



Report

Date: 2 September 2016

Security Level: IN CONFIDENCE

To: Hon Anne Tolley, Minister for Social Development

This document may contain legal advice and be legally privileged. It should not be disclosed on an information request, without further legal advice.

Alignment Project: Crown payments for health services and disability support services that require a recipient to enter an employment relationship

Purpose of the report

- 1 There are several Crown payments made directly to injured or disabled people to purchase health and disability support services that require, or can require, a person to enter an employment relationship with a family carer, support worker etc. For example, Ministry of Health's (MOH) Funded Family Care and Individualised Funding, Ministry of Social Development's (MSD) payments to Enabling Good Lives (EGL) participants and Accident Compensation Corporation's (ACC) support payments.
- 2 The *Social Security (Income and Cash Asset Exemption) Regulations 2011* (the Regulations) exempt most health services and disability support service payments from being considered income for the purpose of social security payments. Accordingly, MSD disregards these payments in the income tests used to assess eligibility for financial assistance.

3 Section 9(2)(h) Legal professional privilege

- 4 MSD recommends that you amend the Regulations to support MSD's current practice. This change does not require any additional funding, as the expenditure is already being incurred, and could be in place by the end of the year. MSD will retain the practice of exempting these payments, while you consider this paper.
- 5 If you agree to amend the regulations to support current practice, MSD will provide you with a draft Cabinet Social Policy Committee paper in October to progress this change.
- 6 We also recommend that we provide you with advice on exempting these payments from cash asset tests, which could also occur by way of amendment to the Regulations.

Recommended actions

It is recommended that you:

- 1 **Note** that the Ministry of Social Development has always disregarded health service and disability support service payments made to disabled people for the purchase of support services from all income tests used to assess financial assistance
Yes / No
- 2 **Note** that the *Social Security (Income and Cash Assets Exemption) Regulations 2011* that exempt health service and disability support service payments from being treated as income do not apply to payments made "because of an employment relationship", such as Funded Family Care, Individualised Funding, payments to Enabling Good Lives participants and ACC's self-managed support payments
Yes / No
- 3 **Agree** that health and disability funding provided to a person to purchase support services should be exempt from income tests as these payments cannot be used for income purposes such as paying ordinary living costs, and that we provide you with a draft Cabinet Social Policy Committee paper in October recommending amendment to the *Social Security (Income and Cash Asset Exemption) Regulations 2011*
Agree / Disagree
- 4 **Note** that, if you agree to the above, the Ministry will retain the practice of exempting these payments from all income tests used to assess financial assistance
Yes / No
- 5 **Note** that we will not retrospectively review clients affected by our previous practice
Yes / No
- 6 **Note** that funds from a client's health service and disability support service payments, which are set aside to cover employment-related costs, can accumulate in their bank account to as much as \$2,500 a year
Yes / No
- 7 **Note** that exempting these payments from cash asset tests for financial assistance would also require amendment to the *Social Security (Income and Cash Asset Exemption) Regulations 2011*
Yes / No
- 8 **Agree** that the Ministry provide you with advice on whether these funds should be exempted from cash asset tests for financial assistance
Agree / Disagree
- 9 **Agree** to send a copy of the report to the Associate Minister for Social Development.
Agree / Disagree



Ruth Bound
Deputy Chief Executive, Service Delivery

7/9/16
Date

Hon Anne Tolley
Minister for Social Development

Date

Crown payments for health services and disability support services that require a recipient to enter an employment relationship

- 7 There are a number of Crown payments made directly to disabled or injured people to purchase health and disability support services that require, or can require, a person to employ a family carer or support worker.

Disability Support Service payments from the Ministry of Health

- 8 There are two MOH disability support service payments¹ that can require the disabled person to enter an employment relationship with a family carer or support provider.
- Funded Family Care (FFC) allows high needs disabled people to pay a live-in family member to assist them with their personal care and/or household tasks for up to 40 hours a week. FFC is paid to the disabled person at an hourly rate (which covers paying the family carer the minimum wage and associated employment costs (such as leave provisions, ACC contributions, KiwiSaver contributions, etc.).
 - Individualised Funding (IF), including Enhanced Individualised Funding, enables disabled people to directly manage the support hours they are allocated. MOH may pay IF funds directly to disabled people to purchase Household Management, Personal Care and/or Respite provided by support workers and costs relating to the employment of support workers.
- 9 MOH pays FFC and, in some cases, IF, directly into the disabled person's bank account. The person can then either, use a payroll agency or 'Host' to draw on those funds to pay the family carer / support worker, or they can pay their family carer /support worker themselves. Neither FFC nor IF can be used as personal income of an individual or family – and any unused payments must be refunded to MOH.

Enabling Good Lives payments from the Ministry of Social Development

- 10 In the EGL demonstration in the Waikato, MSD provides funding to disabled people to purchase disability support including household management, personal care and/or respite provided by support workers. Support workers may be directly employed by the disabled person or contracted through a provider. Funds are only available for disability support and cannot be used as personal income.
- 11 Funding from MOH and MSD is pooled for participants and managed through *Vote Social Development*. The person's individual allocation for disability support is paid into a bank account that has been established for the individual's disability support payments. The person can then either, use a payroll agency or 'Host' to draw on those funds to pay the family carer / support worker, or they can pay their family carer /support worker themselves.

