

# **Community Representative to the Benefits Review Committee: Role Description**

## **Benefits Review Committee**

The Benefits Review Committee (BRC)<sup>1</sup>, provides an informal setting for clients to review decisions made by the Ministry of Social Development (the Ministry) before appealing to the Social Security Appeals Authority (SSAA). The process is an important part of ensuring that correct decisions are made by the Ministry on a case by case basis.

The Benefits Review Committee is an opportunity for the applicant to explain why they disagree with the decision and for the Committee to take a fresh look at the Ministry's decision.

## **The role of the Community Representative in the BRC process**

Community Representatives are Ministerial appointees who provide community input into the decision-making process of the Benefits Review Committee. The Benefits Review Committee considers reviews against decisions made by the Ministry in relation to benefit entitlements.

Community Representatives:

- provide a community perspective to the Benefits Review Committee decision making process
- assist in making decisions on applications for review in accordance with relevant legislation.

The Community Representative is part of a three-member panel that make up the Benefits Review Committee. When a client of the Ministry submits a Review of Decision (RoD) the Community Representative is required to:

- consider the report to the BRC, written by the Ministry
- attend the hearing arranged for the client and the Ministry Presenter to make representations to the BRC. This can either be done on papers or in person
- consider the case and decide if they should instruct the Ministry to uphold, uphold in part or overturn the decision being reviewed.

In addition to this, the Community Representatives may:

- chair the hearing of the BRC
- write the report of the BRC and submit it to the appropriate unit of the Ministry.

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<sup>1</sup> established under schedule 7 of the Social Security Act 2018 (see appendix)

## **Frequency of Hearings**

Hearings are scheduled to be held at regular intervals, however as there is a pool of Community Representatives in each region, individual Community Representatives may not be required to sit on every hearing. Each sitting of the committee can take up to a day depending on the number of hearings and the complexity of the cases.

## **Appointment Period**

The position of Community Representative to the Benefits Review Committee is a Ministerial appointment made at the discretion of the Minister for Social Development and Employment (the Minister). This means that the Minister decides who can act as a Community Representative, and for what period of time. The Minister can vary the appointment at any stage.

At present, community representatives are appointed for a fixed term of five years. Community representatives can apply for re-appointment after the end of their tenure but are not rolled over automatically. The Ministry considers each application for re-appointment on a case by case basis, considering the existing regional pool of applicants.

## Competencies and Experience

We are seeking people with the following attributes.

<b>Community</b>	Can relate to all levels of the wider community Good experience and knowledge of the wider community Respects the views, beliefs and cultural perspectives of others.
<b>Facilitation</b>	Proven ability to chair meetings/hearings Ability to facilitate hearings Uses a facilitative approach and a variety of questioning methods to gather information.
<b>Communication</b>	Good written and oral communication skills Ability to remain neutral in a hearing setting Ensures that decisions are made in a fair and transparent manner.
<b>Problem solving</b>	Approaches problems and decision in a logical manner Ability to reach sound conclusions and justify decisions.
<b>Legislation</b>	Knowledge of the Social Security Act Ability to interpret and apply statutes, legislation and other documentation to individual cases Have a good understanding of the principles of natural justice (i.e fairness) Have a clear understanding of the benefits and supplementary allowances administered under the Social Security Act 2018. Note: While it is not an essential skill, this knowledge is desirable, and nominations may be assessed on this area when more than one nominee clearly demonstrates the ability to do the job in all other attributes and competencies.
<b>Miscellaneous</b>	Respects the privacy and confidentiality of individuals Displays sensitivity, empathy and respect for others and is ethical and honest.

# Appendix

## Legislation

The legislation that provides for Reviews of Decision is covered under Section 391-394 of the Social Security Act 2018, Schedule 7 and Regulations 246, 247.

### Sections 391 - 394 of the Social Security Act 2018

#### 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—
- (a) the person and the decision are of kinds specified in the same row of the following table; and
  - (b) the decision is made in the exercise of a function, power, or discretion conferred by a delegation; and
  - (c) the decision is made in relation to the person or estate; and
  - (d) 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.

## Schedule 7

### **Benefits review committees**

#### **1 Establishment**

The Minister must establish at least 1 benefits review committee for every MSD office where decisions or recommendations in relation to the matters to which this Act applies are made or were made.

#### **2 Membership**

Every benefits review committee must consist of—

- (a) a person who is—
  - (i) appointed by the Minister; and
  - (ii) to represent on the committee the community's interests; and
- (b) 2 MSD employees appointed by the chief executive, and—
  - (i) from time to time; or
  - (ii) in respect of the particular review.

#### **3 Member to represent community's interests**

- (1) This clause applies to the member appointed under clause 2(a).
- (2) The member holds office on any terms and conditions that—
  - (a) are not inconsistent with this Act; and
  - (b) the Minister thinks fit.
- (3) The member—
  - (a) may be paid remuneration at a rate and of a kind determined in accordance with the fees framework; and

- (b) is entitled to be reimbursed for actual and reasonable travelling and other expenses in accordance with the framework.
- (4) The member is not, just because of membership of the committee, to be treated as employed in the service of the Crown for the purposes of—
  - (a) the State Sector Act 1988; or
  - (b) the Government Superannuation Fund Act 1956.

#### **4 Secretarial and administrative services**

All secretarial and administrative services required for the committee's purposes must be supplied by MSD.

#### **5 Quorum, and committee's decision, at meetings**

At any meeting of the committee,—

- (a) the quorum is the committee's total membership; and
- (b) the decision of any 2 members of the committee is the committee's decision.

#### **6 MSD employee cannot act as committee member if that employee was involved in decision being reviewed**

An MSD employee cannot act as a member of the committee if that employee was involved in the decision being reviewed.

## **Social Security Regulations 2018 – Part 7, 246-247**

### **Reviews and appeals**

#### **Reviews by benefits review committee**

#### **246 Application under section 391 of Act to be made in writing**

An application for review under section 391 of the Act must be made in writing.

#### **247 Procedure on review**

- (1) The committee must, as soon as practicable after it receives an application for review, review the decision.
- (2) In reviewing the decision, the committee may, in accordance with the Act, decide to confirm, vary, or revoke the decision.



- (3) The committee must give written notice of its decision on the review to the applicant for review.
- (4) The written notice must include the reasons for the decision, and advice that the applicant has, under sections 395 to 399 of the Act, a right to appeal to the appeal authority against the decision if the committee has, under this regulation, confirmed or varied MSD's decision.