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

30 JAN 2020

[redacted]

Tēnā koe [redacted]

Thank you for your letter dated 17 September 2019 to the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982, the following information:

- *The rules and all documentation concerning self-employment expenses, including details of all expenses that the Ministry does allow, does not allow and the reasons why.*

- *Policy documents and relevant legislation applied for the assessment of self-employment income for benefit purposes, so that they are fully informed of their obligations.*

In response to the first part of your request for the rules and documentation concerning self-employment expenses, including details of all expenses that the Ministry does allow, does not allow and the reasons why, I can advise that this information does not exist in this way. Depending on the nature and needs of the business, the expenses that might be allowed for one client's business may not be for another. For example, a real estate agent claiming home office expenses seldom incurs greater household outgoings, however, a plumber operating from home may have purchased or rented a home of extra size to house a workshop or vehicles.

As such, there is not a document that details the business expenses that the Ministry does and does not allow, as this is dependent on the circumstances of each individual business. Consequently, your request for this is information is refused under section 18(e) of the Official Information Act on the basis that the information requested does not exist.

You may be interested to know that the Ministry employs a small group of qualified Chartered Accountants who specialise in analysing and interpreting financial statements and other business information that is presented by clients seeking income or asset-tested benefits. They provide front-line staff with advice and support on the more complex cases, as well as addressing general queries. When involved in a case, the services offered by this group are:

- **Assessing income and assets** - providing a calculation or assessment of a client's income and/or assets in accordance with the provisions of the Social Security Act, policies and case law (including High Court and Social Security Appeal Authority decisions) when determining a client's eligibility to benefit assistance.
- **Providing expertise in dealing with business situations** - including sole traders, partnerships, companies and trusts, particularly with respect to the deprivation provisions of schedule 3, part 4, Social Security Act 2018.



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The second part of your request is for Policy documents and the relevant legislation applied for the assessment of self-employment income for benefit purposes. This request is addressed in two parts below.

**Policy documents**

The Ministry's website 'Map' contains policy guidelines that operationalise legislation for staff to follow when assisting clients. These documents are written to enable staff to make accurate and sound decisions, ensuring clients receive their full and correct entitlement.

All information in Map is available internally and externally on the Ministry's website. The content provided externally is an exact copy, allowing clients and members of the public access to all Map information. The information relevant to your request is enclosed, however, due to the way in which the website is set out, you may find it easier to follow by accessing the below web-links:

- www.workandincome.govt.nz/map/income-support/core-policy/income/index.html
- www.workandincome.govt.nz/map/income-support/core-policy/income/definition-of-income/introduction.html.

Map contains some links to the Ministry's intranet. There is no direct access to internal sites from Map. The information on the internal sites assists staff with the process to deliver assistance to clients. Please find enclosed copies of the following intranet pages relevant to your request:

- *'Deprivation of income and assets'*, updated 15 November 2018.
- *'Self-employed income'*, updated 2 August 2016.

**Relevant Legislation**

You also requested to be informed of the relevant legislation applied for the assessment of self-employment income for benefit purposes. You can find the legislation at the following web-links:

- www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784375.html
- www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784812.html
- www.legislation.govt.nz/act/public/2018/0032/latest/DLM6784836.html.

The legislation normally used by the Ministry regarding self-employment income is section 6 of the Social Security Act 2018 (the Act), Schedules 2 and 3 of the Act.

It is important to note that definition of income for benefit purposes is not the same as the definition of income used by the Inland Revenue Department. Income for benefit purposes includes money received and the legislation provides no direction on offsetting money received from money spent.

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 regarding self-employment expenses with us, please feel free to contact OIA_Requests@msd.govt.nz. If you are not satisfied with this response regarding intergenerational benefit receipt, 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

Matt McLay
**Group General Manager, Client Experience and Design**

# Deprivation of income and assets

This page describes the process you will need to follow when considering deprivation.

On this Page:

**Policy**

The purpose of the Social Security Act 2018 states that people should look to their own resources before seeking support.

Deprivation means someone has changed their financial arrangements to put themselves at a financial disadvantage, which has lead to them qualifying for assistance or assistance at a higher rate.There are several key points:

Applying deprivation is discretionary, not mandatory in every case.

Applying deprivation allows a benefit to be declined, reduced or cancelled.

Deprivation can apply where a person has rearranged their financial position to qualify for a benefit or increased rate of benefit, regardless of whether this was intentional or not.

The act of deprivation must result in the person qualifying for any income or asset tested assistance payable under the Social Security Act 2018 or an increased rate of payment.

**Process**

The steps for assessing deprivation are:

Determine if deprivation has occurred – has the client (or partner) given assets away or sold for less than market value? Is the client (or partner) not earning an income where they could be? If yes, continue to next step

Find out the client's specific circumstances that may impact on the decision to apply deprivation. Follow the Types of deprivation quick reference` guide to help determine what questions may need to be asked

Decide if you are going to apply deprivation

Calculate deprivation (notional income or the deprived asset value) by comparing actual income with possible income or the value of the asset given away or sold for less than market value

Decide when to apply deprivation from

Discuss and explain deprivation with the client and record details in a client event note. You will need to discuss deprivation with the client from the start but you need to ensure the client has understood how you came to your decision and this must be recorded.

If a client has deprived themselves of:

an asset it may affect their entitlement to extra help (for example Accommodation Supplement or Temporary Additional Support) or other assistance with an asset test

any income (or asset producing income) it may affect their entitlement to a main benefit as well as extra help.

If you have a client with a trust, this [http://doogle/resources/helping-clients/procedures-manuals/work-and-income/core-procedures/income/trusts.html] Doogle page provides an overview of trusts, the Trust Questionnaire and Case Referral Cover Sheet for the Financial Determination Team.

## Determining if deprivation has occurred

Deprivation situations will generally be identified as part of the application process or at the periodic review of a benefit.

Ways to identify deprivation are by:

Looking at income declared on the application forms. Income should be linked to the source where possible. For example interest income should be received from money held or invested, business income should be linked to an interest in either a company or other business entity (e.g. sole trader or partnership).

Asking the client if they have funds which are invested or held in non income producing circumstances.

Asking the client if they have any involvement in a trust or transferred assets to a trust. If so, they will be required to provide documentation.

For more information see:

Trusts [http://doogle/resources/helping-clients/procedures-manuals/work-and-income/core-procedures/income/trusts.html]

Asking the client if they have gifted any assets (including money) or lent any money and the terms on which the money was lent.

Comparing income and assets declared last year with this year to see if assets or income have reduced significantly. This is only relevant to deprivation if the client has control over the income and has taken actions that have led to deprivation, if it is just a change in income this is part of a Review of Annual Income.

If the application form identifies income from a trust or business income, the client may be required to answer further questions and provide further documents, see Trust questionnaire. However if they receive the full trust or business income, there may be no deprivation.

Once a potential deprivation situation is identified it is essential that you discuss this with the client.

The following are some examples of deprivation:

Gifting of assets or making a 'gift' to someone else

Letting or leasing of properties at below market rates

Cash assets held in non income producing circumstances e.g. cheque account.

