



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Oifig an Cheannaire Oibríochtaí,
Na Seirbhísí Míchumais/An Rannán Cúram Sóisialta,
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3rd February 2021

Deputy Mark Ward
Dail Eireann,
Leinster House,
Kildare Street,
Dublin 2.
e-mail: mark.ward@oireachtas.ie

Dear Deputy Ward,

The Health Service Executive has been requested to reply directly to you in the context of the following parliamentary questions, which were submitted to this department for response.

PQ 44814/20

To ask the Minister for Health the cost to the State in defending the 115 court cases brought by parents since late 2018 whose children did not receive an assessment of need in a timely manner; and if he will make a statement on the matter.

PQ 5812/21

To ask the Minister for Health the cost to the State in legal fees since late 2018 in defending the 115 court cases brought by parents whose children did not receive an assessment of need in a timely manner set out in the Disability Act 2005; and if he will make a statement on the matter.

HSE Response.

Since the commencement of Part 2 of the Disability Act in June 2007 the HSE has endeavoured to meet its legislative requirements as set out in the Act. Under the Act, any person suspected of having a disability, born on or after June 1st 2002 is eligible to apply for an Assessment of Need (AON)

Children who qualify for an AON under the Act have a right to:

- an assessment of their health needs arising from their disability
- an assessment report
- a statement of the services they will receive
- make a complaint if they are not happy with any part of the process

The Disability Act 2005 outlines the statutory timelines under which AONs must be completed. In effect the assessment must be completed within six months of the application date with a further month to issue the report and service statement where appropriate.

The numbers of applications for AON under the Act have risen steadily since its implementation in June 2007. In 2008 2,535 applications for AON were received with 1,392 assessments completed. In 2019 the number of applications received had grown to 6,596 with 3,312 assessments completed. When originally implemented, it was envisaged that AON would apply to children aged less than five

years and the Education for Persons with Special Education Needs Act (2004) (EPSN) would address the needs of older children. The relevant sections of the EPSN Act have not been commenced.

Furthermore, as a consequence of a High Court ruling of December 2009, the effect of which was to open eligibility to all children born after 1st June 2002, the number of children aged five and over has risen steadily as a percentage of all applications received. At the end of 2011, the figure stood at 26%, while at end of 2019, this figure was 55%. This is a reflection that the AON process is an accumulative process in terms of numbers of children seeking access.

Section 14 of the Disability Act outlines a number of grounds for complaint in relation to Part 2 of the Act. An applicant may make a complaint in relation to one of more of the following:

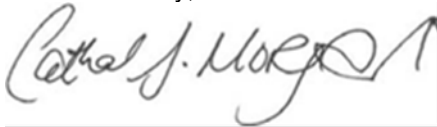
- a) a determination by the assessment officer concerned that he or she does not have a disability;
- b) the fact, if it be the case, that the assessment under section 9 was not commenced within the time specified in section 9(5) or was not completed without undue delay;
- c) the fact, if it be the case, that the assessment under section 9 was not conducted in a manner that conforms to the standards determined by a body referred to in section 10; PT. 2 S. 12 [No. 14.] Disability Act 2005 [2005.]
- d) the contents of the service statement provided to the applicant;
- e) the fact, if it be the case, that the Executive or the education service provider, as the case may be, failed to provide or to fully provide a service specified in the service statement.

Section 22 of the Act goes on to describe the statutory enforcement process via the Circuit Court system. For a period prior to 2018 there were delays investigating complaints under Section 14 of the Act. As a consequence, a number of families initiated Judicial Review proceedings in the High Court on the basis that the statutory remedy was inadequate. The resulting judgements stated that, in the absence of delays, the statutory remedy presents a viable remedy for applicants.

There have been 115 applications to the Circuit Court for enforcement orders under Section 22 of the Disability Act. These cases relate to the grounds for complaint listed above. The State Claims Agency has reported to the HSE that it has received 30 claims in relation to this assessment of needs matter. All 30 of these claims were received in 2020 and are currently being managed by the State Claims Agency on behalf of the HSE. As of 20/01/2021, there were no payments made.

Furthermore, there have been a number of Judicial Review cases that address some wider issues relating to the AON process as well as some additional Circuit Court cases. The costs since 2018 of HSE appointed solicitors and counsel is €700,815. These costs include both Circuit Court and High Court costs.

Yours sincerely,



Dr. Cathal Morgan,
Head of Operations - Disability Services,
Community Operations