MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

Medical Appeals Board
Process Overview and Information Pack

Contents

Overview

The Medical Appeals Board (MAB) is an appeal body that is established under Schedule 9 Medical board of the Social Security Act 2018 to make correct and fair decisions with regard to procedure and law.

Under section 411 of the Social Security Act 2018 a client can appeal to the Medical Appeals Board if:

- they do not agree with a decision made on medical grounds to decline or cancel the Child Disability Allowance, Supported Living Payment on the ground of health condition, injury or disability[1], Jobseeker Support or Veteran's Pension[2]
- they are on Jobseeker Support, Supported Living Payment, Sole Parent Support, or are a partner of a main beneficiary and disagree with a decision made on medical grounds regarding their work obligations or work preparation obligations
- they have work obligations and MSD determines that they do not have a good and sufficient reason for not complying with a drug test obligation and/or failing to apply for suitable work that requires drug tests, on the basis that they are not addicted to or dependent on drugs.

MAB hearings are a chance for a Board to take a fresh look at decisions made by the Ministry of Social Development (MSD).

The medical appeals process is an important part of ensuring that correct decisions are made by MSD on a case-by-case basis. The MAB hearing is an exercise of the client's right to challenge a decision of MSD and for the Board to review MSD's decision in a fair and independent manner. To ensure this, it is important that the principles of natural justice are adhered to throughout the process. All judicial and administrative officials involved in the MAB process must act fairly, MAB members must act impartially when sitting on a Board, and both parties must be given a chance to be heard.

This information pack is intended to assist MSD staff in discharging that responsibility. Initial sections of the pack discuss the appeal process in general, while later sections provide information specific to MAB co-ordinators and MSD presenters.

[1] This includes countries where New Zealand has a Reciprocal Agreement under which clients can receive the Supported Living Payment.

[2] Appeals in relation to Veteran's Pension for clients 65 years of age and over, or with a service related medical condition, injury or disability are administered by Veteran's Affairs New Zealand and are not subject to the processes outlined in this document.

Legislation – Schedule 9 Medical board

1 Establishment and membership

(1) A medical board consists of 3 members appointed—

(a) by the chief executive; and

(b) for the particular purpose.

(2) A person is ineligible for appointment as a member unless the person is—

(a) a medical practitioner; or

(b) a rehabilitation professional (see subclause (3)); or

(c) a person who has appropriate expertise in the fields of vocational training or vocational support for persons with health conditions, injury, or disability.

(3) In subclause (2)(b), **rehabilitation professional** means a person who is—

(a) a person professionally engaged in the rehabilitation of persons from sickness or accident or with disabilities; or

(b) a nurse; or

(c) an occupational therapist; or

(d) a physiotherapist; or

(e) a psychologist.

(4) In subclause (3)(b), **nurse** means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions.

(5) In subclause (3)(c), **occupational therapist** means a health practitioner who is, or is deemed to be, registered with the Occupational Therapy Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of occupational therapy.

(6) In subclause (3)(d), **physiotherapist** means a health practitioner who is, or is deemed to be, registered with the Physiotherapy Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of physiotherapy.

(7) In subclause (3)(e), **psychologist** means a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology.

Compare: 1964 No 136 s 10B(4), (5)

Subpart 5—Appeals to medical board

Right of appeal

411 Right of appeal on medical grounds

Any applicant or beneficiary may appeal to the medical board against a decision of MSD that is—

(a) made in relation to the applicant or beneficiary; and

(b) of a kind specified in a row of the following table.

Row	Assistance or obligations	Decision to be appealed
1	Any benefit	Determination— (a) made in reliance on a work ability assessment by a health practitioner under section 118 (work ability assessment); and (b) whether the person assessed is entitled to a benefit and, if so, what kind of benefit
2	Jobseeker support—on the ground of health condition, injury, or disability	Decision that a claim for this benefit is declined, or that this benefit is cancelled, in either case on medical grounds or on grounds relating to a person's capacity for work
3	Jobseeker support—on the ground of health condition, injury, or disability	Determination under section 141(1) that a beneficiary has, while receiving this benefit, the capacity to seek, undertake, and be available for part-time work, and so is required to comply with the work test on and after a date specified in a notice given under section 141(4)
4	Jobseeker support—on the ground of health condition, injury, or disability	Decision to confirm, amend, revoke, or replace under section 141(6) a determination, and that results in a determination under section 141(1) that a beneficiary has, while receiving this benefit, the capacity to seek, undertake, and be available for part-time work, and so is required to comply with the work test on and after a date specified in a notice given under section 141(4)
5	Jobseeker support—on the ground of health condition, injury, or disability	Determination— (a) made in reliance on a work ability assessment by a health practitioner under section 118 (work ability assessment); and (b) whether the person assessed, being a person receiving this benefit, has for the purposes of section 141(1) the capacity to seek, undertake, and be available for part-time work (*see also* section 155)
6	Jobseeker support—except on the ground of health condition, injury, or disability	Determination— (a) made in reliance on a work ability assessment by a health practitioner under section 118 (work ability assessment); and (b) whether the person assessed, being a person receiving this benefit, is entitled on an application or on MSD's own initiative, to deferral of work-test obligations

Row	Assistance or obligations	Decision to be appealed
		under section 155
7	Jobseeker support—except on the ground of health condition, injury, or disability	Decision to decline under section 155 on medical grounds an application— (a) made by a beneficiary granted this benefit; and (b) made under section 155; and (c) for deferral of all or any of the beneficiary's work-test obligations
8	Jobseeker support—on any ground	Decision on medical grounds under section 155 to revoke a deferral granted under section 155 of all or any of the beneficiary's work-test obligations
9	Work-test obligations or work-preparation obligations	Determination— (a) made in reliance on a work ability assessment by a health practitioner under section 118 (work ability assessment); and (b) whether the person assessed, being a person who is subject to work-test obligations or work-preparation obligations, has the capacity to meet those obligations
10	Drug-testing obligation	Decision under section 250(1)(a) to the effect that a beneficiary does not have a good and sufficient reason, on the ground that the beneficiary is addicted to, or dependent on, controlled drugs, for either or both— (a) not complying with a drug-testing obligation: (b) failing to apply for suitable employment that requires candidates to undertake drug tests
11	Supported living payment—on the ground of restricted work capacity or total blindness	Decision that a claim for this benefit is declined, or that this benefit is cancelled, in either case on medical grounds
12	Supported living payment—on the ground of restricted work capacity or total blindness	Decision under section 123(1)(a) that a person receiving this benefit has the capacity to comply with obligations under section 125.
13	Child disability allowance	Decision that a claim for this benefit is declined, or that this benefit is cancelled, in either case on the ground that the child is not a child with a serious disability (as defined in section 79)
14	Veteran's pension under section 164 of the Veterans' Support Act 2014	Decision to decline a claim for, or to cancel, this benefit, in either case on the ground of the applicant's or beneficiary's mental or physical infirmity

Natural justice

It is very important that all officials involved with the hearing, both MSD and members of the Board, act in accordance with the principles of natural justice.

Natural justice is a concept that has been used in the law for a long time. At its most simple, it could be described as the duty of judicial and administrative officials to act fairly.

It has two parts:

1. The rule that a person should not be a judge in their own case. This means that MAB members must act impartially when sitting on a Board. Impartiality is discussed in further detail later in this pack.

2. The rule that a person must always be given a chance to be heard. There are a number of aspects to this, which MAB members should keep in mind at all stages of the appeals process; these are discussed below.

Both the client and MSD should be given the opportunity to explain their view of the case. This means that each party is able to state their case and that the Board takes into account what each party has said.

The right to be heard also includes a person's right to hear the case against them.

In practice, this means that each party is given the opportunity to hear the case of the other party. If someone does not understand the other party's case it is very hard for them to respond, and that person may be denied the opportunity to address the points they need to argue their case properly. This means that both parties should be present throughout the MAB hearing to ensure they can hear and, if required, respond to any additional points.

A person's right to know the case against them also means that the Board should let the parties know about any policy or legislation which the Board thinks affects the case, but the parties themselves have not referred to. Again this gives the parties a chance to respond and make the best submissions that they can.

Although it is important to treat both MSD and the client equally, Board members should recognise that MSD has a natural advantage. The MSD presenter will have access to the relevant law, policy and legal advice; the client may not have this. To minimise this imbalance of power, the Board should focus on ensuring that the client has a full opportunity to be heard. The Board should try and assist the client by pointing them to relevant legislation and policy and, if necessary, explaining it to them.

If further information is sought by the MAB, in particular a legal interpretation relating to a specific point, suggest that the client may like to get some advice from an advocacy service and ask MSD to provide the client with the information available on client representation services in their area.

The Medical Appeals Process

A medical appeal is an opportunity for:

- the client to advise that they disagree with a decision based on medical grounds
- MSD to ensure that legislation has been applied correctly.

Below is a summary of the MAB process with timeframes given as a maximum number of working days. The flowchart that follows this summary provides a simplified overview of the process.

The decision

1. Before making a decision on eligibility or obligations on medical grounds, MSD will consider all new information provided and any relevant information already held. This may include, but is not limited to:
   - the information provided in the relevant medical certificate
   - discussions with the client about the impacts of the medical condition, injury or disability – including in a structured interview
   - the client's responses to the Self-Assessment Questionnaire, where completed
   - reports obtained from a medical examination
   - reports from a designated health practitioner
   - advice from a Regional Health Advisor or Regional Disability Advisor

Pre-hearing process

2. A client can appeal to the MAB when they disagree with a decision on eligibility or obligations that has been made by MSD on medical grounds or on grounds relating to capacity for work and is covered under the provisions listed in section 411 of the Social Security Act 2018. Further information on appealable decisions is provided in the sections titled: What is a Medical Appeals Board? and Jurisdiction.

3. The client must request a MAB hearing in writing. This may be done by way of a Medical Appeals Board Hearing Application form, letter, e-mail or Personal Details form. There is no requirement for the client to use the Medical Appeals Board Hearing Application form, and other written requests for a MAB hearing must be accepted.

   A client has three months from the time the decision is communicated in writing in which to appeal to the MAB. However if there are good reasons for the delay, a MAB can accept an appeal outside the three month period.

4. A case manager discusses with the client: the original decision, what the client is appealing against, any new information, the appeal process and if there are any associated costs.

   Generally the client will meet with the case manager who made the original decision so that they can explain the rationale for their decision. However if the client does not wish to meet with that case manager, this will be allowed. The client will be offered the opportunity to meet with another staff member to discuss the appeal. This may be another case manager, Assistant Service Centre Manager or Service Centre Manager, as appropriate.

5. The appeal should be considered by an RHA or RDA who wasn't involved in the original decision. The RHA or RDA will recommend that the original decision be upheld or overturned. The co-ordinator then does an internal review of the original decision, taking into account any new information the client provides and information from the Health and Disability team.

6. If MSD still believes the original decision is correct (in part or full), the co-ordinator will complete the Report for the Medical Appeals Board and then contact Board members in their region to organise a hearing.

7. The co-ordinator then sets the hearing date, time and venue. The Board is arranged and the client is advised. The Board is made up of three members as listed in Schedule 9 Medical board of the Social Security Act 2018. Further information on who can be a Board member is provided in the section titled: Board make up.

8. The co-ordinator sends a copy of the *Report for the Medical Appeals Board* and all supporting documentation to each Board member, so that each Board member can read all the information before the hearing.

9. A copy of the *Report for the Medical Appeals Board*, all supporting documentation, the factsheet *A Guide to Medical Appeals Board Hearings*, and information about free legal/benefit advice are sent to the client by the co-ordinator. The client is invited to attend the hearing and advised of the option of providing further information.

   The co-ordinator advises the MSD presenter of the hearing details and discusses the appeal and report with the presenter.

Hearing process

10. The hearing is held. If the client chooses not to attend at the hearing, MSD will also not attend and the appeal is held on papers only. If the client attends then the MSD presenter will also attend. Representations are made to the Board from both parties.

11. If the request for an appeal is received more than three months after the client was notified, the co-ordinator will inform the Board of this. The first thing the MAB must do is decide at an initial appeal hearing whether there is good reason for the delay in lodging the request – this is referred to as an out-of-time appeal hearing. If it is considered that there is no good reason for the delay, the appeal will not be heard. If there is good reason for delay then the substantive appeal is heard.

12. The Board will then consider if it has enough information from the *Report for the Medical Appeals Board*, the submissions and the representations made in person to make a decision on the case. If there is not enough information (or additional information is raised at the hearing) then the Board can ask for the coordinator to request a further medical opinion. The hearing will be adjourned until that information can be provided. A date should be set at the hearing, generally within 10 working days, for the MAB to reconvene. However if the client does not agree to further medical information being provided the MAB will need to make its decision on the information it has at the time.

    The MAB can ask for new information relevant to the appeal from the client or MSD. If the client and MSD are not attending the hearing the MAB should ask that the coordinator request the new information. In cases where new information is presented, the client and/or MSD must be given the opportunity to comment. This may require an adjournment. Depending on the nature of the new information

the adjournment could be until later the same day or another hearing date. If the information requested is not provided, the MAB has to make a decision based on the information it has.

Post-hearing process

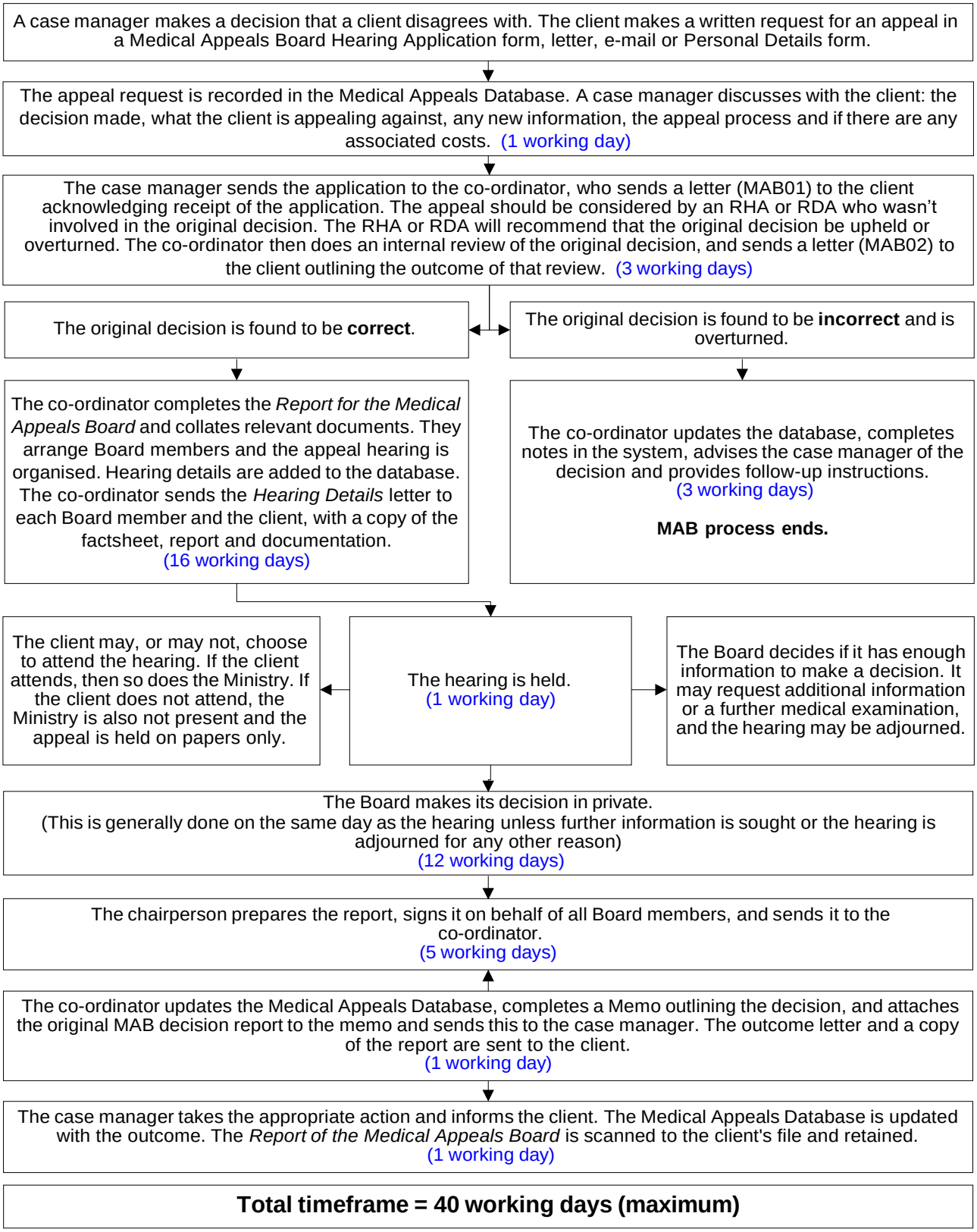
13. The decision making of the Board is done in confidence and neither the client nor MSD is present when a decision is reached. The Board can decide to uphold, uphold in part or overturn the decision of MSD.

