



Reviews of Decision

Report Writers

Information Pack

*To be read in conjunction with the
Panel Members Information Pack*



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

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Overview

A review of decision is an opportunity for:

- the applicant to advise that they disagree with a specific decision made
- the Ministry to ensure that legislation has been applied correctly, this includes the appropriate exercise of discretion

An applicant can apply in writing for a Review of Decision (this may be in a letter, email or an application form) where they have received formal notification of (and do not agree with) a decision which has been made under the provisions listed in section 397 of the Social Security Act 2018. This includes decisions made under:

- any provisions of (or of any regulations made for the purposes of any provisions of) Parts 1 to 6 and Schedules 1 to 5 of the Social Security Act 2018
- a special assistance programme approved by the Minister under section 100 or 101 of the Social Security Act 2018
- any regulations in force under section 437 (regulations: issue and use of entitlement cards);
- any provisions of, or of regulations made under, the Residential Care and Disability Support Services Act 2018; or
- Part 6 of the Veterans' Support Act 2014, subject to section 175(2) of that Act; or
- Part 1 of the New Zealand Superannuation and Retirement Income Act 2001; or

the Family Benefits (Home Ownership) Act 1964.

Jurisdiction - can the BRC review the decision?

The BRC cannot review a decision (i.e., the BRC does not have jurisdiction) if:

- it is not a decision listed in section 395-399 of the Social Security Act 2018
- the matter has been heard previously by the BRC or by another judicial body
- the review is outside the three-month review period and the committee considers there is not a good reason for delay

What can't be reviewed under sections 395-399?

Some decisions made by the Ministry are not able to be appealed to the Appeal Authority (and therefore have no right to be reviewed by a BRC):

Decisions made on medical grounds

- any decision made on medical grounds for Supported Living Payment (health condition, injury or disability), Jobseeker Support (health condition, injury or disability), Child Disability Allowance or Veterans Pension
- any decision made (on medical grounds or on grounds relating to capacity to work) to require a Jobseeker Support (health condition, injury or disability).

There are separate appeal provisions for decisions made on medical grounds. Information can be found on the following doogle page:

<http://doogle.ssi.govt.nz/map/income-support/core-policy/reviews-and-appeals/medical-appeals-board.html>

Some employment assistance decisions including:

- Flexi-wage self-employment assistance
- Vocational Services for People with Disabilities (community participation only)

Some Social Housing decisions including:

- The decision not to review the clients housing need
- Any decision made by a housing provider regarding tenancy- related matters such as:
 - the determination of a market rent rate
 - rent arrears
 - damages debt or
 - whether someone can join into a tenancy agreement

Service complaints

A review of decision may include a complaint about the service the applicant received.

For example,

A client contacts the Ministry several times, asking her case manager to contact her. The case manager does not return these calls, so the client contacts the call centre. The next appointment is weeks away.

In this case it is appropriate for the BRC to:

- comment on the delays and note that this is regrettable
- ask the Ministry to look into the delays and explain or apologise to the applicant then look at the reviewable decision

Other decisions made by the Ministry that are not reviewable

- where the application for benefit has lapsed under section 297 of the Social Security Act 2018 -
- any decision that has been made on defining job seeker activities included in an existing Job Seeker Agreement
- Student Allowance and Student Loans under the Education Act 1989

Some decisions have restricted right of review. For example, only the decision relating to income and asset testing of Residential Care Subsidy applications can be reviewed by a BRC. Decisions about eligibility or conditions for funding are not able to be reviewed by a BRC. Nor is the decision to grant or decline a Residential Care Subsidy Loan.

Matter heard previously

An applicant has the right to have their decision reviewed once. If the decision has already been reviewed, it cannot be reviewed again. If the review has been heard by a Benefits Review Committee previously and the applicant has not appealed the decision to the Social Security Appeal Authority, suggest to them that they should do this if they are still unhappy with the decision.

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

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

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

If you think there may have been a procedural error or fundamental breach of natural justice that has meant that the applicant has been disadvantaged or an issue around bias or impartiality - Contact your regional legal advisor

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

Exceptions

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

Fundamental Breaches of Natural Justice

- the applicant has not been informed of the Benefits Review Committee hearing; or
- the applicant has not been given the opportunity to be heard (explain their view of the case) this can either be in person or the opportunity to submit material in writing and to respond to any material or written submissions the Ministry produces.

In these situations, the BRC would need to be either:

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

Fundamental errors (not compliant with sections 391-394, Schedule 7 of the Social Security Act 2018 or regulation 247 Social Security Regulations 2018)

Description of Error	What to do – best remedy of error
Benefits Review Committee does not have the right make up e.g. 2 panel members instead of 3 –as per clause 5, Schedule 7 of the Act.	New Benefits Review Committee to be arranged (original BRC treated as invalid)
<p>Ministry staff member on the Benefits Review Committee has had prior involvement in the decision being reviewed – as per clause 6, Schedule 7 of the Act</p> <p>For more information refer to the Disqualification section of the Panel Members Information Pack, page 20.</p>	New Benefits Review Committee to be arranged (original BRC treated as invalid)
<p>Benefits Review Committee does not make a decision to:</p> <ul style="list-style-type: none"> • Uphold – Confirm; or • Partially Uphold – Vary; or • Overturn – Revoke the original decision as per regulation 247 of the Social Security Regulations 2018 	New Benefits Review Committee to be arranged (original BRC treated as invalid)
Benefits Review Committee does not give reasons for its decision, as required by regulation 247 of the Social Security Regulations 2018	<p>Reconvene original Benefits Review Committee to correct the omission.</p> <p>If the reconvened Benefits Review Committee are unable to give reason(s) for its decision a new BRC will have to be arranged (original BRC treated as invalid)</p>

Note: If you have any queries in relation to the above please contact the Client Advocacy and Review Team in National Office or by email at review_client_rep_team@msd.govt.nz

Hearing Types

Out of Time Reviews – Establishing if a Review is Out of Time

The Social Security Act 2018 gives applicants three months to apply for a review of decision from the date they were notified of the decision. This is considered to be received on the fourth day after it was posted unless there is evidence to the contrary.

However, the Ministry in all cases, should ensure that these cases are in fact 'Out of Time'.

To assist with this, the following considerations should be included, and the BRC Site Coordinator should have checked that this has been done, either the BRC Co-Ordinator, Review of Decision assigned champion or assigned Report Writer or Manager.

The Application for a review of decision must be considered as received within the three-month timeframe if:

- The person was not informed of the decision under review
- The person was not given review rights
- The decision letter was returned to the Ministry
- The person has not elected to use MyMSD, and there is no proof of receipt
- The person has contacted the Ministry during the three months period and asked questions about the decision being reviewed

If there is evidence to support that the person had not been advised of the decision, including that they had three months to review that decision, then it is fair to conclude that the review is not out of time.

Co-Ordinator's: All Ministry systems should be checked to ensure that any/all information pertaining to the Review of Decision has been included and considered. Appendix 3 lists these systems as they are presently, but any new platforms of storage are not excluded and should be also checked.

It may be appropriate at this stage to ensure that the Ministry has checked for any/all ministerial correspondence related to this review. (National Office, Regional Services etc)

If, the Ministry concludes that the review is **not out of time**. This will proceed as a in time Review of Decision.

NOTE: The 'date of the decision and application for a review of decision' in the HIYA - RoD system will need to be amended/edited to reflect this so that review is completed on the substantive decision and not via an Out of time hearing.

Out of time - Internal Review

Once the Ministry has established that the Review is Out of Time, the first stage of the process is to complete an Internal Review.

