



MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

**Medical Appeals Board
Board Members Information Pack**

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Contents

Overview	1
Legislation – Section 10B. Right of appeal on medical grounds	2
Natural Justice	5
The Medical Appeals Process	7
Process Flowchart	10
The Medical Appeals Board	11
What is a Medical Appeals Board?	11
Board make up	12
Board members	13
Appointing members of the Board	13
Impartiality and disqualification	14
Member availability	14
Payment	14
Jurisdiction	15
When the MAB cannot hear an appeal	16
Service complaints	16
Matters heard previously	17
Out of time appeals	17
Process if the matter may be outside the jurisdiction of the MAB	18
Withdrawals	18
Information for the MAB	19
The Report for the Medical Appeals Board	19
New Information	20
New information provided when the client applies for an MAB hearing	20
New information provided prior to the MAB hearing	20
New information presented at a MAB hearing	20
Additional information required for the MAB to make a decision – medical examinations	21
New information provided after the MAB hearing but before the decision has been sent to the client and the Ministry	21
New information provided after the MAB decision has been made and the findings have been sent out to the client	21
Personal representations	22
Resources available to the MAB to help them make its decision	22
Client Representatives and Support People	23
Agents	23
Support people	23
Pre-hearing Procedures	24
Board members	24
Objections	24
Postponements	24
Pre-hearing preparations	25
Setting up	25
Chairperson	25
Requests for taping a hearing	26
The Hearing	27
Procedure	27
Notes	27
Ministry presenter	27
Presentations	27
Hearing the appeal on papers	28
Evidence	28
Adjournments	30

Disruption.....	31
Decisions.....	32
Making decisions.....	32
Administrative Law and Natural Justice.....	32
Available decisions.....	33
Split decisions.....	33
Post-hearing Procedures.....	34
Documenting the decision.....	34
Report checking.....	35
Sharing the report with the client's regular practitioner.....	35
Document and report retention.....	35
Chairperson's Guide.....	36
Appendix 1: Section 10B. Right of appeal on medical grounds.....	38
Appendix 2: Section 39A. Child disability allowance.....	41
Appendix 3: Section 39C. Medical examination may be required.....	42
Appendix 4: Section 40B. Supported living payment: on grounds of sickness, injury, disability, or total blindness: eligibility and ineligibility.....	43
Appendix 5: Section 40C. Supported living payment: on grounds of sickness, injury, disability, or total blindness: medical examination.....	45
Appendix 6: Section 88B. Jobseeker support: standard eligibility requirements.....	46
Appendix 7: Section 88E. Jobseeker support: on grounds of sickness, injury, or disability: medical examinations.....	48
Appendix 8: Section 88F. Jobseeker support: obligations on beneficiaries.....	50
Appendix 9: Section 88H. Jobseeker support: application for deferral of work test obligations.....	52
Appendix 10: Section 88I. Jobseeker support: chief executive's powers and duties to defer work test obligations.....	53
Appendix 11: Section 60Q. Certain obligations may be placed on beneficiaries and their spouses and partners.....	54
Appendix 12: Section 100B. Chief executive may require person to undergo assessment.....	56
Appendix 13: Section 102A. Work test obligations.....	58
Appendix 14: Section 102B. Work test obligations: drug testing obligations.....	60
Appendix 15: Section 102C. Work test obligations: drug testing obligations on referral to opportunity of suitable employment.....	61
Appendix 16: Section 116C. Good and sufficient reasons for failures to comply.....	63
Appendix 17: Social Security (Work Test Obligations—Drug Testing Obligations) Regulations 2013 – section 7. Good and sufficient reasons for failures to comply.....	65
Appendix 18: War Pensions Act 1954.....	67
Appendix 19: Report for the Medical Appeals Board.....	69
Appendix 20: Report for the Medical Appeals Board – Hearing on the reason for the delay.....	76
Report for the Medical Appeals Board – hearing on the reason for the delay.....	76
Appendix 21: Report of the Medical Appeals Board.....	83
Appendix 22: Report of the Medical Appeals Board – Hearing on reason for delay.....	86
Appendix 23: Glossary of Terms.....	89
Appendix 24: Frequently Asked Questions.....	91

Overview

The Medical Appeals Board (MAB) is an appeal body that is established under Section 10B, Right of appeal on medical grounds of the Social Security Act 1964 to make correct and fair decisions with regard to procedure and law.

A client can appeal to the Medical Appeals Board if:

- they do not agree with a decision made on medical grounds to decline or cancel the Child Disability Allowance, Supported Living Payment, Jobseeker Support or Veteran's Pension¹
- they are on Jobseeker Support, Supported Living Payment, Sole Parent Support, or are a partner of a main beneficiary and disagree with a decision made on medical grounds regarding their work obligations or work preparation obligations
- they have work obligations and the Ministry determines that they do not have a good and sufficient reason for not complying with a drug test obligation and/or failing to apply for suitable work that requires drug tests, on the basis that they are not addicted to or dependent on drugs.

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

The medical appeals process is an important part of ensuring that correct decisions are made by the Ministry on a case by case basis. The MAB hearing is an exercise of the client's right to challenge a decision of the Ministry and for the Board to review the Ministry's decision in a fair and independent manner.

This information pack is intended to assist MAB members in discharging that responsibility.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

¹ Appeals in relation to Veteran's Pension are administered by Veteran's Affairs New Zealand and are not subject to the processes outlined in this document.

