light of the statutory requirement for the allowance. Having regard to the totality of the evidence, the Chief Appeals Officer acknowledged the additional parenting requirements of the child but noted the statutory requirements had not been met:-

"From my review of the papers that were before the Appeals Officer, and as was acknowledged by the Appeals Officer, it is clear that [the child] requires additional support in certain areas of her life but the evidence also indicates that the child is independent in many aspects of daily living – feeding, dressing, bathing, toileting.

While it is asserted that the statutory test was misapplied and that the medical evidence points in one direction I do not find this to be the case nor do I consider that the Appeals Officer misapplied the statutory test in the manner submitted. I am satisfied that having regard to the totality of the evidence presented as set out in detail by the Appeals Officer it has not been established that [the child] requires continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age.

In summary, having reviewed all of the evidence that was before the Appeals Officer and taking account of the grounds submitted by [legal representatives on behalf of the Appellant] I do not consider that the Appeals Officer has erred in fact and/or law and having regard to the totality of that evidence I find no reason to revise his decision on the grounds submitted by [the Appellant's legal representatives].

In the circumstances I must decline to revise the decision of the Appeals Officer."

13. On 17 September 2021, the appellant sought another review of the appeal under s. 317 of the 2005 Act on the basis that information put before the Chief Appeals Officer on 12 May 2021, was not before the Appeals Officer when the decisions on the 8 September 2020 and 21 April 2021 were made. The letter from her solicitor seeking the review, included a heading "*New facts and Evidence*" under which very detailed instructions were set out relating to the child's current daily routine. The letter continues:-

"The care provided is very particular to [the child's] needs and it is care that can only properly be provided by [the appellant], who consistently over the course of hours supervises, prompts, encourages and assists [the child], in every daily task of getting ready. She would be unable to get out of bed, wash, brush her teeth, use the toilet, dress or eat properly without the constant care, supervision and assistance provided by [the child's] parents around this on a consistent and ongoing basis."

14. Other difficulties which the child experienced were also outlined, accompanied by an explanation of how these matters were dealt with by the appellant and the problems which arise. The letter proceeded to detail all of the evidence which had been submitted in relation to this application commencing with the initial application form.

15. On the 8 November 2021, the appellant was informed that the appeal had been disallowed. It is this decision that the appellant appealed to the High Court on a question of law pursuant to s. 327 of the 2005 Act.

The Decision of the Appeals Officer

16. In light of the complaints raised by the appellant in relation to this decision, it is appropriate to set it out extensively:-

"Mobility

There are no issues identified with the child's mobility on the application form but the appellant notes that her daughter has a problem with coordination. The medical report indicates that the child's mobility is normal but her balance/coordination is affected to a severe degree by her condition. According to the occupational therapy report dated 15 April 2019 the child has

difficulty with hopping, jumping, skipping, running or similar skills compared to same age peers and she is clumsy. The appellant's representative states that the child is constantly spilling and dropping things. He claims that she bumps into tables and furniture and she routinely bumps into and walks into people. A multidisciplinary assessment report dated 15 February 2019 notes that the child walks a lot so, notwithstanding her issues with balance/coordination, the child does not appear to require assistance with mobility.

Personal Care

On the application form the appellant notes that her daughter has a problem with buttons and zips. The medical report indicates that the child's fine motor skills and her manual dexterity are affected to a severe degree by her condition which supports the appellant's claims that her daughter has a problem with buttons and zips. The appellant indicates that her daughter can get out of bed safely on her own, wash her face and hands and brush her teeth and bathe herself without assistance.

The occupational therapy report states that the child's parents report that the appellant's daughter can brush her teeth and wash, but she needs to be supervised when brushing her teeth and washing her hair. The occupational therapy report also states that the appellant's daughter can dress and undress independently but it takes a long time and she needs some assistance with buttons and zips.

The appellant's representative states that the appellant's daughter is unable to wash herself properly and requires care and assistance with washing on a daily basis and constant prompting, supervision and assistance with dressing. The representative states that brushing her teeth can take the

appellant's daughter up to twenty minutes even with prompting, direction supervision and assistance. The representative also claims that the appellant's daughter can't use hygiene products when menstruating.

It is my opinion based on the evidence in the appeal documentation that the appellant's daughter is mostly independent for personal care but requires some level of assistance in relation to certain areas of personal care.