14. The Board must record the reasons for its decision in writing. The decision is signed by the chairperson on behalf of the Board members. If the decision is to uphold in part or overturn the original decision, instructions will be issued to MSD to ensure that the decision of the Board is followed. The co-ordinator sends a copy of the report to the client within one day of the report being received by MSD.

15. A week after a copy of the report from the Board has been received by the client the MAB co-ordinator will ask the client for their consent to send a copy of the Board's report to the client's regular practitioner. If consent is not provided, the Board's report will not be sent to the client's regular practitioner.

Process flowchart

The flowchart below provides a general overview of the medical appeals process with timeframes shown as maximum working days for each stage.



The Medical Appeals Board

What is a Medical Appeals Board?

The MAB is an independent body established to ensure that correct and fair decisions are made within the legislation.

A client can appeal to the MAB when they disagree with a decision that has been made on eligibility or obligations by MSD on medical grounds or on grounds relating to capacity for work and is covered under the provisions listed in section 411 of the Social Security Act 2018.

The MAB takes a fresh look at all the information about a client's medical circumstances or incapacity.

If the appeal relates to a decision on eligibility, the MAB will decide whether the client meets the medical criteria or work capacity criteria for the relevant benefit and consider whether the correct decision was made to decline or cancel the benefit.

If the appeal relates to a decision on work obligations or work preparation obligations, the MAB will decide whether the client has capacity to meet those obligations and whether the correct decision was made about the obligations.

Where the decision is in relation to drug test obligations, the Board will consider whether the client has a good and sufficient reason for not complying with a drug test obligation and/or failing to apply for suitable work that requires drug tests, on the basis that they are addicted to or dependent on controlled drugs.

When determining the client's capacity for work, capacity to meet work obligations or capacity to meet work preparation obligations on medical grounds, only the client's capacity relating to their own health condition, injury or disability can be considered by the Board.

The following table summarises the decisions that are appealable to the MAB on medical grounds.

Detailed descriptions of the decisions that are appealable to the MAB are provided in the section titled Jurisdiction.

Decisions appealable to the MAB on medical grounds

When the benefit is:	… and when the decision made on medical grounds is about:
Child Disability Allowance	• whether the client qualifies for the benefit
Jobseeker Support	• whether the client qualifies for the benefit
	• full-time work obligations
	• part-time work obligations
	• work preparation obligations
	• drug test obligations (good and sufficient reason for not complying on the basis that they are addicted to or dependent on controlled drugs)
Supported Living Payment on the ground of health condition, injury or disability*	• whether the client qualifies for the benefit
	• work preparation obligations
Supported Living Payment on the ground of caring for a patient requiring care	• work preparation obligations
Sole Parent Support	• part-time work obligations
	• work preparation obligations
	• drug test obligations (good and sufficient reason for not complying on the basis that they are addicted to or dependent on controlled drugs)
Veteran's Pension where the client is under 65 years of age with a medical condition, injury or disability that is not related to their service	• whether the client qualifies for the benefit
Partners of main beneficiaries	• full-time work obligations
	• part-time work obligations
	• work preparation obligations
	• drug test obligations (good and sufficient reason for not complying on the basis that they are addicted to or dependent on controlled drugs)

* This includes countries where New Zealand has a Reciprocal Agreement under which clients can receive the Supported Living Payment.

Board make up

The MAB must be established with three members from any of the following professions:

- medical practitioners (preferably not more than one designated health practitioner)
- rehabilitation professionals including:
    - a person who is professionally engaged in the rehabilitation of people from sickness, accidents, or with disabilities
    - occupational therapists
    - physiotherapists
    - nurses
    - psychologists
- others with appropriate expertise in the fields of vocational training or vocational support for persons with a health condition, injury or disability

The rehabilitation professional gives a rehabilitation point of view to the Board, which will help in determining the client's capacity to undertake work.

Generally the MAB should have at least one member who is a medical practitioner.

The hearing must be set for a date on which all three members of the Board can be present, as there must be three members at the hearing to make a decision.

Board members

Board members are required to:

- work with MSD when setting a date, time and location for the hearing
- review the written application and evidence
- attend the hearing
- appoint a chairperson
- consider the information presented at the hearing
- determine whether additional information is needed to make a decision
- make a decision in equal partnership with other members of the Board and
- the chairperson is to sign the final decision report

Appointing members of the Board

MSD will identify suitable members to participate on the MAB. To assist with the process MAB members are trained and provided with the Medical Appeals Board: Board Members Information Pack, copies of the relevant guides for medical practitioners and the relevant legislation.

Board members will be suitably qualified to hear an appeal and have an interest in participating in the appeals process.

Each Board member must be capable of:

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

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

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

Impartiality and disqualification

A MAB is an independent Board for reviewing appeals and they must act accordingly. They need to take great care to make sure they openly act independently and fairly. A Board member is not on the MAB as a representative of MSD.

The issue of independence is very important. Members must have had no prior involvement in the case.

The role of the MAB is to independently review MSD's decision in accordance with the law. The Board must review the client's eligibility for benefit on medical grounds, capacity for part-time work, or capacity to undertake work independently. In addition, they should be seen to be impartial. Where impartiality of a Board member could be questioned they should disqualify themselves from the hearing and withdraw themselves from the Board.

No member of the MAB can hear a case if he or she:

- is currently the client's medical practitioner or has been for a significant period in the past
- has been the client's designated health practitioner
- has a direct financial or personal interest in the outcome
- has had any prior involvement in the appeal
- has some personal connection with the client or presenter
- has a personal prejudice for or against a person(s) involved in the appeal
- has pre-decided the appeal and comes to it with a closed mind

If any of these criteria apply the MAB member must disqualify him or herself from the hearing.

It is important that Board members consider any small contact with the client when considering disqualification. This may cause difficulties in isolated areas; however it is important that the integrity of the MAB process is maintained.

Member availability

Each region has a pool of available MAB members. Having a pool of MAB members mean that hearings can occur on a regular basis, and this allows for prompt processing of all appeals and the ability to alternate members.

There is no limit to the number of times someone can be a member of the Board.

The Health and Disability teams in each region are responsible for finding appropriate registered health practitioners in their areas to be appointed Board members.

Payment

Board members must submit an invoice to the National Accounting Centre for each hearing they participate in. The MSD co-ordinator can provide invoicing details to members.

Board members are paid based on the costs related to providing their time for the appeals process. Time spent preparing for hearings is included.

Where a scheduled hearing is cancelled, it may be appropriate for Board members to be compensated for their time. This will be considered on a case-by-case basis.

For example if the hearing is cancelled two or three days before it was to be held, it may not be possible for the practitioner to make arrangements to be back in their practice and it would be reasonable for them to be compensated accordingly.

Jurisdiction

The client must apply in writing for a MAB hearing by way of a Medical Appeals Board Hearing Application form, a letter, e-mail or Personal Details form where they have received notification of a decision which has been made under the provisions listed in section 411 of the Social Security Act 2018. These are decisions regarding:

- Child Disability Allowance – when this assistance is declined or cancelled on the grounds that the child does not have a serious disability as defined in sections 78 and 79 of the Social Security Act 2018
- Jobseeker Support[1] – when this assistance is declined or cancelled on medical grounds; or when it is determined that the recipient has capacity to undertake full-time work, part-time work or work preparation on medical grounds (sections 27-28 and section 141 of the Social Security Act 2018)
- Supported Living Payment[1] – when this assistance is declined or cancelled on medical grounds (sections 34-35 and 37 of the Social Security Act 2018)[2]; or when it is determined that the recipient has capacity to undertake work preparation or planning on medical grounds (sections 121-125 of the Social Security Act 2018). This means that a person can appeal to the MAB where:
    - the Supported Living Payment on the ground of health condition, injury or disability[3] is cancelled or declined on medical grounds
    - it is determined that a person receiving the Supported Living Payment on the ground of health condition, injury or disability[3] has capacity to undertake work preparation or planning on medical grounds
    - it is determined that a person receiving the Supported Living Payment on the ground of caring for a patient requiring care has capacity to undertake work preparation or planning on medical grounds
- Work and Work Preparation Obligations[1] – when it is determined that the spouse/partner of a beneficiary or a recipient of Sole Parent Support has capacity to undertake work or work preparation on medical grounds (sections 121-125 of the Social Security Act 2018)
- Drug Test Obligations – when MSD determines that a client with work obligations does not have a good and sufficient reason for not complying with a drug test obligation and/or failing to apply for suitable work that requires drug tests, on the basis that they are not addicted to or dependent on controlled drugs (section 250 of the Social Security Act 2018 and regulation 85 of Social Security Regulations 2018

[1] This may include decisions made based on any work ability assessment undertaken by a health practitioner or where an application for an exemption is declined using information provided in a Work Capacity Medical Certificate.

[2] This includes countries where New Zealand has a Reciprocal Agreement under which clients can receive the Supported Living Payment.

[3] This includes total blindness.

- Veteran's Pension – when this assistance is declined or cancelled on medical grounds, the client is under 65 years of age and the medical condition, injury or disability is not related to their service (section 164 of the Veterans' Support Act 2014)[4]

The Board may not hear an appeal outside of these areas.

On occasion a request for an appeal may be declined for more than one reason. In these cases, the Board may only decide on the part of the appeal that falls within its jurisdiction.

Matters relating to areas outside the jurisdiction of the MAB should be reviewed separately. If the MAB determines that it has received an appeal that is outside its jurisdiction, the chairperson should advise MSD.

A client has three months from the time the decision is communicated in writing in which to appeal to the MAB. However if there are good reasons for the delay, a MAB can accept an appeal outside the three month period.

Countries with reciprocal agreements

Countries with a reciprocal agreement where the Supported Living Payment can be paid are:

- Australia
- Canada
- Denmark
- Hellenic Republic (Greece)
- Ireland
- Jersey and Guernsey
- Netherlands
- United Kingdom (inside New Zealand only)

When the Medical Appeals Board considers an appeal from a client covered by a Reciprocal Agreement, the Board will assess the client based on the Supported Living Payment criteria as stipulated in section 34-39 of the Social Security Act 2018. In this situation additional information will be provided as required.

Note where a client is being paid Supported Living Payment under a Reciprocal Agreement and they reside in a country other than New Zealand they are exempt from work test obligations.

[4] Appeals in relation to Veteran's Pension for clients 65 years of age and over, or with a service related medical condition, injury or disability are administered by Veteran's Affairs New Zealand and are not subject to the processes outlined in this document.

When the MAB cannot hear an appeal

The MAB cannot hear an appeal if:

- it is not a decision listed in section 411 of the Social Security Act 2018
- the appeal has been heard by a Board previously
- the appeal is outside the three month review period and the Board considers there is not a good reason for delay
- the Board has no jurisdiction to hear the issue being appealed.

If the client wants to progress an appeal in these cases, both MSD and the client will make submissions on the matter. The MAB will decide if the decision can be appealed or not. Further information on this is provided in the section titled: Process if the matter may be outside the jurisdiction of the MAB.

Service complaints

An appeal may include a complaint about the service the client received.

For example:

A client includes in their request for an appeal that they contacted MSD several times, asking the case manager to contact him or her. The case manager does not return these calls so the client contacted the Contact Centre. The next appointment was weeks away.

In this case it is appropriate for the MAB to:

- comment on the delays and note that this is regrettable
- ask MSD to look into the delays and explain or apologise to the client
- then look at the substantive issue

Matters heard previously

A client has the right to have their appeal heard once. If the appeal has already been determined, it cannot be heard again.

It is important to carefully identify the decision being appealed. What seems like a request for an appeal on a decision again, may relate to a different decision. For example, a client's first appeal may be related to a decision to cancel the Supported Living Payment on medical grounds. However, he or she may then reapply for the Supported Living Payment due to his or her condition deteriorating and may then seek a further appeal if that application is declined.

Out-of-time appeals

Clients may appeal a decision within three months from the date they were notified of the decision. The date of notification is considered to be the fourth day after the letter advising of the decision was mailed to the client, unless there is evidence to the contrary. Evidence may include the fact that the client has notified MSD that they have moved address (and MSD has not noted the information) or that the mail is returned because the client is not known at the address. Each appeal will need to be considered individually.

Where a client requests an appeal more than three months after the original decision was made, the Medical Appeals Board will hold an initial hearing to decide if there was a good reason for the delay. This hearing will not be an opportunity to discuss the original decision.

If the original request for an appeal does not state the reasons for the delay, MSD will contact the client and explain the situation. The client must be given the opportunity to provide the reasons for both the appeal itself and the delay if this information is not included in their request for an appeal.

MSD will complete the *Report for the Medical Appeals Board - Hearing on the reason for the delay* template, and provide a copy to MAB members and the client before the hearing. The template for MSD's report can be found in Appendix 17: Report for the Medical Appeals Board - Hearing on the reason for the delay and is available on the Medical Appeals Board – Letters and reports Doogle page.

When considering whether there is good reason for the delay, the Board should act in accordance with the principles of natural justice and ensure that both the client and MSD are given the opportunity to explain their view of the case.

If the Board decides that there is good reason for the delay, the MAB should allow the appeal to proceed to the substantive hearing.

If the Board finds that there is no good reason for the delay, the MAB should decline to hear the appeal.

The template for the report completed by the Board outlining the decision on the reason for the delay is provided in Appendix 19: Report of the Medical Appeals Board - Hearing on the reason for the delay.

Process if the matter may be outside the jurisdiction of the MAB

If the decision that the client disagrees with is clearly outside the jurisdiction of the MAB, the client should be notified and given the opportunity to withdraw their request for an appeal. For example if the matter relates to an application for Jobseeker Support that has been declined for non-medical reasons, or debt recovery, the MAB cannot make a decision. In all other cases, the matter should be forwarded directly to the MAB. If jurisdiction is an issue, the MAB will hold a jurisdiction hearing to determine that issue before considering the substantive decision.

If the client does not withdraw his or her request for an appeal, and MSD considers that it is not appealable, the case should still be referred to the Board.

The Board should seek submissions from both parties before it determines whether it has the jurisdiction to consider the appeal. The Board will then prepare a report explaining whether the review is within its jurisdiction or not. The completed report will be sent to MSD, and the co-ordinator will ensure the client receives a copy of the report.

Withdrawals

The client may withdraw their appeal at any time before an appeal is heard and a decision made.