Legislation – Section 10B. Right of appeal on medical grounds

Unofficial consolidated version of the Social Security Act 1964
-- as at 15 July 2013

10B Right of appeal on medical grounds

- (1) Any applicant or beneficiary affected may appeal to the Board against a decision of the chief executive that is-
- (a) a decision that a claim for a child disability allowance is declined, or that any such allowance is cancelled, in either case on the ground that the child is not a child with a serious disability (within the meaning of section 39A(1) and (2)); or
 - (b) a decision that a claim for a supported living payment on the ground of sickness, injury, disability, or total blindness is declined, or that any such benefit is cancelled, in either case on medical grounds; or
 - (c) a decision under section 60Q(1)(bb) that a person in receipt of a supported living payment on the ground of sickness, injury, disability, or total blindness has the capacity to comply with obligations under section 60Q(3); or
 - (d) a decision under section 60Q(1)(bc) that a person in receipt of a supported living payment on the ground of caring for a patient requiring care has the capacity to comply with obligations under section 60Q(3); or
 - (e) a decision that a claim for jobseeker support on the ground of sickness, injury, or disability is declined on medical grounds or on grounds relating to a person's capacity for work, or that a person's jobseeker support on the ground of sickness, injury, or disability is cancelled on medical grounds or on grounds relating to the person's capacity for work; or
 - (f) a determination under section 88F(2) that a jobseeker support beneficiary on the ground of sickness, injury, or disability has, while receiving that benefit, the capacity to seek, undertake, and be available for part-time work, and so is required to comply with the work test on and after a date specified in a notice under section 88F(4); or
 - (g) a confirmation, amendment, revocation, or replacement under section 88F(6) of a determination, and that results in a determination of the kind specified in paragraph (f) of this subsection; or
 - (h) a decision on medical grounds under section 88I(2) to decline an application under section 88H(2) by a beneficiary granted jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability) for deferral of all or any of the beneficiary's work test obligations; or
 - (i) a decision on medical grounds under section 88I(7) to revoke a deferral granted under section 88I of all or any work test obligations of a beneficiary granted-
 - (i) jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability); or

- (ii) jobseeker support granted on the ground of sickness, injury, or disability; or
 - (j) any of the following made in reliance on any work ability assessment by a health practitioner under section 100B:
 - (i) a determination whether the person assessed is entitled to a benefit and, if so, what kind of benefit:
 - (ii) a determination whether the person assessed, being a person in receipt of jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability), is entitled on an application under section 88H, or under section 88I(4), to deferral of work test obligations under section 88I:
 - (iii) a determination whether the person assessed, being a person in receipt of jobseeker support on the ground of sickness, injury, or disability, has for the purposes of section 88F(2) the capacity to seek, undertake, and be available for part-time work:
 - (iv) a determination whether the person assessed, being a person who is subject to work test obligations or work preparation obligations under section 60G, has the capacity to meet those obligations; or
 - (k) a decision under section 116C(2)(a) to the effect that a beneficiary does not have a good and sufficient reason, on the ground that the beneficiary is addicted to, or dependent on, controlled drugs, for either or both:
 - (i) not complying with a drug testing obligation under section 102B(1):
 - (ii) failing to apply for suitable employment that requires candidates to undertake drug tests; or
 - (l) a decision to decline a claim for a veteran's pension under section 70 of the War Pensions Act 1954, or to cancel any such pension, in either case on the ground of the applicant's or beneficiary's mental or physical infirmity.
- (2) An appeal under this section must be made within-
- (a) 3 months after the decision has been communicated to that person; or
 - (b) any further period the Board may (if it considers there is good reason for the delay) allow on application made before or after the end of that 3-month period.
- (3) The chief executive is bound by the Board's decision on an appeal under this section.
- (4) The Board is to comprise 3 members to be appointed by the chief executive for the particular purpose, being medical practitioners, rehabilitation professionals (as defined in subsection (5)), or other persons having appropriate expertise in the fields of vocational training or vocational support for persons with sickness, injury, or disability.

- (5) **Rehabilitation professional**, in subsection (4), means a person who is-
- (a) a person professionally engaged in the rehabilitation of persons from sickness or accident or with disabilities; or
 - (b) a nurse; or
 - (c) an occupational therapist; or
 - (d) a physiotherapist; or
 - (e) a psychologist.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Natural Justice

It is very important that all members of the Board act in accordance with the principles of natural justice.

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

It has two parts:

1. The rule that a person should not be a judge in their own case. This means that MAB members must act impartially when sitting on a Board. *Impartiality* is discussed in further detail later in this pack.
2. The rule that a person must always be given a chance to be heard. There are a number of aspects to this, which MAB members should keep in mind at all stages of the appeals process; these are discussed below.

The Board should ensure that both the client 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 the Board takes 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 the Board should ensure that they still get the opportunity to state their case. Board members should tell the party that their point has been understood but explain that the hearing needs to move on.

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

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

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

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

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

The following pages set out the processes, timeframes and guidelines for MAB members.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

The Medical Appeals Process

A medical appeal is an opportunity for:

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

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

The decision

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

Pre-hearing process

2. A client can appeal to the MAB when they disagree with a decision on eligibility or obligations that has been made by the Ministry on medical grounds or on grounds relating to capacity for work and is covered under the provisions listed in section 10B of the Social Security Act 1964. Further information on appealable decisions is provided in the sections titled: What is a Medical Appeals Board? and Jurisdiction.
3. The client must request for a MAB hearing in writing. This may be done by way of a Medical Appeals Board Hearing Application form, a letter, e-mail or Personal Details form. There is no requirement for the client to use the Medical Appeals Board Hearing Application form, and other written requests for a MAB hearing must be accepted.