Support payments from the Accident Compensation Corporation

- 12 ACC purchases non-contracted Home and Community Support Services (HCSS). This gives clients the ability to find their own services to support their rehabilitation. These may include home help, attendant care and childcare. Non-contracted HCSS are for clients who want to have their services provided by a friend, family, whanau or agency that does not have a contract with ACC.
- 13 Clients can choose either to have ACC pay their carer/non-contracted agency directly or for ACC to pay the client who will then pay their carer. Payment may be made on receipt of weekly timesheets or as a continuous weekly payment, the latter generally applying where the client's injury is stable and their needs are unlikely to change over the next three months. ACC has processes that minimise the risk of fraud.

¹ The Ministry of Health funds a range of disability support services for people with a physical, intellectual or sensory disability which is likely to continue for at least six months and result in reduced independent function to the extent that ongoing support is required.

Current practice is to exempt Crown payments for health and disability services that require a recipient to employ a person

- 14 Since 2007, MSD has disregarded all health service and disability support service payments from being considered income of the disabled person for the purpose of social security payments (but are income for the person they employ).

Legal advice on treatment of Crown payments for health and disability services requiring an employment relationship

15 Section 9(2)(h) Legal professional privilege

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Funds provided to clients to purchase health services and disability support services should not be treated as income

- 18 Income and asset tests ensure that financial assistance is targeted to those most in need, as taxpayer funds are scarce resources. They require, where appropriate, clients use their own resources before seeking Government financial assistance.
- 19 However the purpose of payments such as FFC, IF, EGL and ACC support payments is to allow people to directly purchase their own support services. These payments cannot be exchanged for cash or other services, must be used to purchase health- or disability-related services and cannot be used to pay for the type of ordinary living costs for which benefit payments are provided.
- 20 Any funding provided to a client for purchasing health services or disability support services should be exempt from income tests used to determine eligibility for social security payments. These payments should only be counted as income for the family carer / support worker being paid by the client.
- 21 The wording in the regulations would have been intended to ensure that the payments are treated as income for a person being paid by the injured or disabled person to provide a service – not the injured or disabled person themselves.

The current practice will be retained until you have received and considered advice on amending the regulations

Legal advice on risk of current practice

22 Section 9(2)(h) Legal professional privilege

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Client impacts

24 MSD is unable to estimate how many clients receiving FFC, IF, EGL and ACC support payments are having, or have had, these payments excluded from income assessment. This information is not specifically recorded and the standard practice is to exempt these payments. However, we do know, that:

- 187 people receive FFC payments
- around 875 people self-manage their IF payments, again, most will be our clients
- 71 clients are receiving self-managed EGL payments from MSD
- 6,750 ACC clients receive income support from MSD and may also be receiving some disability support payments from ACC.

Practice change to align with legislation

25 A practice change would involve treating payments such as FFC, IF, EGL and ACC payments as income and charging them against the benefit. This practice may result in a reduction in assistance for injured or disabled clients receiving these payments (the funds would be treated as income and a person’s benefit abated accordingly) and would also result in MSD incurring additional and unintended operational costs.

26 Given that the Regulations already exempt other health service and disability support service payments, it is consistent with that approach that FFC, IF, EGL and ACC payments also be exempt. MSD recommend that you consider amending the Regulations to exempt these payments as income (except where they are made to meet a disabled person’s own living expenses). Note this change does not require any additional funding as the expenditure is already being incurred, and could be in place by the end of the year.

27 If you agree to amend the Regulations to support this current practice, MSD will:

- provide you with a draft Cabinet Social Policy Committee paper in October to progress this change
- will accept the risk of continuing with the current practice, in anticipation of the amendment progressing.

We will not review our previous decisions to disregard FFC, IF, EGL and ACC payments

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Section 9(2)(h) Legal professional privilege

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Section 9(2)(h) Legal professional privilege

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Section 9(2)(h) Legal professional privilege

Client impacts

- 30 Any previous FFC, IF, EGL and ACC payments received by injured or disabled clients would have been excluded from their income assessments, because MSD practice is to exclude all health and disability support service payments. MSD cannot, however, accurately identify the number of clients who have benefited from this practice as these exclusions are not recorded.

Proposal

- 31 MSD will not retrospectively review any previous decisions to disregard FFC, IF, EGL and ACC payments from income assessments. Clients advantaged by the practice cannot be identified, retrospective reviews would penalise individual beneficiaries and MSD would not be able to recover debts (as they were the result of MSD error).

We will also provide advice on how health and disability support service payments impact on people's cash asset limits

- 32 MSD have also found that funds from a client's health service and disability support service payments, which are set aside to cover employment-related costs, can accumulate in their bank account to as much as \$2,500 a year. It may be appropriate to consider how these are treated, in terms of the cash asset tests used to assess eligibility for financial assistance.
- 33 Note that exempting these payments from cash asset tests for financial assistance would also require amendment to Regulations.
- 34 MSD will provide you with further advice on whether these funds should be exempted from cash asset tests for financial assistance.

Consultation

35 Section 9(2)(h) Legal professional privilege

Alignment ref: 2015/29
Rep ref: REP/16/8/1001
EDRMS ref: A9060094