If the client advises that they wish to withdraw their appeal, then the co-ordinator will notify the Board immediately and confirm this in writing.

Information for the MAB

The report for the Medical Appeals Board

A report is completed and sent to the MAB members prior to the hearing, allowing as much time as possible for the Board members to review the information. All reports for the MAB are in a standard format. The report will accurately and concisely summarise what the appeal is about.

The co-ordinator is responsible for completing the *Report for the Medical Appeals Board* in collaboration with the case manager who made the original decision. The co-ordinator will need to ensure that the quality of the final report meets MSD's communication standards.

Each report should clearly explain the entire case to someone as if they have no understanding of the welfare system.

A report for the MAB should contain:

- the client's details
- the decision being appealed
- the initial actions and decision made (Summary of Facts)
- a copy of relevant legislation and policy
- the internal review and decision made
- the client's and their representative's view on the appeal
- MSD's view on the appeal
- recommendations from MSD
- a list of attachments to the report

The report and its attachments must be considered along with any information or submissions provided by the client and their representative if they have one.

A copy of the report template can be found in Appendix 16: Report for the Medical Appeals Board and is available on the Medical Appeals Board - Letters and reports Doogle page.

New information

At any stage of the appeal process, before the MAB makes a decision, MSD or the client can produce additional information to be considered. The MAB coordinator should ensure the new information is provided to the other party (eg MSD or the client).

New information provided when the client applies for a MAB hearing

When the client applies for a medical appeal, it is appropriate for MSD to take another look at the original decision before the case is considered by the MAB.

The original decision will be revisited and MSD will consider the following:

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

MSD may change its decision in light of the review and a MAB hearing may not be required. If the decision remains the same, the MAB coordinator will ensure that both the information originally presented and the new information are provided to the MAB.

New information provided prior to the MAB hearing

If additional information is provided to the MAB or the co-ordinator it must also be provided to the other party (eg MSD or client). The other party must be granted, if possible, adequate time to consider the additional information prior to the appeal hearing. Alternatively, the hearing can be postponed until the other party has had sufficient time to consider the additional information. If the hearing is postponed, it is important that a new hearing date is arranged at the time. This ensures that there is not an unreasonable delay before the Board meets to consider the decision under review.

New information presented at a MAB hearing

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

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

Additional information required for the MAB to make a decision – medical examinations

If there are doubts about whether the client meets the medical criteria for the relevant benefit, the Board may ask the client whether he or she will undergo an additional medical examination. If the client agrees, the hearing is adjourned, and the client is referred to a specialist or other medical practitioner.

Note

- No Board member may undertake the medical examination.
- The requirement to make a final decision must not be dependent on whether or not the client agrees to undergo an additional medical examination.
- If the client does not agree to be referred for further medical examination, then the Board decides the appeal based on the written evidence provided and evidence presented during the hearing.
- If the client agrees to undergo an additional medical examination, then the Board should consider the results of the examination alongside the other evidence provided

MSD will pay any further costs that are incurred as a result of the client being examined by another person.

MSD, via the MAB co-ordinator, will arrange the appointment for a medical examination and organise to reconvene the hearing following the examination. The hearing should generally be reconvened within 10 working days of the initial hearing.

The MAB coordinator will send the report from the medical examination to the client, MSD and the Board at the same time.

In many cases, the Board will indicate who or where the client should be referred to; if they do not indicate a suitable practitioner or practice, the MAB co-ordinator will work with the local Health and Disability Team to identify a suitable practitioner.

The practitioner should be instructed to invoice against nominal 14971.

New information provided after the MAB hearing but before the decision has been sent to the client and MSD

If new information relating to the decision is received, the Board needs to consider if the information would change the decision. Both parties should be given the opportunity to respond in writing to the new information. The Board will need to reconvene and include the outcome in the *Report of the Medical Appeals Board*.

New information provided after the MAB decision has been made and the findings have been sent out to the client

The decision of the MAB is final and there is no further right of appeal under the Social Security Act 2018.

If new information relating to the decision that was under review is provided, it must be sent to the Service Centre or Unit that made the original decision. If the information relates to a material change of circumstances (as opposed to information that could or should have been presented to the MAB at the time), it will be considered under section 304-310 of the Social Security Act 2018. The outcome of the section 304-310 review will be treated as a new decision and give the client new appeal rights.

If the co-ordinator is unsure whether the information is a change of circumstances or not, they will refer to the Regional Health Advisor, Regional Disability Advisor or the regional solicitor as appropriate.

Personal representations

The client may attend in person at the appeal hearing. If the client chooses to attend, then the MSD presenter should also attend. If the client chooses not to attend the hearing, then the MSD presenter does not attend either. The appeal is then decided on papers only (ie based on the report and attachments only and any written submissions from the client).

The client cannot be required to attend the hearing. If the client does not attend, the case must be decided on the evidence before the MAB. Board members should not form any adverse opinion about the appeal based on the client's failure or refusal to attend.

The Board can ask questions to clarify points raised either by the written submissions or the personal representations. If the client has chosen to attend, both parties should be present throughout the hearing to ensure that they can hear and, if required, respond to any additional points raised.

If a client asks questions about the report or aspects of the original decision, these should be put to the MSD presenter to answer.

If the client at the hearing presents new information, it is appropriate for the MSD presenter to question the client directly or through the Board.

Resources available to the MAB to help them make its decision

If the Board is unsure of a legal point, such as interpreting case law or legislation, then it should ask for legal submissions on that point from the client and the MSD presenter.

The Board must not directly contact MSD's legal advisors and this should be made by the MAB coordinator. This is because the legal advisors act for MSD and it is a conflict of interest for them to provide legal advice directly to the Board.

If the client does not have legal representation, MSD can provide a list of free legal advice providers such as Community Law Centres or Citizen's Advice Bureaux.

Client representatives and support people

The client is entitled to bring his or her own representatives and support people to the MAB hearing – this includes advocates, solicitors, agents and other support people.

If the client indicates that an advocate or solicitor will be attending the hearing, then the MSD presenter will be informed. If a solicitor is going to attend it may be necessary for MSD to arrange for their solicitor to also be in attendance. The co-ordinator will notify the MSD presenter of this so that they can contact the appropriate MSD solicitor.

The co-ordinator will inform the MAB, wherever possible, if a client has a lawyer or advocate, or wants support people to attend the MAB hearing.

In most cases, the Board will allow the person to attend. The Board may, in extreme circumstances, decline to allow a person (other than the client's legal representative) to attend or appear on behalf of a client.

If at all possible, the client should be notified before the hearing of the Board's decision to refuse to allow a support person or advocate to attend the hearing.

Agents

The client may choose to appoint an agent to act on their behalf. The client should confirm this in writing prior to the hearing.

The agent may:

- have an existing arrangement with the client and been involved in all or some of the client's meetings with Work and Income
- be appointed for the purpose of appearing before the Board
- be any person appointed by the client such as relative, friend, advocate or legal representative
- represent the client at the hearing both in the presence or absence of the client

If the client is absent from the hearing but an agent attends on their behalf, MSD will also attend the hearing.

Support people

In the case of a support person, they may speak on behalf of the client but only in the presence of the client and with the client's permission.

Pre-hearing procedures

Medical Appeals Database

The MAB database is a web-based tool for recording and tracking all medical appeals lodged with Work and Income.

When a request for an appeal is received, it must be lodged into the database with full details.

It is the co-ordinator's responsibility to ensure that the database is updated at each stage of an appeal and to complete full notes in the free text boxes.

National Office completes reports from the database and therefore requires that the appeals are updated consistently. This is essential for MSD to provide accurate reporting.

Note: When a client chooses to withdraw their appeal, this must be recorded in the MAB database and noted in CMS.

For information on using the database, refer to Appendix 21: The Medical Appeals Database.

Trespassed clients

If the client has a current trespass order, the process for the MAB hearing will need to be adjusted to accommodate this. The client can choose how they would like the hearing to proceed as follows:

- the hearing can proceed on a papers-only basis
- the client can appoint an agent, if they haven't already done so, to represent them at the hearing
- the client can opt to have their hearing via teleconference (with their representative and/or support people as appropriate)

Sometimes the client may wish to use a combination of these options.

If a client does not pose a physical threat, investigate the option of using a venue the client is not trespassed from to allow them to attend. The co-ordinator should discuss this with their manager.

Remote Client Unit

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

- the hearing can proceed on a paper-only basis
- the client can appoint an agent, if they haven't already done so, to represent them at the hearing
- the client can opt to have their hearing via teleconference (with their representative and/or support people as appropriate)

The Remote Client Unit will co-ordinate the MAB hearings for clients that they manage in conjunction with the appropriate site.

Board members

The Board must be made up of three members as listed in clause 1 of Schedule 9 Medical board of the Social Security Act 2018. Further information on this is provided in the section titled: Board make up.

Generally the MAB should have at least one member who is a medical practitioner.

The hearing must be set for a date on which all three members of the Board can be present, as there must be three members at the hearing to make a decision.

Objections

The client can object to any member being part of the MAB, by stating the reasons for his or her objection. If grounds are found for disqualification, or there is an issue with a particular Board member that will interfere with the process of natural justice, the Board member objected to is usually replaced. The client would usually discuss this with the MSD co-ordinator prior to the hearing.

Postponements

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

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

Any practice that differs from this should be discussed with National Office to ensure it is procedurally correct.

Pre-hearing preparations

The Board members and the client are sent the *Report for the Medical Appeals Board* and supporting documents before the hearing.

It is not appropriate for any of the Board members to have any contact with the client regarding the hearing before the hearing date.

Setting up

The co-ordinator will arrange the following:

- a suitable room (e.g.; a person outside cannot observe proceedings, there is sufficient lighting, it is a comfortable temperature, there is access for people with disabilities)
- a table (and chairs) that all Board members, client and support people can sit at
- water and glasses
- paper, pens and calculator
- original papers submitted
- consolidated legislation
- any relevant policy manuals

When arranging the hearing, the co-ordinator will take any specific cultural or language requirements into consideration. In some cases, the co-ordinator may have arranged for an interpreter at MSD's expense.

Chairperson

It is a good practice for the Board to identify someone to be the chairperson. The chairperson should be chosen only when the three Board members come together.

The chairperson will take the lead in organising the Board, explaining the hearing process to all attendees, writing the *Report of the Medical Appeals Board*, ensuring all Board members agree with the content of the report, and submitting the report within the appropriate timeframes.

The chairperson sets the scene for the hearing. The role of chair is extremely important as he or she can play a pivotal role in ensuring that a fair and impartial decision is reached.

Recording a hearing

A client does not need to seek approval from the Board or MSD before recording a hearing. It is entirely lawful for someone to record a conversation to which she or he is a party. This means that the client does not need to ask for permission and does not need to inform the other parties of the recording. However, it is an offence if a client records a conversation that she or he is not a part of – e.g. if the client leaves the room and records the conversation of others in the room.

The Board can inform the client that it is preferable that the client informs the Board that she or he is taping the hearing, but the Board does not have authority to refuse to let the client record the hearing.

If a client requests to record the hearing, best practice would be for the Board to record the hearing using a dictaphone which makes a digital recording. Copies can then be made to a CD so that the client, the Board and MSD all have the same recorded information. MSD Fraud Intervention Services have dictaphones available.

The hearing

Procedure

The MAB can set its own process for the hearing as the Social Security Act 2018 does not set out a hearing procedure. The MAB needs to clearly state the process for the hearing to each person present at the hearing. The process adopted must be fair and reasonable.

Notes

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

MSD presenter

If the client chooses to attend the hearing, an MSD staff member must attend the hearing to present MSD's case. If the client chooses to not attend the hearing, the MSD presenter is also not present.

The MSD presenter is generally the case manager that made the original decision and will present MSD's case to the Board. If the original decision maker is unable to attend the hearing, another appropriate member will attend on MSD's behalf. This may include another case manager or a service centre manager.

The MSD presenter will be required to have a sound understanding of natural justice and the relevant legislation appended to this document.

Presentations

The Board sets the process and may wish to clarify the process for questions between the client and MSD. This must comply with the rules of natural justice.

MSD often presents its case first to the MAB. This may be because MSD has compiled the *Report of the Medical Appeals Board*. It may be a better use of time for Board members to summarise their understanding of the facts and issues of the case and question MSD on any issues they have.

There is no ability for the client or MSD presenter to cross-examine the other party directly. If a client has questions about the report or aspects of the decision, the Board should put these to MSD to answer. In some cases, it will be appropriate for the MSD presenter to question the client directly or through the Board particularly if the client at the hearing presents new information.

If the client does not attend the MAB, MSD does not attend either, and the appeal is held on papers only. However, if the appeal involves a situation where the client's evidence would be important, the hearing can be adjourned, and further information can be requested. If the information requested is not provided, the MAB has to make a decision based on the information it has.

Hearing the appeal on papers

If the client does not wish to attend the appeal hearing the MAB hears the appeal on papers only. No verbal submissions are made to the Board by the client or an MSD presenter.

In addition to the *Report for the Medical Appeals Board*, further written submissions provided by the client and/or MSD may be given to the Board to consider. A copy of any further information provided must be given to all parties involved in the appeal.

MSD should always be ready to attend and present MSD's case should the client decide to attend at the last minute.

Evidence

Evidence is anything the Board chooses to listen to or read whilst considering the appeal before it. The mere fact that certain evidence is provided to the Board does not mean that it is true, relevant or correct in fact or law. It is the Board's role to consider the evidence put before it and to make a decision. Some areas to keep in mind when considering evidence are:

- Credibility

  People making statements to the Board may be telling the truth, part truths, lies or otherwise, and MAB members must decide whether they believe the statements being made are true or not.

  There are no strict rules on how to determine that a person is credible, but the following factors will be relevant:

  (i) Prior inconsistent statements

  This is where a person makes one statement to one person and later contradicts that statement, particularly where the contradictory statement/s appear to have been made to gain monetary benefit.

  (ii) Multiple explanations

  This is where someone makes a statement and then subsequently varies the statement to make it more advantageous for themselves.

  (iii) Lies

  Where a person giving evidence is shown to be telling a lie/s, then that person's credibility should be questioned. It is not necessary for the lie/s to be directly related to the specific facts giving rise to the issues before the Board.

- Inferences

  An inference is a conclusion that can reasonably be drawn from facts previously established.

- Standard of Proof

  The standard of proof at a MAB hearing is the "balance of probabilities". This means that if the Board can say that "we think it more probable than not" that something occurred, then that is sufficient to prove a fact. For example, if the client claims that they telephoned Work and Income to ask that their benefit be cancelled, the Board need to be satisfied that "it was more probable than not" that this occurred. If that is the case, then it has been established as a fact that the client telephoned Work and Income

  This differs from the standard of proof in a criminal trial, where evidence needs to be established "beyond reasonable doubt". The "beyond reasonable doubt" test is a much higher threshold than the "balance of probabilities" one.

- Weight of Evidence

  Some evidence will be "stronger" or more compelling than other evidence. This is called the "weight" of the evidence and the Board must consider what "weight" should be given to any particular piece of evidence. Much of the weighting will turn on the individual piece of evidence and the facts of the appeal, but there are additional factors that can affect the weight of evidence:

  (i) Relevance

  Board members must consider whether the evidence is relevant to the issue being decided. The legislative provisions being dealt with will generally prescribe the relevance of evidence. However, it should also be remembered that whilst evidence may be irrelevant to the decision to be made, that should not preclude the MAB (within the bounds of common-sense and reasonableness) to listening to such evidence because:

  – the client should be able to put all their concerns to the Board; and
  – whilst evidence might not be relevant to one area of law, it may be relevant to finding entitlement under another legislative provision.