The Internal Review is not completed on the out of time issue itself but should be completed on the substantive (original) issue to establish whether the original decision under review was correct.

The only exception to this is if a review is received more than seven years after the decision was made. In these circumstances the Internal Review will not need to be completed.

Should the Original Decision be upheld / partially upheld then the Ministry must complete the Report to the Benefit Review Committee to consider whether there are **considerations or good reasons** for the delay.

Out of Time Reviews – consulting with the Applicant

The Ministry has established that the Review is deemed to be Out of Time, and therefore it must now consider the legislation which gives the Benefits Review Committee the ability to hear reviews outside the three months, following the applicant being notified of the decision.

In line with this, the Ministry must consider if there are **considerations or good reasons** for the delay in requesting a review of Decision.

The applicant must be given the opportunity to provide reasons for the delay of the review if they are not included in their ROD.

If the original request for review does not state the reasons, the Ministry must contact the applicant and explain the situation.

Give the applicant the opportunity to explain why the review was lodged out of time.

Out of Time Report to the BRC – Considerations – Good and Sufficient Reasons for delay

The Ministry must take into account, all **considerations** below and/or any **good reasons** provided by the applicant, for the delay in requesting a review of Decision.

Each case will need to be considered individually.

Determining entitlement and eligibility for assistance can be challenging and difficult to understand.

The examples given below are not an exhaustive list. The person may have other good reasons, not outlined, that could still be a good and sufficient reason for their delay in applying for a review.

- Are there any barriers, specific to the person that may have contributed to the delay? For example, but not limited to, illness, disability, language, access to information, trauma, or stress.
Stress can affect a person in different ways and may inhibit their ability to focus on, and understand, the decision. Fear of retribution can also contribute to a person's stress levels. These factors may contribute to why a review has been submitted late

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- Was it reasonable for the person to require more time to understand or question the decision? In some cases, an Applicant may only realise that they have grounds to review after receiving advice from an advocate or lawyer.
 - Applicants may also have delayed a review while a criminal prosecution was in progress.
 - The time that has lapsed since the original decision was made. This is an additional prompt for the Report Writer to conduct a thorough check of all MSD systems for contact with the person (about the decision or even other decisions) up to the date that the review was received.
 - Other good reason provided by the Applicant.

Only the Benefits Review Committee can allow a person's substantive review to be heard when they have applied outside of the three-month review timeframe.

Out of Time – Completing the BRC Report

The Report to the Benefits Review Committee should be completed on the Out of Time issue only.

The Committee must consider whether there were other considerations / a good reason for the delay.

If the committee finds that there were no other considerations / a good reason for the delay, the committee should decline to hear an application for review more than 3 months after notification of the decision.

It should not consider the substantive issue.

The applicant does not have the right of appeal to the Social Security Appeal Authority, if a committee determines that there are no grounds for the decision to be reviewed outside of the three-month timeframe.

If the committee decides that there were other considerations / a good and sufficient reason for the delay, then the committee will allow the review to proceed to the substantive hearing.

The committee will consider the substantive issue at another time after both parties have adequate time to prepare submissions.

Process if matter outside the jurisdiction of the Benefits Review Committee

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

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

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

Stages of the review and appeal process

There are three stages to the review and appeal process.

Stage 1 – Internal review

This is an administrative process only. When the applicant applies for a Review of Decision, it is appropriate for the Ministry to take another look at the original decision before the case goes to the Benefits Review Committee.

The original decision should be revisited. Consider the following:

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

The original decision maker completes a Internal Review (template available in HIYA) and makes a recommendation.

The Internal Review is forwarded to the manager who will make a decision on the internal review.

The manager will decide too either:

- uphold the decision
- uphold the decision in part or
- overturn the decision.

Note: HIYA should be updated with the outcome of the internal review. The applicant must be advised by letter of the decision made. All letters are available in HIYA.

Stage 2 – Benefits Review Committee

Where the internal review outcome is not favourable or only favourable in part for the applicant, the decision must go before the Benefits Review Committee without any further request from the applicant.

Where the internal review fully overturns the Ministry's decision the issue will generally be resolved. However, the applicant may still want to go to the BRC. This is their right, and it can occur even though there may be no issue for the BRC to consider.

Where a decision is to go to the BRC for a hearing a Report to the Benefits Review Committee needs to be completed. The information from the internal review will generally form part of the Report to the Benefits Review Committee. (The template for this report is available in HIYA)

Just because the matter has been referred to the BRC, this does not prevent the matter being re-looked at if new information is provided.

A committee has three members. Two members are Ministry of Social Development representatives and the third is a Community Representative appointed by the Minister for Social Development. Committee members should not have had any prior involvement in the case to be heard.

The committee must act independently of the Ministry and make a decision within the law. The committee will look at the relevant Law and Policy and how this should be applied in the particular situation and whether the decision was fair and reasonable in line with the relevant Law and Policy.

Stage 3 – Appeal Authority hearing

Where the original decision is upheld (or partially upheld) by the Benefits Review Committee, the applicant may apply for an appeal for the matter to go before the Social Security Appeal Authority (SSAA).

The SSAA is an independent judicial tribunal administered by the Ministry of Justice.

The Ministry is required to file a report setting out all the relevant information relating to the BRC decision. This report is known as the Report to SSAA report. A copy of this report is sent to the applicant. The Ministry's Appeal Officers (part of Legal Services) prepare the Report to SSAA.

RoD/ BRC legislation

Sections 391 - 394 of the Social Security Act 2018

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

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

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

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

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

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

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

Committee

393 Benefits review committee

- (1) Every benefits review committee is established, and operates, in accordance with Schedule 7.
- (2) MSD must refer an application made under section 391 to the appropriate benefits review committee.
- (3) In determining what benefits review committee is the appropriate benefits review committee, MSD must have regard to—
 - (a) the location of the MSD office in which was made the decision of MSD that is the subject of the application; and
 - (b) the location of the applicant’s usual or last known place of residence; and
 - (c) how the applicant can conveniently, and at minimum expense, attend in person, or otherwise take part in, a review hearing.
- (4) The appropriate benefits review committee may be the benefits review committee of an MSD office other than the MSD office in which was made the decision of MSD that is the subject of the application.

Example

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

Procedure

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

Regulations made under section 451 provide for the following matters:

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

Schedule 7 Benefits review committees

1 Establishment

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

2 Membership

Every benefits review committee must consist of—

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

3 Member to represent community's interests

- (1) This clause applies to the member appointed under clause 2(a).
- (2) The member holds office on any terms and conditions that—
 - (a) are not inconsistent with this Act; and
 - (b) the Minister thinks fit.
- (3) The member—
 - (a) may be paid remuneration at a rate and of a kind determined in accordance with the fees framework; and
 - (b) is entitled to be reimbursed for actual and reasonable travelling and other expenses in accordance with the framework.
- (4) The member is not, just because of membership of the committee, to be treated as employed in the service of the Crown for the purposes of—
 - (a) the State Sector Act 1988; or
 - (b) the Government Superannuation Fund Act 1956.

4 Secretarial and administrative services

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

5 Quorum, and committee's decision, at meetings

At any meeting of the committee, —

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

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

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

Sections 397-400 of the Social Security Act 2018

The legislation, which sets out the jurisdiction of the Benefits Review Committee, is found in Section 397-399 of the Social Security Act 2018. These sections refer to the Social Security Appeal Authority and, therefore in turn, apply to the Benefits Review Committee.