Toileting

On the application form the appellant indicates that her daughter does not need help to use the toilet and does not have any problems with wetting or soiling and does not need to wear nappies, pull-ups or pads. The medical report indicates that the child's continence is normal.

The occupational therapy report states that the parents of the appellant's child report that she is fully toilet trained but she requires supervision/checking around personal hygiene.

The appellant's representative claims that the appellant's daughter has issues in relation to toileting around soiling and improper wiping. The occupational therapy report notes that the child's parents stated that their daughter had difficulty with toileting but the report does not specify what the difficulty was.

The family impact statement provided by the appellant does not identify any issues with toileting.

It is my opinion based on the evidence in the appeal documentation that the appellant's daughter is mostly independent for toileting.

Feeding/Diet

The appellant notes on the application form that her daughter needs encouragement to eat from time to time and is selective about what she eats. She indicates that her daughter does not have any food allergies or require a special diet and her food intake does not have to be controlled. The medical report indicates that the child's feeding/diet is affected to a severe degree by her condition.

The appellant's representative states that the appellant's daughter is unable to use cutlery and is unable to cut her food. The occupational therapy report also notes that the parents reported that their daughter had difficulty using cutlery but that she is independently eating with a fork.

It is my opinion based on the evidence in the appeal documentation that the appellant's daughter is mostly independent for feeding but she has a restricted diet.

Education/Schooling

The appellant's daughter attends a mainstream school. She receives resource teaching hours and the appellant notes that the psychologist [sic] report recommends that the child get the support of a special needs assistant. The medical report indicates that the child's learning is affected to a severe degree by her condition. The appellant reports in the family impact statement that her daughter finds school stressful. The appellant also states that her daughter probably goes to school on only three days per week.

It is my opinion based on the evidence in the appeal documentation that the appellant's daughter requires some care and attention in relation to education/schooling.

Sleeping

The appellant indicates on the application form that her daughter does not sleep well most nights and takes longer that an hour to settle 1 to 3 times a week. The appellant notes that her daughter is sensitive to noise and it takes her daughter a long time to get back to sleep if disturbed. The medical report indicates that the child's sleep is affected to a severe degree by her condition.

In the family impact statement the appellant notes that her daughter did not sleep in her own bed until she was 10 years old and the appellant has endured many sleepless nights or nights of interrupted sleep. The appellant also states that her daughter is anxious on school nights. She claims that she tries to get her daughter to sleep by talking to her daughter and rubbing her back.

It is my opinion based on the evidence in the appeal documentation that the appellant's daughter requires some care and attention in relation to sleeping.

Communication

The appellant indicates that her daughter does not understand what is said to her and sometimes needs to have words explained to her. The appellant also states that her daughter sometimes uses the wrong expressions for emotions. The medical report indicates that the child's communication is affected to a severe degree by her condition and her speech is moderately affected.

While both the occupational therapy report and multidisciplinary assessment report note that the appellant's daughter was shy and quiet neither of the reports identify significant difficulties with communication. The

multidisciplinary assessment report notes that the appellant's daughter found trying to coordinate descriptive language and gestures challenging.

It is my opinion based on the evidence in the appeal documentation that the communication ability of the appellant's daughter does not give rise to a requirement for a significant level of care and attention.

Social Skills

The appellant indicates that her daughter does not make decisions in an age appropriate way and does not cope well with changes in routine. She also indicates that her daughter needs more time than other children of the same age when preparing to leave the house, needs assistance to look after personal belongings, likes to be on her own, has difficulty mixing with other children and has difficulty participating in events. The appellant also notes that her daughter needs constant prompting when getting dressed and spends a lot of her time in her room. The appellant states that her daughter has a fixation on electronic devices and is prone to lose things and forget important things.

The medical report indicates that the child's social skills are severely affected by her condition.

The multidisciplinary assessment report notes that her parents stated that the appellant's daughter is socially unsure of herself and struggles with self-esteem and has a significant issue with anxiety. The multidisciplinary assessment report also notes that the appellant's daughter demonstrated limited insight into typical social relationships.

The appellant states that her daughter has no friends and doesn't go out with anyone except for her parents and being outside of the home can be stressful.

While the appellant's daughter has issues in relation to social skills it is my opinion that those issues do not give rise to a requirement for a significant level of care and attention.

Behaviour

The appellant indicates that her daughter is prone to outburst and difficult to calm down. She also indicates that her daughter appears significantly anxious, can be aggressive to others and shows unusual/obsessive/repetitive or withdrawn behaviours. The appellant notes that her daughter regularly loses her temper over minor things.