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

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

Often the client will meet with the case manager who made the original decision so that they can explain the rationale for their decision. However if the client does not wish to meet with that case manager, this will be allowed and a substitute offered.

5. The Ministry co-ordinator will then complete an internal review of the initial decision, taking into account any new information the client provides.
6. If the Ministry still believes the original decision is correct (in part or full), the co-ordinator will contact Board members in their region to organise a hearing.
7. The co-ordinator then sets the hearing date, time and venue. The Board is arranged and the client is advised. The Board is made up of three members as listed in sections 10B(4) and 10B(5) of the Social Security Act 1964. Further information on who can be a Board member is provided in the section titled: Board make up.
8. The co-ordinator sends a copy of the *Report for the Medical Appeals Board* and all supporting documentation to the each Board member, so that each Board member can read all the information before the hearing.
9. A copy of the *Report for the Medical Appeals Board*, all supporting documentation, and the factsheet *A Guide to Medical Appeal Hearings* are sent to the client by the co-ordinator. The client is invited to attend the hearing and advised of the option of providing further information.

Hearing process

10. The hearing is held. If the client chooses not to attend at the hearing, the Ministry will also not attend and the appeal is held on papers only. If the client attends then the Ministry presenter will also attend. Representations are made to the Board from both parties.
11. If the request for an appeal is received more than three months after the client was notified, the co-ordinator will inform the Board of this. The first thing the MAB must do is decide at an initial appeal hearing whether there is good reason for the delay in lodging the request – this is referred to as an out-of-time appeal hearing. If it is considered that there is no good reason for the delay, the appeal will not be heard. If there is good reason for delay then the substantive appeal is heard.
12. The Board will then consider if it has enough information from the *Report for the Medical Appeals Board*, the submissions and the representations made in person to make a decision on the case. If there is not enough information (or additional information is raised at the hearing) then the Board can ask for further medical opinion to be provided. The hearing will be adjourned until that information can be provided. A date should be set at the hearing, generally within 10 working days, for the MAB to reconvene. However if the client does not agree to further medical information being provided the MAB will need to make its decision on the information it has at the time.

The MAB can ask for new information relevant to the appeal from the client or the Ministry. In cases where new information is presented, the client and/or the Ministry must be given the opportunity to comment. This may require an adjournment. Depending on the nature of the new information the adjournment could be until later the same day or another hearing date. If the information requested is not provided, the MAB has to make a decision based on the information it has.

