MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Benefits Review Committee

Panel Members

Information Pack

To be read in conjunction with the
Report Writers Information Pack

Contents

Overview

Benefits Review Hearings are a chance for a review panel to take a fresh look at decisions made by the Ministry of Social Development.

The Benefits Review Committee is a review body that is established by legislation to make correct and fair decisions with regard to procedure and law.

This guide is intended to assist you in discharging that responsibility.

The Benefits Review process is an important part of ensuring that correct decisions are made by the Ministry on a case by case basis. The Benefits Review Hearing is an exercise of the Applicant's right to challenge a decision of the Ministry and for the committee to review the Ministry's decision in a fair and independent manner.

Natural Justice

As a member of the panel it is very important that you act in accordance with the principles of 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. Impartiality is discussed further on page 7 of this pack.

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

You should ensure that both the applicant and the Ministry are given the opportunity to explain their view of the case. This means that each party is able to state their case and that you, as the panel, take into account what each party has said.

Sometimes it may seem that the information being given is not directly relevant to the issue. It may be necessary to ask the party to move on to the next point, but you should ensure that they still get the opportunity to state their case. You should tell them that you have understood the point that they making but explain that you need to move the process on.

It often helps to summarise the main points of the case made by each party at the end of their submissions. This lets them know you have taken on board what they have said.

Sometimes a new point may come up after one or both parties have already presented their main case. In this situation, give each party the chance to respond to that new point.

The right to be heard also includes a person's right to hear the case against them. In practice, this means that each party is given the opportunity to hear the main points of the case of the other party. If someone does not understand the other party's case it is very hard for them to respond, that person may be denied the opportunity to address

the points they need to argue their case properly. This means that both parties should be present throughout the BRC hearing to ensure they can hear and if required, respond, to any additional points.

If you are unsure of the point that one party is trying to make, the chances are the other party is also unsure, so ask the party who made the point to clarify.

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

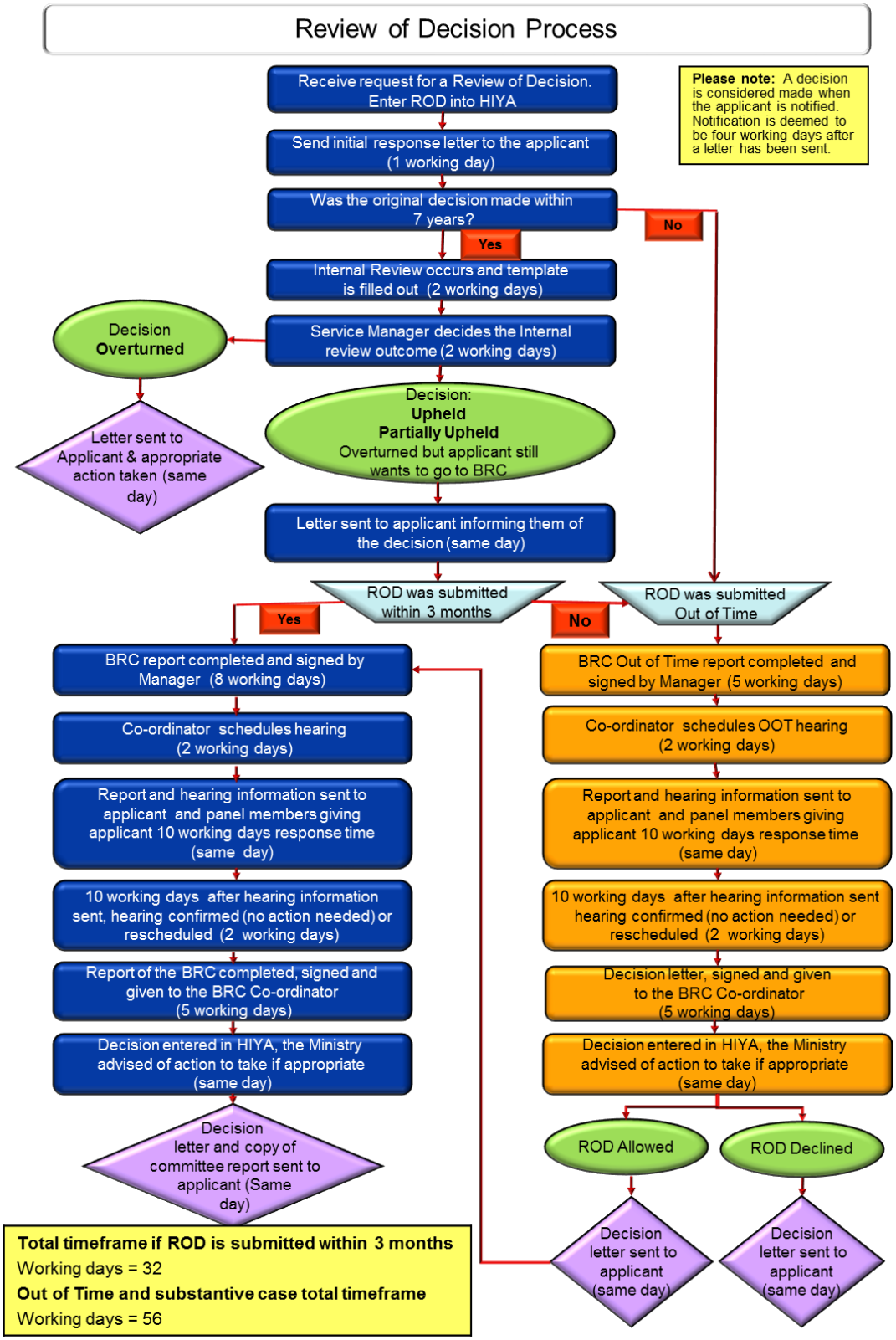
Although it is important to treat both the Ministry and the applicant equally, you should recognise that the Ministry has a natural advantage. The Ministry representative will have access to the relevant law and policy and legal advice; the applicant may not have this. To minimise this imbalance of power,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

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

The following pages set out the processes, timeframes and guidelines for Benefits Review Committee Panel Members. See page 14 for more information on Fundamental Breaches of Natural Justice.