Other assets that do not produce a reasonable return of income to the client

Money invested in growth funds with a low or no income stream

Money invested in Bonus Bonds instead of an income-earning account or term deposit

Setting up a Trust so the trust assets are not producing an income

Where clients acting as trustees of a Trust fail to make distributions of all Trust income or, as beneficiaries fail to call on the trust income

Clients who are controlling shareholders in a company, withholding distribution of company profits

Failing to lease or rent out a property without good and sufficient reason

Client's who have deliberately got rid of income or asset(s) with the result that they keep receiving or are eligible for a benefit

Failing to apply for income or assets the client is entitled to, with the result that they keep receiving a benefit or other financial assistance for example refusing Estate/trust income the client is entitled to

This is not a complete list so you may find some other situations where you need some advice. Discuss with your Service Centre Trainer in the first instance or contact Helpline for further advice.

## Find out the client's specific circumstances that may impact on the decision to apply deprivation

The questions you need to ask will be determined by the situation, you will need to know the client's full circumstances and if it is at all possible for the deprivation situation to be reversed.

Types of Deprivation - Quick reference guide [http://doogle/resources/helping-clients/procedures-manuals/work-and-income/core-procedures/income/trusts.html]

## Decide if you are going to apply deprivation

If deprivation has occurred, you must still consider whether it should be applied after taking into account the client's individual circumstances.

The client's full circumstances need to be taken into account not just the act of deprivation itself for example any contractual or other legal commitments in relation to their financial circumstances', or health issues, or anything else that may be relevant.

The following factors can be considered in deciding whether (or not) to apply deprivation:

Do any of the client's assets, or their trust's assets, provide an income below what could reasonably be expected?

The reasons why the client rearranged their finances to reduce their assets and or income

The reasons why the client chose to take no action to receive an income from their assets

Would applying deprivation cause hardship to the client? Can the client quantify this and is it temporary or unavoidable?

Can the client take steps to reverse or improve their financial arrangements to avoid deprivation and have they been given a reasonable opportunity to do so? In other words, could they avoid any possible hardship by rearranging their financial circumstances associated with the deprivation?

Was the client aware that they were depriving themselves of income or property?

In the cases of property deprivation could the property be leased or sold to become a cash asset? Is there any reason why the property (eg flats) cannot be rented out?

In company situations, consider the extent of the client's control over the company e.g. they may be one of a number of company shareholders and unable to influence the distribution of company profits, or they may be the main or only shareholder and so have control.

If the client has lent money can they recover it?

Can the client identify any issues that they feel should be taken into account?

Are there any medical issues that should be considered, for example if a client has a partner who is terminally ill or recently died you can use your discretion to allow time before applying the deprivation or discussing the deprivation with the client.

**Note** Deprivation does not have to be applied in every case, it is discretionary. Even where there is deprivation you may exercise your discretion not to apply it.

Your decision may be subject to the Benefit review process and the Social Security Appeal Authority so it is important that your decision is well documented. Your decision to apply deprivation (or not) must be based on fact and not be subjective. Your Service Centre Manager should be consulted before you make your decision.

## When not to apply deprivation

There are some circumstances where you would not apply deprivation even though deprivation may have occurred. These are (but not limited to):

Money used to renew or purchase major household appliances (including a family car) or fittings, repairs and maintenance

Money used for major medical treatment/surgery or travel costs for these

Loans which have been defaulted on or where the borrower has no capacity to repay, for example the person who received the loan have become bankrupt, or the business has gone into liquidation and there is little or no prospect of the loan being repaid.

You may decide that deprivation has occurred but exercise discretion not to apply it after considering the client's individual circumstances, for example if there has been a traumatic event in the client's life or a medical emergency in the family that makes applying deprivation unreasonable at this time.

If the notional income or deprived asset value is not going to affect entitlement or the rate of payment for assistance you may decide it is not worth applying deprivation.

If you are not sure about making a decision then talk to your Service Centre Trainer or contact Helpline.

## Calculate deprivation by comparing actual income or assets with deprived income or assets

When you have decided to apply deprivation you must then determine what value or amount will be used to represent the deprived income or asset.

In assessing the amount of deprivation, factors which are taken into account include:

whether the deprived asset or property is providing any income or no income at all and what a reasonable level of income from an asset is

what income someone could expect if they invested the asset value in the retail banking market? The 'Reserve Bank 6 month term deposit rate' will give you the interest rate to use as a guide to what income could be.

The 'types of deprivation quick reference guide' is a good place to look and see what questions will help determine what value to give deprived assets and notional income options.

Calculating Assets

Deprived assets will be valued as the current value of asset.

When assessing an asset for deprivation you also need to consider the income that may also be deprived.

Add 'Deprived asset' in the comments field when entering details into SWIFTT INCMH screen under 'cash assets'. A must view note needs to be completed outlining the decision details and include the value of the deprivation and how this was determined.

Calculating Income

The amount of deprived income is known as notional income. The difference between what the client could earn and what they do earn is known as notional income.

Notional income means a person may be treated as having income even though they do not actually receive it. When we treat the person as having the income it is called notional income.

Notional income is added to the client's other income when assessing entitlement or the benefit rate. Add 'Notional income' in the comments field when entering details into SWIFTT INCMH screen under 'other income'.

When assessing deprived income you can either:

use the Reserve Bank six month term deposit and apply this to the cash asset or value of the asset, or

calculate realistic income, if there is another way to assess income

Some situations may have a more realistic way of assessing income, for example when assessing deprived income from a house, it may be more accurate to take into account market rental rates to determine the potential rental property income that has been deprived rather than apply an interest rate to the current value of the house.

If the notional income is only minor there is discretion to accept that deprivation may not apply in the particular situation. Alternatively the difference between income received and reasonable income expected could be charged as notional income.

When you consider the client's circumstances you also have to decide:

if it is fair and reasonable to include the notional income or whether the client's circumstances warrant some recognition to not include the notional income

how long the notional income should remain on the client's record, this could be:

until the deprivation situation changes,

a specified time if this is more reasonable, or

a review date in the future, such as a Review of Circumstances, Review of Annual Income, or 52 Week Reapplication.

When you decide to include notional income in the client's assessment of income you then need to decide from which date the notional income should be included in the chargeable income.

If you need help making decisions with deprivation cases talk to your Service Centre Trainer in the first instance, you can also contact Helpline.

## Notional income example

Bob applies for a benefit on 2 June 2015. Bob has $150,000 invested in growth funds. Returns on the growth fund are mainly capital but Bob received $1,500.00 in the year to 31 March 2015 from dividends for shares held by the fund.

The actual income received represents 1% of the total amount invested. The closest available Reserve Bank six month term deposit rate as at 1 June 2015 is 4.21%

| | |
|---|---|
| The potential for a return of 4.21% on $150,000 = | $6,315 |
| Less actual income | $1,500 |
| Equals notional income | $4,815 |

In this example the notional income that could be added to the client's chargeable income would be $4,815 for the current review year. Together with the $1,500 actual income, this makes a total income of $6,315.00. The notional income is to be reviewed at the Review of Annual Income or when Bob changes his financial situation.

## Decide when to apply deprivation from

Generally, the notional charge should not apply until three months from the date you notify the client of your decision, this is called the notice period. The letter to the client should include when the notice period will expire.

A three month notice period is considered a reasonable time period in which the client can consider their position and decide if they want to re-arrange or reverse the deprivation situation. Follow up contact should be made with the client after the letter has been sent to see what the client's intentions are.

Your contact with the client must be recorded in a CMS Client Event Note (include date and time phoned, what was discussed and decisions reached).

There may be some factors which might mean that the notional income charge could be applied from an earlier or even a later date. Factors that can be considered in deciding when to apply a notional income charge include:

if the client decides to accept the notional charge and not make changes to reverse the deprivation situation. If the client indicates they will not be changing the deprivation situation you may decide that the notional income should apply at the point when the client informs you of this.