  (ii) Best evidence

  The "best evidence" should be presented to the Board. In other words, rather than an advocate making statements on behalf of people who are absent, it is preferable to hear from the client who has personal knowledge of the facts being alleged. If this person is not present, then it is likely that there can be less weight given to any evidence presented on behalf of that person in written form.

  However, the Board is unable to summons a client to give evidence before it.

  (iii) Documentary evidence

  This is written evidence such as letters, computer records, dockets, declarations. The mere fact that there is something in writing does not automatically mean that the document records a true statement. For instance, where a statement is made in the form of an affidavit/declaration, that statement cannot be accepted as being true, merely because it is in writing or by reason that it is sworn.

(iv) Opinion

A person's opinion will generally count for little, except where the person giving the opinion is an expert. An "expert" is someone with recognised practical experience and/or qualifications in a particular field. Obviously, even where someone is accepted as being expert in a particular field, this does not mean that their evidence should be accepted un-critically, but rather that more weight should be accorded to that evidence than evidence given by a non-expert.

(v) Corroboration

This means that the evidence presented about a particular fact is confirmed by other evidence from an alternative, un-related source.

- Motive

People giving evidence will always have a motive or reason for giving that evidence, from a law abiding citizen performing a civic duty to a person driven by malice against the client. The motive of the person giving evidence must be acknowledged and evaluated when considering the weight and credibility of that evidence.

Adjournments

An adjournment is a suspension of the proceedings to another time or place. For example, the Board may agree to suspend a hearing where either party needs time to consider additional information that has been presented at the hearing.

If there is a request from either party for an adjournment it is usually granted. The Board must consider why the adjournment was asked for, and consider whether it is fair and reasonable to adjourn. If the adjournment is granted then the Board needs to specify the length of the adjournment and either arrange a time to reconvene the hearing or instruct the co-ordinator to schedule the follow up hearing.

As a general rule an adjournment should not be longer than 10 working days but each adjournment should be based on the need for the adjournment. No appeal should be adjourned without the follow up hearing being scheduled.

Disruption

The Board can impose reasonable rules for the conduct of the hearing itself.

If a person is unreasonably disrupting the process of the hearing or behaving inappropriately, the chairperson has the ability to request that the person leave the hearing. A person behaving in such a manner should initially be warned that they will be asked to leave the hearing if such behaviour continues.

The chairperson may adjourn the hearing for 30 minutes to enable the person(s) to regain their composure if a warning has been given. If after such a break the person continues to be unreasonable or behave inappropriately the chairperson should politely request that the individual leave the hearing.

If the client is asked to leave the hearing, the appeal is then decided on papers only (ie based on the report and attachments only and any written submissions from the client) and MSD should not be present.

Decisions

Making decisions

Once the MAB is satisfied that it has all relevant information regarding a case it can make a decision. The Board makes its decision without the client or MSD present.

The MAB must only consider the decision being appealed by the client. If the hearing raises additional issues of entitlement or ineligibility, these should be referred back to MSD.

A copy of the report template is attached in Appendix 18: Report of the Medical Appeals Board.

It is essential that the Board's decision reflects the relevant law and is reached in a fair way. This means that the Board should:

- check to ensure that the applicable legislation from the time of the original decision is being applied
- identify and understand the requirements of the legislation
- consider all the options available to the client
- fully explain the legal constraints and requirements to the client and ask the client to comment on how he or she meets each specific requirement
- decide whether the client meets which, if any, of the specific legislative provisions the MAB are dealing with
- consider seeking legal submissions if unsure of the extent of the application of the ruling to the specific appeal
- act within the law

It is important that Board members understand the difference between law and policy. The primary function of the MAB is to check the law has been correctly applied. Policy is MSD's interpretation of the law and how it should be applied.

Administrative Law and Natural Justice

The MAB must make a fair decision in a fair manner.

When making decisions the Board needs to consider the following:

- Illegality

  This refers to a situation where the decision maker got the law wrong, usually regarding the correct interpretation of the legislation and the scope of their power under that legislation.

  The MAB members are acting outside the scope of their powers if they (amongst other things):
  (i) make a decision for a purpose other than that set out in the legislation
  (ii) fail to take account of all relevant matters or take account of irrelevant matters
  (iii) get the facts significantly wrong
  (iv) strictly apply a pre-set policy without taking account of the individual facts of the appeal (policy should be used as a guideline and not treated as sacrosanct)
  (v) allow someone else to make the decision for them
  (vi) make a decision for which they have no proper lawful delegation
  (vii) make a decision for which they have no lawful power or authority

- Unreasonableness

  The MAB must not make such an unreasonable decision or come to such an unreasonable finding that no reasonable person could have made that finding, having regard to the specific provisions and intention of the Social Security Act 2018 and the facts of the appeal. Unreasonableness will be a question of fact in each appeal and requires careful consideration.

- Unfairness

  This relates to a fair procedure. This obligation to be fair will involve:
  (i) giving full and fair notice of the issues to be considered, the evidence for and against the client, and the law that will be taken into account in making the decision
  (ii) such notice being given in sufficient time to allow the client to adequately prepare for the hearing (and to ensure they understand any consequences of not appearing at the hearing)
  (iii) giving the client an opportunity to make representations to the Board and for those representations to be properly considered
  (iv) avoiding undue and unreasonable delay
  (v) giving full and detailed reasons for each point raised (eg what was considered and what was not considered) and discussed and how they contributed to the decision made

- Consistency

  The decision must be consistent with the law, prior statements, representations, policy etc, although the outcomes may differ by reason of the individual facts.

Available decisions

The MAB can decide to uphold, uphold in part, or overturn the decision of MSD.

The decision of the Board does not have to be unanimous. Two out of three Board members must agree for a decision to be made final.

If further matters are raised that the Board feels need to be addressed outside of the decision being reviewed, the Board can make a comment and recommend that MSD address the issues.

If the decision of the Board is to uphold in part or overturn the original decision instructions will be issued to MSD on the actions that MSD needs to take to conclude the appeal.

Split decisions

In some cases the Board may not be able to come to a unanimous decision. In these cases a majority only decision is needed and two of the Board members need to agree.

If one Board member disagrees, or dissents from the decision then it should be recorded that this is the case in the *Report of the Medical Appeals Board*. The reasons for their dissention should also be included in the report. The dissenting view should follow directly after the majority and should point to the factors or issues that contributed to the different conclusion.

Post-hearing procedures

Documenting the decision

Once the Board has made its decision it is documented in *Report of the Medical Appeals Board*. The chairperson is responsible for ensuring the report is completed.

The report sets out the deliberations of the Board, its reasoning and its decisions on all points raised. It requires that:

- both the client's case and the case of MSD be fairly represented in the final report. The final report should not be restricted to a direct copy of the content from MSD's submission
- the final report needs to fully explain the reasons for the decision made by the Board. This does not mean a short bullet point list. The client should see that their arguments have been considered and addressed, and should understand the basis for the decision the Board reached
- if the Board makes reference to legislation or policy in the final decision, then that legislation or policy needs to be referred to and may also be quoted or attached to the report. Where policy is departed from, reasons for this decision need to be explained

The MAB has a legal obligation to provide full written reasons for its decision. It is the generally the chairperson's responsibility to complete the final report. It is the MSD co-ordinator's responsibility to ensure the client receives the report in a timely manner.

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

It may be possible to copy sections relating to facts and the law from the report to the MAB. However, all submissions to the Board must be accurately summarised.

If the MAB determines that MSD's case contains the wrong law or policy, then the MAB should make comments about this in its findings.

If a split decision is made then the dissenting opinion of the Board member must be documented in the final report.

The final report is sent to MSD's co-ordinator who sends a copy to the client with a covering letter. The completed and signed report must be received by MSD within 17 working days of the conclusion of the hearing.

Any follow up required by MSD should be actioned within 24 hours of notification of the decision.

The template for the report is provided in Appendix 18: Report of the Medical Appeals Board.

Report checking

All three Board members are responsible for the content of the report. When the report is completed, the other Board members are responsible for checking the report. If a Board member believes an area has not been sufficiently covered in the report he or she must advise the chairperson to make the appropriate amendments before signing it.

All three members of the Board are not required to sign the final report – the chairperson can sign the *Report of the Medical Appeals Board* on behalf of the MAB. If one Board member disagrees with the decision it is important that this, and the reasons for the dissention, is recorded. The report is then given to MSD and a copy sent to the client.

If the report submitted by MSD to the MAB contains factual errors, then the Board needs to ensure that these are corrected in its final *Report of the Medical Appeals Board*.

Sharing the report with the client's regular practitioner

A week after a copy of the report from the Board has been received by the client the MAB co-ordinator will ask the client for their consent to send a copy of the Board's report to the client's regular practitioner. If consent is not provided, the Board's report will not be sent to the client's regular practitioner. The client has the final decision on what is shared with their regular practitioner.

Any attempts to contact the client, whether successful or not, must be fully noted, as must the client's response to the request for consent.

The Board should not send their report to the client's regular practitioner. They can, however, recommend that the client provides the practitioner with a copy of the report once they receive it.

Document and report retention

When the Board has made its decision, all supporting documentation should be scanned on the client's file and should not be destroyed unless it is a copy. This includes any notes taken during the hearing.

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

Board members may want to keep copies at home of decisions for reference purposes once a decision has been made. Copies of the original reports cannot be kept at a member's home. However, if Board members wish to do this, they should ask the co-ordinator to arrange for a copy to be provided which has identifying details of the client removed.

Co-ordinators

Co-ordinators

The co-ordinator's role is to ensure that the MAB process happens in a consistent, efficient and timely manner. They are responsible for completing the internal review and the *Report for the Medical Appeals Board*. The co-ordinator will also act as a contact point for information and requests from all parties involved in on-going appeals.

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

Co-ordinator responsibilities

The co-ordinator is responsible for ensuring that the overall hearing process runs smoothly for their region and that MSD meets the specified timeframes. The co-ordinator is responsible for:

- identifying Board members in the region, in conjunction with the local Health and Disability Team
- maintaining the MAB database with details of the internal reviews, hearings and outcomes for their region
- acting as the primary point of contact for the Board, client and MSD staff
- ensuring the overall hearing process runs smoothly for their region
- completing an internal review, checking the MSD systems to ensure the correct decision has been made. This includes providing a copy of the client's application, medical assessment/certificate and supporting documentation to a Regional Health Advisor (RHA) or a Regional Disability Advisor (RDA) to make a recommendation. They will not have been involved in the original decision. This will include a recommendation for referral to a designated health practitioner if the client has not recently had a designated health practitioner assessment.

  For example, if the RHA provided advice for the original decision, the RDA should provide a recommendation as part of the internal review. If there is no RHA or RDA in the region who can review the case, the co-ordinator will refer to an RHA or RDA in another region. The RHA or RDA will seek assistance from the Principal Health Advisor or Principal Disability Advisor as required
- working with the Board and client when setting a date, time and location for the hearing
- organising an appropriate venue and resources for the hearing
- advising the client and Board members of the hearing details and procedure
- completing and including a copy of the client's application, medical assessment/certificate and supporting documentation
- sending the *Report for the Medical Appeals Board* and related documentation to the Board and the client
- ensuring the client has been given the factsheet *A Guide to Medical Appeal Hearings*
- organising travel for the client to attend a hearing, if required
- ensuring an MSD presenter is available to present findings at the hearing
- advising the MSD presenter of the hearing details
- supporting and assisting the MSD presenter throughout the appeal process

- arranging further medical assessment if referred by the MAB
- advising the client and case manager of the Board's decision
- escalating issues as appropriate

The internal review

An internal review is an internal process to check decisions made by MSD employees. It is an opportunity for MSD to take another look all of the facts and any additional information to ensure the correct decision was made. This is an administrative process that reconsiders:

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

To complete the internal review, the co-ordinator must:

- ensure the appeal is lodged into the MAB database within 24 hours of receipt
- will send the acknowledgement letter to the client
- look at the original decision and what date it was made on
- look at what legislation and policy the decision was made under
- check that the decision was made in line with the legislation and policy
- look at what advice was sought to support the original decision. For example, from Helpline, designated health practitioner, Legal or an RHA or RDA
- ensure the client has been offered a referral to a designated health practitioner if they have not recently had a designated health practitioner assessment
- seek advice from an RHA or RDA not involved in the original decision. The RHA or RDA will recommend if the correct decision was made or if the decision needs to be changed. advise the client the outcome of the internal review – the decision has been upheld or overturned
- update the MAB database with the internal review outcome
- progress the appeal as appropriate

Once all of the information on the original decision and the recommendation from the RHA OR RDA has been considered, the co-ordinator completes the review and makes a decision on how to progress the appeal. If the appeal relates to Veteran's Pension, the MAB co-ordinator will liaise with the Veteran's Pension Centre throughout the process.

The co-ordinator will advise the MSD presenter of the outcome of the internal review and if they may need to attend a MAB hearing.

Further information on the internal review is provided in Appendix 22: Completing the Internal Review.

Outcome of the internal review

Where the internal review outcome is not in favour or only partly in favour of the client (ie the original decision is upheld, or upheld in part), the decision must go before the MAB without any further request from the client.

Where the internal review fully overturns MSD's decision, the issue will be resolved.

Where the appeal is to be considered at a MAB hearing a *Report for the Medical Appeals Board* needs to be completed. The information from the internal review will generally form part of the *Report for the Medical Appeals Board*. Guidance on completing the report is provided in Appendix 23: Completing the Report for the Medical Appeals Board.

Matters that have been referred to the MAB may be reconsidered by MSD if new information is provided prior to the hearing being held and the Board making a decision.

Letters, templates and guides

All the letters and templates referred to in this information pack are provided on the Medical Appeals Board - Letters and reports Doogle page. All letters and reports once completed are to be scanned into CMS for future reference.

As the letters do not print out with a return address, those sites without pre-printed letterhead will need to staple a business card to the top of the letter or copy the letter text onto the relevant service centre letter template.

Letterhead

MSD letterhead is required on all correspondence from the MAB. This is to ensure the perception of impartiality of the MAB is addressed.

All correspondence regarding the internal review is deemed to have been done at the local level, so will use site letterhead. All other correspondence coming from the co-ordinator is deemed to be on behalf of the MAB and therefore requires MSD letterhead.

Escalation of issues

If at any stage the co-ordinator is not happy with the progress of a MAB, they need to escalate the issue to their local manager, Regional Operations Manager, Regional Director, and then to National Office as appropriate.

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

Any issue escalation needs to be noted in the MAB database. Copies of any correspondence regarding any escalation should be scanned into CMS and treated as critical data.

Schedules

Planned appeal hearings are manually scheduled and maintained by the MSD co-ordinator.

How the co-ordinator manages this process is dependent on the delivery model options that are adopted by the particular region or unit.

From time to time it may be necessary to co-ordinate a hearing from another region or site. For example, clients who move regions will require a hearing to be arranged within the region where they are now residing to enable them to attend.

Changes in circumstances

A national spreadsheet is held on all MAB members. It is the co-ordinator's responsibility to ensure this is up to date for their area/region. The co-ordinator will need to contact the local Health and Disability team in any of the following situations:

- a MAB member would like to resign
- additional MAB members are required
- a MAB member changes their address or contact details

Once the change in circumstances is confirmed, National Office must be notified in order to update the national spreadsheet of MAB members.

MSD presenters

MSD presenters

The MSD presenter represents MSD at MAB hearings. They present the *Report for the Medical Appeals Board*, discussing the process MSD followed in reaching its decision.

The MSD presenter is generally the case manager who made the original decision being appealed by the client.

