



**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MANATŪ WHAKAHIATO ORA

**Benefits Review Committee**  
**Co-ordinators Information Pack**

RELEASED UNDER THE  
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## Introduction

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This information pack is to assist you with your role as Benefits Review Committee (BRC) co-ordinator.

The BRC co-ordinator works on behalf of the BRC and has an important role to play in ensuring that requests for review are addressed in a consistent, professional and timely manner. The efficient operation of a good BRC co-ordinator impacts on regional and national performance which is monitored via the National Standards.

To get a full overview of the role of the co-ordinator this information pack should be read in conjunction with the HIYA ROD Training Pack and the full ROD Resource Kit.

## Overview

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Benefit review hearings are a chance for a review panel to take a fresh look at decisions made by the Ministry of Social Development.

The Benefits Review Committee is a review body that is established under the Social Security Act 2018 (the Act) to make correct and fair decisions with regard to procedure and law.

The benefit review process is an important part of ensuring that correct decisions are made by the Ministry on a case by case basis. The benefit review hearing is an opportunity for the applicant to explain why they disagree with the decision and for the committee to re-look at the Ministry's decision.

The benefit review co-ordinator's role is to ensure that the benefit review process happens in an efficient and timely manner. The co-ordinator will also act as a distribution point for information and requests.

The following pages set out the processes, timeframes and guidelines for benefit review co-ordinators to ensure that the hearing process runs smoothly and within designated timeframes.

## Co-ordinator Responsibilities

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### Regional Co-ordinators

The regional BRC co-ordinator's role is to ensure that the overall hearing process runs smoothly for their region and that the Ministry meets the specified timeframes. The regional co-ordinator is responsible for:

- Monitoring regional/group progress in HIYA
- Maintaining a current list of all community representatives available
- Providing a contact point for advocacy groups
- They may, in suitable regions/groups, schedule hearings and arrange panel members
- They may, in suitable regions/groups, ensure decisions are implemented and recommendations are considered by the Ministry, noting the Ministry's response to the recommendations in HIYA
- Receiving a copy of the Benefits Review Committee's (BRC) report
- Providing a contact point for National Office Review and Client Representatives team
- Having a current list of Site/Area Co-ordinators for their region/group

## Site/Area Co-ordinators

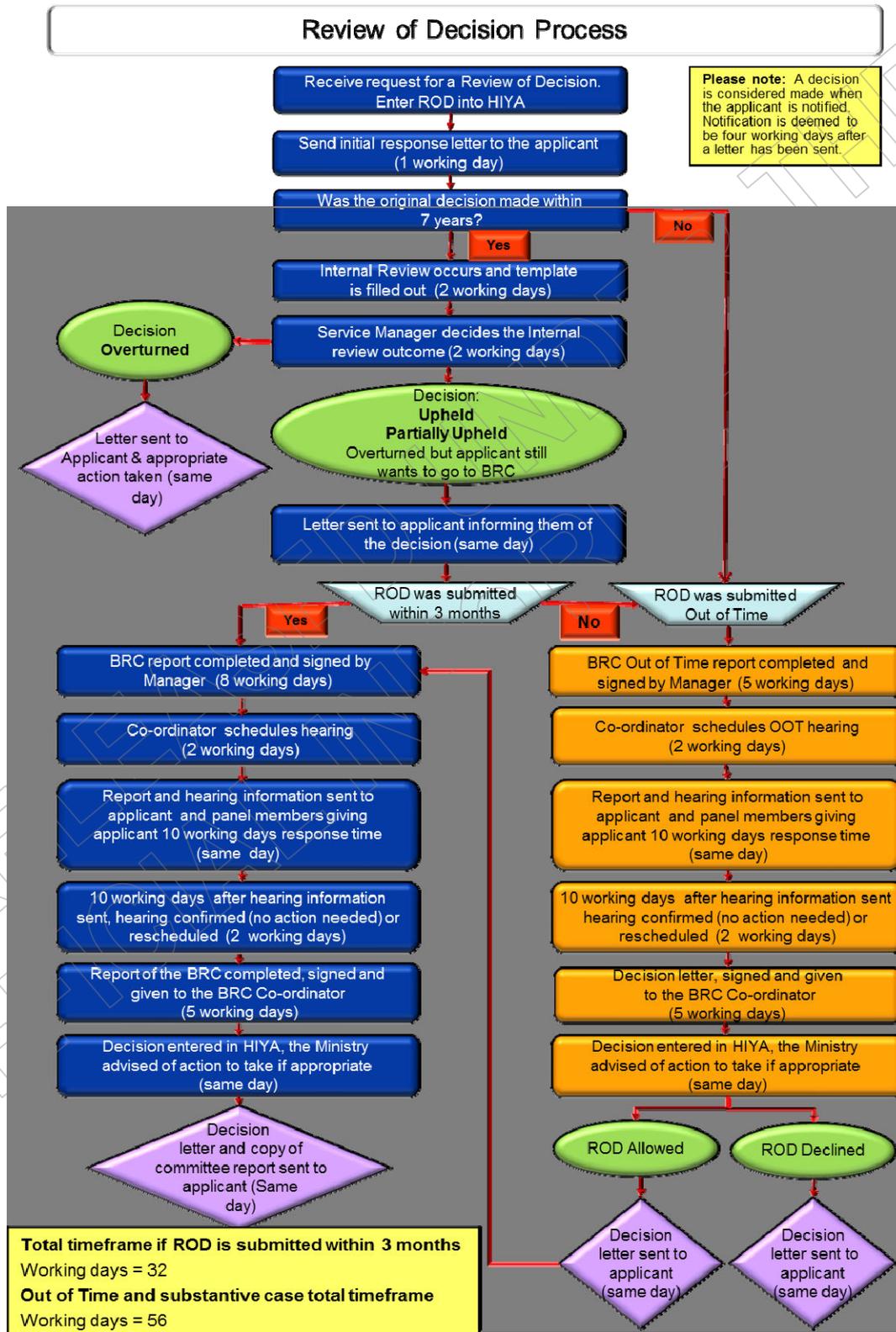
Some regions or business units that are more geographically spread may nominate site co-ordinators as well as regional co-ordinators. Their role is similar to the regional co-ordinator, but they would service a specific site within their region as opposed to the region as a whole.