Benefit Review Process

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



The Co-ordinators Process

1. Most decisions made by the Ministry can be reviewed by the Benefits Review Committee. When a decision is made to reduce or decline a service applied for, review of decision rights are given to the applicant in writing. An applicant has three months to ask a BRC to review a decision. However if there are good reasons for the delay, a BRC can accept an application for review outside the three month period.

2. The applicant can apply in writing for a review of decision.

3. The Ministry will then complete an administrative check (internal review) of the initial decision, taking into account any new information provided. If the Ministry still believes the original decision is correct (in part or full) a report to the Benefits Review Committee is prepared and forwarded to the BRC co-ordinator. The timeframe for this process is 14 working days.

4. A copy of the report to the BRC, all relevant papers, and a description of the Benefits Review Hearing process is sent to the applicant, inviting them to attend the hearing and giving them the option of providing further information if they wish.

5. The co-ordinator then sets the hearing date, time and venue. The panel (made up of a community representative and two Ministry staff members) is arranged and the applicant is advised.

6. The co-ordinator then sends a copy of the report and all relevant papers to the panel, so that each panel member can read all the information before the hearing.

7. The hearing is then held. If the applicant chooses not to appear the review is held on papers only (Ministry doesn't appear either). If the applicant appears then the Ministry will also appear. Representations are made to the committee from both parties.

8. The committee will then decide if they have enough information from the report, any submissions, and representations made in person to make a decision on the case. If there is not enough information (or additional information is raised at the hearing) then the committee can ask for further information to be provided on specific points. The hearing will be adjourned until that information can be provided. A date should be set at the hearing, within 10 working days, for the BRC to re-convene.

   The BRC can ask for new information relevant to the decision under review from the applicant or the Ministry. In cases where new information is presented the applicant and/or the Ministry must be given the opportunity to comment. If the information requested is not provided the committee has to make a decision based on the information before them.

9. The decision making of the committee is done in confidence; neither the applicant nor Ministry is present when a decision is reached. The committee can decide to uphold, uphold in part or overturn the decision of the Ministry. The legislation states that the BRC must uphold, vary, or revoke a decision.

10. The committee must record the reasons for its decision in writing. The decision is signed by all panel members. If the decision is to uphold in part *(vary*) or overturn *(revoke)* the original decision instructions will be issued to the Ministry to ensure that the decision of the committee is followed. A copy of the report is sent to the applicant. If the decision was to uphold part of or all of the original decision

(confirm) then the applicant is advised of their appeal rights to the Social Security Appeal Authority.

11 If the committee makes recommendations in their report the co-ordinator ensures they are considered by the Ministry and that HIYA is noted with the outcome of these considerations.

Legislation

The legislation that provides for Reviews of Decision is covered under Section 391- 394 of the Social Security Act 2018, Schedule 7 and Regulations 246 and 247 of the Social Security Regulations 2018.

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
Decision under specified social assistance enactment		
1	An applicant or a beneficiary	A decision of MSD made under an enactment referred to in section 397(1)(a) to (g)
Decision under mutual assistance provisions in reciprocity agreement		
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)
Decision to recover from spouse or partner who misleads MSD excess amount beneficiary obtained		
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)
Decision to recover from spouse or partner apportioned excess amount beneficiary obtained by fraud		
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 section399(1)); and (c) that includes the decisions in row 2 of the table in section 399(1)
Decision to recover from spouse or partner unapportioned excess amount beneficiary obtained by fraud		
5	A beneficiary's spouse or	A decision of MSD—

	partner	(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)
Decision to recover excess amount from deceased beneficiary's estate		
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))
Decision to recover excess amount from deceased spouse's or partner's estate		
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,—

(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.

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.

Asking for a Review of Decision

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, including the appropriately exercising of discretion

An applicant can apply in writing for a Review of Decision (this may be in a letter, an e-mail or an application form) where they have received verbal or written notification of (and do not agree with) a decision which has been made under the provisions listed in section 397,398 and 399 of the Social Security Act. 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; or
- a special assistance programme approved by the Minister under section 100 or 101; or
- 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;
- decisions under section 398 reciprocity agreements
- decisions under section 399 to recover an amount from a person or estate

Note: From 14 April 2014 that certain decisions relating to Housing have been included in Section 397 and are therefore reviewable including:

- the assessment or re-assessment of:
    - their eligibility or continued eligibility for social housing
    - their housing needs
- the calculation of the rate of Income Related Rent
- the establishment and recovery of Income Related Rent debt

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 397, 398 or 399 of the Social Security Act
- 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 section 397

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) client to be subject to, or continue to be, subject to part-time work obligations under section 155 of the Social Security Act 2018

There are separate appeal provisions for decisions made on medical grounds under section 411 of the Social Security Act 2018.