The medical report indicates that the child's behaviour is affected to a moderate degree by her condition.

In her submissions to the appeal the appellant repeatedly refers to the tantrums and meltdowns that her daughter experiences and she notes that her daughter can demonstrate aggression during them. She refers to her daughter wrecking bedrooms and to having her daughter's nail marks imprinted on her arms. She also notes that her daughter throws objects at the wall, threw a TV across a room and smashed a table and a mirror. She nearly hit electrical wires in a wall that she broke through with a weightlifting bar.

It is clear from the appellant's submissions that her daughter's tantrums and meltdowns cause significant disruption to family life. It is my opinion that the tantrums and meltdowns experienced by the appellant's daughter give rise to significant demands on the appellant's parenting resources.

Safety

The appellant indicates that her daughter has poor perception of road safety and she notes that her daughter finds it hard to judge a safe distance to cross the road in traffic. The appellant also indicates that her daughter does not have dangerous habits, does not put foreign objects in her mouth, does not have self-harming behaviour and is not a flight risk.

It is my opinion based on the evidence in the appeal documentation that the attitude to safety of the appellant's daughter does not give rise to a requirement for a significant level of care and attention.

Sensory Issues

The appellant's daughter has significant sensory issues. The medical report indicates that the child's sensory issues are moderately affected by her condition. The appellant states that her daughter cannot tolerate certain sounds or certain fabrics on her skin. She gets overwhelmed by crowds. It would appear that the sensory issues of the appellant's daughter are the source of many of the tantrums and meltdowns that she experiences. Consequently, the sensory issues of the appellant's daughter can give rise to significant demands on the appellant's parenting resources.

Conclusion: *It is my opinion that the appellant's daughter has a disability that requires the appellant to commit time and effort to supervising and encouraging her daughter. I acknowledge that the appellant's daughter requires some level of care and attention. However, I am not satisfied that the level of care and attention that the appellant's daughter requires is substantially in excess of the care and attention*

normally required by a child of the same age and the decision on the appeal that issued to the appellant on 8 September 2020 and on 21 April 2021 should not be revised.

For that reason this appeal remains disallowed."

Statutory Provisions

The Allowance

17. The statutory criteria which govern eligibility for the allowance are contained in Chapter 8A of Part 3 of the 2005 Act. The appellant was refused the allowance as it was determined that the care criteria set out in s. 186C of the 2005 Act were not met.

18. Section 186C of the 2005 Act provides:-

"(1) A person who has not attained the age of 16 years (in this section referred to as the 'child') is a qualified child for the purposes of the payment of domiciliary care allowance 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,
(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,
(c) the child –
(i) is ordinarily resident in the State, or
(ii) satisfies the requirements of section 219(2), and
(d) the child is not detained in a children detention school."

Appeals and Reviews

19. Section 311(3) of the 2005 Act provides:-

> *"[a]n appeals officer, when deciding a question referred under [section 311(1)], shall not be confined to the grounds on which the decision of the deciding officer or the determination of the designated person, as the case requires, was based, but may decide the question as if it were being decided for the first time".*

20. Section 317(1) of the 2005 Act provides:-

> *"(1) 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"*

21. Section 318 of the 2005 Act provides:-

> *"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 been made in relation to the law or the facts."*

22. Section 327 of the 2005 Act provides:-

> *"Any person who is dissatisfied with—*
> *(a) the decision of an appeals officer, or*
> *(b) the revised decision of the Chief Appeals Officer,*

may appeal that decision or revised decision, as the case may be, to the High Court on any question of law."

Jurisdiction of High Court in an Appeal on a Question of Law

23. The question arose before the High Court as to what that court's jurisdiction was in a statutory appeal on a question of law.

24. Having reviewed a wealth of authorities relating to what jurisdiction is conferred in an appeal on a question law, the trial judge stated the following at paragraphs 56 - 59 of her judgment:-

"56. The legal principles governing the jurisdiction of the High Court in an appeal on a point of law were again considered by the Supreme Court in Attorney General v. Davis [2018] 2 I.R. 357 (in the context of extradition). In that case McKechnie J. held (at para. 53) that a statutory appeal on a point of law will enable the Court to interfere with a decision appealed against in four-overlapping-circumstances as follows:

1) errors of law as generally understood;

2) errors such as would give rise to judicial review including illegality; irrationality, defective or absence of reasoning, and procedural errors of some significance;

3) errors which may arise in the exercise of discretion which are plainly wrong; and

4) certain errors of fact.