The role of the Site/Area Co-ordinators is to:

- Receive and lodge RODs in HIYA, issue the acknowledgement letter and block time in the decision-makers schedule to complete the Internal Review
- Refer the application to the appropriate decision maker
- May perform an initial QA
- Liaise with the SCM or appropriate senior staff member regarding the Sites/Areas progress
- Liaise with Regional/Group Co-ordinator and report Site/Area progress monthly
- Monitor timeliness at Site/Area level
- They may, in suitable regions/groups, schedule hearings and arrange panel members
- They may, in suitable regions/groups, ensure decisions are implemented and recommendations are considered by the Ministry, noting the Ministry's response to the recommendations in HIYA
- Receive a copy of the BRC report
- Ensure that the ROD and related documentation are either scanned or batched with a nil destruction date

# Benefit Review Hearing Process

The following flow chart and explanation are a general overview of the BRC process.



## The Co-ordinators Process

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1. Either the site co-ordinator or a nominated staff member enters the Review of Decision into HIYA ROD. In conjunction with the service manager a decision is made who will do the review. This would usually be the original decision maker.
2. If the outcome of the internal review results in the review proceeding to the BRC the assigned staff member, in conjunction with a report writing "expert", will write the 'Report to the BRC'. The co-ordinator will check to ensure the report is of an acceptable standard and prepare it for the hearing (the co-ordinator will need four copies of the report and all supporting papers and all originals).
3. The co-ordinator sends the 'Invitation to Hearing' letter to the applicant with a copy of the report, supporting papers and the 'Guide to Benefit Review Hearings'.
4. The co-ordinator informs the applicant of the hearing date. If the date is not suitable the co-ordinator finds one that is mutually agreeable.
5. If the applicant advises that they are bringing a solicitor or advocate to the hearing, the co-ordinator advises the presenter so they can arrange a Ministry solicitor to attend if appropriate.
6. The co-ordinator sends an 'Advice of Hearing' letter to all panel members with a copy of the report to the Committee and all supporting papers.
7. If the applicant advises they do not wish to attend (or does not reply within 10 working days of sending the 'Invitation to Hearing' letter) the co-ordinator confirms the hearing.
8. The co-ordinator sends an 'Advice of Hearing' letter to all panel members with a copy of the report and all supporting papers to the Committee. Along with an 'Advice of Hearing' letter to the applicant.
9. The hearing occurs. *For information about the hearing process, please refer to the 'Hearing' section of this information pack.*
10. After the hearing the co-ordinator ensures the 'Decision of the Benefits Review Committee' report is completed by the BRC. This can be done by checking the HIYA ROD system. Advice of the hearing outcome and a copy of the report should be sent to the presenter and the applicant by the chairperson of the panel.
11. The co-ordinator ensures that the decision of the BRC is implemented within 24 hours of notification of the hearing.
12. The co-ordinator ensures any recommendations made by the panel are considered by the Ministry and HIYA noted with the outcome of these considerations.

# Administration

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## Letters, Templates & Guides

All the letters, templates and guides mentioned in this information pack are built into HIYA ROD. The system has the ability to save and recall all of these documents.

## Letterhead

MSD letterhead is required on all correspondence from the BRC. This is to ensure the perception of impartiality of the BRC is addressed. All correspondence regarding the Internal Review is deemed to have been done at site level so will use site letterhead.

## Client Representatives/Solicitors/Agents & support people

The applicant is entitled to bring his or her own support person to the benefit review hearing. If the applicant indicates that an advocate or solicitor will be attending the benefit review hearing then the Ministry staff member who submitted the 'Report to the Benefits Review Committee' needs to be informed.

If a solicitor is going to attend it may be necessary for the Ministry to arrange for their solicitor to also be in attendance. Again, notify the presenter of this so that they can contact the appropriate Ministry solicitor.

It is also important that you advise the applicant if the Ministry is going to have a solicitor in attendance or as the presenter of the hearing.

If the applicant has an agent all communications should be sent to the designated agent as well as the applicant.

## Clients experiencing mental health issues

Clients who experience depression or anxiety, may find it difficult or stressful to engage with the Review of Decision process. When making arrangements for the hearing it is often best to give them a call (or e-mail if that's their preferred method of contact) to see if they want to attend the hearing, talk them through the process and let them know that there are options available to them.

These options include:

- Attending the hearing with a support person.
- Having an agent or advocate attend with them or in their place.
- The client sending the BRC in a written document explaining why they believe the decision is not correct.
- Attending the hearing by Skype, video conference, or teleconference.
- Having the hearing in a neutral environment such as a community centre or the like.

The above list is not exhaustive, work with the client and/or their agent to find a solution.

You may want to talk to your RHA when looking for solutions.

## Trespassed Clients

If the applicant has a current trespass order the hearing can proceed on a papers only basis or they can appoint an agent, if they haven't already done so, to represent them at the hearing or they can opt to have their hearing via teleconference or video conference. Sometimes they may wish to use a combination of these.

If a client does not pose a physical threat you should investigate the option of using a venue the client is not trespassed from to allow them to attend. This should be discussed with your manager or the National Office Review and Client Representatives team.