- Information about Medical Appeals can be found in Map and on Doogle:
    - MAP Link: http://doogle.ssi.govt.nz/map/income-support/core-policy/reviews-and-appeals/medical-appeals-board.html
    - Doogle Link: http://doogle.ssi.govt.nz/resources/helping-clients/procedures-manuals/work-and-income/health-disability/medical-appeals/

Some Employment and Training 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 sections 297,438 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 decision has been reviewed by a BRC 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.

It is important to carefully identify the decision being reviewed. What seems like an application to review a decision again, may relate to a different decision. For example, the first review related to a decision to establish an overpayment, the applicant may apply for a further review, about the rate of recovery of the overpayment.

If an applicant has been prosecuted by the 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 be an issue.

In this case, the Benefits Review Committee should seek legal submissions from both parties on the issue of jurisdiction and make a determination before considering the substantive matter. If the Benefits Review Committee determines that it does not have jurisdiction, it should not go on to consider the substantive matter.

Exceptions

A second Benefits Review Committee may not be convened to review a decision of an original Benefits Review Committee. The only exceptions to this may be if there has been a fundamental breach of natural justice or a fundamental error (where the BRC has not actually carried out its function to review the decision).

Examples of 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 Benefits Review Committee would need to either:

- reconvene - 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 Benefits Review Committee would have to be organised with the first hearing/decision being treated as invalid i.e. The decision sent by the first Benefits Review Committee that has been found to breach natural justice needs to be disregarded and a completely new panel be set to hear the case again. Contact the Review and Client Representatives team or your regional Solicitor for more information if you think a natural justice breach has occurred.

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 member instead of 3 – as per clause 5, Schedule 7 of the Act	New Benefits Review Committee to be arranged (original BRC treated as invalid)
Ministry staff member on the Benefits Review Committee has had prior involvement in the decision being reviewed – as per to clause 6, Schedule 7 of the Act For more information refer to the Disqualification section of page 20 in this information pack.	New Benefits Review Committee to be arranged (original BRC treated as invalid)
Benefits Review Committee does not make a decision to: • 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	Reconvene original Benefits Review Committee to correct the omission. 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)

Note: If you have any queries in relation to the above please contact the Review and Client Representative team in National Office. MSD_Review_of_Decision_Team@msd.govt.nz

Out of Time Reviews

Section 392 of 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. The date of notification is considered to be the fourth day after the decision was mailed[1], unless there is evidence to the contrary. Evidence may include the fact that the applicant has notified the Ministry that they have moved address (and the Ministry has not noted the information) or that the mail is returned "not known at this address". Each case will need to be considered individually. However, the legislation gives the Benefits Review Committee the ability to hear reviews out of time if it considers there is good reason for the delay in requesting a review.

The first step is to confirm that the request for review has been received within three months of the decision notification. If the request for review has not been received within three months the applicant needs to have good reason for the delay in requesting a review. The applicant must be given the opportunity to provide reasons for the review if they are not included in their ROD.

If the original request for review does not state these reasons, contact the applicant and explain the situation. Give the applicant the opportunity to explain why the review was lodged out of time.

Internal review

The Internal Review is not completed on the out of time issue itself, but should be completed on the **substantive issue** to establish that the decision under review was correct.

Note: if a review is received more than seven years after the decision was made, the Internal Review Template does not need to be completed.

Report to the BRC

The Report to the Benefits Review Committee should be completed on the **out of time issue** only. The committee must consider whether there is good reason for the delay. If the committee finds there were not good reasons for the delay, the committee should decline to hear an application for review; it should not consider the substantive issue. The applicant does not have the right of appeal to the Social Security Appeal Authority.

This means it is very important to ask the applicant to attend the Out of Time hearing to state their reasons for delay.

If the committee decides that there are good reasons for the delay, the review then proceeds to the substantive hearing. The committee will consider the substantive issue at another time after both parties have adequate time to prepare submissions.

[1] (Section 364 of the Social Security Act 2018)

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 to determine that issue before considering the substantive decision.

If the applicant does not withdraw his or her review of decision, and the Ministry considers that it is not reviewable, the case should still be referred to the committee. The committee will determine whether it has the jurisdiction to consider the review.

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 to the BRC.

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.

Correction Power

Section 317 Minister may consent to backdating

Section 317 of the Social Security Act 2018 gives the CE the ability to retrospectively pay a benefit where a client:

- did not make or complete an application for benefit at an earlier date, and
- the reason the client did not make or complete an application for benefit was due to an error or omission on the part of the Ministry

However, the ability to make a decision about correction power **has been delegated** to the Deputy Chief Executive, Service Delivery.

If a payment is declined under the Correction Power by the Deputy Chief Executive, Service Delivery the client then has the right to request a review of decision by the Benefits Review Committee.

You should contact Legal services if you have further questions.

Information for the Benefits Review Committee

Reports to the Committee

All reports to the Benefits Review Committee are in a standard format.

A report to the Benefits Review Committee should contain:

- Applicant details
- The decision being reviewed
- Initial actions and decision made (Summary of Facts)
- A copy of relevant legislation and policy
- Internal review actions and decision made
- The Applicant's and their representative's view on the case
- The Ministry's view on the case
- A recommendation from the Ministry
- List of attachments to the report

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

Below is the link to the report templates in Doogle.