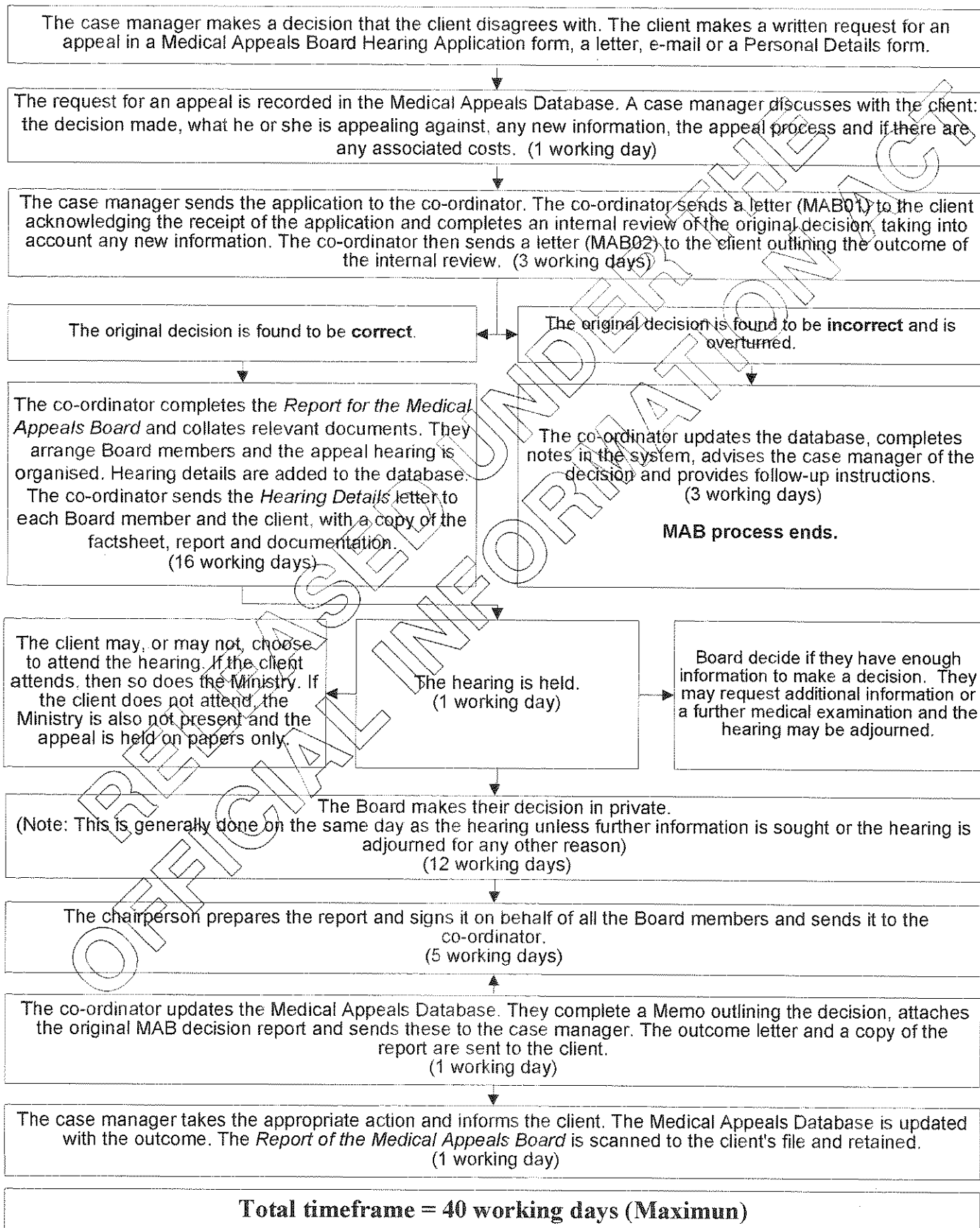
Post-hearing process

13. The decision making of the Board is done in confidence and neither the client nor Ministry is present when a decision is reached. The Board can decide to uphold, uphold in part or overturn the decision of the Ministry.
14. The Board must record the reasons for its decision in writing. The decision is signed by the chairperson on behalf of the Board members. If the decision is to uphold in part or overturn the original decision, instructions will be issued to the Ministry to ensure that the decision of the Board is followed. The co-ordinator sends a copy of the report to the client with-in one day of the report being received by the Ministry.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Process Flowchart

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



The Medical Appeals Board

What is a Medical Appeals Board?

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

A client can appeal to the MAB when they disagree with a decision that has been made on eligibility or obligations by the Ministry on medical grounds or on grounds relating to capacity for work and is covered under the provisions listed in section 10B of the Social Security Act 1964.

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

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

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

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

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

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

When the benefit is:	... and when the decision made on medical grounds is about:
Child Disability Allowance	<ul style="list-style-type: none"> • whether the client qualifies for the benefit
Jobseeker Support	<ul style="list-style-type: none"> • whether the client qualifies for the benefit
	<ul style="list-style-type: none"> • full-time work obligations
	<ul style="list-style-type: none"> • part-time work obligations
	<ul style="list-style-type: none"> • work preparation obligations
	<ul style="list-style-type: none"> • drug test obligations (good and sufficient reason for not complying on the basis that they are addicted to or dependent on controlled drugs)
Supported Living Payment on the ground of sickness, injury, disability, or total blindness	<ul style="list-style-type: none"> • whether the client qualifies for the benefit
	<ul style="list-style-type: none"> • work preparation obligations
Supported Living Payment on the ground of caring for a patient requiring care	<ul style="list-style-type: none"> • work preparation obligations

When the benefit is:	... and when the decision made on medical grounds is about:
Sole Parent Support	• part-time work obligations
	• work preparation obligations
	• drug test obligations (good and sufficient reason for not complying on the basis that they are addicted to or dependent on controlled drugs)
Partners of main beneficiaries	• full-time work obligations
	• part-time work obligations
	• work preparation obligations
	• drug test obligations (good and sufficient reason for not complying on the basis that they are addicted to or dependent on controlled drugs)

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

Board make up

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

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

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

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

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

Board members

Board members are required to:

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

Appointing members of the Board

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

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

Each Board member must be capable of:

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

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

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

Impartiality and disqualification

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

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

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

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

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

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

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

Member availability

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

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

Payment

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

Jurisdiction

The client must apply in writing for a MAB hearing by way of a Medical Appeals Board Hearing Application form, a letter, e-mail or Personal Details form where they have received notification of a decision which has been made under the provisions listed in section 10B of the Social Security Act 1964. These are decisions regarding:

- Child Disability Allowance – when this assistance is declined or cancelled on the grounds that the child does not have a serious disability (section 39A of the Social Security Act 1964)
- Jobseeker Support* – when this assistance is declined or cancelled on medical grounds, or when it is determined that the recipient has capacity to undertake full-time work, part-time work or work preparation on medical grounds (section 88E and 88F of the Social Security Act 1964)
- Supported Living Payment* – when this assistance is declined or cancelled on medical grounds (section 40 of the Social Security Act 1964); or when it is determined that the recipient has capacity to undertake work preparation or planning on medical grounds (section 60Q of the Social Security Act 1964). This means that a person can appeal to the MAB where:
 - the Supported Living Payment on the grounds of sickness, injury, disability, or total blindness is cancelled or declined on medical grounds
 - it is determined that a person receiving the Supported Living Payment on the grounds of sickness, injury, disability, or total blindness has capacity to undertake work preparation or planning on medical grounds
 - it is determined that a person receiving the Supported Living Payment on the grounds of caring for a patient requiring care has capacity to undertake work preparation or planning on medical grounds
- Work and Work Preparation Obligations* – when it is determined that the spouse/partner of a beneficiary or a recipient of Sole Parent Support has capacity to undertake work or work preparation on medical grounds (section 60Q of the Social Security Act 1964)
- Drug Test Obligations – when the Ministry determines that a client with work obligations does not have a good and sufficient reason for not complying with a drug test obligation and/or failing to apply for suitable work that requires drug tests, on the basis that they are not addicted to or dependent on controlled drugs (section 116C and section 7 of the Social Security (Work Test Obligations-Drug Testing Obligations) Regulations 2013)
- Veteran's Pension – when this assistance is declined or cancelled on medical grounds (section 70 of the War Pensions Act 1954)².

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

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

² Appeals in relation to Veteran's Pension are administered by Veteran's Affairs New Zealand and are not subject to the processes outlined in this document.