## Remote Client Unit

The Remote Client Unit has been established to provide an avenue for clients, who have been assessed as posing a high risk to the safety of Ministry staff in Service Centres nationwide, to continue to access Ministry services. If a client has been referred to the Remote Client Unit please send any reviews they may lodge through to the unit to manage. Options available in these cases may include:

- Papers only
- Appointment of agent; or
- Teleconference / Videoconference.

## Timeliness Standards

Refer to the flowchart on page 3 for the benefit review timeliness standards. There is a guideline time allocation for each step, however it is a National Standard that the whole process should take a maximum of 32 working days from the time the applicant submits the Review of Decision to when the final 'Report of the Benefits Review Committee' goes out. There are 56 working days available for Out of Time cases.

## QA Process/Report Checking

The BRC co-ordinator may wish to ensure that the quality of reports going to the committee meets the required standard. It is important to check that the manager's checklist and QA has been completed.

Each report should clearly explain the entire case to someone who has no understanding of the welfare system. If the co-ordinator believes the quality of a report is not acceptable they need to return the report to the responsible manager with clear notes about what needs to be improved.

All relevant documentation should be attached to the 'Report to the Benefits Review Committee'.

A guide template of the 'Report to the Benefits Review Committee' is included in doogle. <http://doogle.ssi.govt.nz/business-groups/organisational-integrity/client-advocacy-and-review/review-and-client-representatives/report-templates/report-templates.html>

## Escalation of Issues

If at any stage the co-ordinator is not happy with the progress of a benefit review they need to escalate the issue to the relevant manager.

When the co-ordinator escalates the issue they need to clearly explain what the issue is and why it is an issue. Explain what steps need to be taken to resolve the issue and what timeframes are involved.

Any issue escalation needs to be noted in HIYA ROD. Copies of any correspondence regarding any escalation should be treated as valuable and reusable. All scanned documents will be held electronically in the client's record and accessed through CMS.

## Schedules

Planned review hearings are held on a schedule maintained by the BRC co-ordinator. How the co-ordinator manages this process is dependent on the delivery model options that are adopted by the particular region or unit.

The responsibility for completing the Report to the BRC always lies with the region, or site of the original decision maker, but from time to time it may be necessary to co-ordinate a hearing from another region or site. For example, clients that move regions, or review a decision that was made in a centralised unit (such as Integrity Intervention Centre or SPS Wellington) will require a hearing to be arranged within the region where they are now residing to enable them to attend.

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## Legal Information

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### Can the BRC review the decision?

The BRC cannot review a decision if:

- the review has been heard by a committee previously (unless there was a fundamental breach of natural justice or fundamental error)
- the review is outside the three month review period and the committee considers there is not a good reason for delay
- the committee has no jurisdiction to hear the issue being reviewed.

### Already Heard by the Committee

An applicant has the right to have their decision reviewed once. If the decision has already been reviewed, it cannot be reviewed again

If the review has been heard by a BRC previously and a decision issued, treat the review as an application to the Social Security Appeal Authority. Contact your regional legal advisor if you think there may have been a procedural error or fundamental breach of natural justice that has meant that the applicant has been disadvantaged or an issue around bias or impartiality.

**For example:** prior involvement in the decision by a panel member. The decision can be treated as invalid and the case reheard.

Note that in some cases, what may seem to be an application to review a decision again, may, in fact, relate to a different decision. For example, the first review related to a decision to establish an overpayment, but the BRC did not consider whether the debt was caused by an error and should not be recovered under Regulation 208. The applicant may apply for a further review, this time of the decision not to consider Regulation 208.

If the applicant has been prosecuted by National Fraud Investigation Unit in the District Court and then applies for a review of the decision to establish and recover the overpayment, jurisdiction will probably be an issue.

In this case, the BRC should seek legal submissions from both parties on the issue of jurisdiction and make a determination before considering the substantive matter. The parties may both be present at this jurisdiction hearing. If the BRC determines that it does not have jurisdiction, it should not go on to consider the substantive matter at a further hearing.

### Exceptions

A second BRC may not be convened to review a decision of an original Benefits Review Committee. The only exceptions to this would be if there had been a fundamental breach of Natural Justice as defined below or a fundamental error where the Benefits Review Committee has not actually carried out its function to review a decision. For example:

Fundamental Breaches of Natural Justice

- the applicant has not been informed of the Benefits Review Committee hearing; or
- the applicant has not been given the opportunity to be heard (explain their view of the case) this can either be in person or the opportunity to submit material in

writing and to respond to any material or written submissions the Ministry produces.

In these situations the BRC would need to be either:

- reconvened - so that the applicant can either attend the hearing or have the opportunity to submit material for the same panel to consider; or
- if a decision has already been made and sent out to both parties a new BRC would have to be organised with the first hearing/decision being treated as invalid i.e. there is no original decision being reviewed, it is treated as never having existed.

**Fundamental errors** (not compliant with sections 391 to 394 of the Social Security Act 2018)

<b>Description of Error</b>	<b>What to do – best remedy of error</b>
Benefits Review Committee does not have the right make up e.g. 2 panel member instead of 3 – contrary to Schedule 7.	New Benefits Review Committee to be arranged (original BRC treated as invalid)
Ministry staff member on the Benefits Review Committee has had prior involvement in the decision being reviewed – contrary to Schedule 7  For more information refer to the Disqualification section of the Panel Members Information Pack.	New Benefits Review Committee to be arranged (original BRC treated as invalid)
Benefits Review Committee does not make a decision to:  Uphold – Confirm; or  Partially Uphold – Vary; or  Overturn – Revoke the original decision – contrary to Regulation 247	New Benefits Review Committee to be arranged (original BRC treated as invalid)
Benefits Review Committee does not give reasons for its decision, as required by Regulation 247	Reconvene original Benefits Review Committee to correct the omission.  If the reconvened Benefits Review Committee are unable to give reason(s) for its decision a new BRC will have to be arranged( original BRC treated as invalid)