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

New information

At any stage of the review process, before the Benefits Review Committee makes a decision, the Ministry or the Applicant can produce additional information to be considered.

New information provided when the applicant applies for an ROD

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 BRC co-ordinator to arrange a 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 the client representative
- any other appropriate means of assistance available to the applicant

New information provided prior to the BRC

If additional information is provided to the Benefits Review Committee/co-ordinator it must also be provided to the other party (e.g. the Ministry or applicant). The other party must be granted adequate time to consider the additional information prior to the review hearing if possible. Alternatively the hearing can be postponed until the other party has

had sufficient time to consider the additional information. If the hearing is postponed, it is important that a new hearing date is arranged at the time. This ensures that there is not an unreasonable delay before the committee meets to consider the decision under review.

New information presented at a BRC

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

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

Additional information required for the BRC to make a decision

If the BRC requires further information it may adjourn the hearing, asking for more information from the Ministry or the applicant (or both). It may also seek submissions on any aspect of the law. If this is the case, 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. It is up to the panel to decide whether or not it is necessary for the attendance of the applicant and the Ministry at this further reconvened meeting.

New information provided after the BRC hearing but before the decision has been sent to the applicant and the Ministry

If new information relating to the decision is received, the panel needs to consider if the information would change the decision. Both parties would need to be given the opportunity to respond in writing regarding the new information and the panel would need to reconvene and include the outcome in the 'Report of the BRC'.

New information provided after the BRC decision has been made and the findings have been sent out to the applicant in the 'Report of the BRC'

If new information that could change the decision to the advantage of the applicant is received, this should be sent to the Service Centre or Unit that made the original decision to consider under section 304 *'Review of entitlement and rate payable'* of the SSA.

If new information is provided which may change the decision of the BRC to the detriment of the applicant it must relate to a material change of circumstances as opposed to information that could or should have been presented to the BRC at the time (see the Supreme Court decision *Arbuthnot*). If you are unsure about whether the information is a change of circumstances or not please refer to your regional solicitor.

If the new information would not change the decision, the applicant needs to be advised why this is, and provided with information about appealing to the Social Security Appeal Authority.

Personal Representations

The applicant may appear in person at the hearing of their review. If the applicant chooses to appear then the Ministry should also appear. If the Applicant chooses not to appear at the hearing then the Ministry cannot appear. The review is decided "on

papers" only (i.e. based on the report and attachments only and any written submissions from the applicant).

However, if the issue is one of credibility and the committee does not consider it can properly determine it without seeing the applicant in person, then the committee should consider adjourning the hearing and requesting the applicant to attend the hearing.

The applicant cannot be required to attend the hearing. If the applicant does not attend, the case must be decided on the evidence before the BRC. You should not form any adverse opinion about the case based on the applicant's failure or refusal to attend.

The applicant (or their representative) and the Ministry present their cases to the committee. The committee can ask questions to clarify points raised either by the written submissions or the personal representations. Both parties should be present throughout the hearing to ensure that they can hear and if required respond to any additional points raised.

Resources available to the BRC to help them make their decision

The committee must not directly contact the Ministry's legal advisors. This is because the legal advisors act for the Ministry and it is a conflict of interest for them to provide legal advice directly to the committee. If the committee is unsure of a legal point, such as the interpreting case law or legislation, then it should ask for legal submissions on that point from the applicant and the Ministry.

If the applicant does not have legal representation a list of possible places to access legal advice should be provided from the information available on the client information page of the ROD doogle site:

http://doogle.ssi.govt.nz/resources/helping-staff/procedures-manuals/review-decisions/client-info.html

Pre Hearing Procedures

The Panel

The Benefits Review Committee is made up of three members. Two members are from the Ministry of Social Development and the third member is a community representative. Clause 5, Schedule 7 of the Social Security Act 2018 sets out that the committee contains:

- Two staff members. The staff members must have had no prior involvement with the decision being reviewed. This prohibition includes such activities as signed off correspondence. This includes computer-generated letters with electronic signatures of Service Centre Managers.
- A community representative appointed by the Minister to represent community interest, and who is resident, or closely associated with the region.

All three members of the panel must be present at the hearing to make a decision.

The applicant can object to any member being part of the Benefits Review Committee, by stating the reasons for his or her objection. If grounds are found for disqualification, or there is an issue with a particular panel member that will interfere with the process of natural justice, the panel member objected to should be replaced. The Applicant would usually discuss this with the Benefits Review Co-ordinator.

Disqualification

No member of the Benefits Review Committee can hear a case if he or she:

- Has a direct financial or personal interest in the outcome;
- Has had any prior involvement in the case;
- Has some personal connection with the applicant, presenter or witness(es) – apart from working relationships;
- Has a personal prejudice for or against a person(s) involved in the case;
- Has pre-decided the case and come to it with a closed mind.

If any of these criteria apply the BRC member (including community representatives) must disqualify him or herself from the hearing.

It is important that panel members consider any small contact with the applicant when considering disqualification. This may cause difficulties in service centres in isolated areas; however it is important that the integrity of the BRC process is maintained.

Impartiality

A panel member is not on the committee as a representative of the Service Line, i.e. Work and income or StudyLink, but as a representative of the Ministry. The issue of independence is very important. The Act requires Ministry members to have had no prior involvement in the case.

The Benefits Review Committee is a review body and you must act accordingly. You should take great care to ensure that you openly act independently and fairly.