Attending the hearing

If the client chooses to attend the hearing, then the MSD presenter will also need to attend the hearing to present the report. If the client chooses not to attend the hearing, then the MSD presenter must not attend either, and the case will go ahead on papers only. The client may change their mind about attending the hearing or not and the MSD presenter may need to make themselves available if the client chooses to attend or may need to leave a hearing where the client does not show up.

If the client intends to bring a Solicitor, then the MSD presenter should discuss this with the regional Solicitor who will consider if they should attend the hearing.

If the MSD presenter has never presented to a MAB before they may choose to take a support person, such as their local manager, with them. The co-ordinator should be notified in advance if the MSD presenter intends to do this so that the inclusion of this extra person can be noted on the hearing information sent out to the client and Board members.

Contact with Board members

It is important that the staff member presenting the case does not meet or socialise with Board members immediately prior to or immediately after the hearing. They may know members of the Board from working with them, but it is important that they maintain a high level of professionalism and ensure that the MAB maintains its position of impartiality. Discussions held prior to the commencement of the hearing may be misinterpreted by the client.

At the hearing

The hearing is meant to be relatively informal and no one is under oath.

Normally MSD will present their case first, as it is their decision that is being reviewed. Sometimes (depending on the procedure that the Board sets down) this can involve the MSD presenter reading out the *Report for the Medical Appeals Board*. In other cases, the Board may just request that specific parts of the report are read through.

The Board may also ask the MSD presenter questions to clarify points that have been raised in the report. Generally questioning is directed through the chairperson of the Board; however, the Board decides how to run the hearing and may decide that direct questioning is allowed. It is important that the presenter remain calm and respectful during the proceedings and remembers that it is the decision that is under review – not the decision maker.

Once the Board is satisfied that it has enough information, both parties will be asked to leave, and the Board will consider its decision in private. It is important the MSD presenter leaves with the client and does not remain behind with the Board.

Appendix 1: Section 411

Subpart 5—Appeals to medical board

Right of appeal

411 Right of appeal on medical grounds

Any applicant or beneficiary may appeal to the medical board against a decision of MSD that is—
(a) made in relation to the applicant or beneficiary; and
(b) of a kind specified in a row of the following table.

Row	Assistance or obligations	Decision to be appealed
1	Any benefit	Determination— (a) made in reliance on a work ability assessment by a health practitioner under section 118 (work ability assessment); and (b) whether the person assessed is entitled to a benefit and, if so, what kind of benefit
2	Jobseeker support—on the ground of health condition, injury, or disability	Decision that a claim for this benefit is declined, or that this benefit is cancelled, in either case on medical grounds or on grounds relating to a person's capacity for work
3	Jobseeker support—on the ground of health condition, injury, or disability	Determination under section 141(1) that a beneficiary has, while receiving this benefit, the capacity to seek, undertake, and be available for part-time work, and so is required to comply with the work test on and after a date specified in a notice given under section 141(4)
4	Jobseeker support—on the ground of health condition, injury, or disability	Decision to confirm, amend, revoke, or replace under section 141(6) a determination, and that results in a determination under section 141(1) that a beneficiary has, while receiving this benefit, the capacity to seek, undertake, and be available for part-time work, and so is required to comply with the work test on and after a date specified in a notice given under section 141(4)
5	Jobseeker support—on the ground of health condition, injury, or disability	Determination— (a) made in reliance on a work ability assessment by a health practitioner under section 118 (work ability assessment); and (b) whether the person assessed, being a person receiving this benefit, has for the purposes of section 141(1) the capacity to seek, undertake, and be available for part-time work (*see also* section 155)
6	Jobseeker support—except on the ground of health condition, injury, or disability	Determination— (a) made in reliance on a work ability assessment by a health practitioner under section 118 (work ability assessment); and (b) whether the person assessed, being a person receiving this benefit, is entitled on an application or on MSD's own initiative, to deferral of work-test obligations

Row	Assistance or obligations	Decision to be appealed
		under section 155
7	Jobseeker support—except on the ground of health condition, injury, or disability	Decision to decline under section 155 on medical grounds an application— (a) made by a beneficiary granted this benefit; and (b) made under section 155; and (c) for deferral of all or any of the beneficiary's work-test obligations
8	Jobseeker support—on any ground	Decision on medical grounds under section 155 to revoke a deferral granted under section 155 of all or any of the beneficiary's work-test obligations
9	Work-test obligations or work-preparation obligations	Determination— (a) made in reliance on a work ability assessment by a health practitioner under section 118 (work ability assessment); and (b) whether the person assessed, being a person who is subject to work-test obligations or work-preparation obligations, has the capacity to meet those obligations
10	Drug-testing obligation	Decision under section 250(1)(a) to the effect that a beneficiary does not have a good and sufficient reason, on the ground that the beneficiary is addicted to, or dependent on, controlled drugs, for either or both— (a) not complying with a drug-testing obligation: (b) failing to apply for suitable employment that requires candidates to undertake drug tests
11	Supported living payment—on the ground of restricted work capacity or total blindness	Decision that a claim for this benefit is declined, or that this benefit is cancelled, in either case on medical grounds
12	Supported living payment—on the ground of restricted work capacity or total blindness	Decision under section 123(1)(a) that a person receiving this benefit has the capacity to comply with obligations under section 125
13	Child disability allowance	Decision that a claim for this benefit is declined, or that this benefit is cancelled, in either case on the ground that the child is not a child with a serious disability (as defined in section 79)
14	Veteran's pension under section 164 of the Veterans' Support Act 2014	Decision to decline a claim for, or to cancel, this benefit, in either case on the ground of the applicant's or beneficiary's mental or physical infirmity

Appendix 2: Subpart 13 – Child disability allowance

78 Child disability allowance: discretionary grant

(1) MSD may grant a child disability allowance for a child (**C**) if C—

(a) is a child with a serious disability; and

(b) is being cared for—

(i) in the home of C's principal caregiver; or

(ii) in approved weekly accommodation (and the child is cared for by C's parent or guardian during school holidays or weekends).

(2) In subsection (1), **approved weekly accommodation** means accommodation—

(a) that is operated by an approved voluntary organisation; and

(b) the cost of which C's parent or guardian is required to contribute to

Compare: 1964 No 136 s 39A(3)

79 Meaning of child with a serious disability

(1) In this subpart, **child with a serious disability** means a dependent child who—

(a) has a disability; and

(b) because of that disability needs constant care and attention; and

(c) is likely to need such care and attention permanently or for a period exceeding 12 months.

(2) In determining for subsection (1)(b) whether a child needs constant care and attention, MSD must consider whether the child (**C**) requires from another person—

(a) frequent attention in connection with C's bodily functions; or

(b) substantially more attention and supervision than is normally required by a child of the same age and sex; or

(c) regular supervision in order to avoid substantial danger to C or to others.

Compare: 1964 No 136 s 39A(1), (2)

Appendix 3: Section 80 Child disability allowance: MSD may require medical certificate

80 Child disability allowance: MSD may require medical certificate

MSD may require that an application for a child disability allowance be supported by a medical certificate that certifies whether or not, in the opinion of a prescribed health practitioner, the child is a child with a serious disability within the meaning of section 79.

Compare: 1964 No 136 s 39C(1)

81 Child disability allowance: MSD may require medical examination

Before granting a child disability allowance, MSD may require the child to be examined by a prescribed health practitioner nominated for the purpose by MSD.

Compare: 1964 No 136 s 39C(2)

Appendix 4: Part 2 - Subpart 4 Supported living payment

Subpart 4—Supported living payment

Supported living payment on ground of restricted work capacity or total blindness

34 Supported living payment: on ground of restricted work capacity or total blindness: requirements

A person is entitled to the supported living payment if the person—

(a) has restricted work capacity or is totally blind; and

(b) meets the residential requirement; and

(c) is aged 16 years or over.

35 When person has restricted work capacity

(1) A person (**P**) has restricted work capacity if P is permanently and severely restricted in P's capacity for work because of a health condition, or because of injury or disability arising (in either case) from an accident or existing from birth.

(2) P is permanently restricted in P's capacity for work if MSD is satisfied that—

(a) the restricting health condition, injury, or disability is expected to continue for at least the period set out in regulations made under section 418(1)(b); or

(b) P is not expected to live for that period because P's condition is terminal.

(3) P is severely restricted in P's capacity for work if MSD is satisfied that P is incapable of regularly working at least 15 hours a week in open employment.

36 Supported living payment: on ground of restricted work capacity or total blindness: ineligibility

A person (**P**) must not be granted a supported living payment if MSD is satisfied that P's restricted capacity for work or total blindness was self-inflicted and brought about by P with a view to qualifying for a benefit

37 Supported living payment: on ground of restricted work capacity or total blindness: medical examination

(1) This section applies to a person (**P**) who is an applicant for, or who is receiving, a supported living payment on the ground of restricted work capacity or total blindness.

(2) MSD may at any time require P to undergo an examination by a prescribed health practitioner.

(3) The prescribed health practitioner must be agreed for the purpose between P and MSD or, failing agreement, must be nominated by MSD.

(4) The prescribed health practitioner must prepare, and must send MSD a copy of, a report that indicates—

(a) whether P is (or whether there is doubt about whether P is)—

(i) permanently and severely restricted in P's capacity for work; or

(ii) totally blind; and

(b) the grounds on which the opinion given in paragraph (a) is based.

(5) The report must, in the case of doubt referred to in subsection (4) (a), and may, in any other case, indicate a date for review of the permanency or severity, or both, of P's health condition, injury, or disability.

Appendix 5: Part 2

Subpart 2—Jobseeker support

20 Jobseeker support: requirements

A person is entitled to jobseeker support if the person—

(a) has a work gap; and

(b) is available for work; and

(c) meets the age requirement; and

(d) meets the residential requirement; and

(e) has no or minimum income.

21 What is work gap

(1) A person (**P**) has a **work gap** if—

(a) P is not in full-time employment; or

(b) P is in employment but is losing earnings through a health condition or injury (for example, is not working at all or is working reduced hours).

(2) For the purposes of subsection (1)(b), P may treat as a loss of P's earnings a payment made to any other person who acts as P's substitute during the period of P's health condition or injury.

(3) Despite subsection (1)(a), P still has a work gap if—

(a) P is receiving jobseeker support at the rate in clause 1(c), (e), or (f) of Part 1 of Schedule 4; and

(b) during a temporary period, P engages in full-time employment; and

(c) the income from that employment and P's other income (if any) when calculated over a 52-week period is less than the amount that would, under the appropriate income test, reduce the applicable rate of jobseeker support to zero.

22 When person is available for work

A person (**P**) is **available for work** if P—

(a) is available for and seeking full-time employment and—

(i) is willing and able to undertake it; and

(ii) has taken reasonable steps to find it; or

(b) would satisfy paragraph (a) were it not for circumstances that would qualify P for an exemption under the regulations referred to in section 157 from some or all of the work-test obligations; or

(c) is willing and able to undertake full-time employment but, because of a health condition, injury, or disability, is limited in P's capacity to seek, undertake, or be available for it.

23 Jobseeker support: age requirement

An applicant for jobseeker support meets the **age requirement** if the applicant is—

(a) at least 18 years old, in the case of an applicant without a dependent child:

(b) at least 20 years old, in any other case.

24 Jobseeker support: no or minimum income

(1) In this subpart, a person (**P**) has **no or minimum income** if P has—

(a) no income; or

(b) income of less than the amount that would reduce the applicable rate of jobseeker support to zero.

(2) If, during a temporary period, P has enough income to reduce the applicable rate of jobseeker support to zero, but P otherwise meets the requirements for jobseeker support, P's entitlement to jobseeker support is not affected by that income

Appendix 6: Jobseeker support: on ground of health condition, injury, or disability

27 Jobseeker support: on ground of health condition, injury, or disability: application must include certificate

(1) An applicant (**A**) for jobseeker support on the ground of health condition, injury, or disability must include in the application a certificate that complies with this section.

(2) The certificate must be given by a prescribed health practitioner.

(3) The certificate must—

(a) certify that A's capacity for work is affected by health condition, injury, or disability; and

(b) indicate the nature of the health condition, injury, or disability, the extent to which A's capacity for work is affected by it, and the length of time that effect is likely to last; and

(c) contain any other information that MSD may require.

28 Jobseeker support: on ground of health condition, injury, or disability: medical examination

(1) MSD may at any time require an applicant for, or a person receiving, jobseeker support on the ground of health condition, injury or disability (**P**) to undergo an examination by a prescribed health practitioner.

(2) The prescribed health practitioner must be agreed for the purpose between P and MSD or, failing agreement, must be nominated by MSD.

(3) The prescribed health practitioner must prepare, and must send MSD a copy of, a report that indicates—

(a) whether P's capacity for work is affected by health condition, injury, or disability; and

(b) the extent to which that capacity is so affected; and

(c) how long that capacity is likely to continue to be affected.

Appendix 7: Section 141. Jobseeker support: work capacity determination and work test

141 Jobseeker support: work capacity determination and work test

(1) MSD makes every determination under this subsection whether a person granted jobseeker support on the ground of health condition, injury, or disability has, while receiving that benefit, the capacity to seek, undertake, and be available for part-time work (as defined in Schedule 2).

(2) MSD—

(a) must make a determination under subsection (1) promptly after granting the person that benefit; and

(b) may make a determination under subsection (1) at any later time.

(3) A determination under subsection (1) must be made after having had regard to—

(a) the relevant certificate given under section 27, and any relevant report obtained under section 28; and

(b) any relevant work ability assessment under sections 115 to 119.

(4) The consequence of a determination under subsection (1) that the person has, while receiving that benefit, the capacity to seek, undertake, and be available for part-time work is that the person is required to comply with the work test on and after a date specified in a written notice (of the determination's making and effects) that MSD must give the person

(5) The date specified in a written notice given under subsection (4),—

(a) in the case of a new grant of jobseeker support, may be the date on which that benefit is first paid; but

(b) in any case, must not be a date before the date on which MSD reasonably considers the person will receive the notice.

(6) MSD may at any time, whether on the application of the person or otherwise, review a determination under subsection (1) and may confirm, amend, revoke, or replace it and any related written notice given under subsection (4).

Appendix 8: Section 155 Deferral of work-test obligations

155 Deferral of work-test obligations

(1) MSD may defer a person's work-test obligations in accordance with regulations made under section 431 permitting it to do so

(2) MSD must defer a person's work-test obligations in accordance with regulations made under section 431 requiring it to do so.

Appendix 9: Regulation 76 of the Social Security Regulations 2018

76 Deferral of work-test obligations on ground of later health condition, injury, or disability

(1) This regulation applies to a person who MSD is satisfied—

(a) receives jobseeker support; and

(b) is subject to work-test obligations; and

(c) has a health condition, an injury, or a disability that first arose or became apparent after the grant of jobseeker support; and

(2) On the application of a person to whom this regulation applies or of its own initiative, MSD may defer all of that person's work-test obligations.

Appendix 10: Specific obligations: work preparation

120 Work-preparation obligations

(1) Sections 121 to 126 set out a person's work-preparation obligations.

(2) Those obligations are intended—

(a) to facilitate the movement into ongoing employment (as their parenting responsibilities and individual circumstances allow) of beneficiaries to whom those obligations apply; and

(b) to provide opportunities for them to improve their capabilities and preparation for employment; and

(c) to improve social and economic outcomes for them and their dependent children.