397 Decision under specified social assistance enactments

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

398 Decision under reciprocity agreements

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

399 Decision to recover excess amount

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

Row	Person who may appeal	Decision of MSD that may be appealed
<i>Decision to recover from spouse or partner who misleads MSD excess amount beneficiary obtained</i>		
1	A beneficiary's (B's) spouse or partner (S)	A decision of MSD— <ol style="list-style-type: none"> (a) to recover from S an amount in excess of the amount to which B was by law entitled; and (b) made under regulations made under section 444; and (c) that includes the decision that, in MSD's opinion, S has made a false statement to or otherwise misled MSD, in relation to any matter; and (d) that includes the decision that, as a result of S making a false statement to or otherwise misleading MSD, the benefit or an instalment of benefit was paid in excess of the amount to which B was by law entitled; and (e) that is not a decision or determination of MSD that relates only to the temporary deferral, rate, or method or methods of debt recovery from B
<i>Decision to recover from spouse or partner apportioned excess amount beneficiary obtained by fraud</i>		
2	A beneficiary's (B's) spouse or partner (S)	A decision of MSD— <ol style="list-style-type: none"> (a) to recover from B an amount in excess of the amount to which S was by law entitled; and (b) made under regulations made under section 444; and (c) that includes the decision that all or part of proportion B (as referred to in regulations made under section 444) is an amount in excess of the amount to which B is by law entitled or to which B has no entitlement, and an amount obtained by fraud by B; and (d) that includes the decision that S either knew, or ought to have known (even if S did not know), of the fraud by B; and

		(e) that is not a decision or determination of MSD that relates only to the temporary deferral, rate, or method or methods of debt recovery from B
<i>Decision to recover from spouse or partner unapportioned excess amount beneficiary obtained by fraud</i>		
3	A beneficiary's (B's) spouse or partner (S)	A decision of MSD— (a) to recover from S an unapportioned amount in excess of the amount to which B was by law entitled or to which B has no entitlement; and (b) made under regulations made under section 444; and (c) that, for the purposes of S's right of appeal under this row, includes the decision that B obtained by fraud an amount in excess of the amount to which B was by law entitled or to which B has no entitlement; and (d) that is not a decision or determination of MSD that relates only to the temporary deferral, rate, or method or methods of debt recovery from B
<i>Decision to recover excess amount from deceased beneficiary's estate</i>		
4	The personal representative of a deceased beneficiary (B)	A decision of MSD— (a) to recover from B's estate an amount in excess of the amount to which B was by law entitled; and (b) made under regulations made under section 444
<i>Decision to recover excess amount from deceased spouse's or partner's estate</i>		
5	The personal representative of a beneficiary's (B's) deceased spouse or partner (S)	A decision of MSD— (a) to recover from S's estate an amount in excess of the amount to which B was by law entitled; and (b) made under regulations made under section 444; and (c) that, for the purposes of the personal representative's right of appeal under this row, includes the decision that B was paid an amount in excess of the amount to which B was by law entitled

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

400 Appeal must be begun within 60 working days of notification or further allowed period

- (1) An appeal under section 397, 398, or 399 must be begun within—
 - (a) 60 working days after the date on which the appellant receives notification of—
 - (i) the confirmation or variation (if the appeal is against a decision specified in section 395(a)); or
 - (ii) the decision (if the appeal is against a decision specified in section 395(b)); or
 - (b) a further period the appeal authority 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 authority; 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 appeal authority may allow a further period within which the appeal must be begun if—
 - (a) the appeal is not to be, or has not been, begun within that 60 working days ; and
 - (b) an application is made to it, before or after the end of that 60 working days , to allow a further period; and
 - (c) the appeal authority considers there is good and sufficient reason for the delay.

Regulations 246-247 of the Social Security Regulations 2018 provide additional information about the Review of Decision process.

Social Security Regulations 2018: regulations 246-247

Reviews by benefits review committee

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

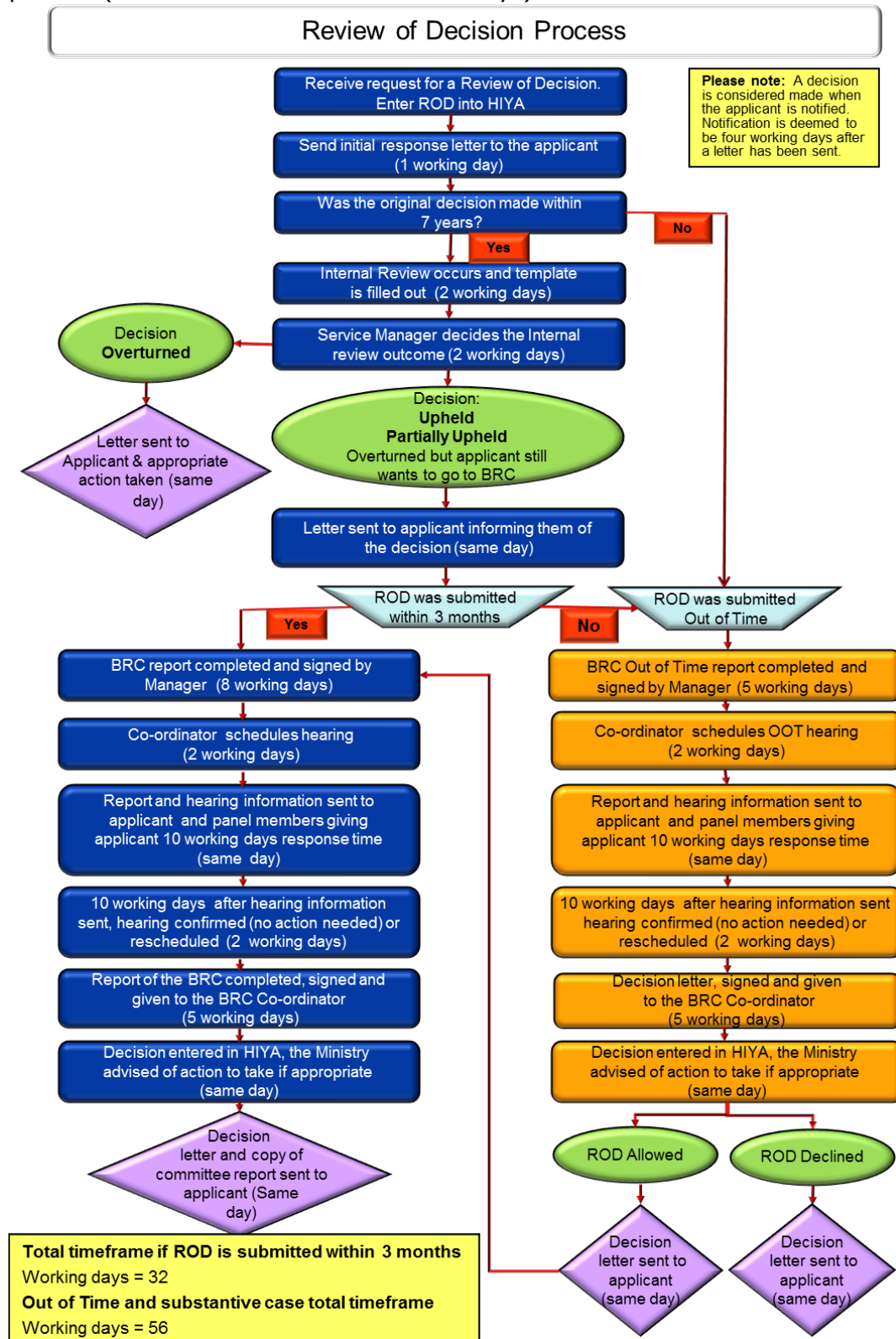
An application for review under section 391 of the Act must be made in writing.