The role of the Benefits Review Committee is to independently review the Ministry's decision in accordance with the law.

Procedure

The Benefits Review Committee can set its own process. The Social Security Act 2018 does not set out a hearing procedure. The BRC needs to clearly state the process for the

hearing to each person present at the hearing. The process adopted must be fair and reasonable.

Disruption

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

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

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

The hearing should continue on the material that the BRC has before it.

Chairperson

The Social Security Act and Regulations does not specify that there will be a chairperson of the Benefits Review Committee. However it is a good practice for the committee to identify someone to take the lead in organising the committee, explaining the hearing process to all attendees and ensuring the final decision report is completed within the appropriate timeframes.

The chairperson should be chosen only when the three panel members come together. A community representative can also be the chairperson. The chair does not necessarily have to write up the report in HIYA, as one of the Ministry panellists can complete this task.

The role of chair is extremely important as they can play a pivotal role in ensuring that a fair and impartial decision is reached. The chairperson "sets the scene" for the hearing. A checklist has been developed to assist the chairperson with this role, providing a guide for introductions and for the process throughout the hearing.

Some of these instructions are in a "scripted" format. The scripted portions are written in italic font.

Pre-hearing Preparations

The panel members are sent the report to the BRC and supporting documents before the hearing. Panel members may choose to take notes from these documents to remind them of questions to ask the applicant or the Ministry presenter.

It is not appropriate to share these notes with other panel members or attendees before the hearing as this may alter the perspective of the other panel members and give a perception that the hearing has been predetermined, or that the person is biased.

This is also the case if the hearing has been adjourned; any notes taken from the earlier part of the hearing should not be shared prior to the reconvened hearing.

However, it is appropriate for notes to be considered and debated as part of the deliberations once all the submissions have been made and the panel has retired.

Requests for taping a hearing

A client does not need to seek approval before recording a hearing. It is entirely lawful for someone to record a conversation to which she or he is a party. The client does not need to ask for permission and does not need to inform the Committee of the recording.

However it is an offence if a client records a conversation that she or he is not a part of, (e.g. if the client leaves the room and records the conversation of others in the room).

If a client requests to record the hearing, **best practice** would be for the Committee to record the hearing using a Dictaphone which makes a digital recording, copies can then be made to a CD so that the client, the Committee and the Ministry all have the same recorded information. The Fraud Investigation Units have these available. The Committee should politely ask the client that it is preferable that the client informs the Committee that she or he is taping the hearing. However, the Committee does not have authority to refuse to let the client record the hearing.

Members should also be mindful that with modern technology a recording may occur without your knowledge.

Chairperson's Guide

Please note that this guide is based on a process where the Ministry will present their case first. This does not restrict the way in which a committee may choose to run their hearing in any way.

- Ensure all of the panel are happy with and clear about the chosen process.
- Collect the applicant and the Ministry presenter from the waiting area.
- Introduce self and advise that you will be fulfilling the role of chairperson
- Introduce all of the other panel members as well as anyone else in the room. Sometimes panellists, particularly community representatives prefer to introduce themselves and should be given this opportunity.
- Introduction (explain):
    - This *hearing is convened in terms of Section 391-394 of the Social Security Act 2018*.

  Schedule 7 of the Social Security Act 2018 outlines the following requirements of this Committee:
    - *It will be made up of 1 community rep and 2 officers of the Ministry*
    - *the community rep will represent the interests of the community*
    - *the two officers of the Ministry will be objective and have had no involvement in any way with the decision being reviewed*
    - *the committee will have a fresh look at the decision and ensure a fair and impartial outcome.*

  The process is:
    - *independent and less formal than a court hearing*
    - *no one is under oath, but I ask that we all enter into the spirit of the hearing so that the committee is able to make a fair and reasonable decision*
    - *the Ministry will present their case first and then the applicant will have an opportunity to explain their reasons for the review*
    - *the committee may ask questions of both parties. All questions are to go through the chairperson.*

When you begin:

- invite the Ministry to go first
- ask whether the papers have been read and understood. If so there will be no need for a verbatim account. An overview of the Summary of Facts and the Case for the Ministry will probably be sufficient. If the applicant is not familiar with the content it is suggested the presenter go into more detail and ensures their material is presented in such a way that non-Ministry staff will have a clear understanding
- invite the applicant to advise the committee why they are reviewing the decision.

Invite the panel to ask any questions. This is the opportunity to seek clarification of any points that have been raised in the hearing. This may be for the benefit of anyone at the hearing.

When concluding:

- ask: *Any closing comments?*

- advise: *No verbal decision will be made. A written decision will be provided as soon as practicable, usually within five working days.*
- advise: *If you are not satisfied with the outcome of the committee's decision you have the right of appeal to the Social Security Appeal Authority. Further details of this will be provided with the written decision.*

Remember:

Keep it friendly

It's the applicant's review

Make sure the applicant feels as though they been *heard*

The Hearing

Setting up

When you are preparing for a benefit review hearing you will need the following:

- a suitable room e.g. outside person cannot observe proceedings, sufficient lighting, comfortable temperature, access for people with disabilities
- a table (and chairs) that all panel members, applicant and support people can sit at
- water and glasses
- paper, pens & calculator
- original papers submitted
- consolidated legislation
- any relevant policy manuals
- take any specific cultural or language requirements into consideration. In some cases the co-ordinator may have arranged for an interpreter.
- Laptop so that the Report of the BRC can be completed immediately after the hearing and if the legislation included in the report to the BRC is not complete, the panel can refer to MAP. NOTE: the panel is not to access the client's file and do their own investigations. If they require further information from the client's file they are to adjourn and request the information via the BRC Co-ordinator.