**Note: If you have any queries in relation to the above please contact the Review and Client Representatives team in National Office. [Review\\_Client\\_Rep\\_Team@msd.govt.nz](mailto:Review_Client_Rep_Team@msd.govt.nz)**

## **Hearing types**

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### **Out of Time Reviews**

The Social Security Act 2018 gives applicants three months to apply for a review of decision from the date they were notified of the decision. This is considered to be received on the fourth day after it was posted unless there is evidence to the contrary. Evidence may include the fact that the applicant has notified the Ministry that they have moved address (and the Ministry has not noted the information) or that the mail is returned "not known at this address". Each case will need to be considered individually. However, the legislation gives the Benefits Review Committee the ability to hear reviews out of time if it considers there is good reason for the delay in requesting a review.

The first step is to confirm that the request for review has been filed within three months of the applicant being notified of the decision. If the review has not been requested within three months the applicant needs to have good reason for the delay in requesting a review. The applicant must be given the opportunity to provide reasons for the review if they are not included in their ROD.

If the original request for review does not state the reasons, contact the applicant and explain the situation. Give the applicant the opportunity to explain why the review was lodged out of time.

### **Out of time Internal Review**

An Internal Review Submission is not completed on the out of time issue itself, but should be completed on the substantive issue to establish that the decision under review was correct. The only exception to this is if a review is received more than seven years after the decision was made. In these circumstances the Internal Review Submission will not need to be completed.

### **Out of time report to the BRC**

The Report to the BRC should be completed on the out of time issue only. The committee must consider whether there is good reason for the delay. If in preparing the out of time report to the BRC the Ministry comes to believe that the applicant does have a good reason for the delay in applying for the review the Ministry can recommend in the report to the BRC that the substantive issue be heard.

If the Ministry is recommending the substantive issue be heard then both the out of time report as well as the substantive issue report to the BRC can be sent to the Committee. This is because it would be very rare for the BRC to decline to hear the substantive issue if the Ministry has recommended it. When sending the reports to the applicant in these circumstances a covering letter should be included stating that if the BRC decide there was a good reason for the delay in applying for the review the hearing for the original decision will take place straight after (a letter template has been included on doogle). When scheduling the hearing in these circumstances, enough time has to be allowed for both the out of time and the substantive issue to be heard, this is based on the assumption that the BRC will allow the substantive issue to be heard.

<http://doogle.ssi.govt.nz/resources/helping-staff/procedures-manuals/review-decisions/out-of-time.html>

## **Out of time BRC decision**

If the BRC finds that there were no good reasons for the delay, the BRC should decline to hear an application for review more than 3 months after notification of the decision. It should not consider the substantive issue. The applicant does not have the right of appeal to the Social Security Appeal Authority if a BRC determines that there are no grounds for the decision to be reviewed outside of the three month timeframe.

If the BRC decides that there is good reason for the delay, then the BRC will decide to allow the review to proceed to the substantive hearing. It will consider the substantive issue at another time after both parties have adequate time to prepare submissions.

## **Jurisdiction**

If the application for review is clearly outside the jurisdiction of the BRC, the applicant should be notified and given the opportunity to withdraw their application for review. In all other cases, the matter should be forwarded directly to the BRC. If jurisdiction is an issue, the BRC will hold a jurisdiction hearing and make a determination on that matter before considering the substantive decision.

If the applicant does not withdraw their application in writing, and the Ministry considers that it is not reviewable under the above criteria, the case should still be referred to the BRC. It will be the role of the BRC to determine whether the review lies inside their jurisdiction. When a review is to proceed to a BRC on the matter of jurisdiction the case should be referred to legal services to assist with the correct preparation of the report.

If jurisdiction is an issue, the applicant should be given the opportunity to explain why the BRC should hear the review. The committee will then prepare a report explaining whether the review is within its jurisdiction or not. The completed report needs to be sent to both the Ministry and the applicant.

## **Prosecution**

At times an applicant may ask for a review on a decision which they are also being prosecuted for. In these situations they must be made aware that anything they say during a Benefit Review hearing can be used as evidence in the court prosecution.

A standard letter has been developed for these situations and is one of the templates available in HIYA ROD.

## **Panels**

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### **Panel Makeup**

The BRC consists of three members. They are:

- two Ministry staff members who have had no prior involvement with the decision being reviewed. This prohibition includes such activities as signed off correspondence. This includes computer-generated letters with electronic signatures of service centre managers.
- a community representative appointed by the Minister to represent community interest, and who is resident, or closely associated with the region.

All three members of the panel must be present at the hearing to make a decision.

If a National Fraud Investigation Unit case is being heard only one of the panel members can be from the unit.

The same panel members can be used for both the out of time and the substantive hearings as the substantive issue is not discussed at the out of time hearing. However, if a hearing is adjourned, then the same panel members must be used, as far as possible, so that all members have heard the same information and discussions.

The applicant can object to any member being part of the Benefits Review Committee, by stating the reasons for his or her objection. If grounds are found for disqualification, or there is an issue with a particular panel member that will interfere with the process of natural justice, the panel member objected to should be replaced. The Applicant would usually discuss this with the Benefits Review Co-ordinator.

### **Community Representatives**

#### **Availability**

Each region has a pool of available community representatives. Having a pool of community representatives mean that hearings can occur on a regular basis allowing for prompt processing of all benefit reviews.

#### **Appointment Process**

The position of community representative to the BRC is a Ministerial appointment made at the discretion of the Minister for Social Development. This means that the Minister decides who can act as a community representative and for what period of time.