57. McKechnie J. went on to identify (at para. 54) a non-exhaustive list of the issues of fact which may be regarded as issues of law:

"i. findings of primary fact where there is no evidence to support them;

ii. findings of primary fact which no reasonable decision-making body could make;

iii. inferences or conclusions:

- *which are unsustainable by reason of one or more of the matters listed above;*
- *which could not follow or be deducible from the primary findings as made; or*
- *which are based on an incorrect interpretation of documents."*

58. From the foregoing it is apparent that there is a significant overlap between the High Court's jurisdiction in judicial review proceedings and by way of statutory appeal on a point of law. I approach this appeal, however, on the basis that my jurisdiction to intervene to set aside a decision in respect of an error of law is wider than in judicial review proceedings in that the jurisdiction on a statutory appeal is not constrained to errors of law which go to the jurisdiction of the decision maker and the decision maker is not entitled to deference in areas of law. Although not every error of law is sufficient to vitiate the decision on a statutory appeal, nonetheless, where the ground of challenge constitutes a pure error of law (for example, a failure to apply the correct statutory test or a breach of the duty to give reasons) and I am persuaded that an error of law which has occurred is significant enough in terms of the actual decision made to vitiate that decision, then I should set the decision aside without regard to the special position of the Appeals Officer as a specialist decision maker. This is because

the Appeals Officer does not have expertise or specialised knowledge relative to the High Court in deciding questions of law.

59. On the other hand, the Appeals Officer is entitled to deference in deciding mixed questions of law and fact such as arise when a challenge is brought on the basis that the decision is unreasonable having regard to the evidence adduced. Clearly, however, if there is no evidence to support a finding of primary fact, the findings made are not ones which a reasonable decision-making body could make and/or or inferences or conclusions are drawn which are unsustainable because they could not follow or are based on an incorrect interpretation of documents, then I should set aside that decision notwithstanding the special expertise of the Appeals Officer because these constitute errors of law and fall to be treated as such."

25. The trial judge's analysis of the law governing an appeal on a question of law cannot be criticised. Indeed, there is no dispute between the parties in relation to the extent of this review jurisdiction.

The Questions of Law

26. The trial judge determined at paragraph 52 of her judgment that the questions of law which she had to consider were:-

"(a) Did the Appeals Officer fail to provide reasons for his decision in November, 2021 which were adequate as a matter of law?

(b) Is the decision of the Appeals Officer in November, 2021 unreasonable / irrational as a matter of law?

(c) Did the Appeals Officer apply the incorrect statutory test in making his decision in November, 2021?"

27. The formulation of these three questions as being the questions of law which arose in the statutory appeal were not appealed by the appellant.

28. The trial judge determined that adequate reasons were given for the decision at issue; that the decision was not unreasonable or irrational as a matter of law; and that the correct statutory test was applied by the Appeals Officer in making his decision.

The Appeal

29. A Notice of Appeal was lodged on the 24 May 2023, wherein the appellant appealed against the trial judge's findings on each question of law. Additional grounds of appeal asserted that the trial judge had erred in finding that evidence of consideration were discernible from the decision making process as a whole. It was also asserted that she misdirected herself in relation to the operation of the appeals procedure in that she had regard to the Medical Assessor's Report which was not before the Appeals Officer. This error, it was asserted, vitiated her decision.

Discussion and determination

Failure to Give Reasons

30. Having considered the extensive case law which exists regarding the duty to give reasons, the High Court determined that the decision of the Appeals Officer at issue provided adequate reasons as to why the allowance was refused to the appellant. At paragraphs 81 and 82 of her judgment, Phelan J. stated:-

"81. … The decision sets out a summary of the material which provided a factual basis on which the appeals officer could come to conclusions as to the Child's care and attention needs. The Appeals Officer patently engages in a process of comparing or weighing the competing factors relative to the nature and extent of need present. The approach of the Appeals Officer in framing his decision demonstrates analysis of the evidence and a consideration of the individual factors in the case. In arriving at the decision which is challenged in these proceedings, the Appeals Officer engages coherently and objectively with the facts before concluding that the statutory threshold for eligibility is not met on the evidence. The Appeals Officer does not " cherry pick". There is no ambiguity as to the basis for the decision and no failure to reflect a consideration in the decision-making process of the material which informed that decision.