If the client chooses to reverse the deprivation situation and this process will take some time to occur because of contractual or other issues around the process

How difficult it is to change the deprivation situation. If financial circumstances can easily be rearranged, the notional income can be replaced by the actual income from the date of the new arrangements.

If the client is genuinely trying to change their financial situation but it is taking longer than they would like, for example, the client has a spare property they are trying to sell at a realistic price, but there are no buyers at present. Then you may consider extending the notice period after three months.

Some assets can be quickly rearranged within a short timeframe. For example, changing bank accounts can be done within six business days or less and so the money may be placed into an income earning arrangement quite quickly. If you feel the three month period is too long then a shorter time period can be used if appropriate.

An exception to the three month notice is when a client has deliberately withheld information on the ownership/income of a property or did not advise us. In these cases retrospective deprivation can be considered.

## Discuss and explain deprivation with the client and record details in a client event note

Discussion about deprivation should occur when the client is applying for benefit or when you identify deprivation may have occurred. Alternatively, contact with the client should be by phone and they should be offered the option of making an appointment with the case manager to discuss if they prefer.

The following points need to be explained and discussed with the client:

What deprivation is and the affect that applying deprivation may have on their entitlement

the legislation allows for a benefit to be reduced, declined or cancelled if a person has directly or indirectly deprived themselves of income or assets that would result in them qualifying for a benefit or increased rate of benefit

applying the deprivation policy is discretionary and is only made after the clients full circumstances are considered

the client has the option to re-arrange their financial arrangements to ensure that they are not depriving themselves of income or assets.

Details of the discussion with the clients must be recorded in a CMS Client Event Note and include as much detail as possible so that anyone reading the note will understand what the deprivation was and the reasons deprivation was applied or not. This will be critical data if the client applies for a review of decision.

Trusts

Trusts are the most common vehicle where deprivation occurs although the setting up of a trust and the transferring of assets to the trust does not automatically mean that deprivation will be applied. If the client continues to receive a reasonable income from the value of the assets (not including their home if it is in the trust), that is not deprivation.

The establishment of a trust occurs where someone transfers their assets to a trust and in doing so the ownership of the asset also transfers to the trust. The people who set up the trust and transfer their assets are known as the settlors of the trust.

Sometimes a third party may be named as settlor, but they are only acting as agent for the client who is the true settlor. The true settlor is the person who is the transferor of the assets. Also, a client may transfer assets into someone else's trust for example to the trust of a son or daughter. They are a transferor to that trust, and should be considered as deprivation.

The assets in the trust are owned by the trustees who are the legal owners of the trust assets. Trustees are usually the client and their partner but often include a third party such as the client's solicitor or accountant.

The assets of the trust are held by the trustees for the beneficiaries of the trust. The beneficiaries are the beneficial owners of the trust assets. That means that the beneficiaries are the people who are to receive the benefits of the trust.

The transferring of assets to a trust is usually recorded by a sale and purchase agreement between the true settlor and the trust. The trust only has a token amount of money e.g. $10 or $100 at the point when it is set up. Then the settlor (our client) transfers money or assets/property into the trust. If the trustees borrow the purchase price of these assets from the settlor, this loan transaction is detailed in the Deed of Acknowledgement of Debt and any gifts of this loan are detailed in the Deed of Forgiveness of Debt.

It is common to see the debt reduced by $27,000 per year as this was the amount allowed to be gifted before tax was to be paid. From 1 October 2011 the gift duty tax will be repealed making it easier to give assets away. This change will reduce the need for Deeds of Acknowledgement of Debt and Deeds of Forgiveness of Debt. There should still be paperwork to show that a transfer or gift has been made e.g. Acknowledgement of gift or Transfer.

Trusts often have someone named as appointer. This is most often the transferor of the assets. An appointer can usually replace or remove or appoint trustees, but this depends on the powers in the trust deed. So if an appointer has those powers, they control the trust, in effect. That's because if they are able to remove a trustee who does not agree with them, they can make certain that all decisions agree with what they want.

A person can be a settlor, trustee, transferor, appointer or a beneficiary of a trust, or any combination of all of these.

Trust documentation

Full trust documentation may be needed to consider whether deprivation of income or property has occurred, these documents are:

Completed and signed trust questionnaire

a copy of the trust deed (this will show you how the client is involved in the trust e.g. settlor, transferor, trustee, beneficiary, or appointer)

a copy of the Sale and Purchase Agreement for all property sold to the trust

a copy of the property valuation at time of sale

a copy of all Deeds of Acknowledgement of Debt

a copy of all IRD gifting statements for gifts made up to 30 September 2011

a copy of all Deeds of Forgiveness of Debt

a copy of the latest trust financial statements, or if accounts not prepared the list of assets and liabilities now held by the trust should be listed in the trust questionnaire

verification of any other assets sold/gifted to the trust

verification of any capital distributions by the trust

last tax summaries and tax returns for the clients and the trust

details of any investments held by the trust

Not all documents will be required in all cases. The Trust questionnaire will indicate what documents the client should provide.

When only the home is held in the trust, there are likely to be no financial accounts or trust tax return.

Considering deprivation and trusts

If the trust assets provide a reasonable return which is fully distributed to the client as a beneficiary (of the trust) there has been no deprivation of income. The income received by the client from their trust is treated as income and added to INCMH in SWIFTT.

You need to consider what income the client would have earned if the client had not transferred the asset into the trust. That is, but for the transfer to the trust, the client would have owned assets and received income, equal to that of the trust. So what would the client now be earning if they had kept the original assets?

Where the family home is transferred to a trust there is no expectation that the family home would generate income if it was not in a trust, so it should be assessed as not having to derive income once it is transferred to a trust. Earning no income from the family home is not considered deprivation of income.

If investment funds are transferred to a trust then there is the expectation that the return to the clients from these funds prior to them being transferred to the trust would continue to apply. If the investments did not provide an income to the client then this could be deprivation of income.

The table provides an example of some common assets and the income expectation that would ordinarily apply to the assets if they are placed in a trust.

| Type of asset | Income expectation outside of a trust | Income expectation if held in a trust |
|---|---|---|
| Family home | No income expected | No income expected |

| | | |
|---|---|---|
| Business entity | Income expected from trading activity | Income expected from trading activity |
| Antique, art and family heirlooms etc | No income expected | No income expected |
| Investment funds | Income expected | Income expected |
| Rental properties | Income expected | Income expected |

If there is other types of assets that you are not sure about talk to your Service Centre Trainer or contact Helpline.

For help with assessing trust cases you can discuss with your Service Centre Trainers or if you need further advice you can contact Helpline.

## Deprivation Example

Mrs Smith is living in Wellington, and is applying for Supported Living Payment on 1 October 2015.

**Determining if deprivation has occurred**

In her application form in the question about her non cash assets Mrs Smith advised that she owned a unit in Auckland where her daughter lived rent free. This indicated that deprivation needs to be explored as she appears to be depriving herself of income and that if notional income was calculated it would result in a reduced rate of Supported Living Payment.

Following the Identifying deprivation flowchart we establish that yes Mrs Smith is not receiving an income where she could be therefore deprivation must be considered. Mrs Smith does have control over the property she owns but is not receiving income from therefore we need to look further.

Finding out the client's specific circumstances that may impact on the decision to apply deprivation.