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

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

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

When the MAB cannot hear an appeal

The MAB cannot hear an appeal if:

- it is not a decision listed in section 10B of the Social Security Act
- the appeal has been heard by a Board previously
- the appeal is outside the three month review period and the Board considers there is not a good reason for delay
- the Board has no jurisdiction to hear the issue being appealed.

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

Service complaints

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

For example:

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

In this case it is appropriate for the MAB to:

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

Matters heard previously

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

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

Out of time appeals

Clients may appeal a decision within three months from the date they were notified of the decision. The date of notification is considered to be the fourth day after the letter advising of the decision was mailed to the client³, unless there is evidence to the contrary. Evidence may include the fact that the client has notified the Ministry that they have moved address (and the Ministry has not noted the information) or that the mail is returned because the client is not known at the address. Each appeal will need to be considered individually.

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

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

The Ministry will complete the *Report for the Medical Appeals Board - Hearing on the reason for the delay* template, and provide a copy to MAB members and the client before the hearing. A copy of the Ministry's report can be found in Appendix 20: Report for the Medical Appeals Board - Hearing on the reason for the delay.

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

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

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

The template for the report completed by the Board outlining the decision on the reason for the delay is provided in Appendix 22: Report of the Medical Appeals Board - Hearing on the reason for the delay.

³ Section 86J (2) of the Social Security Act 1964.

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

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

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

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

Withdrawals

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

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

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Information for the MAB

The Report for the Medical Appeals Board

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

A report for the MAB should contain:

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

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

A copy of the report template can be found in [Appendix 19: Report for the Medical Appeals Board](#).

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

New Information

At any stage of the appeal process, before the MAB makes a decision, the Ministry or the client can produce additional information to be considered.

New information provided when the client applies for an MAB hearing

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

The original decision will be revisited and the Ministry will consider the following.

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

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

New information provided prior to the MAB hearing

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

New information presented at a MAB hearing

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

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

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

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

Note

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

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

The Ministry will arrange the appointment for a medical examination and organise to reconvene the hearing following the examination. The hearing should generally be reconvened within 10 working days of the initial hearing.

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

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

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

The decision of the MAB is final and there is no further right of appeal under the Social Security Act 1964.

If new information relating to the decision that was under review is provided, it must be sent to the Service Centre or Unit that made the original decision. If the information relates to a material change of circumstances (as opposed to information that could or should have been presented to the MAB at the time), it will be considered under section 81 of the Social Security Act 1964. The outcome of the section 81 review will be treated as a new decision and give the client new appeal rights.

Personal representations

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

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

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

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

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

Resources available to the MAB to help them make its decision

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

The Board 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 Board.

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

Client Representatives and Support People

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

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

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

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

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

Agents

The client may choose to appoint an agent to act on their behalf.

The agent may:

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

Support people

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

Pre-hearing Procedures

Board members

The Board must be made up of three members as listed in sections 10B(4) and 10B(5) of the Social Security Act 1964. Further information on this is provided in the section titled: Board make up.

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

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

Objections

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

Postponements

If the client advises the co-ordinator prior to a hearing that they want a postponement, this request should generally be accommodated. However, there may be occasions where after consultation a final hearing date is set and notice is given to the client of this.

In this situation the co-ordinator will liaise with the client and request they propose a suitable date that gives them adequate time to prepare and does not conflict with their schedule or circumstances.

For example if a client was unexpectedly in hospital for a previously booked MAB hearing, the hearing would be rebooked. Alternatively, the client could choose to have their agent appear on their behalf.

Pre-hearing preparations

The Board members and the client are sent the *Report for the Medical Appeals Board* and supporting documents before the hearing. Board members may choose to take notes from these documents to remind them of questions to ask the client or the Ministry presenter.

It is not appropriate to share these notes with other Board members or attendees before the hearing as this may alter the perspective of the other Board 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 Board has retired.

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

Setting up

The co-ordinator will arrange the following:

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

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

Chairperson

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

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

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

Requests for taping a hearing

A client may ask that the MAB hearing be tape recorded. This is an issue for the MAB to consider itself, as part of setting its own procedure. If the MAB does agree to the client recording the hearing, it may be recorded using the National Fraud Investigation Unit (a Unit within the Ministry of Social Development) equipment that makes three tapes (one for the client, one for the MAB and one for the Ministry). If requested before the hearing the co-ordinator can arrange for the equipment to be in the room for the Board to then decide.

If the MAB decides not to allow taping it must provide reasons to the client explaining why this is the case.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

The Hearing

Procedure

The MAB can set its own process for the hearing as the Social Security Act 1964 does not set out a hearing procedure. The MAB needs to clearly state the process for the hearing to each person present at the hearing. The process adopted must be fair and reasonable.

Notes

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

At the end of the hearing the note taker must confirm with the wider Board what the final decision on each point was.

Hearing notes may have been made during the hearing by one or all three of the Board members. Once the MAB has heard the case, each Board member should give their notes to the member responsible for writing the *Report of the Medical Appeals Board* to assist them with writing the report.

If a Board member retains the MAB notes until the report is written, these must be kept secure. Once the report has been completed, the notes should be sent to the Ministry co-ordinator with the signed report.

Ministry presenter

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

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

Presentations

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

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

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

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

Hearing the appeal on papers

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

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

Evidence

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

- **Credibility**

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

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

- (i) **Prior inconsistent statements**

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

- (ii) **Multiple explanations**

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

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 Board.