82. Based both on the terms of the impugned decision itself the Applicant should have been left in no doubt from the terms of the decision that the reason the Allowance stands refused is because, while it is accepted that the child had a disability and has additional care needs, the evidence as to those care needs does not reach the statutory threshold. There is no basis for any suggestion that the reasons provided involved " boxticking". ***I am satisfied that the rationale for the impugned decision was patent from the terms of the decision****."*

31. The appellant argues that as this is not a judicial review application, the jurisprudence from judicial review cases relating to the requirement to give reasons is not appropriate to apply. It is argued that more detailed reasons were required to be given by the Appeals Officer to demonstrate an engagement by him with all of the

submissions made; to explain why submissions which expanded upon the care given by the appellant to her child were not relied upon by the Appeals Officer; and to explain what weight he attributed to the various submissions made. A duty to give reasons which demonstrates an engagement with the evidence was suggested.

32. In *MD v. Minister for Social Protection* [2016] IEHC 70, which was a judicial review case also dealing with the refusal of the allowance, Baker J. adopted the dicta of Hanna J. in *AM v. Minister for Social Protection* [2013] IEHC 524 regarding the duty to give reasons where he stated:-

> *"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."*

33. However, Baker J. went on to state that the duty to give reasons also arose from the requirement to demonstrate that a decision was made after a consideration of the individual facts. She relied on *Mulholland v. An Bord Pleanála (No. 2)* [2006] 1 IR 453 in support of this proposition. However, *Mulholland v. An Bord Pleanála (No. 2)* dealt with a statutory requirement introduced pursuant to s. 34(10)(a) of the Planning Act 2000 which required An Bord Pleanála "*to state the main reasons and considerations on which the decision is based*." It was acknowledged in *Mulholland v. An Bord Pleanála (No. 2)* by Kelly J. that this was a new duty arising from statute.

34. It seems to me that the reliance by Baker J. on the *Mulholland* case was misplaced in circumstances where the duty to give reasons relating to considerations arose from a specific statutory compulsion imposed on An Bord Pleanála rather than arising from the common law requirement to give reasons, which is what is at issue in the instant case.

35. I do not agree that the duty to give reasons expands to a requirement to demonstrate an engagement, in detail, with the evidence such that the decision maker is required to explain why he preferred certain submissions over other submissions, and/or to specify the weight he attributed to the various pieces of evidence before him. This runs contrary to the established proposition that an administrative decision maker does not have to provide a very detailed analysis of his decision making process as this would make the process unworkable and place too great an onus on decision makers.

36. I am of the opinion that the jurisprudence relating to the duty to give reasons, to include the Supreme Court judgment in *Connelly v. An Bord Pleanála* [2021] 2 IR 752, is applicable to the instant application. Simply because this is an appeal on a question of law rather than a judicial review application, does not alter the applicable law with respect to the question of law at issue, namely the duty to give reasons.

37. The Supreme Court stated in *Connelly v. An Bord Pleanála* [2021] 2 IR 752, at paragraph 46 of the judgment of Clarke C.J: -

> *"Therefore, it seems to me that it is possible to identify two separate but closely related requirements regarding the adequacy of reasons given by a decision maker. First, any*

person affected by a decision is at least entitled to know in general terms why the decision was made. This requirement derives from the obligation to be fair to individuals affected by binding decisions and also contributes to transparency. Second, a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision. Closely related to this latter requirement, it also appears from the case law that the reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to actually engage properly in such an appeal or review."

Clarke C.J. also stated at paragraph 28 of the judgment:-

"[T]he legal requirements which go into different types of decisions may, themselves vary very significantly from case to case. In certain circumstances a decision maker may be required to determine whether very precise criteria are met. The issue will, therefore, be as to whether those criteria are present, and the reasons which will require to be given will necessarily have to address why it is said that the criteria were, or were not met. That, in turn, may very well itself require an understanding of the process which led to the decision and the precise issues which were focused on in that process. On what basis was it suggested that the criteria were not met and how did the person concerned suggest that those questions could be answered in its favour. The issues which arise clearly inform the reasoning behind any decision."