The Types of Deprivation quick reference guide suggests the following questions are helpful in this situation (property not in a trust):

Where is the location of the property? Is it in an area where there is a demand ie: a flat in the city or in a remote area

What is the market rent?

Is the property currently tenanted?

Is a tenant living in the property rent free?

If not, would the property be easy to rent?

Has the client chosen not to tenant the property?

What would be the rental income charge?

What is the current property value?

Mrs Smith's specific circumstances are:

The Auckland property was left by Mrs Smith's brother to his partner and the partner then gifted it to Mrs Smith. Mrs Smith claims the gifting took place on the basis that the property would be used by family members and that Mrs Smiths daughter could live there rent free. Mrs Smith thought this arrangement had been documented but the Public Trust office has been unable to locate this document. Mrs Smith felt there was a moral obligation to comply with the wishes of her brother's partner. There is no legal obligation to allow the daughter to live rent free.

Mrs Smith's daughter lives in the unit on the basis that she pays the outgoings on the property: rates, insurance and contributions to the maintenance fund (vary from year to year).

Mrs Smith's daughter has been receiving ACC of $579.00 per week. She could afford to pay a modest rental.

The unit is located in an expensive area of Auckland that is popular and would be easy to rent. Properties adjacent to the Auckland unit have been advertised for rental for $480.00 and $600.00 per week. Even if the daughter paid a modest rent it would cover her mother's disability costs.

Current capital valuation of the unit is $435,000.00. Mrs Smith's daughter pays outgoings which vary from year to year but in most years' amount to less than $3,000.00 per year or $57.70 per week.

**Deciding whether to apply deprivation**

Mrs Smith has the financial resources available to meet her need. It is appropriate that discretion be exercised under Schedule 3, cls 16 of the Social Security Act to assess notional income. It is not necessary to show that the decision was made with intention of claiming a benefit. It is clear that by permitting her daughter to live in the property for significantly less than the market rental Mrs Smith has made a deliberate decision to deprive herself of income.

Having determined that Mrs Smith has deprived herself of income we have discretion to decide whether or not to charge notional income against her Supported Living Payment.

There is no basis on which we should disregard the deliberate decision to obtain no income from her asset in circumstances where she seeks an income tested benefit and we should charge the notional income against Mrs Smith's benefit.

**Calculating deprivation**

In this case there is no actual income being received so the notional income is what could be earned.

In the Types of Deprivation quick reference guide the notional income options are:

the difference between what the client actually receives in rental income and the rental income using the market value for rent, or

If the property was sold charge what interest could be earned if proceeds from the sale were invested? This would be suitable when a client does not want to rent the house or can't find a tenant.

In order to determine notional income options Mrs Smith was asked to provide further information about the unit in Auckland. Mrs Smith advised the unit was valued at $250,000.00 and was inherited from her brother and her daughter lived there rent free.

There are two ways that could be used to assess notional income in this case:

look at the rental income, if the lower rate of $480 is used, after making an allowance of $57.70 per week for expenses (currently paid by the daughter) Mrs Smith potential income from the property would be $432.30 per week or $22,479.60 per year, or

look at what interest could be earned on the amount that could be available to Mrs Smith if the unit were sold. In this case assuming proceeds of sale of $400,000.00 and interest at 4.55% (Reserve bank deposit rate as at July 2010) would produce income of $18,200.00 per year.

In this case I would consider Rental income to be the more appropriate assessment because it is to the client's advantage, realistic, and easier for the client to rearrange her circumstances to reverse the deprivation. This would mean we would charge notional income of $432.30 gross per week against her Supported Living Payment which would reduce her benefit to $50.02 per week.

Because Mrs Smith is not applying for any asset tested financial assistance we do not need to assess the deprived asset value but if we did (for example she had applied for Accommodation Supplement) we would use the current market value, which was $435,000.00.

**Decide when to apply deprivation from**

There should be a notice period before applying the income charge for Mrs Smith's Supported Living Payment.

The Types of Deprivation quick reference guide indicates that when the property is tenanted but not charging market rent or not charging any rent, charge notional income from:

whatever date the client is able to increase the rent from (by law landlords are required to give 60 days notice).

three months or longer if the tenant has a fixed term tenancy, depending on the terms of the tenancy and when it started and the last rent increase.

After discussion with Mrs Smith it was determined that one month was a reasonable time to make arrangements with her daughter to obtain a reasonable income from the unit in Auckland before applying the notional income charge to her Supported Living Payment.

**Discuss and explain deprivation with the client and record details in a client event note**

Mrs Smith was phoned and told of the decisions made. She was told that she needs to advise Work and Income as soon as she has a date for rent payments and the rental property allowable costs if these change. If Mrs Smith has not been able to make arrangements to receive rental income then the notional income will apply from 1 November 2015.

## Deprivation Trust example

Mr Doe and Mrs Doe applied for Jobseeker Support on 11 June 2015 and disclosed the existence of a Family Trust in the application form. They were then asked to complete the Trust questionnaire and supplied documentation of:

the Trust deed

a full set of the most recent Trust financial statements including:

Profit and Loss/Statement of Financial Performance

Balance Sheet/ Statement of Financial Performance

Depreciation schedules

Current accounts

Equity account

Notes to the accounts

The Taxation Summary of the Trust and themselves personally

Mr and Mrs Doe also provided Notices of Assessment from the Inland Revenue Department but did not provide the Financial Statements requested.

It would have been open to the Ministry to insist that the appellant provide the Financial Statements for the Trust and suspend Mr and Mrs Doe's benefit if they declined to provide them. Failure to provide information when requested may result in doubts about eligibility for benefit and therefore suspension of a benefit.

**Determining if deprivation has occurred**

Following the Identifying deprivation flowchart we establish that yes Mr and Mrs Doe are not receiving an income where they could be therefore deprivation must be considered.

Mr and Mrs Doe are the settlors, beneficiaries, and trustees of the Family Trust and therefore have full control of the Trust. Mr and Mrs Doe do have control over the trust and therefore we need to look further.

Finding out the client's specific circumstances that may impact on the decision to apply deprivation

Mr and Mrs Doe are living in the property owned by the trust. The Types of Deprivation quick reference guide shows that the property the client lives in is not considered a type of deprivation. Mr and Mrs Doe still live in the property owned by the trust and but for the trust we would not expect the property to earn an income as it is their home.

The Types of Deprivation quick reference guide suggests the following questions are helpful for determining what we need to know about the investments:

What are the investment/s?

Is the Trust receiving an income from the investments?

If not, why? for example, is interest reinvested into the principle for capital growth and/or not distributed to the beneficiaries of the trust.

Does the client have any of control over the Trust? Who is the settler, trustees and beneficiaries of the Trust?

Has the trust been paying the client any income (if they are a beneficiary of the trust)?

When was the investment sold or given away? Only consider if the client gave the investment away or sold at less than market value in order to alter their financial circumstance to qualify for assistance.

The Trust documents showed that the Trusts investments are geared towards capital growth. The Trust had also advanced $20,000 to their two children, so a total of $40,000 loaned at no interest.

The Trust minutes recorded the Trust assets including the property as worth $802,221.47 and that no income was generated or received by the Trust. Trust investments are currently valued at $235,000.00 (including the amounts loaned to the children).

The Service Centre Trainer referred this information to the Ministry's Financial Analysts who reported:

The Trust had paid expenses for the appellant and his wife relating to their vehicle and the outgoings of their home. These payments could be considered income for the purposes of the Social Security Act.