The Minister has decided that from November 2015 community representatives are appointed for a fixed term of five years.

For more information on the appointment process please refer to the information available on doogle and the MSD website.

#### **Rate of Payment for Community Representatives**

The community representative is paid for work actually done. Payments are processed through the Ministry payroll and attract Withholding Tax.

Payment rate:

- \$116.67 for 0-3 hours
- \$233.35 for 3+ hours

Time spent in preparation for hearings is included in the hours calculated for payment. This means if three hearings are heard in a day and they take three hours to complete and one hour was spent in preparation time payment would be made at the rate of \$233.35.

Allowances paid to committee members for expenses are subject to withholding tax at the rate of 33%. However, certain reimbursements are exempt from withholding tax, provided the following conditions are met:

- The expenditure must have been incurred by the committee member in the course of duties performed on behalf of the Ministry; and
- The expenditure must be reimbursed based on receipts or invoices retained by the Ministry.

For example, a reimbursement of air travel, supported by actual invoices, would not be subject to withholding tax.

Reimbursement of motor vehicle expenses (e.g. mileage allowances), based on the standard IRD rate of 76 cents per kilometre is subject to withholding tax as there would be no supporting invoices or receipts. Time spent travelling cannot be claimed unless travel time exceeds more than three hours in a day.

This application of tax legislation has been based on the circumstances that will best fit the majority of community representatives. As community representatives' individual circumstances vary, it is recommended that they discuss their personal taxation situation with Inland Revenue, an accountant or a taxation specialist.

## **Paying Community Representatives**

An expense claim completed by the community representative and signed by the appropriate budget manager is submitted to Human Resources for each hearing. Expense claim forms can be found in the community representatives page of the Review and Client Representative Team doogle site and the MSD website.

## **Changes in Circumstances**

A national database is held on all community representatives. You need to contact the Review and Client Representatives team in National Office in any of the following situations:

- a community representative would like to resign
- additional community representatives are required
- a community representative changes address

# The Hearing

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## Setting up

When you are preparing for a benefit review hearing you will need the following:

- a suitable room e.g. outside persons cannot observe proceedings, sufficient lighting, comfortable temperature, access for people with disabilities
- a table and chairs that all panel members, applicant and support people can sit at
- water and glasses
- laptop, paper, pens & calculator
- original papers submitted
- consolidated legislation
- any relevant policy manuals
- take any specific cultural or language requirements into consideration. This may include arranging an interpreter
- Resource Kit with most recent updates

## Notes

Committee members are responsible for taking their own notes, although one member may be elected to take more in depth notes or minutes. It is inappropriate for someone outside of the Committee to take minutes as they may put their own slant on what was said.

At the end of each case heard the minute taker must confirm with the wider Committee what the final decision on each point was. A template for minutes is included in the Panel Members Information Pack – Appendix 1. All panel members should initial each page of the minutes at the end of the hearing in acknowledgement that they are a fair and accurate reflection of what was said at the hearing.

Notes from the hearing should be kept with the client's file and then batched once the report of the BRC has been written and signed off by the panel. This way the panel can refer to their notes when they are finalising that the report is a true reflection of the hearing.

## Process for postponements

If the applicant advises the co-ordinator prior to a hearing that they want a postponement for any reason the request should be accommodated. We understand this can be frustrating when there are several postponements. However, it is the applicant's right to defer a hearing if, for any reason, that date is not suitable. This right does not lessen the more frequently they postpone. However, there may be occasions where after consultation a final hearing date is set and notice is given to the applicant of this. This does not affect timeliness issues for performance monitoring as long as these delays are noted, dated and time framed in HIYA.

It is recommended in this situation the co-ordinator liaises with the applicant and request they propose a suitable date that gives them adequate time to prepare and does not conflict with their schedule. If the applicant has a client representative they are to be contacted to confirm they will be adequately prepared to attend. If there are multiple postponements from a client representative this may require an actual meeting to discuss the issue going forward.

If you believe the number of requests for delay are getting unreasonable use the below letter template. This allows the BRC to decide if the request for delaying the hearing is reasonable and within the bounds of natural justice. If the BRC agree that the client has been given ample opportunity to attend the hearing, and have not provided plausible reasons for delaying the hearing again, then the case can be heard on papers only.

The multiple postponement letter template is available on doogle via this link:

<http://doogle.ssi.govt.nz/business-groups/helping-staff/corporate-governance/what-we-do/review-decisions/coordinators.html> <http://doogle.ssi.govt.nz/business-groups/organisational-integrity/client-advocacy-and-review/review-and-client-representatives/letter-templates/letter-templates.html>

## Adjournments

Some cases referred to the Benefits Review Committee may not be finalised at the hearing. The Committee may decide that further time is needed to consider all submissions made to the Committee, or they may request further information be provided by either the applicant or the Ministry.

The Committee will set the date and time to reconvene the hearing. Usually a hearing can be reconvened within a fortnight of the original hearing. Under no circumstances should a hearing be adjourned without a follow up hearing date being set. This ensures that there is not an unreasonable delay in the hearing being finalised.

## New information

At any stage of the review process, before the Benefits Review Committee makes a decision, the Ministry or the Applicant can produce additional information to be considered.

### **New information provided when the applicant applies for an ROD**

When the applicant applies for a Review of Decision, it is appropriate for the Ministry to take another look at the original decision before the case goes to the BRC Coordinator to arrange a Benefits Review Committee.