Notes

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

At the end of the hearing the note taker must confirm with the wider committee what the final decision on each point was. A template has been developed to help you with this task. All panel members should initial each page of the notes at the end of the hearing in acknowledgement that they are a fair and accurate reflection of what was said at the hearing. Refer to Appendix 1: Benefits Review Committee notes.

Hearing notes may have been made during the hearing by one or all three of the Panel members. Once the BRC has heard the case each panel member should give these notes to the report writer to assist them with writing the report, these notes should then remain with the Applicants file.

If a panel member retains the BRC notes until the report is written, these must be kept secure. Once the report has been completed, the notes should be sent to the BRC co-ordinator with the signed report. (*this can be electronic sign off)

Presentations

The Ministry often presents its case first to the BRC. This may be because the Ministry has compiled the report to the BRC. It may be a better use of time for the committee to summarise their understanding of the facts and issues of the case, and question the Ministry on any issues they have.

The BRC hearing is an informal procedure, not a Court or tribunal. There is no "right" of 'cross-examination'.

The committee sets the process and may wish to clarify the process for questions between the applicant and the Ministry. This must comply with the rules of natural justice.

If an applicant asks questions about the report or aspects of the decision, these should be put to the Ministry to answer. In some cases it will be appropriate for the Ministry presenter to question the applicant directly or through the committee particularly if the applicant at the hearing presents new information.

If the applicant does not attend the BRC, the review is held on papers only. However, if the review involves a situation where the applicant's evidence would be important, the hearing can be adjourned. An example of such a situation could be a decision regarding an overpayment, or the recoverable nature of a debt. A final notice of hearing should then be issued. It is also desirable to try and contact the applicant, preferably by telephone as well as by letter, to inform them of this.

Evidence

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

Credibility

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

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

(i) *prior inconsistent statements*
This is where a person makes one statement to one person and later contradicts that statement, particularly where the contradictory statement/s appear to have been made to gain monetary benefit.

(ii) *multiple explanations*
This is where someone makes a statement and then subsequently varies the statement to make it more advantageous for themselves.

For example, in the Thomas double murder case, the defendant Barlow allegedly made three different statements as to whether he had been present at the murder scene or not and what he had done upon discovering the bodies.

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

Inferences

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

Standard of Proof

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

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

Weight of Evidence

Some evidence will be "stronger" or more compelling than other evidence. This is called the "weight" of the evidence and the committee must consider what "weight" should be given to any particular piece of evidence. Much of the weighting will turn on the individual piece of evidence and the facts of the case, but there are some categories to watch for:

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

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

  For example, whether an Applicant lives at home is irrelevant to the issue of entitlement to an Unemployment Benefit but the "living at home" issue will be relevant to whether the Applicant is entitled to Accommodation Supplement.

(ii) *Best evidence*
The "best evidence" should be presented to the committee. In other words, the committee should see and hear the person with personal knowledge of the facts being alleged by that person and not by having an advocate make statements on behalf of people who are absent. If the person with the personal knowledge is not present, then it is likely that there can be less weight given to any evidence presented on behalf of that person in written form.

However, the committee is unable to summons any witness to give evidence before it. For this reason, any appearance by any witness must be with their consent. Non-appearance may be for some other justified reason, other than the avoidance of cross-examination (e.g. the refusal of an employer to allow an employee time off work) and this should be considered by the Committee in evaluating the evidence. The fact that the person has a good reason not to give evidence does not make their evidence any more or less credible or reliable.

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

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

(v) C*orroboration*
This means that the evidence presented about a particular fact is confirmed by other evidence from an alternative, un-related source.

Motive

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

Representation

If the applicant has a lawyer or advocate, or wants support people to attend the BRC, the committee should be informed before the hearing by the co-ordinator.

The committee may, in appropriate and extreme circumstances, decline to allow a person (other than the applicant's legal representative) to attend or appear on behalf of an applicant.

Adjournments

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

As a general rule an adjournment shouldn't be longer than two weeks but each adjournment should be based on the need for the adjournment. No case should be adjourned without the follow up hearing being scheduled.

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 in Legal Services or the Information Privacy, Policy and Practice Team for further advice:

http://doogle.ssi.govt.nz/business-groups/organisational-solutions/legal-services/

http://doogle.ssi.govt.nz/business-groups/organisational-solutions/information-services/

Family Court documents

The applicant may produce Family Court documents during the BRC hearing. A document may be relevant to the decision (Parenting or Protection Orders, for example).

The BRC cannot *require* the applicant to produce any Family Court documents. There are strict rules about who may see these. If an applicant does produce documents like this, the BRC may ask the person questions to confirm that their understanding of the facts is the same as the contents the document. If relevant, the BRC could note in its report that it looked at the relevant document, but returned it to the applicant.

It is important that if sensitive information (such as affidavits or Family Group Conference notes) is produced in a BRC that this is not retained on the applicant's file. In any cases where you come across Family Court documents, ask the Review and Client Representatives team for advice. They will seek legal advice.

If you have other court documents you should contact the Review and Client Representatives team for advice.