- Inferences

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

- Standard of Proof

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

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

- Weight of Evidence

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

- (i) Relevance

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

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

- (ii) Best evidence

The "best evidence" should be presented to the Board. In other words, the Board 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 Board is unable to summons a client to give evidence before it.

(iii) Documentary evidence

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

(iv) Opinion

A person's opinion will generally count for little, except where the person giving the opinion is an expert. An "expert" is someone with recognised practical experience and/or qualifications in a particular field. Obviously, even where someone is accepted as being expert in a particular field, 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) Corroboration

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

- Motive

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

Adjournments

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

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

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

Disruption

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

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

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

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

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Decisions

Making decisions

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

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

A copy of the report template is attached in [Appendix 21: Report of the Medical Appeals Board](#).

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

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

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

Administrative Law and Natural Justice

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

When making decisions the Board needs to consider the following:

- **Illegality**

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

The MAB members are acting outside the scope of their powers if they (amongst other things):

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

- Unreasonableness

The MAB must not make such an unreasonable decision or come to such an unreasonable finding that no reasonable person could have made that finding, having regard to the specific provisions and intention of the Social Security Act 1964 and the facts of the appeal. Unreasonableness will be a question of fact in each appeal and requires careful consideration.

- Unfairness

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

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

- Consistency

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

Available decisions

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

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

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

If the decision of the Board 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 appeal.

Split decisions

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

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

Post-hearing Procedures

Documenting the decision

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

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

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

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

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

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

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

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

The final report is sent to the Ministry's co-ordinator who sends a copy to the client with a covering letter. The completed and signed report must be received by the Ministry within 17 working 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 template for the *Report of the Medical Appeals Board* is provided in Appendix 12.

Report checking

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

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

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

Sharing the report with the client's regular practitioner

Where the findings and decisions detailed in the *Report of the Medical Appeals Board* are relevant to the client's on-going medical treatment or management, the Board may wish to send the report to the client's regular practitioner. In this case, the Board must seek written consent from the client to do so.

The client has the final decision on what is shared with their regular practitioner. If consent is not given, the Board cannot share the report or any findings. They can, however, recommend that the client provides the practitioner with a copy of the report once they receive it.

Document and report retention

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

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

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

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 Board may choose to run the hearing in any way.

The process is:

- independent and less formal than a court hearing
- no one is under oath, but all enter into the spirit of the hearing so that the Board is able to make a fair and reasonable decision
- the Ministry will present their case first and then the client will have an opportunity to explain his or her reasons for the appeal
- the Board may ask questions of both parties. All questions are to go through the chairperson.

1. *Pre-hearing:* Before the hearing begins, the chairperson should:

- ensure all of the Board are happy with and clear about the chosen process
- collect the client and the Ministry presenter from the waiting area
- introduce him or herself as the chairperson
- introduce all of the other Board members as well as anyone else in the room. Sometimes Board members prefer to introduce themselves and should be given this opportunity.

2. *Introduction:* At the beginning of the hearing the chairperson should advise everyone that:

- that the hearing is convened in terms of Section 10B of the Social Security Act 1964 and that Section 10B outlines the requirements of this MAB
- the Board is made up of three independent registered health practitioners who are one of the following:
 - medical practitioners
 - rehabilitation professionals such as occupational therapist, physiotherapists, nurse, or psychologists
 - other persons with appropriate expertise in the fields of vocational training or vocational support for person with sickness, injury or disability.
- the Board will have a fresh look at the decision and ensure a fair and impartial outcome
- the Board's decision is final and the Ministry and the client are bound by it.

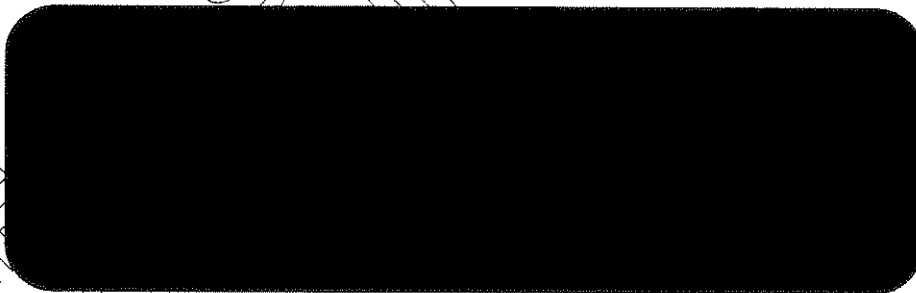
3. *Hearing:* The chairperson will then:

- invite the Ministry to go first, if that is the agreed process
- 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 client is not familiar with the content it is suggested the presenter go into more detail and ensures the material is presented in such a way that non-Ministry staff will have a clear understanding
- invite the client to advise the Board why he or she is reviewing the decision.

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

4. *Conclusion:* At the end of the hearing the chairperson will:

- ask for any closing comments from all parties
- advise that there will be no verbal decision made. A written decision will be provided as soon as practicable
- advise that the Board's decision is final and the Ministry and client are both bound by this decision. That an appeal can only be heard by the MAB once and there is no right of appeal under the Social Security Act 1964.