The Tax Summaries were eventually provided and showed Mr and Mrs Doe received income in the previous financial year form Maori land of $2,652.00 and bank interest of $1,678.00.

The deeds of forgiveness of debt and deeds of acknowledgement of debt show that the gifting programme was completed last year.

Deciding whether to apply deprivation

Mr and Mrs Doe have in effect transferred all their assets and savings to a Trust which they say is primarily for the education and housing needs of their children, although they themselves are named as primary beneficiaries in the Trust deed. It is difficult to understand why Mr and Mrs Doe would consider it appropriate to provide for their children's housing and education needs and at the same time request the State to pay them an income tested benefit. It is apparent from the information available that the Trust does pay some amounts for the benefit of the appellant and his wife from time to time including costs relating to their accommodation, but not the full amount that could be available to them.

Mr and Mrs Doe have taken a series of deliberate actions which individually and collectively have resulted in their depriving themselves of income and assets as follows:

gifting the debts which arose on their transferring of their savings and investments to the Trust

failing to require the Trust to pay interest on any debt owed to them

as trustees of the Trust failing to require the Trust to pay them a reasonable income form the funds invested.

as trustees of the Trust investing the assets of the Trust in investments geared towards capital growth rather than earning income

as trustees of the trust advancing $40,000 to their children without a requirement for the payment of interest.

There is nothing that would persuade us that we should not exercise the discretion to calculate notional income on the investments and money loaned to the children.

**Calculating deprivation**

The Types of Deprivation Quick Reference Guide advises that where the client is the Settlor or Trustee that we consider what the trust could be earning if they were to receive a reasonable return on the investment as notional income. In this case that would mean applying a reasonable interest rate on the current value of the investments which is $235,000 (including the amounts loaned to the children). In this case it would be reasonable to use the closest available Reserve Bank six month term deposit rate as at 1 June 2015 which is 4.21%

| | |
|---|---|
| The potential for a return of 4.21% on $235,000 = | $9,893.50 |
| Less actual income | $0.00 |
| Equals notional income | $9,893.00 |

There is no asset tested assistance being applied for in this case so we do not need to assess the value of deprives assets.

**Decide when to apply deprivation from**

The Types of Deprivation Quick Reference Guide advises to allow up to 3 months before charging notional income where the trust rearranges its investments for distribution to trustees, this is because it takes time to take money out of capital growth investments.

**Discuss and explain deprivation with the client and record details in a client event note**

Part of the discussion with Mr and Mrs Doe about deprivation Mr Doe questioned why MSD do not take into account losses when assessing income. The answer is that the definition of income for the purposes of the Social Security Act 2018 differs from and is significantly wider than the definition of income contained in the Income Tax legislation, and does not allow for the offsetting of losses from one stream of income from profits made in another. The purpose of this wider definition is to ensure that all money available to a beneficiary is taken into account in assessing entitlement to benefit. In this case losses from one investment cannot be offset against income from another investment. Income from a positive investment is available for the support of the Mr and Mrs Doe.

Mr Doe also asked if the Trusts potential income is to be assessed if this is determined by the IRD documents provided. The answer depends on whether the investments are geared towards capital growth rather than income. The Ministry can look at both notional income based on the bank interest rates, and the actual income, and then exercises discretion as to which should be applied. In this case because the investments are geared towards capital growth it is appropriate to apply notional income based on bank interest rates.

## What to do when the client changes their financial arrangements after deprivation has been applied

The action of the client changing their financial arrangements may remove the notional income and be replaced by the income that is a result of the financial rearrangement.

You will need to consider these situations on a case by case basis and decide whether the time period for reorganising the deprived income or asset is reasonable for example within the notice period (e.g. three months). In exercising discretion, you may decide either:

to not apply the notional income if the rearrangement of the deprived income/assets is done within the notice period, or

to apply the notional income at the end of the notice period until the rearrangement of the deprived income/assets is done

Each case will need to be discussed with the client to determine what difficulties the client may be facing in rearranging their circumstances and to determine when to apply the notional income from.

You must record a CMS Client Event Note with the details of what has happened (how the client is going to rearrange, or has rearranged their deprived income/asset) and the reasons for your decision around when to stop applying the notional income. You will need to change the details recorded in INCMH SWIFTT to reflect the changes to income following the financial rearrangement.

Note If the client has changed their financial arrangements but is still not receiving a reasonable income, deprivation and therefore the notional income may still apply.

**Content owner:** Work and Income Operational Support **Last updated:** 15 November 2018

MINISTRY OF SOCIAL DEVELOPMENT
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**Map.** The Guide to Social Development Policy

Home | Income support | Main benefits | Jobseeker Support | Changes and Reviews - Jobseeker Support | Treatment of income | Income change | Income from employment

http://doogle.ssi.govt.nz/map/income-support/main-benefits/jobseeker-support/changes-and-reviews-jobseeker-support/income-from-employment-01.html

Printed: 21/1/2020

# Income from employment

Clients must advise Work and Income of any change in their circumstances that affects their entitlement or rate of Jobseeker Support, such as commencing employment.

## Full-time employment

If the **client** has commenced full-time employment, the Jobseeker Support must be stopped from the date the client commences work as they will no longer be entitled to receive the Jobseeker Support because they will not be able to meet their job search requirements.

### Exception

Sole parents and grand-parented Jobseeker Support clients can work full-time for a temporary period provided their income when assessed over a 52 weeks period doesn't fully reduce the benefit.

If the **partner** has commenced Full-time employment, then the Jobseeker Support can continue providing the partner's earnings are below the cut-out point, and will be charged as income against the benefit.

For more information see:

- Temporary employment period

## Part-time employment

When Jobseeker Support client or their partner commences employment that is less than 30 hours a week payment of the Jobseeker Support can continue as the client or partner will still be able to meet their job search requirements.

The income from part-time employment will be charged against the benefit for the week in which the income was earned or represents.

However, if the earnings from the part-time or casual employment reduce the Jobseeker Support to a 'nil' rate of payment when charged against the benefit, then the benefit must be suspended.

### Exception

Sole parents or grand-parented Jobseeker clients may have income charged annually.

For more information see:

- Employment

## Weekend work

If a client or partner is working weekends regularly, casually or 'one-off' then the income is charged against the benefit from the previous Monday.

For more information see:

- Estimated income

## Self-employment

If a client starts full time self-employment or starts receiving income that reduces their rate of payment to 'nil' they may no longer qualify for Jobseeker Support or be able to meet their job search requirements.

### Exception

Sole parents and grand-parented Jobseeker Support clients can work full-time for a temporary period provided their income when assessed over a 52 weeks period doesn't fully reduce the benefit.

**Note** Jobseeker Support may be paid to clients investigating self-employment options provided they continue to meet the job search requirements and understand that any offer of full time employment takes precedence over any part time activity or employment. Income from any part-time self-employment is charged as income against the benefit.

## Commission work

When a client on Jobseeker Support commences full-time commission work (even if there is nil or minimum income being earned) they will no longer be entitled to receive the Jobseeker Support as they are in Full-time employment.

### Exception

Sole parents and grand-parented Jobseeker Support clients can work full-time for a temporary period provided their income when assessed over a 52 weeks period doesn't fully reduce the benefit.

**Note** when the partner commences self-employment or commission work (either part-time or full-time) then the Jobseeker Support can continue with the earnings being charged as income against the benefit, so long as the income is under the benefit cut-out point.

