



**MINISTRY OF SOCIAL
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

11 JAN 2021

Jessica Dellabarca
fyi-request-14111-bcfefd1b@requests.fyi.org.nz

Dear Jessica Dellabarca

On 11 November 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information on the Ministry's benefit appeals processes, over a 24-month period:

Internal Benefit Review Committee

1. *The number and outcome of the decisions of the BRC broken down by no representation, client representation, lay-person advocate, and legal advocate.*
2. *The process in which a "community member" of the review committee is chosen, the duration for this term and the number of community members in each region.*
3. *Are there any publicly available benefit review committee decisions? If so, could I please have access to these or the process in which the decision is reached.*
4. *Any policy and training documents about how these reviews are carried out.*

Social Security Appeal Authority

1. *The number and outcome of the decisions of the SSAA broken down by no representation, client representation, lay-person advocate, and legal advocate.*
2. *Policy documents provided to the members of the appeal authority in guiding their decisions.*
3. *The process by which SSAA members are appointed.*

Medical Appeal Board

1. *Policy documents provided to the members of the board in guiding their decisions.*
2. *The process by which MAB members are appointed*
3. *The number and outcome of the decisions of the MAB broken down by no representation, client representation, lay-person advocate, and legal advocate.*
4. *Are there any publicly available MAB decisions? If so, could I please have access to these or the process in which the decision is reached.*

Appeals to the High Court

1. *The number and outcome of the decisions of the High Court broken down by no representation, client representation, lay-person advocate, and legal advocate.*
2. *Any documents provided to beneficiaries or MSD representatives before attending a trial.*

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On 16 November 2020, the Ministry emailed you to advise that the following questions had been transferred onto the Ministry of Justice for response:

Social Security Appeal Authority

1. *The number and outcome of the decisions of the SSAA broken down by no representation, client representation, lay-person advocate, and legal advocate.*
2. *Policy documents provided to the members of the appeal authority in guiding their decisions.*
3. *The process by which SSAA members are appointed.*

Appeals to the High Court

1. *The number and outcome of the decisions of the High Court broken down by no representation, client representation, lay-person advocate, and legal advocate.*

I will answer the remaining questions in turn.

Benefit Review Committee

The Benefits Review Committee (BRC) is a review body that was established to make correct and fair decisions with regard to procedure and law.

Benefit Review Hearings are a chance for a review panel to take a fresh look at decisions made by the Ministry. The hearing is an opportunity for the applicant to explain why they disagree with the decision and for the Committee to review the Ministry's decision.

This process is an important part of ensuring that correct decisions are made by the Ministry on a case by case basis.

In regard to the first part of your request, please find **Table One** below for the numbers and outcomes of the decisions of the BRC broken down by 'no representation' (papers only), representation by client only, representation by client and client representative, and representation by client representative only, along with Hearing outcomes, for the 24 month period ending 30 June 2020.

BRC Hearing Attendees	Outcomes			
	Upheld	Part Upheld	Overtured	Not Reviewable
No representation (Papers only)	783	70	62	2
Client Only	465	57	95	1
Client and Client Representative	239	52	88	0
Client representative Only	72	14	15	0
Total	1559	193	260	3

Notes for Table One:

- The figures in Table One above, pertain to the 24-month period ending 30 June 2020. This aligns with the Fiscal years ending 30 June 2019 and 30 June 2020.
- The figures provided relate to BRC Hearings and not Internal Reviews. An Internal Review is an administrative check of the original decision and is not a legal requirement. Only if the original decision is upheld or partly upheld, is the review escalated to a BRC.
- We do not hold the information about whether the client representative is a lay person advocate or a legal advocate in a readily collatable form.

To answer the second part of your request, community representatives are Ministerial appointees who provide a community perspective in the decision-making process of the BRC. Community representatives are appointed by the Minister for Social Development and Employment under Clause 2(a) of Schedule 7 of the Social Security Act 2018 (formerly s10A (4)(a) of the Social Security Act 1964). Each representative holds office on terms and conditions which are set by the Minister for Social Development and Employment. Since October 2015, the term of office for community representatives has been set at five years.