Decisions

Making Decisions

Once the committee is satisfied that it has all relevant information regarding a case it can make a decision. The committee makes its decision without the applicant or the Ministry present.

The BRC must only consider the decision being reviewed by the applicant. If the hearing raises additional issues of entitlement or ineligibility, these should be referred back to the Ministry.

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

- Check to ensure that the applicable legislation from the time of the original decision is being applied;
- Identify and understand the requirements of the legislation. For example, when considering whether to recover a debt under Section 362 and Regulation 207 of the Act. The committee should understand what each of the specific requirements in Regulation 208 of the Act mean. For example, considering whether the debt was the result of an error made by the Ministry;
- Consider all the options available to the applicant. For example, the committee should consider not just whether a debt was properly established, but whether that debt should be written off, or not recovered under the provisions of the Act;
- Fully explain the legal constraints and requirements to the applicant and ask the applicant to comment on how he or she meets each specific requirement;
- Decide whether the applicant meets which if any, of the specific legislative provisions you are dealing with. Avoid concentrating on one issue. Look at the case in a holistic way;
- If necessary, use prior Social Security Appeal Authority decisions to assist in deciding a particular case. However, such decisions must be considered carefully. If they are made solely on an Applicant's particular circumstances then you must compare the Applicant's circumstances with those of the appellants.
- Apply rulings by the High Court on interpretation of the law which are binding and must be applied to the facts of the particular case where the facts of the case cannot be distinguished from the facts in the High Court case. If you are unsure of the extent of the application of the ruling to the case you should then consider seeking legal submissions.
- Act within the law.

It is important that panel members understand the difference between law and policy. The function of the BRC primarily is to check the law has been correctly applied. Policy is the Ministry's interpretation of the law and how it should be applied.

A Panel Members Decision Checklist has been developed to assist panel in ensuring that their decision is documented fully and that all points presented have been considered and responded to. A copy of this checklist is included with the report of the BRC template.

Administrative Law and Natural Justice

Administrative law can be summarised as requiring you to make *a fair decision in a fair manner*. The application of administrative law principles will be determined by the individual circumstances of each case but the principles will apply in all cases.

When making decisions the committee needs to consider the following:

Illegality

This refers to a situation where the decision-maker got the law wrong, usually regarding the correct interpretation of the legislation and the scope of their power under that legislation. You are acting outside the scope of your powers if you (amongst other things):

(i) make a decision for a purpose other than that set out in the legislation;

(ii) fail to take account of all relevant matters or take account of irrelevant matters;

(iii) get the facts significantly wrong;

(iv) strictly apply a pre-set policy without taking account of the individual facts of the case (policy should be used as a guideline and not treated as sacrosanct). However, complying with a Ministerial Direction made pursuant to section 7 of the Social Security Act 2018 is acceptable in law in this context provided that the decision maker will consider stepping outside such a direction in appropriate cases;

(v) allow someone else to make the decision for you;

(vi) make a decision for which you have no proper lawful delegation.

(vii) make a decision for which you have no lawful power or authority.

Unreasonableness

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

Unfairness

This relates to a fair procedure. This obligation to be fair will involve:

(i) giving full and fair notice of the issues to be considered, the evidence for and against the applicant, and the law that will be taken into account in making the decision;

(ii) such notice being given in sufficient time to allow the applicant to adequately prepare for the hearing (and to ensure they understand any consequences of not appearing at the hearing);

(iii) giving the applicant an opportunity to make representations to the committee and for those representations to be to properly considered;

(iv) avoiding undue and unreasonable delay;

(v) giving full and detailed reasons for each point raised (e.g. what was considered and what wasn't) and discussed and how they contributed to the decision made.

Consistency

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

Available Decisions

The Committee can decide to:

- uphold in part (change part of the decision)
- uphold
- overturn

the decision of the Ministry. This means to vary in part, (uphold in part) confirm (uphold) or revoke (overturn) the decision. The decision of the committee does not have to be unanimous. Two out of three panel members must agree for a decision to be made final.

If further matters are raised that the committee feels need to be addressed outside of the decision being reviewed, the committee can make a comment and recommend that the Ministry address the issues. The co-ordinator ensures that the recommendations are considered by the Ministry and that HIYA is noted with the outcome of these considerations.

If one panel member is disagreeing, or dissenting from the decision then it should be recorded that this is the case, and the reasons for their dissention recorded. The dissenting decision should follow directly after the majority and should point to the factors or issues that contributed to the different conclusion.

If the decision of the committee is to uphold in part or overturn the original decision instructions will be issued to the Ministry on the actions that the Ministry needs to take to conclude the review.

Post Hearing Procedures

Documenting the decision

Once the committee has made its decision it is documented in 'Report of the Benefits Review Committee'. The chairperson is responsible for ensuring the report is completed.

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

- both the applicant's case and the Case of the Ministry needs to be fairly represented in the final report (The final report should not be restricted to a "cut and paste" of the Ministry's submission)
- the final report needs to fully explain to the applicant the reasons for the decision made by the committee. "Full reasons" does not mean a short bullet point list. The applicant should see that their arguments have been considered and addressed, and should understand the basis for the decision the committee reached
- if the committee makes reference to legislation or policy in the final decision then that legislation or policy needs to be referred to and may also be quoted or attached to the report. Where policy is departed from, reasons for this decision need to be explained.