For more information see:

- Self-employment
- Temporary employment period
- Core policy Types of income
- Core policy Definition of income

## Legislation

- Beneficiary must notify change of circumstances section 113 Social Security Act 2018
- full-time employment (definition) schedule 2 Social Security Act 2018
- Jobseeker Support: requirements sections 20-24 Social Security Act 2018

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# Self-employment

## Full-time self-employment

When a primary client on Jobseeker Support commences full-time self-employment (even if there is nil or minimum income being earned) they will no longer be entitled to receive the Jobseeker Support as they will not be able to meet their job search requirements. Being available for alternative employment, while continuing their self-employment, is not enough for the client to meet the job search requirements of the Jobseeker Support.

**Note** if the client has a partner who can meet the qualification for Jobseeker Support in their own right, the partner can apply for Jobseeker Support as the primary client. The partner who has commenced full-time self-employment must be included in the Jobseeker Support and have their income from their self-employment charged as income.

## Part-time self-employment

If the primary client starts part-time self-employment then they may still be able to receive the Jobseeker Support, as long as they continue to meet their job search obligations, and understand that any offer of full-time employment takes precedence over any part time activity or employment.

## Partner

If the person who has commenced self-employment (either part-time or full-time) is the partner, then the Jobseeker Support can continue with the earnings being charged as income against the benefit.

This is regardless of whether the partner has work obligations.

**Note** if the partner has full-time work obligations and is working 30 hours per week, or has part-time work obligations and is working 20 hours or more, then they must be drawing an income from this employment to be meeting their work obligations. If they are not receiving any income from the self-employment then they must still be available for and actively seeking employment.

### Sole parents and grand-parented clients

There is an exception for sole parents and grand-parented Jobseeker Support clients. Sole parents and grand-parented Jobseeker Support clients can work full-time in self-employment for a temporary period provided their income when assessed over a 52 week period doesn't fully reduce the benefit.

For more information see:

- Charging income

- Employment related income
- Clients investigating self-employment options
- Commission work
- Temporary employment

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**Map.** The Guide to Social Development Policy

Home | Income support | Core policy | Income | Definition of income | Introduction

http://doogle.ssi.govt.nz/map/income-support/core-policy/income/definition-of-income/introduction.html

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# Introduction

Income is defined as:

- any money received (before income tax) which is not a one-off capital payment

  For example: wages, salary, commission, Parental Leave payments

- the value of any interest (before income tax) acquired which is not a one-off capital payment

  Interest is **much broader** than just the interest received from savings and investments. Interest can refer to the value in **money's worth** rather than money itself

  For example where a client has their rent being paid for by their parents or their ex-partner, they don't receive the rent money as this is paid directly to the landlord. They receive **the value in money's worth** of an **acquired interest** which would be considered as free rent

- payments, capital payments or the value of credits or services received periodically that are made and used for an income-related purpose

- the value of goods, services, transport or accommodation supplied on a regular basis. For example, free board, free rent, an income-related insurance payment

## Taxable income

Although some forms of income are not taxed they are still considered to be income. Whether income is taxed or not, is irrelevant. An example is Government Superannuation - which is paid as a 'free of tax' payment. It is still considered as chargeable income.

For more information see:

- Capital payments
- Guidelines for determining whether a payment is income
- Income that must be included
- Income that must be excluded
- Types of income
- Verification of income and assets
- Income from assets

- Income related purpose
- Main benefits Changes and reviews, Charging income

## Legislation

- Income (definition) clause 3, part 2, schedule 3 Social Security Act 2018
- Income and liabilities schedule 3 Social Security Act 2018

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**Map.** The Guide to Social Development Policy

Home | Income support | Core policy | Income | Definition of income | Guidelines for determining whether a payment is income

http://doogle.ssi.govt.nz/map/income-support/core-policy/income/definition-of-income/guidelines-for-determining-whether-a-payment-is-in.html

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# Guidelines for determining whether a payment is income

In most cases deciding whether a payment is income will be straightforward, that is the payment is money received that is not a capital payment. You must also check whether the payments are specifically included or excluded as income.

Guidelines for specific types of income can be found in:

- Types of income

In other cases where you are unsure whether a payment is income or not, consider the following guidelines:

- why was the payment made?
  - is the payment received for an income-related purpose?
  - is the payment to be used for an income-related purpose?
- is the payment received periodically?
- what is the source of the payment?
- has the client received free goods, services, transport or accommodation on a regular basis?

You need to assess the nature and circumstances of the payment and having considered **all** of these points, determine whether or not the payment, credit or service is income.

## Expenses

In some cases income can be reduced if the client has had expenses. For example:

- where the client has had expenses related to producing a product for sale
- non-taxable allowances such as:
  - attendance fees for jury service
  - a clothing allowance for Orphans Benefit and Unsupported Childs Benefit or Residential Care Subsidy clients

- a travel allowance

For more information see:

- Capital payments
- Income that must be included
- Income that must be excluded
- Employment related income
- Types of income
- Types of income Non-taxable allowances

## Legislation

- income (definition) schedule 2 Social Security Act 2018

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**Map.** The Guide to Social Development Policy

Home | Income support | Core policy | Income | Definition of income | Guidelines for determining whether a payment is income | Income that must be included

http://doogle.ssi.govt.nz/map/income-support/core-policy/income/definition-of-income/income-that-must-be-included-01.html

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# Income that must be included

Legislation defines some types of payments that must be **included** as income, these are:

- any income-related insurance payment
- any payment relating to a situation involving a seasonal layoff
- any payment dependent on the completion of either a fixed-term engagement or a contract. For example, a bonus payment for completing work on time.
- any payment in lieu of notice terminating employment. For example, 4 weeks pay in lieu of notice
- any payment (including holiday pay) which, if it had not been made in relation to termination of employment, would have been paid so as to constitute monetary remuneration. For example, accumulated sick leave
- any payment in relation to termination of employment made by a company to any of its directors
- the value of any goods, services, transport or accommodation supplied on a regular basis, before the deduction of income tax

**Note** any income not used in the financial means assessment for Residential Care Subsidy and that is otherwise not excluded, must be included in the benefit and/or Extra help assessment the client in the community is entitled to.

For more information see:

- Guidelines for determining whether a payment is income
- Income that must be excluded
- Partner of client in long-term residential care
- Goods, services, accommodation in lieu of money
- Employment related income
- Types of income

## Legislation

- income (definition) schedule 2 Social Security Act 2018

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https://www.workandincome.govt.nz/map/income-support/core-policy/income/definition-of-income/income-that-must-be-included-01.html

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# Income that must be included

Legislation defines some types of payments that must be **included** as income, these are:

- any income-related insurance payment
- any payment relating to a situation involving a seasonal layoff
- any payment dependent on the completion of either a fixed-term engagement or a contract. For example, a bonus payment for completing work on time.
- any payment in lieu of notice terminating employment. For example, 4 weeks pay in lieu of notice
- any payment (including holiday pay) which, if it had not been made in relation to termination of employment, would have been paid so as to constitute monetary remuneration. For example, accumulated sick leave
- any payment in relation to termination of employment made by a company to any of its directors
- the value of any goods, services, transport or accommodation supplied on a regular basis, before the deduction of income tax

**Note** any income not used in the financial means assessment for Residential Care Subsidy and that is otherwise not excluded, must be included in the benefit and/or Extra help assessment the client in the community is entitled to.

