



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Implementing the Court of Appeal Judgment on the Means Assessment for Long-Term Aged Residential Care

Portfolio **Social Development and Employment, Health**

On 7 April 2021, the Cabinet Social Wellbeing Committee:

- 1 **noted** that in May 2019, the Court of Appeal found that some aspects of the Ministry of Social Development (MSD)'s approach to carrying out the financial means assessment (FMA) to determine a client's eligibility for the Residential Care Subsidy were inconsistent with legislation;
- 2 **noted** that in December 2019, MSD began implementing the Court of Appeal decision for new clients and reviews for existing clients going forward;
- 3 **noted** that:
 - 3.1 MSD is now finalising preparations to implement the Court of Appeal decision retrospectively;
 - 3.2 MSD proposes to proactively contact around 2,100 clients or estates of deceased clients whose past FMAs may have been affected by the judgment and offer them the opportunity to have these retrospectively reviewed;
 - 3.3 lump sum Residential Care Subsidy refunds will be required to be paid where these reviews find that clients have paid more towards the cost of their care than they should have, based on the Court of Appeal's judgment;
- 4 **confirmed** the strategy in paragraph 3 above for MSD to implement the Court of Appeal decision retrospectively and to process refunds to clients/estates directly rather than through District Health Boards and rest home owners;
- 5 **noted** that:
 - 5.1 a Budget 2021 bid has been submitted to enable MSD to make retrospective payments directly to clients/estates;
 - 5.2 the bid is proposed as a new appropriation in Vote Social Development, with the Minister of Health assigned as the appropriation Minister;
- 6 **noted** that dependent on Budget 2021 funding being available, MSD could start contacting clients and estates about retrospective reviews in April 2021;

- 7 **noted** that MSD and the Ministry of Health will source alternative funding if the Budget 2021 bid is unsuccessful;
- 8 **noted** that:
- 8.1 where a review finds that under their original FMA a client was incorrectly deemed ineligible for Residential Care Subsidy, these clients/couples (or their estates) may also be due retrospective payments of certain other entitlements;
- 8.2 MSD estimates that the cost of these retrospective payments of other benefits will total around \$350,000 – the cost of which will be met within the existing baseline of the relevant Benefit or Related Expense appropriations in Vote Social Development;
- 9 **noted** that the lump sum retrospective payments arising from the reviews, and/or the income derived from them, may affect clients' and/or their partners' eligibility for Residential Care Subsidy and certain forms of social security assistance going forward, or reduce the rate of payment that they receive;
- 10 **noted** that repayments of social security assistance will be exempt under the generic income and cash asset exemption for the first 12 months after payment is made as provided for under the Social Security Regulations 2018;
- 11 **noted** that, unless specifically exempted, the retrospective payments of Residential Care Subsidy arising from these reviews may affect clients' and/or their partners' receipt of income- and asset-tested assistance, including the Residential Care Subsidy and certain social security assistance;
- 12 **agreed** to amend the Social Security Regulations 2018 and the Residential Care and Disability Support Services Regulations 2018 to exempt retrospective back-payments arising from these reviews from asset and income tests for the Residential Care Subsidy and social security assistance for a 12-month period from the date of payment;
- 13 **noted** that the Minister for Social Development and Employment also intends to amend the Ministerial Direction on Special Benefit to exempt retrospective payments of Residential Care Subsidy arising from the reviews from the cash asset and income tests for Special Benefit for a 12-month period from the date of payment;
- 14 **invited** the Minister for Social Development and Employment to instruct the Parliamentary Counsel Office to draft regulations to give effect to the decisions in paragraph 12 above.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Kris Faafoi
Hon Peeni Henare
Hon Willie Jackson
Hon Ayesha Verrall
Hon Aupito William Sio
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Office of the SWC Chair
Officials Committee for SWC