247 Procedure on review

- (1) The committee must, as soon as practicable after it receives an application for review, review the decision.
- (2) In reviewing the decision, the committee may, in accordance with the Act, decide to confirm, vary, or revoke the decision.
- (3) The committee must give written notice of its decision on the review to the applicant for review.
- (4) The written notice must include the reasons for the decision, and advice that the applicant has, under sections 395 to 399 of the Act, a right to appeal to the appeal authority against the decision if the committee has, under this regulation, confirmed or varied MSD's decision.

Review of Decision Process Flowchart

The following flow chart and explanation are a general overview of the BRC process (timeframe shown as maximum days).



HIYA-ROD

The National Standard is that all benefit reviews are logged into a central database (HIYA). This allows details of benefit reviews to be logged and viewed from any site in the country and assists with the monitoring of the National Standards. HIYA clearly shows the benefit review process and which stage each review is currently at.

Template letters and reports have to be used and are accessed through HIYA.

HIYA makes extensive use of e-mail to update case managers, BRC co-ordinators and managers (or equivalents in specialised units) of progress in a review. This includes:

- notifying case managers, BRC co-ordinators and managers at key points such as when a review is logged and when it is resolved
- reminding case managers and BRC co-ordinators that a particular stage is nearly due to be resolved
- alerting case managers, co-ordinators and managers that a particular stage was not resolved by the expected date.

HIYA will ask you to enter key details about the applicant and details of what the benefit review is about. This is to allow some pre-filling of letters etc and will provide information about reviews for policy, training and information request purposes.

Appropriate Resolution of RODs in HIYA

When an ROD is lodged it is an opportunity to revisit the original decision and ensure that legislation has been applied correctly, this includes the appropriate exercise of discretion. Once completed there are five possible recorded resolutions for an ROD. These are overturned, upheld, upheld in part, withdrawn and deleted.

Withdrawn

If the applicant no longer wishes to pursue their ROD they may withdraw their application. This officially ends the process and there are no further review rights. Before withdrawing an ROD you must look at the reasons the applicant is withdrawing. If they are withdrawing because the decision has changed in the applicant's favour (i.e., overturned) you must update the system appropriately as overturned.

Overtaken

It is important that if you see that a decision has been wrongly made you should take steps to correct the decision. This may be because of new information being received which alters the Ministry's position. If the original decision has been changed for whatever reason this should be recorded in HIYA as overturned and not withdrawn.

Upheld in Part

This is similar to an overturned decision but only part of the decision has changed. For example, if a Temporary Additional Support review concerns the

inclusion of two items and after a second look it is found that one of these items should be included while the other should not this decision has been upheld in part.

Upheld

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

Deleted

If a record is a duplicate or was not intended as an ROD (i.e., Medical Appeal or Service Complaint) this may be deleted. Please note that many of the records submitted for deletion can actually be edited to resolve the error.

To get into HIYA-ROD:

For more information about how to use HIYA please access the "HIYA ROD Training Pack" through the following link:

<http://doodle.ssi.govt.nz/working-here/learning-development/coaching-mentoring/review-decisions/index.html>

Process for multiple Review of Decisions or more than one client

Some scenarios can make an ROD seem quite complex. These include where there is more than one decision being reviewed or where there is more than one client.

Where there is more than one decision being reviewed you need to establish if the decisions were interconnected. An example might be if someone is reviewing the establishment of a debt as well as the recovery or the cancellation of a benefit and the subsequent creation of a debt. If the decisions are interconnected, it is fine to deal with them in the one report. If there are two unrelated decisions, such as the commencement date of Temporary Additional Support and declining a Training Incentive Allowance these must be dealt with in two separate records. Two separate reports are required in this instance. This way the statistics in HIYA-ROD will more accurately reflect the amount of reviews that are upheld or overturned. In these situations, it is sensible to hear the two issues at the same hearing though so as to ensure it is convenient for the client.

Another situation is where you have a couple who have had a decision that affects them both. The first thing that needs to be established is whether one or both of them have review rights. When a debt is created on both clients record both clients will receive review rights. Where a benefit for a couple is declined review rights only go to the primary partner. The easiest way to check this is to look at the letters that went out. If only one partner has review rights only one HIYA-ROD record is required. Where both partners receive review rights and both review the decision, there needs to be two records in HIYA-ROD to ensure that the recorded results are statistically valid. However, to ensure that staff do not have the arduous task of completing two largely identical reports it is acceptable to complete one report for both parties and attach it to both records.

If you come across one of these scenarios and you're not sure what to do please feel free to contact a member of the National Office Client Advocacy and Review Team.

Shared care - third party involvement

Sometimes a caregiver seeks a review of decision because the Ministry does not consider them to be the principal caregiver for their child and are therefore not eligible for a benefit, usually Sole Parent Support.

When a review of this type is received the Ministry needs to reconsider who the principal caregiver of the child is in terms of sections 195-196. The outcome of such a review could potentially affect the entitlement of the caregiver who was determined to be the principal caregiver and granted a 'Sole Parent' rate of benefit.

Natural justice principles require that an affected person has an opportunity to be heard. Where sections 195-196 are in dispute both parents are potentially affected, therefore both have a right to be involved in any decision that may affect their own entitlement even if they were not the party who sought the review.

The BRC process remains unchanged in sections 195-196/shared care cases. However, it is recommended that the Ministry advise the other caregiver that a review of decision has been lodged which could affect their benefit entitlement. This should be done via letter as soon as the RoD is acknowledged.

Any response or fresh evidence received by the Ministry from the principal caregiver must be documented, considered as part of the Internal Review and included in the Report to the BRC.

If, after a reasonable time, no response is received from the principal caregiver, it must be presumed that they have nothing further to add to the evidence already with the Ministry. This should also be included in the Report to the BRC.

Below is the Link to the Doogle site for RoD templates, which includes a letter template that has been developed for these situations.

<http://doogle.ssi.govt.nz/business-groups/organisational-integrity/client-advocacy-and-review/review-and-client-representatives/letter-templates/letter-templates.html>

If you have any queries, please feel free to contact your legal advisor or the Client Advocacy and Review Team at review_client_rep_team@msd.govt.nz

Confidential Information

A key part of the Ministry's case may rely on information supplied by an informant who wishes to remain anonymous. A request for anonymity may, for example, be for fear of retribution if the applicant discovers who has provided information to the Ministry.

If the Ministry wishes the committee to consider any such confidential information, then the Ministry cannot withhold that information from the applicant. If the allegations are to be used against the applicant, then the applicant has a right to know the statements made against them and to have an opportunity to respond to such statements. However, this does not necessarily mean the disclosure of the identity of the informant to the applicant. If the identity of the informant is withheld, then this may affect the weight of the evidence, in its consideration by the committee. The Ministry should ensure all identifying factors regarding the informant are removed.

Examples

Example 1: A Review of Decision is received for an applicant who has been declined a Youth Payment. Part of your decision has been based around the contents of the report from a Youth Payment Assessment Provider (Barnardos). This report compiled by Barnardos contains information and quotes made by the applicant's parents/caregivers on a confidential basis.

Generally, a copy of the full assessment report should be provided to the BRC and the applicant so that it is transparent what information was used by the Ministry to make its decision.

There may be some situations where certain, sensitive, information should be withheld as disclosure would involve an "unwarranted disclosure of the affairs of another individual." under the Privacy Act, or where it is necessary to "protect the privacy of an individual" under the Official Information Act. - You should always seek legal advice on a case-by-case basis if you are unsure if information should be withheld.