For more information see:

- Guidelines for determining whether a payment is income
- Income that must be excluded
- Partner of client in long-term residential care
- Goods, services, accommodation in lieu of money
- Employment related income
- Types of income

## Legislation

- income (definition) schedule 2 Social Security Act 2018

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# Income that must be excluded

Legislation defines some types of payments that must be **excluded** as income, these are:

- any benefits, pensions, grants, allowances or concessions payable under the:
  - Social Security Act 2018
  - New Zealand Superannuation and Retirement Income Act 2001 or
  - Veterans' Support Act 2014
- War pensions or other war allowances paid periodically by the government of any other Commonwealth country
- the value of any assistance provided to a person with a sickness, injury, or disability to obtain or remain in employment. For example, an employer pays for transport to and from work due to the client's disability.
- funeral benefits from any friendly society
- a Participation Allowance
- money paid for any military decoration. For example, a decorations allowance
- any Child Support paid in excess of the benefit rate, paid directly to the client
- Independence Allowance from ACC
- any amount of output tax charged in respect of a supply of goods and services made by that person

  If a business is registered it must charge GST on all goods and services. This section reinforces that if a person collects GST as an agent for the Inland Revenue Department, then the amount collected is not treated as income.
- any amount of goods and services tax payable by Inland Revenue to that person
  If the Inland Revenue makes a refund to a client because the client has paid too much GST, then the amount of the refund is not income.
- a debt, health, or disability related insurance payment

- any money received by a caregiver, a young person (including a young adult), or other person under the Oranga Tamariki Act 1989 including:
    - board payments
    - foster care allowances
    - Transition Support Service payments
- any lump sum payments from life insurance or super schemes
- Income Related Rent, which is not a payment or a benefit but a calculated rate of subsidised rent
- income included in the Residential Care Subsidy financial means assessment
- Working for Families Tax Credits

For more information see:

- Definition of income
- Guidelines for determining whether a payment is income
- Income that must be included
- Types of income
- Charging income, Changes and reviews Main benefits
- Extra help
- Residential Care Subsidy Means assessment of income

Contact Helpline if you need assistance deciding whether or not a payment received is income.

## Legislation

- income excludes specified benefits, etc schedule 3, part 2, clause 8 Social Security Act 2018
- Exempt income section 17(3) New Zealand Superannuation and Retirement Income Act 2001

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**Map.** The Guide to Social Development Policy



http://doogle.ssi.govt.nz/map/income-support/core-policy/income/definition-of-income/verification-of-income-and-assets-01.html

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# Verification of income and assets

All income and assets must be verified, this can be through the use of Work and Income verification forms or clients providing documentation.

For more information see:

- Income from assets
- Definition of income
- Types of income
- Processing standards Income and asset details

## Legislation

- MSD must inquire into claim for benefit section 298 Social Security Act 2018
- Information gathering, disclosure, and matching schedule 6, clauses 1-5 Social Security Act 2018

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http://doogle.ssi.govt.nz/map/income-support/core-policy/income/definition-of-income/income-related-purpose-01.html

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# Income-related purpose

Payments, capital payments or the value of credits or services received periodically that are made and used for an income-related purpose, are considered to be income.

A payment would be deemed as being used for an **income-related purpose** if it is:

- replacing lost or diminished income
  For example, a client receives payments from an income-related insurance policy to cover loss of employment or a client receives payment from a family member because the client has no income.

**or**

- maintaining a client or a member of their family
  For example, the payment is for the provision of essential living costs such as rent, food, power and clothing.

**or**

- purchasing goods or services (commonly paid for from income) for the client or a member of their family **or**
- enabling the client to make payments that they are liable to make and that are commonly made from income

Examples of the last two points are payments made to pay hire purchase accounts, insurance payments, payment of fines or child support payments.

For more information see:

- Guidelines for determining whether a payment is income
- Income that must be included
- Income that must be excluded
- Types of income

## Legislation

- income (definition) schedule 2 Social Security Act 2018

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**Map.** The Guide to Social Development Policy



http://doogle.ssi.govt.nz/map/income-support/core-policy/income/definition-of-income/income-from-assets.html

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# Income from assets

Although main benefits do not generally have an asset test, the **income** from any **asset** may affect the client's rate of payment and entitlement to a benefit.

An asset is cash or property owned by a person which has a realisable value, which could include but is not limited to:

- money saved or invested
- money invested in securities, bonds or debentures
- money invested in shares
- money loaned to another person or advanced as a mortgage
- real estate
- copyright

Where assets owned by a client are not producing income, consideration should be given to whether the client is depriving themselves of income. For more information see:

- Types of income
- Verification of income and assets
- Deprivation of income and assets

For more information regarding Main benefits and Extra help that are subject to a specific asset test see:

- Accommodation Supplement
- Advance Payment of Benefit
- Emergency Benefit
- Funeral Grants
- Residential Care Subsidy
- Special Benefit

- Special Needs Grant
- Temporary Additional Support
- Jobseeker Support

## Legislation

- MSD may refuse or cancel benefit for failure to take reasonable steps to obtain maintenance section 202 Social Security Act 2018
- MSD may refuse or cancel benefit if person not ordinarily resident in New Zealand section 204 Social Security Act 2018
- Income and liabilities schedule 3(2) and (16) Social Security Act 2018

# Self-employed income

The following page describes information for charging self-employed income. For questions, queries or more complex cases please refer these to our Accountant - Financial Determination Team.

On this Page:

## Understanding business structures

### Sole trader

One person owns and runs the business. The sole trader owns all the assets, is responsible for any debts and may employ people. This is the typical structure of a new small business.

For example, a client starting up a lawn mowing round.

### Partnership

Two or more people run the business. A partnership is essentially a sole trader but with more than one owner. A client will often include the spouse in the business; this is then a partnership and enables the business income to be split between partners for taxation purposes.

For example, the lawn mowing business with spouse named as a business partner.

### Company

A company is registered (incorporated) with the Companies Office and is a separate legal entity from the people who own it (shareholders). As a small sole trader business grows the owner may choose to move to a Company structure. The shareholders can receive a salary or wage like any other employee; alternatively they may take drawings throughout the year which are recorded at year end as a shareholder salary. Often the shareholder salary is at an exact amount that will reduce the Company to a nil income result.

For example, a lawn mowing business incorporated as a Company.

### Trust

The client may be a settlor, trustee or beneficiary of a trust. Often they are all three. The purpose of a trust is often to remove the settlor from direct or legal ownership of property, but leaving them with an ability to control matters in accordance with the provisions in the trust deed.

The client may be distributed income from the trust and this is chargeable in the normal manner. Any credit balance in the beneficiary current account of the client is a cash asset.

Often the client will not be distributed income from the trust (or only some), even if income is available. However, if the client has settled their property on the trust, the Ministry has the discretion to consider the trust assets and income when considering benefit entitlement.

For example, the lawn mowing business is owned by a Company, the Company is owned by the Trust. The client is a trustee and or beneficiary and continues to exert control (such as deciding as a trustee how much income to be allocated to self as a beneficiary).

When a client is self-employed and in receipt of a main benefit you need to:

Determine the source and the amount of income

Where a client is in receipt of a work testable benefit check the client is still meeting their job search requirements

## Information clients need to know

Income for benefit purposes is not the same as taxable income.