38. Returning to the instant case, the Appeals Officer, having conducted an analysis of the submissions made by the appellant, and having come to a conclusion with respect to each heading he considered in relation to the level of care and attention the appellant was required to expend on her child, concluded that having regard to each of those separate determinations he made, the care and attention required on a global level was not substantially in excess of that needed by another child of a similar age. A breach of the duty to give reasons simply does not arise having regard to the 11 page decision which was produced by the Appeals Officer which extensively sets out his consideration of the various submissions made on behalf of the appellant and the reasons for the decision. The appellant has been fully able to appeal the decision and make submissions regarding alleged defects in the decision making process under the heading of irrationality/unreasonableness. The exercise conducted by the Appeals Officer could in no way be described as *"box ticking"*. I am of the opinion that it was not necessary for the Appeals Officer to give reasons as to why he placed more emphasis on the appellant's earlier submissions than later submissions, nor was it necessary for him to state what weight he attributed to the various submissions. He was entitled to look at the evidence in the round and reach a decision on the basis thereof. The reasons set out by the Appeals Officer comply with the requirements as to reasons set out in *Connolly v. An Bord Pleanála* [2021] 2 IR 752 when a decision maker is determining whether specific statutory criteria were met.

39. Accordingly, the trial judge did not err in determining that the duty to give reasons was complied with by the Appeals Officer.

40. Having concluded that the rationale for the decision was patent from its terms, the trial judge, considered, separately, the information provided to the appellant throughout the process as cumulatively

setting out the reasons for the decision. The appellant complains about the approach of the trial judge in this regard for various reasons. As the trial judge was completely clear that the decision at issue, on its face, provided adequate reasons for the decision and as I agree with the trial judge in that regard, it is not necessary for me to consider this ground of appeal as it can only arise if the primary ground of appeal regarding lack of reasons in the decision itself was successful.

Irrational/Unreasonable Decision

41. With respect to the submission that the Appeal Officer's decision was irrational and/or unreasonable, Phelan J. stated at paragraph 95 of her judgment:-

> *"It is my view that when the decision of the Appeals Officer is considered in the light of the applicable legal principles and the materials before the Appeals Officer, there is no basis for concluding that the decision is unreasonable or irrational. While not fully independent in all activities, it was open to the Appeals Officer to conclude on all of the information available that the Child's level of independence relative to other children of her age is similar in many but not all areas. In those areas where she has greater needs, her additional needs are not at such a significant level as to justify a conclusion that they are substantially greater. The Appeals Officer was entitled on the evidence before him to come to the conclusion that the Child did not require continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age and that the Allowance should be refused."*

42. This legal issue perhaps reflects the crux of the case made by the appellant. The appellant submits that the trial judge was wrong to conclude that the decision of the Appeals Officer was not irrational or unreasonable. This argument is based on the view of the appellant that in light of the submissions made on her behalf, which were expanded upon a number of times throughout the application process, to include two GP reports in support of the application which included a pro-forma assertion that the child required care and attention substantially in excess of another child of her age, the decision of the Appeals Officer to refuse the appellant the allowance could not have been reached rationally. In making this argument, the appellant accepts that the Appeals Officer was an experienced appeals officer in this area of social welfare and that some deference must be afforded to him.

43. Unlike judicial review proceedings, as this appeal was a statutory appeal on a question of law, the trial judge had a jurisdiction to consider the factual determinations made by the Appeals Officer with due deference to his expert knowledge in applications of this nature. If the determinations in relation to primary fact, inferences or conclusions were not supported by evidence or were unreasonable determinations to have made, the trial judge had jurisdiction to find that the decision was an irrational and/or unreasonable decision by virtue of the error in fact finding which occurred, if this was proved to be the case.

44. The appellant's case is that the evidence as a whole, to include the expanded evidence which was submitted to the Appeals Officer, should not have resulted in the Appeals Officer refusing the allowance as the evidence demonstrated the significant level of care which the appellant was required to provide to her child which, it is argued, was substantially in excess of that required by another child of a similar

age. Accordingly, it is argued that the determination was based on factual determinations which were irrational and unreasonable.

45. The difficulty with this argument is that it fails to have regard to the evolving nature of the submissions made during the application process. The initial application form did not reveal the level of care required for the child to be as extensive as later submissions did. This is particularly so with respect to submissions made by the appellant's legal representatives when *"new evidence"* was identified. This is in addition to other evidence to the effect that the child attended a mainstream school, the reports from which were that she was doing quite well despite her difficulties.