Example 2: An investigation into an applicant's benefit entitlement is completed and part of this investigation required witness statements from a third person. This person may wish to remain anonymous, but the statement is detailed and helped you make the decision that the applicant was not entitled to that particular benefit assistance. You may use this statement but must remove name of the third person or any identifying factors that may lead to the identification of that person.

Note: If in doubt, refer the issue to the Ministry's Privacy Officer for further advice. Click link below to Doogle site for information on Legal services.

Review Process Stage One: The Internal Review

Introduction

The first stage in the process is to re-examine the decision being reviewed. It is important that any new information provided by the applicant is taken into account at this point.

When you do not have to complete the internal review template

If you find that the original decision made was clearly incorrect it may be unnecessary for you to complete the Internal Review template. A discussion with your manager or another senior staff member may be sufficient. Ensure that any decisions made are documented on the applicant's file, in HIYA-ROD and in CMS. HIYA should always be updated to reflect the decision and fully noted.

Below is an example of what a note in HIYA-ROD could state:

"On [date] [include details of what has happened] has led to the decision being overturned. This has been checked with the service manager who has agreed decision needs to be overturned. An Internal Review template has not been completed. The outcome letter has been sent to the applicant advising that the decision has been overturned"

How we make decisions?

The first step is to ascertain what the law is and what the criteria is for the decision under review.

The Social Security Act 2018 provides that MSD is, with the authority of the Prime Minister, responsible for the administration of the Social Security Act, and grants all benefits.

MSD means the department or the chief executive, and includes a person acting under delegated authority from the Chief Executive.

Ministry of Social Development staff, by a delegation under section 41 of the State Sector Act, makes decisions about benefit entitlement on behalf of the Chief Executive.

Benefit entitlement is based on certain conditions one must meet in order to obtain the assistance they seek.

These conditions are set by legislation, regulation, programmes and policy. It is necessary to know what these conditions are in order to ascertain the 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 New Zealand Superannuation and Retirement Income Act 2001. These are referred to as the legislation. Acts of Parliament (legislation) are the primary source of law for the Ministry's decision-making.
 - **Regulations**

The Social Security Regulations 2018 deal with various topics including Accommodation Supplement, Childcare Assistance, Funeral Grants, Temporary Additional Support, work obligations, the SuperGold Card etc.
<http://doogle.ssi.govt.nz/map/legislation/regulations/index.html>
 - **Welfare Programmes**

These are programmes made under s101 of the Social Security Act by the Minister who, with the authority of the Prime Minister, is responsible for the administration of the provisions in the Social Security Act relating to a Minister. Some examples are the Employment and Work Readiness Assistance Programme, Special Needs Grant Programme, the Student Allowance Transfer Grant Programme and the Recoverable Assistance Programme.
<http://doogle.ssi.govt.nz/map/legislation/welfare-programmes/index.html>
 - **Ministerial Directions**

A Ministerial Direction provides guidance and instruction on how to apply a specific section of legislation where staff have to exercise discretion in making decisions. The Ministry is required by section 7 of the Social Security Act to comply with Ministerial Directions. For example section 347 provides discretion to the Ministry to make advance payments of benefit if it would best meet the immediate needs of the beneficiary. To assist with exercising this discretion, the Minister has issued the Direction in relation to Advance Payment of Benefit. The use of the Direction helps to promote consistency in decision making and to provide guidance on when it is appropriate to make an advance payment of benefit.
<http://doogle.ssi.govt.nz/map/legislation/ministerial-directions/index.html>

A Ministerial Direction cannot limit the Ministry's ability to exercise its discretion as it is expressed in the specific wording of the section of the Act, and a Direction will retain discretion within its instructions which will allow the Ministry to take into account individual or exceptional circumstances.
 - **Case Law**

Case law is the body of law built up from decisions of the Courts and Appeal Authority. Some case law has a strong precedent value. What this means is that you should come to the same decision as the earlier case, where the facts and law of your case are the same or very similar. Other case law is indicative, rather than binding. What this means is that earlier decisions will give you guidance on how a court is likely to decide future cases. An example is Ruka v. Department of Social Welfare which concerned what constitutes a relationship in the nature of marriage. It is important to remember that a Court case may be subject to appeal, there may have been a change in the legislation since the case or the facts of the case may be different from the one currently before the decision maker.

Try to set out how the principles of the cases you quote are relevant to the case the BRC is going to consider. Don't just say that according to "Ruka" the Ministry made the right decision. You must identify what factors in the case supports your decision.

When you write your report, you will need to set out the relevant Law. You should consult your regional legal advisor if you need any assistance in applying or referring to relevant case law.

Mandatory versus Discretionary

Legislation, like 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 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 s63 of the Act.

You can tell if discretion is used as the Legislation will say "may" or will specifically refer to discretion. For example, s63 provides:

MSD may grant an emergency benefit.....

Discretion and Policy

The Ministry has extensive policies which apply to the benefit system. There will often be extensive policy where discretion is used, as well as a Ministerial Direction. This helps to ensure the exercise of discretion is consistent and gives the decision maker guidance in how to exercise their decision.

The Ministry's policy is found in MAP in Doogle. Sometimes it is necessary to refer to old Policy Manuals when it is an old decision which is being reviewed.

The policy must not be rigidly applied. The process must be consistent, but the applicant'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 an applicant's disadvantage, 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 completing the appropriate application forms, obtaining reliable evidence and seeking any further information that is relevant. An example of this further information may include statements from witnesses,

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 a review of decision is lodged, the report writer will not have to recreate the full factual situation.

If you have some doubts about the decision this should be raised with the manager, co-ordinator or site expert who may seek an opinion from legal services.

Obtaining a Legal Opinion

Service Delivery solicitors are called upon from time to time to provide advice on Reviews of Decisions to either case managers, investigators or managers. This often happens where there are difficult or unusual legal issues involved.

Helpline 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 and legal submissions and the way you should use them in relation to BRC hearings differs.

When you are completing an Internal Review or writing up a Report to the BRC you can seek **legal advice** from your regional legal advisor if you are unsure of how the legislation and/or policy apply to your specific case. This advice will probably be provided in email form addressed to you as a staff member of the Ministry. This advice is internal to the Ministry and is protected by legal privilege. It should not be disclosed to anyone outside the Ministry, quoted in a Report to the BRC or attached as a document to the Report to the BRC. It is internal legal advice and should be treated as such. In addition, you should also avoid writing "we have received legal advice and it supports our decision etc." This is inappropriate as it does not further the Ministry's case (it is not an argument or reasoning supporting the decision) and can only be viewed as trying to place pressure on the BRC.

Note if you want to rely on and use the legal advice provided by your legal advisor you should ask them to check your Report to the BRC when drafted to ensure that the way you have used the legal advice is accurate.

Occasionally it may be necessary to attach a **legal submission** to a Report to the BRC or to provide a legal submission at the request of the BRC panel. This is different to legal advice as it is a submission prepared specifically for the purpose of presenting to the BRC. If you are required to present a legal submission to a BRC you should make it very clear when you are speaking to your legal advisor that the submission will be presented at the BRC and is not, simply internal legal advice.

If you are in any doubt as how to use a piece of legal advice contact your regional legal advisor.

Completing the Internal Review Template

Once you have gathered your relevant documents and facts and you are satisfied that the decision has been made correctly and have sourced the appropriate legislation and policy you need to set out the key reasons why you consider your reason to be correct on the Internal Review Template. This is submitted to your manager (or other relevant senior member of staff such as a Service Centre Trainer or Investigation Manager).