For more information about the appointment processes of community representatives, please see the link below:

<https://www.msd.govt.nz/about-msd-and-our-work/about-msd/ministers/appointments.html>

Please find **Table Two** below for the number of community members/representatives in the Ministry as at 26 November 2020, broken down by region.

Region	Number of Community Representatives
Auckland	8
Bay of Plenty	7
Canterbury	6
Central	5
East Coast	5
Nelson	8
Northland	4
Southern	13
Taranaki	3
Waikato	7
Wellington	4

In regard to the third part of your request, the BRC is operated in confidence between the members of the committee and the applicant, decisions contain personal information which is not made publicly available as it would breach the privacy of the associated individuals. As such, the Ministry is withholding all BRC decisions under section 9(2)(a) of the Act in order to protect the privacy of natural persons.

To answer the fourth part of your request, please see the following links below for copies of publicly available information which is used by Ministry staff to assist them in the BRC process.

<https://www.msd.govt.nz/documents/about-msd-and-our-work/contact-us/complaints/v9.2-panel-members-information-pack.pdf>

<https://www.msd.govt.nz/documents/about-msd-and-our-work/contact-us/complaints/report-writers-information-pack.pdf>

<https://www.msd.govt.nz/documents/about-msd-and-our-work/contact-us/complaints/committee-co-ordinators-information-pack.pdf>

Medical Appeal Board

The Medical Appeal Board (MAB) is an independent body established to ensure that correct decisions are made based on medical grounds or on grounds relating to a person's capacity for work.

The MAB takes a fresh look at all of the information about a client's medical circumstances and work capacity.

In regard to the first part of your request, please see the following link below for documents that are used by board members to guide and inform their decision-making process.

<https://www.msd.govt.nz/about-msd-and-our-work/contact-us/review-of-decision/medical-appeals-board.html#Documentsforboardmembersandstaff5>

In regard to your second question, the Ministry will identify suitable members to participate on the MAB. Board members will be suitably qualified to hear an appeal and have an interest in participating in the appeals process.

Each Board member must also be capable of:

- reviewing the medical evidence relied on by the decision maker, and the grounds on which the benefit was declined
- identifying where medical evidence before the Board is insufficient
- reviewing new medical evidence not before the original decision maker
- understanding any submissions given
- applying the medical evidence and the submissions to the relevant legislation.

Therefore, a MAB member must be capable of assessing medical evidence but cannot and should not be expected to re-diagnose a client.

Once a Board has been agreed upon for a hearing, it is good practice for the Board to appoint a chairperson from these three members.

In regard to the third part of your request, the Ministry does not readily breakdown MAB decisions by no representation, client representation, lay-person advocate and legal advocate. In order to provide this information, the Ministry would need to review each individual outcome to determine the information you have requested. As such,

this part of your request is refused under section 18(f) of the Act as substantial manual collation would be required to provide you with the information requested.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

In an effort to assist, the Ministry is able to provide you with MAB outcomes for the past 24 months. In the period of 1 July 2018 to 30 June 2019, 54 cases were heard by the Medical Appeal Board. Of those 54 cases, 44 were upheld and 10 were overturned.

In the period of 1 July 2019 to 30 June 2020, 33 cases were heard by the Medical Appeal Board. Of those 33 cases, 21 were upheld, 11 was overturned and one was partially upheld.

Regarding the fourth part of your request, MAB is operated in confidence between the board and the applicant, and decisions contain personal information which is not made publicly available as it would breach the privacy of the associated individuals. As such, the Ministry is withholding all MAB decisions under section 9(2)(a) of the Act in order to protect the privacy of natural persons. Please see the link provided above for copies of the documents that are used by board members to guide and inform their decision-making process.

Appeals to the High Court

In regard to this part of your request, any beneficiary appealing to the High Court is responsible for their own proceedings and therefore the Ministry does not provide any documents. Ministry representatives are simply prepped on the facts of each case and are not provided with any specific standard documentation. As such, this part of your request is refused under section 18(e) of the Act as the information requested does not exist.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response regarding the Ministry's benefit review processes, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely

A handwritten signature in blue ink, appearing to read "D. Anderson".

Diane Anderson
Manager, Client Advocacy and Review