The original decision should be revisited. Consider the following:

- relevant legislation and policy
- the information presented at the time
- any new information to hand
- reasons for the original decision
- the reason the applicant is not happy with the decision and any points raised by the client representative
- any other appropriate means of assistance available to the client

### **New information provided prior to the BRC**

If additional information is provided to the Benefits Review Committee/co-ordinator it must also be provided to the other party (e.g. the Ministry or applicant). The other party must be granted adequate time to consider the additional information prior to the review hearing if possible. Alternatively the hearing can be postponed until the other party has had sufficient time to consider the additional information. If the hearing is postponed, it is important that a new hearing date is arranged at the time. This ensures that there is not an unreasonable delay before the committee meets to consider the decision under review.

## **New information presented at a BRC**

If new information is presented at the hearing the committee needs to ensure that each party has time to consider any new material, and if necessary an adjournment should be granted. It is important that both parties are given reasonable opportunity to respond to any new information before the committee takes account of that new information in its decision making process.

Depending on the nature of the new information the adjournment could be to later the same day or another hearing date.

## **Additional information required for the BRC to make a decision**

If the panel require further information they may adjourn and request further information from the Ministry or the applicant (or both). They may also seek submissions on any aspect of the law. If they do this both parties will be asked to provide submissions. Such an adjournment may occur while you are still present at the hearing or after you have left. If it is after you have left the hearing the chairperson will write to both the Ministry and the applicant requesting the further information and setting down a new date for the panel to reconvene. It is up to the panel to decide whether or not it is necessary for the attendance of the applicant and the Ministry at this further reconvened meeting.

## **New information provided after the hearing but before decision sent to the applicant and the Ministry**

If new information relating to the decision under review is received, the panel will need to consider if the information would change the decision. Both parties would need to be given the opportunity to respond in writing regarding the new information and the panel would need to reconvene and include the outcome in the 'Report of the BRC'.

## **New information provided after hearing and decision has been sent to applicant and Ministry**

If new information relating to the decision under review is received that could change the decision to the advantage of the applicant this would need to be sent to the Service Centre or Unit that made the original decision to consider under s81 of the SSA. If the new information would not change the decision the applicant would need to be advised why and provided information regarding the option of lodging an appeal to the Social Security Appeal Authority.

If new information is presented which may change the decision of the BRC to the detriment of the applicant it must relate to a material change of circumstances as opposed to information that could or should have been presented to the BRC at the time (see High Court case *Hamidi*). The Ministry has no "right of appeal" from the BRC. If you are unsure about whether the information is a change of circumstances or not please refer to your regional solicitor.

## **Hearing the review on papers**

If the applicant does not wish to attend the review hearing the Benefits Review Committee hears the review on papers only, i.e. no verbal submissions are made to the Committee by the applicant or a Ministry presenter.

Further written submissions provided by the applicant and/or the Ministry, in addition to the BRC report, may be given to the Committee to consider. A copy of any further information provided must be given to all parties involved in the review.

The Ministry should always be ready to appear and present the Ministry's case should the applicant decide to appear at the last minute.

## Decisions

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### Making Decisions

Once a review case has been heard and all submissions considered the committee will decide the outcome of the review. The committee can decide to:

- uphold the decision
- uphold in part the decision
- overturn the decision

Generally, a committee should discuss the case and make its decision at the conclusion of the hearing (i.e. after the applicant/presenter(s) have left). The committee can then write up its decision.

If the committee decides to overturn (revoke), or uphold in part (vary), the original decision, instructions will be given as to what action the Ministry needs to take as a result of the hearing. The committee will document the expected outcomes and notify the applicant and the Ministry in writing of this decision. It will be the relevant manager's responsibility to ensure that the required actions are taken.

If further matters are raised that the committee feel they need to address outside of the decision being reviewed, the committee can make a comment and recommend that the Ministry address the issue/s.

### Split decisions

In some cases the committee may not be able to come to a unanimous decision. In these cases a majority only decision is needed, e.g. two of the committee members need to agree. The dissenting committee member should provide reasons why they would have decided the case differently in the final decision report.

### Writing the Decision of the Committee Report

The Benefits Review Committee has a legal obligation to provide full written reasons for its decision. It is the chairperson's responsibility for ensuring the report is completed and that the three panel members agree with the final version. It is the co-ordinator's responsibility to ensure the applicant receives the report in a timely manner.

It may be possible to copy and paste sections relating to facts and the law from the report to the Benefits Review Committee. However, it needs to be ensured that all submissions to the Committee are accurately summarised.

If a split decision is made then the dissenting opinion of the committee member needs to be documented in the final report.

The final report needs to fully explain to the applicant the reasons for the decision made by the committee. If the committee makes reference to legislation or policy in the final decision then that legislation or policy needs to be referred to and may also be quoted or attached to the report.

"Full reasons" does not mean a short bullet point list. The decision should consider both sides of the case, make any necessary factual decisions and apply relevant law and policy to these facts. Where policy is departed from, reasons for this decision need to be

explained. The applicant should see that their arguments have been considered and addressed, and should understand the basis for the decision the Committee reached.

## Document Retention

When the panel has made its decision, all supporting documentation should be either scanned or batched permanently and should not be destroyed unless it is a copy. This includes any notes taken during the hearing.

Panel members should not take documents home with them, as these will contain the client's personal information. The Ministry has an obligation under the Privacy Act 1993 to store personal information securely.

It is recognised that panel members, particularly community representatives, may want to keep copies of decisions at home for reference purposes once a decision has been made. If panel members wish to do this, they should ask the co-ordinator to arrange for a copy to be provided for the panel member which has identifying details of the client removed.

# Legislation

## Review of Decision legislation

The legislation, which requires us to review and check decisions made in respect of benefits, is found in sections 391 – 394 of the Social Security Act 2018.