46. While the child's GP had submitted a pro-forma medical report confirming that the child's care needs were substantially in excess of another child of a similar age, this is not determinative of the matter. Rather, the GP's report forms part of the overall evidence in the application which is to be considered and weighed by the Appeals Officer in light of all of the evidence submitted by the appellant.

47. The Appeals Officer was engaged in an evidential assessment of the care and attention which the appellant expended on her daughter and had to determine whether the care and attention expended on a continuous basis was substantially in excess of the care and attention another child of a similar age required. It is true, as Counsel for the appellant submitted at the hearing, that one aspect of that evidence indicated "*significant coordination difficulties*" relating to the child's fine and gross motor abilities which placed her at the 0.5 percentile for her age. However, the Appeals Officer was obliged to carry out this assessment having regard to the totality of the evidence and all of the submissions before him from the appellant which, as already identified, varied in nature over time.

48. What is clear from the decision of the Appeals Officer is that he had regard to all of the information submitted to him to include the appellant's initial application form; the accompanying medical documentation; the oral evidence received from the appellant and the child's father; and the additional submissions made by the appellant's legal representatives. It is, fundamentally, a matter for the Appeals Officer to consider the submissions made. In the instant case, having considered the evidence as a whole, the Appeals Officer was of the view that the statutory test was not met. This was a decision which was open to the Appeals Officer to make having regard to the evidence. It is not based on determinations of fact which are unreasonable nor has an incorrect interpretation been placed on documentation resulting in unreasonable inferences or conclusions being drawn. The decision was neither an irrational or unreasonable determination to have been made. Accordingly, it has not been established that the decision is wrong in law on the basis of being irrational and/or unreasonable and the trial judge did not err in her determination in this regard.

Statutory Test

49. The appellant argues that the trial judge erred in finding that the correct statutory test was applied.

50. Section 186C of the 2005 Act has been set out earlier. Guidelines also have been developed in relation to the allowance which reflect s. 186C stating:-

> *"Eligible children from birth to the age of 16 who are living at home and who have a severe disability requiring continual or continuous care and attention which is substantially in excess*

of that normally required by a child of the same age may qualify for [the allowance]"

The section makes it clear that the nature of the care which is covered by s. 186C is care which is continual or continuous and which is substantially in excess of that normally required by a child of the same age.

51. It is important to note that the test has two components, namely the child requires continual or continuous care; and the care required is substantially in excess of that normally required by a child of the same age. Accordingly, the test is not satisfied when particular care is required to be provided in relation to a particular issue and that care is substantially in excess of the care a child of that age would normally require in relation to that particular issue. Rather, the allowance is granted when the global care of the child is continual or continuous and the level of care required is substantially in excess of a child of the same age. The terms of the decision reflect that this is the test which was applied by the Appeals Officer.

52. The trial judge did not err in finding that the respondent applied the correct statutory test when considering the appellant's application.

Trial Judge's Reference to the Medical Assessor

53. The appellant asserts that the trial judge misdirected herself regarding the operation of the appeals procedure in that she did not realise that the Medical Assessor's Report was not available to the Appeals Officer. This error, it is asserted, vitiated her decision. The respondent objects to this argument being made as it obviously did not form part of the underlying High Court proceedings.

54. The criticism of the trial judge with respect to her understanding in relation to the Medical Assessor's Report is not warranted. At no point does the trial judge state that the Appeals Officer considered this report. She does refer to the Appeals Officer being required to consider the GP's evidence *"in the balance with all the other medical evidence available".* However, this cannot be interpreted as referring, specifically, to the Medical Assessor's Report. Rather it relates to any other medical evidence which an applicant submits for the purpose of an application. In the instant case, there were two expert reports diagnosing DSD and ASD which accompanied the original application form.

55. While the trial judge does refer to the Medical Assessor's Report in that section of the judgment dealing with reasons being inferred by reference to the decision making throughout the process, I have already determined that as she was definitive that the decision at issue patently reflected the reasons for the decision, and as I am in agreement with that view, that part of her reasoning does not arise for my consideration.

Conclusion

56. For the reasons already set out, the appellant has not been successful in her appeal and accordingly the appeal is dismissed.

57. The parties had already agreed that the respondent's cross appeal in respect of the High Court's Order relating to costs, should be deferred until after this ruling. Accordingly, the parties should proceed to obtain a hearing date to deal with all cost issues arising from the Court of Appeal office.

58. As this judgment is being delivered electronically, Whelan and Power JJ. have authorised me to say that they agree with it.