The client is expected to use their own resources before they approach the Ministry for assistance. This expectation includes the use of income and assets in trust. Generally assets should be re-organised so that they generate an income rather than capital gains assets (e.g. landlords with equity but returning losses or minimal income, owners of bare land, idle property such as holiday home, capital gain shares etc). Where the client has the option to generate a small income from their assets vs a larger income, the expectation is that the client re-organises their assets so they are maximising their potential income (rather than minimising it). Where clients choose to minimise their income, staff should look at applying the deprivation of income rules.

The client is obliged to disclose all income and assets, including those held under other entities (such as Trusts/Companies).

Some business expenses and tax adjustments we do not allow include:

Depreciation

Losses from separate income streams

Losses brought forward

Others that can also be declined or partially declined include:

Home office,

Some vehicle expenses (fixed costs included in mileage claims)

Entertainment

Donations

Depending on the circumstances there may be others.

## Information we need from clients

It is the client's duty to provide an estimate of income in the form of:

Financial statements or

Taxation summaries or

Profit and loss statement or

Sales and revenue along with costs they wish to claim

Trusts – have client complete trust questionnaire

Note: the client has the obligation to estimate/calculate their own income which is for checking by the Ministry. It is not the job of the Ministry to be the clients 'accountant' and prepare the income estimate for the client.

## Income for benefit purposes

The way the Ministry charges income differs from Inland Revenue (IR). We may allow expenses that we consider were necessarily incurred to generate the income.

Examples of differences include:

Actual income includes money received whether tax is deducted from it or not.

The Ministry must look at income from each income source and add these together.

We cannot deduct losses from one income stream against profits or income made in another stream.

We cannot deduct losses from a previous income year against the current income year profits.

We assess income from closely held companies or trusts, whether distributed to the client or not.

We do not allow all the same expenses that are claimed for tax purposes, such as entertainment expenses, home office, rent charges for the client's or trust's or company's property, or depreciation. These expenses are added back to the income.

Funds introduced -when clients cannot explain where these funds came from, can be considered as income.

**Home Office**

Many self-employed business clients will claim a Home Office expense in their financial statements. In most cases this is estimated by dividing up household costs such as rates, insurance, mortgage (or a share of the rent) and repairs and maintenance between the home and the business. The Home Office should be added back (i.e. denied as an expense) unless the client can show it is an expense directly to the business (as in it only exists because of the business – and would cease if the business ceased). Discretion should be used as situations vary, for example the cost of a real estate agents use of home compared to a plumbers business based at home.

On occasions where you do decide to allow Home Office, the next step is to confirm what the total of these expenses are and ensure that whatever is claimed on the business is not also claimed as an accommodation cost (for example if rent was $200 per week and $50 was claimed as home office and you decide to allow home office – only $150 rent is claimable for accommodation supplement).

**Company**

When charging income from a Company owned by the client, the Company structure is ignored and the income is charged as if the client were a sole trader. The reason for this is that the client as the owner of the company can decide what to pay to themselves and what to leave behind as company income.

The company income is adjusted in the same way as a sole trader or partnership with the same expenses added back as detailed above (eg depreciation, home office etc.). In addition any payments to the client included in the Company expenses will also need including as income, such as shareholders salaries, Directors fees, management fees and so on.

Following the above steps means that regardless of whether a client operates as a business, partnership, sole trader or trust, the income charged for benefit purposes will not change.

## For more information

myLearn - Interpreting Business Accounts [https://elearn.ssi.govt.nz/course/view.php?id=3241]

Accountants - Financial Determination [http://doogle/business-groups/helping-clients/work-and-income/who-we-are/our-teams/income-determination-team.html]

Trusts (including the trust questionnaire) [http://doogle/resources/helping-clients/procedures-manuals/work-and-income/core-procedures/income/trusts.html]

Charging Income [http://doogle/map/income-support/main-benefits/jobseeker-support/charging-income-01.html]

Self-employment [http://doogle/map/income-support/main-benefits/jobseeker-support/changes-and-reviews-jobseeker-support/self-employment-01.html]

Employment related income [http://doogle/map/income-support/core-policy/income/types-of-income/employment-related-income.html]

Calculators [http://doogle/business-groups/helping-clients/work-and-income/who-we-are/regional/northland/training/calculations.html]

Jobseeker Support - Job search requirements [http://doogle/map/income-support/main-benefits/jobseeker-support/job-search-requirements-01.html]

**Content owner:** Work and Income Operational Support **Last updated:** 02 August 2016

Home » Business groups » » Work and Income » Who we are » **Accountants - Financial Determination**

# Accountants - Financial Determination

We are a small group of qualified Chartered Accountants who specialise in analysing and interpreting financial statements and other business information that is presented by clients seeking income or asset-tested benefits. We can provide you with advice and support on the more complex cases, however we also welcome email or phone enquiries for general queries or simple scenarios, or if you would like to discuss a case prior to forwarding it to us.

On this Page:

## What we can assist you with

**Assessing income and assets** - We can provide a calculation or assessment of a client's income and/or assets in accordance with the provisions of the Social Security Act, policies and case law (including High Court and Social Security Appeal Authority decisions) when determining a client's eligibility to benefit assistance.

**Providing expertise in dealing with business situations** - including sole traders, partnerships, companies and trusts, particularly with respect to the deprivation provisions of schedule 3, part 4, Social Security Act 2018.

**Providing training and publishing advice** - on calculating income and assets.

**Advising Ministry staff** - We are available for phone and email enquiries. This advice is available to all Ministry staff who have issues in this area, including front-line, Helpline, Integrity Services, Legal Services, the Residential Subsidy Unit and War Pensions.

**Attending Benefit Review and Appeal Authority hearings** - to assist in the interpretation of financial information.

## What is outside the scope of our role

providing an accounting service for our Ministry clients

providing complex legal advice which is the role of Legal Services

assuming responsibility for a case - we can provide you with advice and support

exercising any discretionary provisions provided under the Act - these should remain with the client's case manager.

## How to refer a case for analysis

In the first instance, please seek the assistance of your team trainer or manager, however if they cannot assist, please:

complete the case referral cover sheet; and

forward the case referral cover sheet, all documentation and financial statements by mail or courier.

Case referral cover sheet (Word 50.5KB) [http://doogle/documents/business-groups/helping-clients/work-and-income/who-we-are/our-teams/income-determination-team/case-referral-cover-sheet.doc]

## Accountants - Financial Determination

For Issues involving Seniors please contact:

s 9(2)(a) [redacted] - s 9(2)(k) [redacted]

Email s 9(2)(a) [redacted] s 9(2)(k) [redacted]

Global details for s 9(2)(a) [redacted]

For any issues involving any of our other clients, please contact:

s 9(2)(a) [redacted] - s 9(2)(k) [redacted]

Email s 9(2)(a) [redacted] s 9(2)(k) [redacted]

Global details for s 9(2)(a) [redacted]

s 9(2)(a) [redacted] - s 9(2)(k) [redacted]

Email s 9(2)(a) s 9(2)(k)

Global details for s 9(2)(a)

## Information to further support you

The following links provide you with support information when dealing with income determination:

An Explanation of Income for Benefit Purposes [http://doogle/resources/helping-clients/procedures-manuals/work-and-income/core-procedures/income/income-for-benefit-purposes.html]

Trust Help Page [http://doogle/resources/helping-clients/procedures-manuals/work-and-income/core-procedures/income/trusts.html]

Company Income Help Page [http://doogle/resources/helping-clients/procedures-manuals/work-and-income/core-procedures/income/companyincome.html]

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