### 391 Right to seek review of specified decision of MSD made under delegation

#### 391 Right to seek review of specified decision of MSD made under delegation

- (1) A person may make an application to MSD for a review by a benefits review committee of a decision of MSD, but only if—
- the person and the decision are of kinds specified in the same row of the following table; and
  - the decision is made in the exercise of a function, power, or discretion conferred by a delegation; and
  - the decision is made in relation to the person or estate; and
  - the decision is not one that section 340(3)(b), 343(b), 371(b), or 396 prevents from being appealed to the appeal authority (for example, because that kind of decision is appealable to the medical board).

Row	Person who may make application for review	Decision to be reviewed
<i>Decision under specified social assistance enactment</i>		
1	An applicant or a beneficiary	A decision of MSD made under an enactment referred to in section 397(1)(a) to (g)
<i>Decision under mutual assistance provisions in reciprocity agreement</i>		
2	An applicant or beneficiary or other person	A decision of MSD made using a power under section 384 (MSD may use mutual assistance provisions to recover debts) (referred to in section 398)
<i>Decision to recover from spouse or partner who misleads MSD excess amount beneficiary obtained</i>		
3	A beneficiary's spouse or partner	A decision of MSD— (a) to recover, from a spouse or partner who misleads MSD, an excess amount the beneficiary obtained; and (b) made under regulations made under section 444 (referred to in section 399(1)); and (c) that includes the decisions in row 1 of the table in section 399(1)
<i>Decision to recover from spouse or partner apportioned excess amount beneficiary obtained by fraud</i>		
4	A beneficiary's spouse or partner	A decision of MSD— (a) to recover from a spouse or partner an apportioned excess amount the beneficiary obtained by fraud; and (b) made under regulations made under section 444 (referred to in section 399(1)); and (c) that includes the decisions in row 2 of the table in section 399(1)
<i>Decision to recover from spouse or partner unapportioned excess amount beneficiary obtained by fraud</i>		
5	A beneficiary's spouse or partner	A decision of MSD— (a) to recover from a spouse or partner an

		unapportioned excess amount the beneficiary obtained by fraud; and (b) made under regulations made under section 444 (referred to in section 399(1)); and (c) that includes the decision in row 3 of the table in section 399(1)
<i>Decision to recover excess amount from deceased beneficiary's estate</i>		
6	The personal representative of a deceased beneficiary	A decision of MSD— (a) to recover from the estate of the deceased beneficiary an excess amount the beneficiary obtained; and (b) made under regulations made under section 444 (referred to in row 4 of the table in section 399(1))
<i>Decision to recover excess amount from deceased spouse's or partner's estate</i>		
7	The personal representative of a beneficiary's deceased spouse or partner	A decision of MSD— (a) to recover from the estate of the beneficiary's deceased spouse or partner an excess amount the beneficiary obtained; and (b) made under regulations made under section 444 (referred to in section 399(1)); and (c) that includes the decision in row 5 of the table in section 399(1)

- (2) For the purposes of subsection (1)(c), a decision is not made in relation to a person or an estate by reason only that the decision has an economic or other effect on the person or estate.

### **392 Application must be made within 3 months after date of notification or further period allowed**

- (1) The application for review must be made within—  
(a) 3 months after the date of receiving notification of the decision; or  
(b) a further period the committee has under this section allowed.
- (2) An applicant for review is treated as receiving notification of the decision in line with regulations made under section 449 if—  
(a) a decision is made in respect of which an application for review lies to the committee; and  
(b) notice of the decision is given to the applicant in a way prescribed by those regulations; and  
(c) the notice is (in the absence of evidence to the contrary) taken to have been received by the applicant as provided by those regulations.
- (3) The committee may allow a further period within which the application must be made if—  
(a) the application is not to be, or has not been, made within that 3-month period; and  
(b) the committee is asked, before or after the end of that 3-month period, to allow a further period; and  
(c) the committee considers there is good and sufficient reason for the delay.

### *Committee*

### **393 Benefits review committee**

- (1) Every benefits review committee is established, and operates, in accordance with Schedule 7.

- (2) MSD must refer an application made under section 391 to the appropriate benefits review committee.
  - (3) In determining what benefits review committee is the appropriate benefits review committee, MSD must have regard to—
    - (a) the location of the MSD office in which was made the decision of MSD that is the subject of the application; and
    - (b) the location of the applicant's usual or last known place of residence; and
    - (c) how the applicant can conveniently, and at minimum expense, attend in person, or otherwise take part in, a review hearing.
  - (4) The appropriate benefits review committee may be the benefits review committee of an MSD office other than the MSD office in which was made the decision of MSD that is the subject of the application.
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**Example**

The decision of MSD that is the subject of the application was made in the MSD office at a location. Afterwards, the applicant moves away from that location. The benefits review committee of the MSD office of a location nearer to the applicant's new usual place of residence is appropriate because it enables the applicant conveniently, and at minimum expense, to attend in person, or otherwise take part in, a review hearing.

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*Procedure*

**394 How to begin, and procedure and powers for, review by benefits review committee**

Regulations made under section 451 provide for the following matters:

- (a) how to begin, and the procedure on, a review:
  - (b) the benefits review committee's power to deal with (for example, confirm, vary, revoke, or refer back for reconsideration) the decision reviewed:
  - (c) related matters specified in that section.
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**BRC Jurisdiction legislation**

The legislation, which sets out the jurisdiction of the Benefits Review Committee, is found in Sections 396 to 399 of the Social Security Act 2018.