Remember that if no evidence can be found to support the decision made you will need to reconsider the Ministry's position.

It is important that if you see that a decision has been wrongly made you should take steps to change the decision. The Ministry can correct a wrong decision at any stage in the process.

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

If your decision is upheld the Internal Review template will become part of the evidence used to support your Report to the BRC.

Stage Two: The Report to the Benefits Review Committee

Introduction

The report is a crucial document in the BRC process as it tells the story to the Benefits Review Committee who are not familiar with the events of the case. It may also help clarify matters for the applicant 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 applicant knows fully how the Ministry came to the decision.

There will be “experts” in your region or business unit that have undergone the report writing training. Utilise the knowledge of these experts to assist you when you are writing your report.

Report Content

Decision being reviewed

You need to write down the decision that the applicant has asked to be reviewed.

- What is the decision the applicant is reviewing i.e. the decision to grant Temporary Additional Support at \$xx;
- An indication of what the applicant is seeking i.e. due to not including the hire purchase payments for the motor vehicle, the applicant wants..;
- What benefit assistance is involved;
- The date the decision was made.

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

The Supreme Court decision in *Arbutnot v Chief Executive of The Department of Work and Income [19 July 2007]* clarified the scope of a review of decision. It is helpful to identify what issues are in contention, but what is being reviewed remains the final outcome that the Ministry came to, rather than the individual factors considered by the decision maker which led to that outcome.

An example is:

The decision to pay Temporary Additional Support at the rate of \$.... due to not including the hire purchase payments for the motor vehicle of 01 May 2010.

Summary of facts

You will need to set out the facts relating to the actual decision, set out a description of the applicant’s present circumstances and what income support, if any, the applicant is currently receiving. If you refer to any documents or applications, then you must attach the document to your report *see list of documents*.

The file and computer records should have all the details you need to write the summary of facts. Sometimes it may be necessary to obtain further facts. This

may mean that you have to contact the applicant and ask them for further information. Make sure you note, date and time frame any requests for extra information in HIYA ROD as this may affect your timeliness.

Include only relevant facts for which the Ministry has reliable sources of information. Opinion should not be included here, and the use of emotive language should be avoided.

Aim to 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.

Make sure you have the correct legislation. If you are having trouble finding the correct legislation, go into MAP under the heading of the topic of the review. The Introduction page will generally provide a “link” to the appropriate legislation. For example, if you receive a review about the date of grant of a Supported Living Payment go to:

Main Benefits – Supported Living Payment – Commencement Date (bottom of the page) – Section 311 and Section 316, Social Security Act 2018.

You should be certain to clearly distinguish between legislation and policy. If you are unclear about this, you should seek some advice.

You must use the wording that was in force when the decision was made. The Social Security Act often changes, and it is important that you include the correct wording. If you need help, please seek advice from your Service Centre Trainer, Manager or Legal Advisor.

Consider whether there are any relevant Court cases or SSAA decisions. This could include cases that support the case of the Ministry or the applicant.

Quote the legislation, welfare programmes, regulations, ministerial directions and policy relied on. Often, for simplicity of reading, these can be attached with the list of documents. Alternatively, you can copy the whole section into your report. Refer to the section numbers in the legislation and the paragraph numbers/clauses in the programmes, regulations and directions. MAP does not have any paragraph numbers, so it is not possible to refer to paragraph numbers.

Applicant’s case

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

You need to clearly state in this section why the applicant wants to review the original decision. You also need to ensure that you include all of the points that the applicant wants considered and any additional facts that are relevant to the case. This information can often be retrieved from the application for review, or they may have discussed some of their reasons with you. It is inappropriate to introduce elements of the Ministry’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 Ministry's 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 the Ministry relies fit:

- the law
- the policy guidelines

You should set out either:

- why the law does not allow the applicant to receive what they want; or
- looking at all the relevant circumstances the exercise of the discretion was correct.

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

If the applicant's review is that the Ministry has the facts wrong, set out why the Ministry considers it has the correct facts and the reasons for this.

If the applicant's review is based on the Ministry not considering all facts, set out all the facts including that which the applicant claims have not been considered and show how they have been considered.

If the applicant's review is that the Ministry has wrongly interpreted the law, set out how the law has been interpreted and why this is considered the correct interpretation.

If the applicant's review is that the Ministry has not properly exercised discretion, set out how the discretion was exercised and why this was correctly exercised.

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

Conclusion

In this section, set out:

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

For example:

The Ministry submits that, having regard to the circumstances of this particular case, the decision to decline assistance was appropriate considering in particular the legal requirement that education be provided free, if a school ski trip and an alternative English class were a part of S and S's education, then their school is obligated to provide them free of charge.

Considering each of the different programmes – Temporary Additional Support, Special Needs Grant, Advance of Benefit – it was considered that

the criteria relevant to each was not meet and that there were not grounds for exercising any discretion 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 and attach a copy of all the relevant documents. Such documents may include:

- Application for Review of Decision
- Applications and/or review forms (for the form of assistance that is under review)
- Any subsequent assessments and/or calculations
- Any relevant Client Event notes
- All referenced legislation and policy

See Panel Members pack regarding confidential information.

Layout

The report should look neat and tidy, professional and should be easy to read and follow. This should be straightforward as the HIYA templates format the document for you.

Law and Policy

The HIYA templates will prompt you as to how the legal referencing within your report should be completed. For example:

The legislative basis for Disability Allowance is set out in Section 84-89 of the Social Security Act 2018 ("The Act").

Section 84-89 of the Act is subject to a Ministerial Direction under section 7 of the Social Security Act 2018.

Further legislation and Policy is as follows:

Ministerial Direction – Disability Allowance

Use a logical order. This could be a chronological order for the facts. This could mean referring to the legislation, then the Ministerial Direction and then the Policy. Use bullet points or numbering if it helps to clarify a list.

Do not be afraid to use white space. Cramming too much onto a page makes it difficult to read.

Numbering

Number every page of the report. HIYA templates will do this for you automatically.

When numbering appendices this 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. A common mistake is to refer to the Ministerial "Directive" when it is a Ministerial Direction.

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 leaving the job"

Say:

"It took four weeks for the applicant to provide reasons for leaving their job."

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

Common examples are referring to computer programmes such as CMS, DREW, HIYA, etc. Minimum standards are also often referred to, without an explanation of what they actually are.

Be consistent in what you call something. If the person is an applicant, always refer to them as an applicant.

Refer to people in the report in the third person instead of using names. Staff should be referred to using their titles. For example: Service Centre Manager or Case Manager or Investigator. The client should be referred to as 'the Applicant'.

We use the third person for two reasons firstly, so our reports are in line with those used by the Social Security Appeal Authority and secondly, as it makes the report less personal.

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 applicant applied for Jobseeker Support"

Rather than

"An application for Jobseeker Support was made by the client."

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

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

Process after the Report is completed

The report is submitted to your manager (or other relevant senior staff member such as Capability Developer, Team Coach or Investigation Manager) to be checked.

Check with your regional/area co-ordinator for the hearing arrangement process operating in your region or area. In most cases, you will need to send multiple copies of your report to the regional co-ordinator so that they can send a copy to the applicant and to the BRC panel that is arranged to hear the case.

Presenting to the Benefits Review Committee

You will be invited to attend the Benefits Review hearing to present your report to the committee. If the applicant chooses not to attend the hearing, then you will not have to attend either and the case may go ahead on a “papers only” basis.