Appendix 1: Section 10B. Right of appeal on medical grounds

Unofficial consolidated version of the Social Security Act 1964 -- as at 15 July 2013

10B Right of appeal on medical grounds

- (1) Any applicant or beneficiary affected may appeal to the Board against a decision of the chief executive that is-
- (a) a decision that a claim for a child disability allowance is declined, or that any such allowance is cancelled, in either case on the ground that the child is not a child with a serious disability (within the meaning of section 39A(1) and (2)); or
 - (b) a decision that a claim for a supported living payment on the ground of sickness, injury, disability, or total blindness is declined, or that any such benefit is cancelled, in either case on medical grounds; or
 - (c) a decision under section 60Q(1)(bb) that a person in receipt of a supported living payment on the ground of sickness, injury, disability, or total blindness has the capacity to comply with obligations under section 60Q(3); or
 - (d) a decision under section 60Q(1)(bc) that a person in receipt of a supported living payment on the ground of caring for a patient requiring care has the capacity to comply with obligations under section 60Q(3); or
 - (e) a decision that a claim for jobseeker support on the ground of sickness, injury, or disability is declined on medical grounds or on grounds relating to a person's capacity for work, or that a person's jobseeker support on the ground of sickness, injury, or disability is cancelled on medical grounds or on grounds relating to the person's capacity for work; or
 - (f) a determination under section 88F(2) that a jobseeker support beneficiary on the ground of sickness, injury, or disability has, while receiving that benefit, the capacity to seek, undertake, and be available for part-time work, and so is required to comply with the work test on and after a date specified in a notice under section 88F(4); or
 - (g) a confirmation, amendment, revocation, or replacement under section 88F(6) of a determination, and that results in a determination of the kind specified in paragraph (f) of this subsection; or
 - (h) a decision on medical grounds under section 88I(2) to decline an application under section 88H(2) by a beneficiary granted jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability) for deferral of all or any of the beneficiary's work test obligations; or
 - (i) a decision on medical grounds under section 88I(7) to revoke a deferral granted under section 88I of all or any work test obligations of a beneficiary granted-
 - (i) jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability); or

- (ii) jobseeker support granted on the ground of sickness, injury, or disability; or
 - (j) any of the following made in reliance on any work ability assessment by a health practitioner under section 100B:
 - (i) a determination whether the person assessed is entitled to a benefit and, if so, what kind of benefit;
 - (ii) a determination whether the person assessed, being a person in receipt of jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability), is entitled on an application under section 88H, or under section 88I(4), to deferral of work test obligations under section 88I;
 - (iii) a determination whether the person assessed, being a person in receipt of jobseeker support on the ground of sickness, injury, or disability, has for the purposes of section 88F(2) the capacity to seek, undertake, and be available for part-time work;
 - (iv) a determination whether the person assessed, being a person who is subject to work test obligations or work preparation obligations under section 60Q, has the capacity to meet those obligations; or
 - (k) a decision under section 116C(2)(a) to the effect that a beneficiary does not have a good and sufficient reason, on the ground that the beneficiary is addicted to, or dependent on, controlled drugs, for either or both:
 - (i) not complying with a drug testing obligation under section 102B(1);
 - (ii) failing to apply for suitable employment that requires candidates to undertake drug tests; or
 - (l) a decision to decline a claim for a veteran's pension under section 70 of the War Pensions Act 1954, or to cancel any such pension, in either case on the ground of the applicant's or beneficiary's mental or physical infirmity.
- (2) An appeal under this section must be made within-
- (a) 3 months after the decision has been communicated to that person; or
 - (b) any further period the Board may (if it considers there is good reason for the delay) allow on application made before or after the end of that 3-month period.
- (3) The chief executive is bound by the Board's decision on an appeal under this section.
- (4) The Board is to comprise 3 members to be appointed by the chief executive for the particular purpose, being medical practitioners, rehabilitation professionals (as defined in subsection (5)), or other persons having appropriate expertise in the fields of vocational training or vocational support for persons with sickness, injury, or disability.

- (5) **Rehabilitation professional**, in subsection (4), means a person who is-
- (a) a person professionally engaged in the rehabilitation of persons from sickness or accident or with disabilities; or
 - (b) a nurse; or
 - (c) an occupational therapist; or
 - (d) a physiotherapist; or
 - (e) a psychologist.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 2: Section 39A. Child disability allowance

Unofficial consolidated version of the Social Security Act 1964 -- as at 15 July 2013

39A Child disability allowance

- (1) For the purposes of this section and of sections 39B to 39E, **child with a serious disability** means a dependent child who-
- (a) has a physical or mental disability;
 - (b) because of that disability needs constant care and attention; and
 - (c) is likely to need such care and attention permanently or for a period exceeding 12 months.
- (2) In determining for the purposes of subsection (1)(b) whether a child with a serious disability needs constant care and attention the chief executive shall consider whether the child requires-
- (a) from another person, frequent attention in connection with his bodily functions; or
 - (b) attention and supervision substantially in excess of that normally required by a child of the same age and sex; or
 - (c) regular supervision from another person in order to avoid substantial danger to himself or others.
- (3) Subject to the provisions of this section and of sections 39B to 39E, the chief executive may grant a child disability allowance in respect of a child with a serious disability being cared for-
- (a) in a private home that is the residence of the person caring for that child; or
 - (b) in a home or hostel operated by an approved voluntary organisation if the child's parent or guardian is required to contribute to the cost of maintaining him in that home or hostel and the child is cared for by his parent or guardian during school holidays or weekends.