121 Persons subject to work-preparation obligations

The following persons must comply with section 124 and may be required to do any of the things set out in section 125:

(a) a person who receives sole parent support and whose youngest dependent child is under the age of 3 years:

(b) a person who would receive sole parent support but has a dependent child under 12 months old and receives jobseeker support instead solely because that child is an additional dependent child (as defined in section 222):

(c) a person who is a work-tested beneficiary and who has been granted under regulations made under section 431 a deferral of that person's work-test obligations:

(d) a person who—

(i) is the spouse or partner of a person who—

(A) receives an emergency benefit or jobseeker support paid at a work-test couple rate; and

(B) has a youngest dependent child aged under 3 years; and

(ii) is not the spouse or partner of a young person to whom section 166 or 167 applies:

(e) the spouse or partner of a person who—

(i) receives a supported living payment on the ground of restricted work capacity or total blindness; and

(ii) has a youngest dependent child aged under 3 years:

(f) a person under the age of 65 granted an emergency benefit under section 17(2)(c) of the New Zealand Superannuation and Retirement Act 2001.

122 Persons not subject to work-preparation obligations

The following persons are not required to comply with section 124 and must not be required to do any of the things set out in section 125:

(b) a person who is a work-tested beneficiary:

(c) a person who is currently exempted under section 158(1) from all the person's work-test obligations.

123 Persons subject to work-preparation obligations if sufficient capacity to comply

(1) The following persons are not required to comply with section 124 but may be required to do any of the things set out in section 125 if MSD decides that the person is capable of complying with the obligation in question:

(a) a person who receives a benefit under section 34 (supported living payment on the ground of restricted work capacity or total blindness):

(b) a person who receives a benefit under section 40 (supported living payment on the ground of caring for another person).

(2) A person referred to in subsection (1)(a) or (b) may be required to attend and participate in an interview with an MSD employee or a person on behalf of MSD for the purpose of helping MSD decide whether the person is capable of complying with any of the work-preparation obligations set out in section 125.

124 General obligation to take all steps to prepare for employment

A person to whom this section applies must take all steps that are reasonably practicable in the person's circumstances to prepare for employment.

125 Work-preparation obligations as required by MSD

A person to whom this section applies must, as required by MSD from time to time,—

(a) undertake planning for employment:

(b) attend and participate in an interview with an MSD employee or a person on behalf of MSD:

(c) report to MSD or a person on behalf of MSD on the person's compliance with the work-preparation obligations set out in this section, and must do so as often as, and in the manner that, MSD reasonably requires:

(d) participate in or undertake any of the following activities specified by MSD that MSD considers suitable for improving the person's work-readiness or prospects for employment:

(i) a work assessment:

(ii) a programme or seminar to increase particular skills or enhance motivation:

(iii) a work-experience or work-exploration activity:

(iv) employment-related training:

(v) an education programme:

(vi) any other activity (including rehabilitation) other than medical treatment, recognised voluntary work, or activity in the community.

Appendix 11: Specific obligations: work ability assessment

115 Obligation to undergo work ability assessment

Sections 116 to 119 out the obligation of a person to undergo a work ability assessment.

116 Persons subject to work ability assessment

The following persons must comply with a requirement under section 118 by MSD that they undergo a work ability assessment:

(a) a person who receives any of the following benefits: jobseeker support, sole parent support, a supported living payment (except as provided in section 117), or an emergency benefit; or

(b) the spouse or partner of a person listed in paragraph (a).

117 Persons not subject to work ability assessment

MSD must not require a person who receives a supported living payment on the ground of restricted work capacity to undergo a work ability assessment if, in MSD's opinion, that person—

(a) is terminally ill; or

(b) has little or no capacity for work, and the person's condition is deteriorating or not likely to improve.

118 Work ability assessment

(1) MSD may at any time require a person to whom this section applies to attend and participate in a work ability assessment to determine, or help determine, all or any of the following matters:

- (a) whether the person is entitled to a benefit and, if so, what kind of benefit:
- (b) if a person granted jobseeker support is subject to a work-test obligation, whether that obligation should be deferred:
- (c) if a person is granted jobseeker support on the ground of health condition, injury, or disability, whether that person has the capacity for part-time work:
- (d) whether the person should be exempted from a work-preparation or work-test obligation:
- (e) whether the person has the capacity to comply with a work-preparation or work-test obligation:
- (f) what is suitable employment for the person for the purposes of section 145:
- (g) what are suitable activities for the person for the purposes of section 125(d) or 146(1)(d):
- (h) what assistance and supports are necessary for the person to obtain employment.

(2) The assessment must be made in accordance with the procedure determined by MSD.

(3) A person who has been assessed under subsection (1) may be required by MSD to undergo a reassessment under that subsection as MSD thinks appropriate.

Appendix 12: Specific obligations: Work test obligations

144 General obligation to be available for suitable employment, etc

A person to whom this section applies must—

(a) be available for, and take reasonable steps to obtain, suitable employment; and

(b) accept any offer of suitable employment, including temporary employment or employment that is seasonal or subsidised; and

(c) attend and participate in an interview for any opportunity of suitable employment to which the beneficiary is referred by MSD.

145 Meaning of suitable employment

In section 144, **suitable employment**, in relation to a person (**P**), means employment that MSD is satisfied is suitable for P to undertake for a specific number of hours per week that MSD determines, having regard to the employment required to satisfy the work test for P.

146 Work-test obligations as required by MSD

(1) A person to whom this section applies must, as required by MSD from time to time,—

(a) undertake planning for employment:

(b) attend and participate in an interview with an MSD employee or a person on behalf of MSD:

(c) report to MSD or a person on behalf of MSD on the person's compliance with the work-test obligations set out in this section or sections 144 and 147, and must do so as often as, and in the manner that, MSD reasonably requires:

(d) participate in or undertake any of the following activities specified by MSD that MSD considers suitable for improving the person's work-readiness or prospects for employment:

(i) a work assessment:

(ii) a programme or seminar to increase particular skills or enhance motivation:

(iii) a work-experience or work-exploration activity:

(iv) employment-related training:

(v) any other activity (including rehabilitation) other than medical treatment, recognised voluntary work, or activity in the community:

(e) undertake and pass a drug test in accordance with sections 147 to 151.

(2) Subsection (1)(d) applies whether or not a person is subject to a sanction for failing to comply with a work-test obligation.

(3) If MSD requires a person to undertake an activity under subsection (1)(d), MSD must take reasonable steps to arrange for the person to undertake that activity.

147 Obligation to undertake and pass drug test

(1) A person to whom an obligation under section 144(a), 144(c), 146(1)(d)(ii), or 146(1)(d)(iv) applies must undertake and pass a drug test by a specified date if—

(a) a potential employer or training provider requests the drug test; and

(b) the drug test is lawfully requested and undertaken; and

(c) the drug test is a compliant drug test (see section 148).

(2) The obligation under subsection (1) to undertake and pass a drug test is included in, forms part of, and does not arise apart from, the obligation under section 144(a), 144(c), 146(1)(d)(ii), or 146(1)(d)(iv).

(3) A drug test is lawfully requested and undertaken if it is requested and undertaken for a lawful purpose (for example, for a lawful health or safety purpose), and it does not matter that the employer or provider requesting the drug test is not authorised or required by or under this Act to compel the person to undertake it.

(4) A drug test under this section is presumed to be lawfully requested and undertaken unless the contrary is proved.

148 Compliant drug test defined

A **compliant drug test** is a drug test that complies with the requirements prescribed by regulations made under section 431.

149 Failing drug test

(1) For the purposes of this Act, a person is taken to have failed an evidential drug test requested under section 257 if the person fails a screening test and waives the right to an associated evidential drug test.

(2) A potential employer or training provider may disclose, or authorise the drug test provider to disclose, to MSD that a person who has undertaken a drug test under section 147 has failed the drug test.

(3) MSD may act on the information disclosed under subsection (2) unless MSD has reason to believe that it is not reliable (for example, MSD may have evidence to the contrary).

(4) Consent of a person who has undertaken a drug test under section 147 to disclosure under subsection (2) is not required.

150 Use of drug test result

MSD may, in accordance with regulations made under section 431, use the result of a drug test undertaken under section 147 and disclosed to MSD under section 149.

151 Costs of drug test

(1) MSD may, in accordance with regulations made under section 431(1)(c), reimburse a potential employer for the costs of a drug test undertaken by a person under section 147 requested by that employer.

(2) Subsection (1) does not apply to the costs of an evidential drug test if the person waives the right to the evidential drug test in the situation specified in section 149(1).

Appendix 13: Good and sufficient reason for non- compliance

249 Good and sufficient reason for non-compliance: default by MSD

A good and sufficient reason for failure to comply with a requirement or obligation set out in section 233 includes default by MSD if—

(a) compliance was dependent on any assistance specified by MSD; and

(b) MSD failed to provide that assistance, whether at all or to the extent or in the manner specified.

250 Good and sufficient reason for failure to comply with drug-testing obligation

(1) A person (**P**) has a good and sufficient reason for not complying with a drug-testing obligation, or for failing to apply for suitable employment that requires candidates to undertake drug tests, or for both, if MSD is satisfied that P—

(a) is addicted to, or dependent on, 1 or more controlled drugs; or

(b) is undertaking addiction treatment; or

(c) is awaiting assessment for, or an opportunity to undertake, addiction treatment; or

(d) is taking, in the dosage prescribed, a controlled drug lawfully prescribed for P by a health practitioner; or

(e) falls within another ground or grounds prescribed for the purposes of this subsection by regulations made under section 418(1)(j).

(2) In subsection (1), **addiction treatment** means treatment that—

(a) is for addiction to, or dependence on, 1 or more controlled drugs; and

(b) is provided by a health practitioner, or other person, who is professionally engaged in the treatment or rehabilitation of people who are using, or have used, controlled drugs; and

(c) is of a kind approved by MSD.

251 Good and sufficient reason for failure to supervise dependent child

A good and sufficient reason for failure to comply with an obligation under section 146(1)(d) includes supervision of a dependent child during hours when it would be unreasonable to expect a dependent child of the person in question to be without that person's supervision.

Appendix 14: Regulation 85 Social Security Regulations 2018

85 Good and sufficient reason for specified failures to comply: ground specified

(1) This regulation prescribes for the purposes of section 250(1)(e) of the Act a ground on which a beneficiary may for the purposes of section 153 or 154(e) of the Act have a good and sufficient reason for either or both of the following specified failures:

(a) not complying with a drug testing obligation under section 147 of the Act:

(b) failing to apply for suitable employment that requires candidates to undertake drug tests.

(2) The ground prescribed by this regulation is that—

(a) the person has completed a screening process that has identified the person (based on information the person provided) as—

(i) a user of (even if not dependent on, or addicted to) 1 or more controlled drugs; and

(ii) a person who requires or may require support in addressing the person's use (including, without limitation, the causes of the person's use) of 1 or more controlled drugs; and

(b) the person has (in any manner) agreed to receive services for drug issue assessment and assistance for a period that—

(i) is reasonable for that purpose; and

(ii) has been recommended by a suitably qualified provider of services of that kind; and

(c) the period referred to in paragraph (b) has not expired.

(3) **Recognised services for drug issue assessment and assistance** means services—

(a) to assess any needs of the recipient for support in addressing the recipient's use (including, without limitation, the causes of the recipient's use) of 1 or more controlled drugs, give the recipient support of that kind, or both; and

(b) that will be, or have been, provided by a suitably qualified provider of services of that kind.

Appendix 15: Veterans' Support Act 2014

164 Entitlement to veteran's pension under War Pensions Act 1954 by reason of infirmity

(1) A veteran is entitled to a veteran's pension if, at the commencement of this Part, he or she—

(a) was receiving a veteran's pension under the War Pensions Act 1954 by reason of infirmity in accordance with section 70(1)(b)(ii) of that Act; and

(b) has not reached the New Zealand superannuation qualification age.

(2) The veteran ceases to be entitled to a veteran's pension under subsection (1) on reaching the New Zealand superannuation qualification age.

(3) If the veteran is also entitled to weekly income compensation under subpart 4 of Part 3, the veteran may elect to receive weekly income compensation instead of a veteran's pension.

(4) If the veteran elects to receive weekly income compensation, all of the provisions of subpart 4 of Part 3 apply to the veteran.

(5) A veteran who has received weekly income compensation under subpart 4 of Part 3 may not elect to receive a veteran's pension under this section.

161 Entitlement to veteran's pension

(1) A veteran is entitled to a veteran's pension if—

(a) the veteran has qualifying operational service: and

(b) the veteran has reached the New Zealand superannuation qualification age and is eligible to receive New Zealand superannuation.

(2) A person is entitled to a veteran's pension if—

(a) the person has reached the New Zealand qualification age and is eligible to receive New Zealand superannuation; and

(b) the person was immediately before the commencement of this Part, entitled to receive a veteran's pension under the War Pensions Act 1954.

(3) This section is subject to section 167.

Appendix 16: Report for the Medical Appeals Board

Report for the Medical Appeals Board

This report provides the Medical Appeals Board with background information about the decision that is being appealed on medical grounds.

Note: *If the decision which led to the request to appeal is incorrect you do not need to complete this template. For further information please refer to the Medical Appeals Board: Process Overview and Information Pack.*

Medical Appeals Board Co-ordinator details:

Medical Appeals Board Co-ordinator (Responsible for the internal review): _____

Community Link/Service Centre: _____

Client details:

Client name: _____

Client number (SWN): _____

Section 1 – Decision being appealed

*Which of the following is the client appealing on medical grounds? (Please **delete** the statements and benefits that do not apply)*

- **The decision to decline or cancel on medical grounds** [Child Disability Allowance; **or** Jobseeker Support; **or** Supported Living Payment on the ground of health condition, injury or disability; **or** Veteran's Pension (under 65 years of age and with a medical condition, injury or disability that is not related to their service)]

- **The decision to require the client to comply with part-time work obligations –** [Jobseeker Support; or partner of a main beneficiary; **or** Sole Parent Support]

- **The decision to require the client to comply with full-time work obligations –** [Jobseeker Support; **or** partner of a main beneficiary]

- **The decision to require the client to comply with work preparation obligations –** [Jobseeker Support; or Supported Living Payment on the ground of health condition, injury or disability; **or** Supported Living Payment on the ground of caring for a patient requiring care; **or** partner of a main beneficiary; **or** Sole Parent Support]

- **The decision that the client does not have a good and sufficient reason for not complying with a drug test obligation and/or failing to apply for work that requires drug tests, on the basis that they are addicted to or dependent on controlled drugs –** [Jobseeker Support; **or** partner of a main beneficiary; **or** Sole Parent Support]

Date of Decision: *[DD/MM/YYYY]*

Date this application for appeal was received: *[DD/MM/YYYY]*

Section 2 – Summary of facts

Note: *Any verbal discussions that are likely to be referred to in the hearing should be documented and included in the summary of facts.*

Note: *Information should be provided in chronological order.*

Outline the legislation and policy used to make the decision being appealed:

(Quote the relevant sections of legislation and policy guidelines (Map) that were relied on when making the decision. This should be the law that applied at the time the decision was made and can include primary legislation, regulations, Welfare Programmes and/or Ministerial Directions.)

Describe the client's circumstances, eg sole parent, three children:

List the client's full benefit history:

List the client's employment history (if applicable):

Attach:
- *any relevant information, eg relevant system notes*
- *the client's medical certificate history (relevant medical certificates and include any relevant designated health practitioner's reports)*
- *any work ability assessments completed – eg Self-Assessment Questionnaires, Work Ability Assessments*

List any advice sought and received from other parties and any relevant information that supports the decision made, including the section of the legislation being used. For example, Regional Health or Regional Disability Advisors, Principal Advisors, Helpline. (Copies of written advice or information must also be attached.)

Outline the full summary of facts that lead to the decision being appealed (in chronological order):

Section 3 – Case for the client

Note: *Do not introduce elements of MSD's case in this section.*

Make sure you include all of the points that the client (and the representative) wants considered and any additional facts that are relevant to the case. The client's case must be fairly represented.