If you have never presented to a Benefits Review Committee before you may like to take a support person with you. Ensure that you notify your BRC co-ordinator in advance if you intend to do this so that they can note the inclusion of this extra person on the invitations to the hearing that will be sent out.

It is important that you do not meet with or socialise with members of the committee immediately prior to or immediately after the hearing. You may know members of the panel from working with them, but it is important that you maintain a high level of professionalism and ensure that the panel maintains their position of impartiality. Discussions held prior to the commencement of the meeting can be easily misinterpreted by the applicant.

The BRC panel sets out the procedure for the hearing. The panel should tell you what the procedure is at the hearing. The hearing is meant to be relatively informal. Normally the Ministry will present their case first, as it is their decision that is being reviewed. Sometimes (depending on the procedure that the panel sets down) this can involve you reading out your report to the panel. In other cases, the panel may just request that you read through specific parts of the report.

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

The panel will then ask for the applicant to state their case and may seek further clarification from them as well.

For more help on presenting to a BRC see Appendix 1 “Presenting a Review of Decision to a Benefits Review Committee”.

Please note: Both you and the applicant should remain in the hearing while the other presents their case. This is to ensure that both sides get to hear each other’s arguments and have an opportunity to respond (if necessary).

Once the panel are satisfied that they have enough information they will ask both parties to leave and will consider their decision in private. Again, you should leave with the applicant and not remain behind with the committee.

If the panel require further information they may adjourn and request further information from the Ministry or the applicant (or both). They may also seek submissions on any aspect of the law. If they do this both parties will be asked to provide submissions. Such an adjournment may occur while you are still present at the hearing or after you have left. If it is after you have left the hearing the chairperson will write to both the Ministry and the applicant requesting the further information and setting down a new date for the panel to reconvene.

The Hearing Outcome

The BRC panel will forward you a copy of their findings report within twelve working days of the hearing taking place. This report (and any accompanying material) is considered critical data and should be stored on the client's file.

The applicant will also have been sent a copy of the report along with a covering letter.

It is important that you read the report carefully and adhere to any directions given by the BRC panel. If the decision has been wholly or partially overturned the applicant will generally expect to be contacted by you in order for the decision of the BRC to be implemented or to advise them that it has been. Such instructions should be adhered to within 24 hours.

If you are unsure how to implement the decision speak to your manager or a senior colleague about how it should be done. You cannot simply ignore the decision if you disagree with it or don't think it makes sense. Alternatively, if the decision of the BRC is unclear you can ask the chairperson to reconvene the committee and issue a clarification. Such an arrangement may be made through the co-ordinator. You must advise the applicant and their representatives that this is being done.

Frequently Asked Questions

What is an Internal Review?

- » An Internal Review is an internal process to check decisions made by the Ministry of Social Development employees. It is an opportunity for the person who made the original decision to review all of the facts and any additional information to ensure the correct decision was made.

Who can ask for a Review of Decision?

- » Any person (or their agent) who is unhappy with a decision made by the Ministry of Social Development that directly affects them can request a review of the decision be made.

What if I agree with the applicant?

- » The applicant may clarify information previously provided or provide additional information; or a mistake may have been made. This may mean the original decision was incorrect, according to the legislation, and you may overturn the original decision.

What's the difference between overturning, withdrawing and deleting?

- » If the original decision has been changed this should be recorded as overturned.
- » When the applicant no longer wishes to proceed with their review this should be withdrawn and
- » where there is a duplicate record, or the applicant intended for the review to be treated as something else (e.g. a service complaint or medical appeal) this should be submitted for deletion.

What is the difference between an Internal Review and a BRC?

- » An Internal Review is an administrative process while a BRC is a legislative process provided for in sections 391-394 of the Social Security Act 2018.

When do Benefit Reviews happen?

- » A case will go to Benefit Review whenever an Internal Review confirms or partially confirms the original decision made. This is called "upholding or partially upholding the decision".

Do I have to do an ROD or BRC?

- » Yes, you are legally required to action a request to review any decision an applicant (or their lawyer, authorised agent or advocate) does not agree with.

What help can I get to do this?

- » Your Manager, senior staff members, service centre trainers, your regional legal advisor, National Fraud Investigators, Helpline, the National Office Client Advocacy and Review Team and the regional/area BRC Co-ordinator can all help you complete an internal review or benefit review report.

What do I do once I've written my report?

- » Once you have finished your report this will go to a designated staff member to be QA'ed. This will usually be your manager. They will look at your report and make sure it is in line with the criteria set out in the manager's checklist. They may come back to you with a few changes

they require. You will need to make these before the report is signed off and ready to progress to the next stage.

Do I have to attend the BRC hearing?

- ▶ Yes, if the applicant is going to attend you will have to as well. However, if the applicant is not attending, you will not have to either. Both parties should remain present during the hearing so they can hear the other side's case and have the opportunity to respond (if necessary).

Can I get legal advice while doing an Internal Review or Report to the BRC?

- ▶ Your regional legal advisor is available to provide legal advice at any stage before a hearing. You can call for advice from your regional legal advisor at any time.

When should I ask for legal advice?

- ▶ If any of the following situations apply you should consider seeking advice from your regional legal advisor:
 - ▶ If you are unsure of the legal basis of your decision;
 - ▶ If you are unsure of how legislation should be applied;
 - ▶ In a particularly complicated case;
 - ▶ If you think the situation could escalate to a stage where you feel uncomfortable in being able to manage the internal review or benefit review report;
 - ▶ If a solicitor is involved on behalf of the applicant;
 - ▶ If the applicant indicates they want to go to the Social Security Appeal Authority.

You must bear in mind that legal advice is just that – only advice. Ultimately it is the Ministry itself that is responsible for the decision. Once you have sought and received advice you should discuss it with your manager and if necessary, the appropriate staff at National Office.

Who is on a BRC?

- ▶ A committee has three members. Two members are Ministry of Social Development representatives and the third is a Community Representative appointed by the Minister for Social Development and Employment. None of the committee members will have had any prior involvement in the case heard at the hearing.

What if an application for review is made more than three months after written confirmation of the original decision?

- ▶ You should complete the Internal Review. If the Ministry's decision was not made correctly, you should overturn it. If it was made correctly, then the BRC will need to decide whether they will hear the review. A BRC will hear a review outside of the three-month period if they consider that there is a good reason for the delay. For more information on this see the "Out of Time Reviews" section of this pack.

What happens if the BRC has no jurisdiction to hear the case?

- ▶ The Committee can only hear reviews on certain matters. Sections 395-399 of the Social Security Act lists what reviews can and cannot be heard by the committee. If a review is outside of the jurisdiction of the BRC and the applicant is wanting the review to go to BRC, then the co-ordinator should forward the case to the committee to decide the point (e.g., whether or not they can hear the case). The committee will then prepare a report explaining the reasons for the conclusion that they have reached.

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- ▶ The applicant must be given the chance to make submissions on the subject of jurisdiction and unless both parties agree otherwise, there should still be a hearing. The question of jurisdiction must be determined by the BRC.

As a presenter, what do I do if the panel adjourn and ask me for more information?

- ▶ If the panel needs more information, it is the presenter's responsibility as the representative of the Ministry to provide anything requested to them. The chairperson will generally write to you outlining exactly what they require and will provide a timeframe for you to get the information to them. This information will be forwarded on to the applicant as well. They will also advise to whether you need to provide anything further and if you are required to attend a reconvened hearing.

Can the Ministry change a BRC decision?