**396 Authority cannot hear and determine certain appeals on medical or capacity grounds**

- (1) The appeal authority must not, despite sections 397, 398, and 399, hear and determine any appeal on medical grounds, grounds relating to incapacity, or grounds relating to capacity for work, against any decision of MSD in respect of—
    - (a) jobseeker support on the ground of health condition, injury, or disability; or
    - (b) a supported living payment on the ground of restricted work capacity or total blindness (see rows 11 and 12 of the table in section 411); or
    - (c) a child disability allowance under section 78; or
    - (d) a veteran's pension under section 164 of the Veterans' Support Act 2014.
  - (2) No appeal lies under section 397(1)(a) against—
    - (a) a decision under section 155 against which an appeal lies under row 7 or 8 of the table in section 411 to the medical board; or
    - (b) a decision under section 250(1)(a) against which an appeal lies under row 10 of the table in section 411 to the medical board.
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## *Rights of appeal*

### **397 Decision under specified social assistance enactments**

- (1) An applicant or beneficiary may appeal to the appeal authority against any decision or determination of MSD made in relation to the applicant or beneficiary under—
- (a) any provisions of (or of any regulations made for the purposes of any provisions of) Parts 1 to 6 and Schedules 1 to 5; or
  - (b) a special assistance programme approved by the Minister under section 100 or 101; or
  - (c) any regulations in force under section 437 (regulations: issue and use of entitlement cards);
  - (d) any provisions of, or of regulations made under, the Residential Care and Disability Support Services Act 2018; or
  - (e) Part 6 of the Veterans' Support Act 2014, subject to section 175(2) of that Act; or
  - (f) Part 1 of the New Zealand Superannuation and Retirement Income Act 2001; or
  - (g) the Family Benefits (Home Ownership) Act 1964.
- (2) Subsection (1)(d) applies to a person in relation to whom a decision is made under any provisions of, or of regulations made under, the Residential Care and Disability Support Services Act 2018, as if the person were a beneficiary.
- (3) For the purposes of subsection (1), a decision or determination is not made in relation to an applicant or a beneficiary by reason only that the decision or determination has an economic or other effect on the applicant or beneficiary.
- (4) This section is subject to provisions to the contrary in this Act (for example, sections 340(3)(b), 343(b), and 371(b)).

### **398 Decision under reciprocity agreements**

An applicant or beneficiary or other person may appeal to the appeal authority against a decision that was made in relation to that person by MSD under the power conferred by section 384 (MSD may use mutual assistance provisions to recover debts).

### **399 Decision to recover excess amount**

- (1) A person specified in a row of the following table may appeal to the appeal authority against a decision that is—
- (a) of the kind specified in that row; and
  - (b) made in relation to the person or estate.

Row	Person who may appeal	Decision of MSD that may be appealed
<i>Decision to recover from spouse or partner who misleads MSD excess amount beneficiary obtained</i>		
1	A beneficiary's (B's) spouse or partner (S)	A decision of MSD— <ol style="list-style-type: none"> <li>(a) to recover from S an amount in excess of the amount to which B was by law entitled; and</li> <li>(b) made under regulations made under section 444; and</li> <li>(c) that includes the decision that, in MSD's</li> </ol>

		<p>opinion, S has made a false statement to or otherwise misled MSD, in relation to any matter; and</p> <p>(d) that includes the decision that, as a result of S making a false statement to or otherwise misleading MSD, the benefit or an instalment of benefit was paid in excess of the amount to which B was by law entitled; and</p> <p>(e) that is not a decision or determination of MSD that relates only to the temporary deferral, rate, or method or methods of debt recovery from B</p>
<i>Decision to recover from spouse or partner apportioned excess amount beneficiary obtained by fraud</i>		
2	A beneficiary's ( <b>B's</b> ) spouse or partner ( <b>S</b> )	<p>A decision of MSD—</p> <p>(a) to recover from B an amount in excess of the amount to which S was by law entitled; and</p> <p>(b) made under regulations made under section 444; and</p> <p>(c) that includes the decision that all or part of proportion B (as referred to in regulations made under section 444) is an amount in excess of the amount to which B is by law entitled or to which B has no entitlement, and an amount obtained by fraud by B; and</p> <p>(d) that includes the decision that S either knew, or ought to have known (even if S did not know), of the fraud by B; and</p> <p>(e) that is not a decision or determination of MSD that relates only to the temporary deferral, rate, or method or methods of debt recovery from B</p>
<i>Decision to recover from spouse or partner unapportioned excess amount beneficiary obtained by fraud</i>		
3	A beneficiary's ( <b>B's</b> ) spouse or partner ( <b>S</b> )	<p>A decision of MSD—</p> <p>(a) to recover from S an unapportioned amount in excess of the amount to which B was by law entitled or to which B has no entitlement; and</p> <p>(b) made under regulations made under section 444; and</p> <p>(c) that, for the purposes of S's right of appeal under this row, includes the decision that B obtained by fraud an amount in excess of the amount to which B was by law entitled or to which B has no entitlement; and</p> <p>(d) that is not a decision or determination of MSD that relates only to the temporary deferral, rate, or method or methods of debt recovery from B</p>
<i>Decision to recover excess amount from deceased beneficiary's estate</i>		
4	The personal representative of a deceased beneficiary ( <b>B</b> )	<p>A decision of MSD—</p> <p>(a) to recover from B's estate an amount in excess of the amount to which B was by</p>

		law entitled; and (b) made under regulations made under section 444
<i>Decision to recover excess amount from deceased spouse's or partner's estate</i>		
5	The personal representative of a beneficiary's ( <b>B's</b> ) deceased spouse or partner ( <b>S</b> )	A decision of MSD— (a) to recover from S's estate an amount in excess of the amount to which B was by law entitled; and (b) made under regulations made under section 444; and (c) that, for the purposes of the personal representative's right of appeal under this row, includes the decision that B was paid an amount in excess of the amount to which B was by law entitled

- (2) A reference in this section to a decision to recover an amount from a person or estate includes (without limitation, and except as expressly provided in this section) all related decisions on all or any of the temporary deferral, rate, or method or methods, of debt recovery from the person or estate.