What is the reason the client has given for appealing the decision? (Please delete the statements that do not apply)

For example:

- ***MSD has the facts wrong*** *(set out the facts the client claims MSD has wrong and the reasons for this)*

- ***MSD has not considered all the facts*** *(set out the facts including those which the client claims have not been considered and show how they have been)*

- ***MSD has wrongly interpreted the law*** *(set the client's interpretation of the relevant legislation)*

- ***MSD has not properly exercised discretion in relation to work obligations for Jobseeker Support*** *(set out how the client believes the discretion should have been exercised)*

State why the client wants to review the original decision:

- *Have you fairly represented the case for the client?*
- *Are there any facts that have occurred that are relevant to the case and you should include?*
- *Have you included all of the points that the client would like considered?*

Section 4 – Case for the Ministry of Social Development

Clearly and concisely summarise the reason the client has given for requesting an appeal and outline MSD's case, including evidence relied upon. If the client has provided the reasons why they are appealing the decision, then it is appropriate to set out MSD's response to those reasons.

State how the legislation and/or policy are applied to the appeal.
Justify your decision based on law, policy and the facts of the case.
You should explain clearly how the facts as presented by MSD "fit" with the law and policy.

Outline the client's capacity to work (if relevant):
For example:
- *how the client's medical condition impacts on their ability to work*
- *the client's capacity to work at least 15 hours per week*
- *what the client's service needs are*
- *how the client is likely to progress towards work*
- *the client's participation and planning for employment*
- *the client's undertaking of work-related activities or programmes*
- *the client's undertaking of any rehabilitation to improve work readiness or prospects for employment.*

Defend MSD's reasons on this page.

Section 5 – Conclusion

In this section:
- *state that MSD considers the decision under appeal to have been made correctly*
- *provide a brief and concise statement which outlines the reasons for the decision.*

Medical Appeals Board Co-ordinator
(Responsible for the internal review): _____

Title: _____

Signature: _____

Date: ___/___/___

Appendix 1 – Information

List all the documents attached to this report that relate to the decision being appealed, this should include:

- *any application, document(s), statements, reports lodged with, received by, or prepared for the Chief Executive*
- *a copy of the decision appealed against*
- *any reports setting out the considerations taken into account when the decision was made.*

For example and not limited to:

- *Completed Benefit Application Form*
- *The document which requests the appeal*
- *Work Capacity Medical Certificate/s dated xx/xx/xxxx*
- *Relevant Medical Certificates dated xx/xx/xxxx*
- *Designated health practitioner's report dated xx/xx/xxxx*
- *Self-Assessment Questionnaires dated xx/xx/xxxx*
- *Work Ability Assessment dated xx/xx/xxxx*
- *Signed employment plan/s dated xx/xx/xxxx*
- *Legislation applied and relevant Map pages (where necessary)*
- *Any correspondence sent to the client*
- *Clear view of process followed for MSD's decision*
- *MSD system note/s '..... ' dated xx/xx/xxxx*
- *Advice received from other parties dated xx/xx/xxxx*
- *MSD's process for the assistance being appealed (clearly presented).*

Appendix 17: Report for the Medical Appeals Board – Hearing on the reason for the delay

Report for the Medical Appeals Board – hearing on the reason for the delay

Before considering the appeal itself, the Medical Appeals Board must determine whether the application for appeal on medical grounds was received within the three-month time limit, and if outside the three-month time limit, whether there was a good reason for the delay.

Medical Appeals Board Co-ordinator details:

Medical Appeals Board Co-ordinator (responsible for the internal review): _____

Community Link/Service Centre: _____

Client details:

Client name: _____

Client number (SWN): _____

Section 1 – Summary of facts

Note: *Any verbal discussions that are likely to be referred to in the hearing should be documented and included in the summary of facts.*

Note: *Information should be provided in chronological order.*

Outline the decision made:

List the steps taken to advise the client of the decision:

What appeal rights were given to the client and in what form:

List contact (if any) from the client to Work and Income during the three months after notification:

Was any correspondence returned to MSD during this period (eg returned with 'returned to sender' or 'gone no address'):

Outline any other interactions with the client during the three months after notification:

Date of Decision: *[DD/MM/YYYY]*

Date this application for appeal was received: *[DD/MM/YYYY]*

Section 2 – The law

Section 412 of the Social Security Act 2018 states:

412 Appeal must be begun within 3 months of notification or further allowed period

(1) An appeal to the medical board under section 411 must be begun within—

(a) 3 months after the date on which the applicant receives notification of the decision; or

(b) a further period the board has under this section allowed.

(2) An appellant is treated as receiving notification of the decision in line with regulations made under section 449 if—

(a) a decision is made in respect of which an appeal lies to the board; and

(b) notice of the decision is given to the appellant in a way prescribed by those regulations; and

(c) the notice is (in the absence of evidence to the contrary) taken to have been received by the appellant as provided by those regulations.

(3) The board may allow a further period within which the appeal may be begun if—

(a) the appeal is not to be, or has not been, begun within that 3-month period; and

(b) an application is made to it, either before or after the end of that 3-month period, to allow a further period; and

(c) the board considers there is good and sufficient reason for the delay.

Section 3 – Case for the client

Note: *Do not introduce elements of MSD's case in this section.*

Include any information the client has included in their application relating to why they've requested an appeal of the decision at this time. Only include details relating to the out of time issue.

What is the reason the client has given for the delay in appealing the decision?

Section 4 – Case for the Ministry of Social Development

Outline why MSD considers the appeal cannot be heard.

For example:
- *the time that's lapsed since the original decision was made*
- *if the delay would be prejudicial to MSD, ie it creates difficulty in contacting witnesses or information relating to the facts of the case has been destroyed*
- *the letter to the client containing the decision and appeal rights was not returned to MSD (date sent)*
- *the client contacted MSD about other matters within the three months of notification of the decision*
- *The client has appealed or reviewed other decisions made in respect of their benefit within the three-month timeframe so they are aware of the process.*

Defend MSD's reasons on this page.

Section 5 – Conclusion

In this section:
- *state that MSD considers the appeal to be out of time and there to be no good reason for the delay*
- *provide a brief and concise statement which outlines the reasons for the decision*

Set out:
- *The outcome required by MSD*
- *The reasons for the desired outcome*
- *The reasons why the applicant's desired outcome is inappropriate/appropriate*

Medical Appeals Board Co-ordinator
(responsible for the internal review): _____

Title: _____

Signature: _____

Date: ___/___/___

Appendix 1 – Information

List all the documents attached to this report that relate to the out of time request for an appeal:
- *a copy of the letter regarding the original decision being appealed*
- *any communications to or from the client in the three months following the original decision.*

For example and not limited to:
- *Completed Benefit Application Form*
- *The document which requests the appeal*
- *Work Capacity Medical Certificate/s dated xx/xx/xxxx*
- *Relevant Medical Certificates dated xx/xx/xxxx*
- *Designated health practitioner's report dated xx/xx/xxxx*
- *Self-Assessment Questionnaires dated xx/xx/xxxx*
- *Work Ability Assessment dated xx/xx/xxxx*
- *Signed employment plan/s dated xx/xx/xxxx*
- *Legislation applied and relevant Map pages (where necessary)*
- *Any correspondence sent to the client*
- *Clear view of process followed for MSD's decision*
- *MSD system note/s '..... ' dated xx/xx/xxxx*
- *Advice received from other parties dated xx/xx/xxxx*
- *MSD's process for the assistance being appealed (clearly presented).*

Appendix 18: Report of the Medical Appeals Board

MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

IN THE MATTER of the Social Security Act 2018

AND

IN THE MATTER of an application for Appeal by

Client title and full name
Client Address
Town/City

against a decision of The Ministry of Social Development

REPORT OF THE MEDICAL APPEALS BOARD

MEDICAL APPEALS BOARD MEMBERS

Chairperson/Board Member	*[Name]*
Board Member	*[Name]*
Board Member	*[Name]*

HEARING AT

[Physical location, eg office/site]
[Physical location, eg street address]
[Town/city]

HEARING DATE

Date: *[DD/MM/YYYY]*
Start time: *[HH:MM]*

APPEARANCES

*Please **delete** the statement that does not apply:*

No appearances were made at the hearing.

OR

The hearing was attended by: [Provide the name and position of person(s) who attended the hearing – for example the client, client's support people and the MSD presenter].

DECISION BEING APPEALED

Give details of the decision being appealed.

Copy from the Report for the Medical Appeals Board *if this is accurate, eg application for Supported Living Payment was declined, Jobseeker Support client was required to comply with part-time work obligations etc.*

FINDINGS

The Board considered all the information that was presented.

The report should:

- *provide clear reasons for the decision*
- *summarise all the points raised by both parties*
- *state the findings of facts that relate to the appeal*
- *refer to the relevant legislation*
- *ensure the facts support the decision and are consistent with the relevant legislation.*

- *Note: A copy of your report will be provided to MSD staff and the client, therefore your finding must provide clear reasons for your decision.*

DECISION

*Please **delete** the statements that do not apply:*

The Board agreed to uphold the original decision.

OR

The Board agreed uphold a part of original decision.

OR

The Board agreed to overturn the original decision.

- *If a panel member is dissenting from the decision, please record the reasons.*

MEDICAL APPEALS BOARD

Date of hearing: *[DD/MM/YYYY]*

The Chairperson confirms that this report reflects the decision of the Medical Appeals Board.

NAME (print)	CHAIRPERSON	DAY	MONTH	YEAR
NAME (print)	BOARD MEMBER	DAY	MONTH	YEAR
NAME (print)	BOARD MEMBER	DAY	MONTH	YEAR

Appendix 19: Report of the Medical Appeals Board - Hearing on the reason for the delay

MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

IN THE MATTER of the Social Security Act 2018

AND

IN THE MATTER of an application for Appeal by

Client title and full name
Client Address
Town/City

against a decision of The Ministry of Social Development

REPORT OF THE MEDICAL APPEALS BOARD

Hearing on the reason for the delay

When an appeal is requested more than three months after the original decision, the Medical Appeals Board must determine whether there was a good reason for the delay in requesting an appeal before considering the original decision.

MEDICAL APPEALS BOARD MEMBERS

Chairperson/Board Member	*[Name]*
Board Member	*[Name]*
Board Member	*[Name]*

HEARING AT

[Physical location, eg office/site]
[Physical location, eg street address]
[Town/city]

HEARING DATE

Date:	*[DD/MM/YYYY]*
Start time:	*[HH:MM]*

APPEARANCES

*Please **delete** the statement that does not apply:*

No appearances were made at the hearing.

OR

The hearing was attended by: *[Provide the name and position of person(s) who attended the hearing – for example the client, client's support people and the MSD presenter].*

SUMMARY OF FACTS – REASON FOR THE DELAY

Give the facts relevant to the reason for the delay in requesting the appeal.

Include a summary of:

- *the client's circumstances*
- *events relating to the original decision*
- *any communications between MSD and the client (and vice versa) relating to the original decision, appeal rights, or other matters in the period between the decision being made and the appeal being requested.*

FINDINGS

The Board considered all the information that was presented.

The report should:

- *only include details relating to the reason for the delay in requesting the appeal*
- *provide clear reasons for the decision on whether there was a good reason for the delay*
- *summarise all the points raised by both parties*
- *state the findings of facts that relate to the delay*
- *refer to the relevant legislation*
- *ensure the facts support the decision and are consistent with the relevant legislation.*

Note: A copy of your report will be provided to MSD staff and the client, therefore your finding must provide clear reasons for your decision.

DECISION

*Please **delete** the statement that does not apply:*

The Board agreed that there was a good reason for the delay and will hear the appeal of the original decision.

OR

The Board found that there was not a good reason for the delay and has declined to hear the appeal of the original decision.

If a panel member is dissenting from the decision, please record the reasons.

MEDICAL APPEALS BOARD

Date of hearing: *[DD/MM/YYYY]*

The Chairperson confirms that this report reflects the decision of the Medical Appeals Board.

NAME (print)	CHAIRPERSON	DAY	MONTH	YEAR
NAME (print)	BOARD MEMBER	DAY	MONTH	YEAR
NAME (print)	BOARD MEMBER	DAY	MONTH	YEAR

Appendix 20: Glossary of Terms

Internal review

An internal review of the request for an appeal will be completed in two stages.

The first stage will include a review of the benefit application to ensure it was completed correctly. MSD has the ability to correct an incorrect decision at any time, regardless of whether the request for an appeal was submitted within the three-month timeframe or not.

The second stage of the internal review allows the co-ordinator to ensure that all documents pertaining to the original decision are collated and attached to the *Report for the Medical Appeals Board*.

Agent

A person is authorised to act on behalf of the client only when the client has confirmed this in writing. Written confirmation must state the nature of the relationship between client and the authorised agent.

Co-ordinator

MSD will appoint at least one co-ordinator for each Work and Income region to coordinate MAB. The co-ordinators are the primary point of contact for the Board, the client and staff of MSD.

Deferral

Some clients on Jobseeker Support will have some of their work obligations temporarily deferred. Clients on Jobseeker Support with a deferral do not have work obligations while the deferral is in place.

When a deferral is applied the client will be subject to work preparation obligations and may be required to take part in certain activities.

A deferral may be applied when the client is limited in their capacity because they are temporarily sick, injured or disabled or clients with a subsequent child that is less than one year of age.

Deferrals are considered by a case manager and applied based on a client's circumstance. The client does not need to make an application for a deferral.

Judiciary

The branch of the state that decides disputes between parties independently and in accordance with the law – ie Judges and tribunal members.

Jurisdiction

The authority of a body to decide a particular issue. The sorts of disputes that the MAB may consider are set out in section 411 of the Social Security Act 2018.

If a dispute has arisen in another country, or the dispute may have already been decided by another judicial body, there could be issues about jurisdiction.

Legislation

Legislation includes any law passed by Parliament called an Act or statute.

Regulations, Ministerial Directions and Welfare Programmes are also legislation.

Note: An Act before it is passed by Parliament is called a Bill.

Map

Map stands for Manuals and Procedures.

Map contains MSD's policies on how to apply legislation – primarily the Social Security Act 2018.

MSD presenter

The MSD presenter is generally the original decision maker. If the client attends the hearing, the MSD presenter is required at the hearing to present MSD's case. This will generally be done through presenting a brief summary of the process that was followed and the decision that was reached, and through answering any questions from the MAB on that process and decision.

Policy

Policy has two parts:

1. Policy made by governments. In MSD we call this sector policy. Governments will introduce legislation to give effect to their policies in law.

2. Policy made after a law is passed, which provides guidance to employees of a government department on how to apply the law. In MSD we call this operational policy. This sort of policy is only a particular government department's view of how the law should be applied. It does not have legal force and should not be applied if it is inconsistent with the law.

Sickness, injury or disability

"Sickness, injury, disability or total blindness" directly reflects the legislative wording on the grounds for benefit eligibility. This term is used interchangeably with "health condition, injury or disability".

Substantive decision

The substantive decision is the original decision that was made by MSD.

Appendix 21: The Medical Appeals Database

All medical appeals are logged into a central database. This allows details of appeals to be logged and viewed from any site in the country and assists with the monitoring of standards.

Appropriate resolution of appeals in the MAB Database

When an appeal is lodged it is an opportunity to revisit the original decision and ensure that legislation has been applied correctly. Once completed there are four possible resolutions for an appeal. These are withdrawn, overturned, partially upheld or upheld.

Withdrawn

If the client no longer wishes to pursue their appeal they may withdraw their request for an appeal. This officially ends the process and there are no further appeal rights. Before withdrawing an appeal, the co-ordinator must look at the reasons why the client is withdrawing. If they are withdrawing because the decision has changed in the client's favour (ie overturned), then the co-ordinator must update the system appropriately.