A "notes page" has been developed to assist panel in ensuring that their decision is documented fully and that all arguments presented have been considered and responded to. Refer Appendix 1: BRC Hearing Notes.

Report of the BRC QA and Signoff

When the report is sent to the other panel members for signoff the panel members are responsible for checking the report. If a panel member believes an area has not been sufficiently covered in the report they do not sign it off until the appropriate amendments have been made.

All three members of the committee sign the final report and initial each page as being a fair representation of the events of the hearing and the decision made. If one panel member disagrees with the decision it is important that this, and the reasons for the dissention, is recorded. The report is then given to the applicant and a copy to the Ministry.

If the report to the BRC contains errors then the BRC needs to ensure that these are corrected, these errors will automatically transfer into the report of the BRC if you copy and paste from the report to the BRC.

The exception being the case for the Ministry, this is Ministry's case and should the panel notice grammatical errors then they need to ensure those are corrected but should the wrong law and policy be applied to the facts of the case the BRC should make comments about this in their findings. All three panel members are responsible for the content of the report, if this contains errors then this reflects on the Panel.

The final report is sent to the applicant with a covering letter. If the decision is not in the applicant's favour, or only partially favourable, he or she is informed of the right to appeal to the Social Security Appeal Authority.

The completed and signed report must be sent to the applicant within five days of the conclusion of the hearing.

Any follow up required by the Ministry should be actioned within 24 hours of notification of the decision. The co-ordinator ensures that any recommendations made by the panel are considered by the Ministry and HIYA noted with the Ministry's response.

Appendix 1: Benefits Review Committee Notes

BRC Hearing Notes

Applicant's Name:	SWN:
Committee:	Chairperson Panellist Panellist
Date:	
Attendees for the Applicant: Attendees for the Ministry:	

1. Key Legislation:

2. Key Facts:

- **Applicant**

- **Ministry**

3. Feedback to Site(*if applicable*):

4. Notes:

Upheld	Upheld in Part	Overturned	Allowed	Declined

5. Attached to Report:

Appendix 2: Glossary of terms

Legislation:

- Any law passed by parliament. This is called an Act or statute
- Any law made by someone with statutory authority – 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: 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, which has a judicial function and is established by legislation to decide disputes about a specific subject matter. For example, the disputes Tribunal or the Social Security Appeal Authority. Some tribunals such as the Waitangi Tribunal have a more investigatory and advisory function.

Social Security Appeal Authority (SSAA): The SSAA is an independent tribunal established under section 397,400 of the Social Security Act to decide appeals on benefit entitlement. The Ministry of Justice administers the SSAA. Members are appointed by the Governor-General on the recommendation of the Minister.

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 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.

It is not a tribunal-type body, as it is not characterised by independent tenure, the right of appeal for both parties, the ability to compel evidence, to order costs or to take any necessary steps to require its decision to be implemented.

Jurisdiction: The authority of a body to decide a particular issue. The sorts of disputes that the Social Security Appeal Authority may consider are set out in section 397, 400 of the Act.
If a dispute has arisen in another country, or the dispute may have already been decided by another judicial body, there could be issues about jurisdiction.

Natural Justice: Refer page 1 of Panel members' information pack

Substantive decision: The substantive decision is the original decision that was made by the Ministry.

Appendix 3: Frequently asked questions

Q. Does the Applicant need to attend an Out of Time hearing?

A. Yes, it's important the Applicant attends to present their case regarding why it has taken more than three months to apply for the review of decision. However the BRC cannot require the applicant to attend, and if he or she does not, must make a decision on the papers.

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

A. If you are able to get the Ministry's presenter to come back and present their case then there isn't any reason why the case can't proceed, if the Ministry's presenter is unable to present then adjourn to another day to allow both parties state their case.

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

A. Ministry letter head, the Applicant and the Ministry both get a copy of this letter.

Q. The BRC overturned the Ministry decision, are we still required to give the applicant appeal rights?

A. Yes, this is a legal requirement.

Q. The applicant's advocate has read the findings, decided they are unclear, and wants the BRC to reconsider the decision as he or she is concerned there may be a breach of Natural Justice. What do we do?

A. depending on what the findings actually say it may be they need to re-convene to address all the issues raised by both parties. It's advised you discuss this on a case by case basis with the RoD team.

Q. The Applicant has a representative attending and he/she quotes Scoble and Taylor. How do we go about getting information on these cases and work out if they are relevant?

A. If case law is introduced at the hearing that the panel is not familiar with the panel should adjourn and ask for the Ministry presenter to get some information about the quoted case.

Q. The BRC has decided that it doesn't have jurisdiction to consider the review of decision. Do we still need a hearing? Do we invite the applicant? And what do we have to give the Applicant for appeal rights?

A. Yes a hearing is required, the BRC would decided based on the circumstances and the legislation if the decision is reviewable or not. A BRC's jurisdiction to review decisions is set out in sections 391 and 397 of the Act.

Where the BRC has decided that it does not have jurisdiction to consider a Review of Decision, the Applicant cannot then appeal this Review of Decision to the Social Security Appeal Authority.

The Social Security Appeal Authority may only consider appeals that have been confirmed or varied by a BRC.

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

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

Q. The BRC agree with the decision that the Ministry has made to decline monetary assistance for food but don't agree with the reason used to decline the assistance – is this partially overturned?

A. No, you agree with the decision made just not the reason the Ministry used, in this instance you disagree with the reason for decline, not the decline itself.