- ▶ Generally, the decisions of a BRC will bind the Ministry. However, in the *Arbuthnot* decision the Court recognised that the CE could use his power of review to reconsider a BRC decision. The Court gave guidance on when such a review would be appropriate. The Court held that beneficiaries are entitled to expect the Ministry's decisions, once made, will not be disturbed without very good reason. It is required that there has been a material change in the circumstances of the client or other factual information received which changes the clients' entitlement to receive a benefit. Refer Supreme Court decision in *Arbuthnot v Work and Income [July 2007]*. Such cases must be referred to the National Office Client Advocacy and Review Team for advice.

Appendix 1: Presenting a Review of Decision to a Benefits Review Committee

This guide is to help the Ministry present a Review of Decision (ROD) at a Benefits Review Committee (BRC).

The BRC process is independent and less formal than a court hearing. You are not under oath.

The panel will be waiting for you and the applicant. One panel member will then come and collect you both and the hearing will commence. It would be expected the chairperson will start the proceedings with a quick introduction and outline the BRC process. The BRC can start proceedings any way they want so don't be surprised if it differs.

Before and during the hearing you need to remember that the BRC are impartial to the Ministry, so you need to act independently of them but also in a way that is perceived as impartial. For example, it is possible you may know someone on the panel. It may not appear to the applicant that the panel is impartial if they see you talking to a panel member about the weather. To the Applicant it may appear you are chatting about the review of decision.

The chairperson will ask if the report has been read and understood. This means no need for verbatim, just a quick summary of the key facts and legislation.

Generally, you will present the Ministry's case first. It is worth remembering that this is a review of a decision made by you or a fellow staff member on behalf of the Ministry and not a personal one. Keep it friendly. It is expected you will answer questions that the BRC may have. This helps them conclude with a fair and impartial outcome. It may also help to clarify matters for the applicant.

Once you have presented the Ministry's case then it's the applicant's turn. This, like the Ministry's, is their opportunity to state their case and answer questions that the BRC may have.

If submissions are presented at the hearing you will need to read through to ensure there is no new information. You can ask the chairperson for a short adjournment to read the submission. Should you find points or information that requires a response it maybe you can communicate it verbally at the hearing. If it requires a written response you need to ensure that this is supplied to the BRC panel and applicant. It may require a longer adjournment so this information can be put together.

The BRC may require additional information. This is asked of the Ministry or the applicant, or both. The BRC may require submissions on aspects of the Law. If this is the case, then the Ministry and applicant will be asked to supply this which is likely to result in an adjournment for this information to be submitted. In this case you would need to seek the legal submission from your solicitor.

Once the BRC have heard both cases you both will be asked to leave so the BRC can make their decision. Once they have you will be notified of this decision in the Report of the BRC which is due within 12 days of the hearing.

If at the hearing the applicant does not appear, you are not required to present the Ministry's case and the review will be heard on papers only. The BRC will

meet and make a decision based on the information provided in the report. There are a number of reasons why an applicant may not appear, but it is always important to encourage them to attend. Remembering this is their review and often new information can be disclosed at the hearing and it may be the applicant did not at the first instance find it relevant to advise the Ministry. This helps the BRC conclude appropriately and in accordance with the law and principals of Natural Justice.¹

If this is your first time presenting to the BRC, you may like to take someone along to support you. Ensure you notify the BRC co-ordinator before the hearing so this can be communicated to the applicant. Likewise, the applicant may bring a support person. Some regions also allow staff to "sit in" on a BRC to watch how it operates. You may wish to discuss the opportunity to do this with your manager. If the applicant's intentions are to bring a Solicitor, then you should discuss this with your regional Solicitor if they should attend the hearing with you.

Should you require further assistance contact the Client Advocacy and Review Team in National Office. Below is the link to the ROD site on doogle.

<http://doogle.ssi.govt.nz/resources/helping-staff/procedures-manuals/review-decisions/service-line-resources.html>

¹ See the Panel Members pack for more details on Natural Justice

Appendix 2: Glossary of terms

Legislation

Includes:

Any law passed by parliament. This is called an Act or statute

Any law made by a subordinate body, such as a Minister, under delegation from Parliament – such as Regulations, Ministerial Directions and Welfare Programmes.

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

Policy

Policy has two parts:

1. Policy made by governments. In the Ministry 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 the Ministry 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.

As a case manager and as a BRC panel member you will be dealing with operational policy.

MAP

MAP stands for Manuals and Procedures.

MAP contains the Ministry's policies on how to apply legislation – primarily the Social Security Act 2018 **Judiciary**

The branch of the state that decides disputes between parties independently and in accordance with the law - i.e., Judges and tribunal members.

Tribunal

An independent body, similar to a Court, with a judicial function which is established by legislation to decide disputes about a specific subject matter – e.g., Disputes Tribunal and the Social Security Appeal Authority. Some tribunals have a more investigatory and advisory function – e.g., the Waitangi Tribunal.

Social Security Appeal Authority (SSAA)

The SSAA is an independent tribunal established under section 401 and Schedule 8 of the Social Security Act 2018 to decide appeals on benefit entitlement. The applicant has a right of appeal to the SSAA from a decision of the BRC or of the Chief Executive personally (except for Out of Time decisions) and both parties have a right of appeal to the High Court on questions of law. Every appeal is by way of rehearing of the matter in full. The SSAA is administratively provided for and run by the Ministry of Justice. Its members are appointed by the Governor-General on the recommendation of the Minister given after consultation with the Minister of Justice.

Review Body

The BRC is an example of a review body. It is a review body established by legislation but is internal to the Ministry of Social Development. The characteristics of a review body include the composition of its members being internally provided, or, in the case of the Community Representative, appointed by the Minister and being administratively managed internally by the Ministry., A review body such as the BRC take a "fresh eyes" approach and it may only confirm, vary or revoke the original decision. It does not have the trappings of a tribunal-type body, such as independent tenure, the right of appeal for both parties, the ability to compel evidence, to order costs or to take any necessary steps to carry into effects its decision.

Jurisdiction

Jurisdiction refers to the authority of a judicial body to decide a particular issue. The sorts of disputes that a judicial tribunal such as the Social Security Appeal Authority may consider are prescribed by statute i.e. sections 395-399 of the Social Security Act 2018.

There might also be other reasons that a judicial tribunal or body may not have jurisdiction to decide a case, for example, the dispute may have arisen in another country, or the dispute may have already been decided by another judicial body.

Natural Justice

Natural justice is a concept that has been around 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 you must act impartially when you sit on a panel.
2. The rule that a person must always be given a chance to be heard.

Refer to the Panel members' information pack for more details

Appendix 3: Systems

When considering a Review of Decision, the Ministry and Committee should be satisfied that all systems have been checked for associated letters / information from the Applicant on the matter under Review.

It is also noted that as storage platforms change that this list would encompass new systems, yet unnamed. An example of this is the replacement of the Appointment Booking Tool with Q Manager

These systems may include but are not limited to the following:

CMS	Client event notes, hardship applications,
UCV2	Historic notes of relevance (system replaced by CMS)
Objective Files	National Office - repository of Ministerial Executive and associated correspondence
MyMSD	Online Service for Applicants
SWIFTT	Payment System
SOLO	Employment Records
TRACE	Debt Database
EMAIL	Site and Staff Emails
STP	Work Processing Intake system
ABT	Appointment Booking Tool (historic system replaced by Q-Manager)
Q Manager	Booking tool
Share Drives	Local and Regional repositories used for correspondence potentially
HIYA	Complaints and Review of Decision platform
ART	Youth Service Information System
IRON MOUNTAIN	File Storage Facility for files