Overturned

It is important that if a decision has been wrongly made, MSD takes steps to correct the decision. This may be because of new information being received which alters MSD's position. If the original decision has been changed for whatever reason, the co-ordinator will record the appeal as overturned and not withdrawn in the MAB database.

Partially upheld

This is similar to an overturned decision, but only part of the decision has changed.

Upheld

When a second look has been taken and the decision is confirmed as lawful and correct this decision is upheld.

Link to MAB Database

To access the MAB database, users must enter the user name and password that they use to access Outlook.

The MAB database is available at: http://waicctprod.ssi.govt.nz/pls/apex/f?p=121%3A1.

Using the MAB Database

The existing MAB database is a web-based tool for recording and tracking all medical appeals lodged with Work and Income.

For information on how to use the MAB database, refer to the *Medical Appeals Database User Guide* on the Medical Appeals Board - Letters and reports Doogle page.

Appendix 22: Completing the Internal Review

The internal review is a chance for MSD to re-examine the decision being appealed. It is important that any new information provided by the client is taken into account at this point.

The internal review is completed for both the substantive issue and the out-of-time issue where the appeal is lodged three months from the time the decision was communicated in writing.

When the *Report for the Medical Appeals Board* template does not need to be completed

If the internal review finds that the original decision was clearly incorrect, the co-ordinator does not need to complete the *Report for the Medical Appeals Board* template. In this case, the co-ordinator will ensure that any decisions made are documented in the MAB database and in CMS. The MAB database must always be updated to reflect the decision and fully noted.

Below is an example of what a note in the MAB database could state:

> *On [date] [include details of what has happened] an internal review has led to the decision being overturned. This has been checked with the Service Centre Trainer who has agreed that the decision needs to be overturned. The reasons for this are The outcome letter has been sent to the client advising that the decision has been overturned. Internal review findings have been sent to the case manager to follow up the necessary actions of….*

How to make decisions?

The first step is to ascertain what the legislation is and what the criteria is for the decision under appeal.

The Social Security Act 2018 provides that the Chief Executive of MSD is responsible for the administration of the Social Security Act, and grants all benefits. The Chief Executive has delegated decisions about benefit entitlement to staff. Staff need to understand relevant legislation and policy in order to determine correct benefit entitlement.

Sources of law

Types of law that govern our decision making are:

- Acts of Parliament

  Some relevant examples are the Social Security Act 2018 or the Residential Care and Disability Support Services Act 2018 . These are referred to as the legislation. Acts of Parliament (legislation) are the primary source of law for MSD's decision making.

- Regulations

  An example is "Appeals to medical board" (regulations 261 and 262) of the Social Security Regulations 2018.

Mandatory versus discretionary

Legislation, such as the Social Security Act 2018, is made up of rules and criteria that must be met before certain things can occur.

For example, certain criteria must be met before a benefit can be granted. These are mandatory. An example of mandatory criteria is the stand down which all clients must be subject to when they apply for benefit, or the age a person must be before they qualify for NZ Superannuation.

You can often tell if these conditions are mandatory because the legislation will say "must". Section 113 (1) of the Social Security Act 2018 states that:

> *A beneficiary must without delay notify MSD of a change in the beneficiary's circumstances if—*

Where the law is not mandatory, the decision maker will usually have the power to make a choice. If the decision maker has a choice it is referred to as using their discretion. Sometimes the discretion is limited and sometimes it is wide. An example of a wide discretion is Emergency Benefit under section 63 of the Act.

If discretion is used, the Legislation will say "may" or will specifically refer to discretion. For example, section 63 provides:

> *MSD may grant an emergency benefit…….*

Discretion and policy

MSD has extensive policies that apply to the benefit system. MSD policy is found in Map in Doogle.

The policy must not be rigidly applied. The process must be consistent but the client's individual circumstances must be considered and room made for individual circumstances. The decision must, however, always be lawful and comply with the legislation.

If a decision has been made contrary to policy and to a client's disadvantage, then there must be a very compelling reason to do so.

Fact finding

The second step is to find out all the information that is relevant to the decision that is being made. A client's full and correct entitlement cannot be established without first knowing all of the relevant facts. This is often known as finding out the full circumstances of the client.

Establishing the facts requires obtaining reliable evidence (including any application forms) and seeking any further information that is relevant. An example of this further information may include the Regional Health Advisor (RHA) or the Regional Disability Advisor (RDA) recommendation, and any other supporting documentation that was used in making the original decision.

It is important to fully record the facts and retain any documentary evidence. By doing this at the time of application, it will ensure that a proper decision is made using all the relevant facts and, if an appeal is lodged, anyone else involved in the appeal will not have to recreate the full factual situation.

If the co-ordinator has doubts about the decision this should be raised with the manager, co-ordinator or site expert who may seek an opinion from Legal Services or National Office.

Obtaining a legal opinion

Legal Services is called upon from time to time to provide advice on appeals to either case managers, investigators or managers. This often happens when there are difficult or unusual legal issues involved.

Helpline and National Office can also be used to assist in determining that the correct decision has been made in the first instance.

Legal advice and legal submissions

Legal advice, legal submissions and the way they should be used in relation to MAB hearings differs.

When completing an internal review or writing up a *Report for the Medical Appeals Board* the co-ordinator can seek **legal advice** from the regional legal advisor if they are unsure of how the legislation and/or policy apply to the specific case. This advice will probably be provided in email form addressed to the co-ordinator as a staff member of MSD. This advice is internal to MSD and is protected by legal privilege. It should not be disclosed to anyone outside MSD, quoted in a *Report for the Medical Appeals Board* or attached as a document to the *Report for the Medical Appeals Board*. It is internal legal advice and should be treated as such.

In addition, the co-ordinator should also avoid writing "we have received legal advice and it supports our decision etc." This is inappropriate as it does not further MSD's case (it is not an argument or reasoning supporting the decision) and can only be viewed as trying to place pressure on the MAB.

Note if the co-ordinator wants to rely on and use the legal advice provided by the local legal advisor, the co-ordinator should ask them to check the *Report for the Medical Appeals Board* when drafted to ensure that the way the legal advice is used is accurate.

If there is any doubt as to how to use a piece of legal advice, then the co-ordinator should contact the local regional legal advisor.

Occasionally it may be necessary to attach a **legal submission** to a *Report for the Medical Appeals Board* or to provide a legal submission at the request of the MAB. This is different to legal advice as it is a submission prepared specifically for the purpose of presenting to the MAB. If MSD is required to present a legal submission to a MAB, the co-ordinator should make it very clear when speaking to the legal advisor that the submission will be presented at the MAB and it is not simply internal legal advice.

The Report for the Medical Appeals Board template

Once the co-ordinator has gathered the relevant documents, legislation and policy, and is satisfied that the decision has been made correctly, they need to set out the key reasons why the original decision is considered to be correct in the *Report for the Medical Appeals Board* template. This report is sent to the Board members and the client prior to the hearing.

If no evidence can be found to support the decision made, the co-ordinator will need to reconsider MSD's position.

It is important that if a decision has been wrongly made, MSD takes steps to change the decision. MSD can correct a wrong decision at any stage in the process.

An appeal should not be seen as any sort of attack on MSD, or the original decision maker's integrity. It is a person's right to challenge a decision.

Appendix 23: Completing the Report for the Medical Appeals Board

The *Report for the Medical Appeals Board* is a crucial document in the MAB process as it tells the story to the Medical Appeals Board which is not familiar with the events of the case. It may also help clarify matters for the client so that, although they may not agree, they may understand why the particular decision was made. The report is also to ensure that the process is open and the client knows fully how MSD came to the decision.

The template for the *Report of the Medical Appeals Board* is on the Medical Appeals Board - Letters and reports Doogle page.

Report content

Decision being appealed

Outline the decision that the client has asked to be appealed, including:

- What is the decision the client is appealing, eg the decision to decline the CDA.
- An indication of what the client is seeking, eg entitlement to the CDA as the child requires more attention/supervision than normally required by a child of the same age and gender, the client wants….
- What benefit assistance is involved.
- The date the decision was made.

This should accurately and concisely summarise what the appeal is about. It is important because it will focus the mind of the report reader to what is at issue.

It is helpful to identify what issues are in contention, but what is being appealed remains the final outcome that MSD came to, rather than the individual factors considered by the decision maker which led to that outcome.

Summary of facts

Set out the facts relating to the actual decision, including a description of the client's present circumstances and what income support, if any, the client is currently receiving. If the report refers to any documents or applications then they must be attached to the report. For more information see the section titled: List of documents.

The file and computer records should have all the details needed to write the summary of facts. However, sometimes it may be necessary to obtain further facts. This may mean that the co-ordinator has to contact the client and ask them for further information. The co-ordinator will note the date and timeframe of any requests for extra information in the MAB database, as this may affect timeliness.

Only relevant facts for which MSD has reliable sources of information can be included in the report. Opinion should not be included here, and the use of emotive language should be avoided.

The report should follow a chronological (time) order in setting out what happened.

The Law and policy

In this section, set out the particular law and policy that affects the decision.

The correct legislation should be sourced from Map under the heading of the topic of the appeal. The Introduction page will generally provide a "link" to the appropriate legislation. For example, for an appeal to the Medical Appeals Board, the report will refer to the information from:

> *Income Support – Core policy – Reviews and Appeals – Medical Appeals Board – Section 411 Social Security Act 2018*

The report should clearly distinguish between legislation and policy.

The report must use the wording that was in force when the decision was made. The Social Security Act often changes and it is important that the report include the correct wording.

The report will quote the legislation and policy relied on. Often, for simplicity of reading, these can be attached with the list of documents. Alternatively, the whole section can be copied into the report. The report should refer to the section numbers in the legislation. Map does not have any paragraph numbers so it is not possible to refer to paragraph numbers.

If there are any questions or concerns about the legislation or policy relevant to the appeal, advice should be sought from the local Service Centre Trainer, manager or Legal Advisor.

Client's case

It is important that the client's case is fairly represented. This includes any points raised by their representatives.

The report should clearly state in this section why the client wants to appeal the original decision. It should include all of the points that the client wants considered and any additional facts that are relevant to the case. This information can often be retrieved from the request for an appeal, or they may have discussed some of their reasons with the case manager or co-ordinator. It is inappropriate to introduce elements of MSD's case in this section.

Please note: It is not sufficient to simply refer to an attached document.

Case for the Ministry of Social Development

The MSD case should be summarised and the evidence relied on or to be given by any witnesses in support, set out.

Set out how the facts upon which MSD relies fit:

- the law
- the policy guidelines
- why the law does not allow the client to receive what they want after looking at all the relevant circumstances.

Areas of conflict over the facts of the case should be set out in full.

If the client's appeal is that MSD has the facts wrong, then set out why MSD considers it has the correct facts and the reasons for this.

If the client's appeal is based on MSD not considering all facts, set out all the facts including those that the client claims have not been considered and show how they have been considered.

If the client's appeal is that MSD has wrongly interpreted the law, then set out how the law has been interpreted and why this is considered the correct interpretation.

If the client has provided the reasons why they have appealed the decision, then it is appropriate to set out MSD's response to those reasons. This may assist the client in understanding why the particular decision was made even if they do not agree with it.

Conclusion

In this section, set out:

- that MSD considers the decision under appeal to have been made correctly
- a very brief and concise statement of the reasons for the decision.

For example:

> MSD submits that, having regard to the circumstances of this particular appeal, the decision to decline the Child Disability Allowance was appropriate considering in particular the legal requirement that the child did not require more supervision than any other child of the same age and gender as advised by the specialist in their report dated 12 October 2012.
>
> Considering the medical requirements for eligibility of the Child Disability Allowance – it was considered that the criteria were not met to grant assistance.
>
> Accordingly, the decision to decline assistance was correct and should be upheld.

List of documents

Set out a list of the relevant documents in chronological order and attach a copy of all the relevant documents. Such documents may include:

- the request for an appeal
- the application forms (for the form of assistance that is under appeal)
- the medical certificates
- the Designated health practitioner reports
- the specialist reports
- a completed Self-Assessment Questionnaire
- a Work Ability Assessment
- any relevant notes in CMS
- all referenced legislation and policy

Layout

The report should look neat and tidy, professional and should be easy to read and follow.

The report should:

- have a logical order
- include a list of documents in chronological order
- summarise facts in chronological order
- refer to the legislation then the Policy
- use bullet points to clarify a list.

Use white space as cramming too much onto a page makes it difficult to read.

Do not copy the legislation from Doogle without tidying it up by removing unnecessary brackets and spaces. For example, the following is copied without any tidying up. It is very difficult to follow in this format:

> The [chief executive] may, [in the [[chief executive]]'s discretion] [and subject to such conditions as [[the [chief executive]]] thinks fit to impose], grant an emergency benefit under [this Act] on account of hardship to any person who satisfies the following conditions, namely:
>
> *(a) That by reason of age, or of physical or mental disability, or of domestic circumstances, or for any other reason, he is unable to earn a sufficient livelihood for himself and his dependants (if any); and*
> *(b) That he is not qualified to be granted any benefit [...]:*

When excess brackets are removed the text will appear as follows:

> The chief executive may, in the chief executive's discretion and subject to such conditions as the chief executive thinks fit to impose, grant an emergency benefit under this Act on account of hardship to any person who satisfies the following conditions, namely:
>
> *(a) That by reason of age, or of physical or mental disability, or of domestic circumstances, or for any other reason, he is unable to earn a sufficient livelihood for himself and his dependants (if any); and*
>
> *(b) That he is not qualified to be granted any benefit [...]:*

Numbering

Number every page of the report.

When numbering appendices, the numbering should be clear and distinct from the numbers on the report itself.

Language

Use simple, plain English words where possible. Sometimes it is necessary to use complex words as precision is required and it is important to use the correct terminology.

Do not use emotive language, but set out the facts in a neutral way. For example, instead of:

> The client took far too long to get back to me with their reasons for the delay in submitting their request for an appeal

Say:

> It took 4 weeks for the client to provide reasons for the delay in submitting their request for an appeal.

Avoid using jargon acronyms, particularly internal jargon. Often MSD staff will understand what is being spoken about but the client does not. By having clear communication, it will help the client understand the reasoning for the decision.

Common examples are referring to computer programmes such as CMS etc.

The report should be consistent in how things are referred to. If the person is a client, always refer to them as a client. If they are a beneficiary, always refer to them as a beneficiary. If a term is capitalised, always try to use the capital letter when referring to the same thing.

Sentences

Sentences should be short and simple. Each sentence should have one idea only. Try to use active sentences. Avoid using passive sentences. That is, try:

> *The client applied for Supported Living Payment*

Do not say:

> *An application for Supported Living Payment was made by the client.*

If in doubt, refer to the MSD style guide which is available in Doogle at the following link:

http://doogle.ssi.govt.nz/helping-you/communications-advice/writing-editing/styleguide/index.html

Process after the report is completed

Copies of the final *Report for the Medical Appeals Board*, all related documentation and the relevant legislation must be sent to the client and each MAB member prior to the hearing.

Appendix 24: Frequently Asked Questions

Q. The MAB is considering the hearing on the papers when the client arrives and has a valid reason for their lateness. What do we do?

A. If the MSD presenter is able to come back and present their case then there is no reason why the case cannot proceed. If the MSD presenter is unable to present then adjourn to another day to allow both parties state their case.

Q. The Board adjourns because it wants additional information, which letterhead does it use?

A. MSD letterhead, the client and MSD both get a copy of this letter.

Q. There has been significant service delays getting the decision appealed, is the MAB able to just overturn the decision?

A. No. The MAB must apply the law and policy to the facts of the client's case before overturning MSD's decision. The MAB could mention and apologise for the delay.