Appendix 3: Section 39C. Medical examination may be required

Unofficial consolidated version of the Social Security Act 1964
-- as at 15 July 2013

39C Medical examination may be required

- (1) The chief executive may determine that an application for a child disability allowance be supported by the certificate of a medical practitioner certifying whether or not, in the opinion of the medical practitioner, the child in respect of whom the application is made is a **child with a serious disability** within the meaning of subsections (1) and (2) of section 39A.
- (2) Before an application for a child disability allowance is granted, the chief executive may require the child in respect of whom the application is made to be examined by a medical practitioner nominated by the chief executive for the purpose.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Appendix 4: Section 40B. Supported living payment: on grounds of sickness, injury, disability, or total blindness: eligibility and ineligibility

Unofficial consolidated version of the Social Security Act 1964 -- as at 15 July 2013

40B Supported living payment: on ground of sickness, injury, disability, or total blindness: eligibility and ineligibility

- (1) A person is entitled to the supported living payment under this section if he or she satisfies the criteria in subsections (1A) and (1B), and-
- (aa) (Repealed)
 - (a) the person is totally blind; or
 - (b) the person is permanently and severely restricted in his or her capacity for work because of sickness, or because of injury or disability arising (in either case) from accident or existing from birth.
- (1A) An applicant for the supported living payment under this section must be aged at least 16 years.
- (1B) An applicant for the supported living payment under this section must meet the residential requirements in section 74AA.
- (2) A person is permanently restricted in his or her capacity for work if the chief executive is satisfied that-
- (a) the restricting sickness, injury, or disability is expected to continue for at least the period set out in regulations made under this Act for the purposes of this section; or
 - (b) the person is not expected to live for the period set out in those regulations, because the person's sickness, injury, or disability is terminal.

Consolidation notes ▼

For the Social Security (Supported Living Payments) Regulations 1998 (as retitled by section 97 and Schedule 4 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013), see SR 1998/241.

Consolidation notes ▲

- (3) A person is severely restricted in his or her capacity for work if the chief executive is satisfied that the person is incapable of regularly working 15 or more hours a week in open employment.
- (3A) Subsection (3) is subject to section 40K.
- (4) A person who is not both permanently and severely restricted in his or her capacity for work must not be granted a supported living payment under this section, unless he or she is totally blind.

- (5) A person must not be granted a supported living payment under this section if the chief executive is satisfied that the person's restricted capacity for work, or total blindness, was self-inflicted and brought about by the person with a view to qualifying for a benefit.
- (6) (Repealed)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 5: Section 40C. Supported living payment: on grounds of sickness, injury, disability, or total blindness: medical examination

**Unofficial consolidated version of the Social Security Act 1964
– as at 15 July 2013**

40C Supported living payment: on ground of sickness, injury, disability, or total blindness: medical examination

- (1) This section applies to a person who is an applicant for, or a person in receipt of, a supported living payment on the ground of sickness, injury, disability, or total blindness.
- (2) The chief executive may require the applicant or beneficiary to submit himself or herself for examination by a medical practitioner or a psychologist. The medical practitioner or psychologist must be agreed for the purpose between the applicant or beneficiary and the chief executive, or, failing agreement, must be nominated by the chief executive.
- (3) The medical practitioner or psychologist must certify whether, in the medical practitioner's or psychologist's opinion, the applicant or beneficiary is, or is not, or whether there is doubt about whether the applicant or beneficiary is or is not
 - (a) permanently and severely restricted in his or her capacity for work; or (as the case may be)
 - (b) totally blind.
- (4) A certificate given under this section must state the grounds upon which the opinion is founded.
- (5) A certificate given under this section must, in the case of doubt referred to in subsection (3), and may, in any other case, indicate a date for review of the permanency, severity, or both, of the applicant's or beneficiary's sickness, injury, or disability.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Appendix 6: Section 88B. Jobseeker support: standard eligibility requirements

Unofficial consolidated version of the Social Security Act 1964
-- as at 15 July 2013

88B Jobseeker support: standard eligibility requirements

- (1) A person is entitled to jobseeker support if he or she satisfies the criteria in subsections (2), (3), and (4), and-
 - (a) is not in full-time employment, but-
 - (i) is seeking it; and
 - (ii) is available for it; and
 - (iii) is willing and able to undertake it; and
 - (iv) has taken reasonable steps to find it; or
 - (b) is not in full-time employment, but would comply with subparagraphs (i) to (iv) of paragraph (a) but for circumstances that would qualify the person for an exemption under section 105 from some or all work test obligations; or
 - (c) is not in full-time employment and is willing to undertake it but, because of sickness, injury, or disability, is limited in his or her capacity to seek, undertake, or be available for it; or
 - (d) is in employment, but is losing earnings because, through sickness or injury, he or she is not working at all, or is working only at a reduced level.
- (2) An applicant for jobseeker support-
 - (a) must be aged at least 18 years, in the case of an applicant without a dependent child;
 - (b) must be aged at least 19 years, in any other case.
- (3) An applicant for jobseeker support must meet the residential requirements in section 74AA.
- (4) An applicant for jobseeker support must have-
 - (a) no income; or
 - (b) an income of less than the amount that would fully abate that benefit.
- (5) Nothing in subsection (4) affects the entitlement of a person to receive jobseeker support if, during a temporary period, the person has income sufficient to fully abate that benefit but the person otherwise fulfils the conditions of entitlement to that benefit.

- (6) Nothing in subsection (1)(a) or (4) affects the entitlement of a person receiving jobseeker support at the rate in clause 1(ab) or (ba) of Schedule 9 to receive jobseeker support if, during a temporary period, the person engages in full-time employment, and the income from that employment and the person's other income when calculated over a 52-week period under section 64(2A) is less than the amount that would fully abate the benefit.
- (7) A sick or injured person (A) may treat as a loss of A's earnings for the purposes of subsection (1)(d) a payment A makes to any other person (B) who acts as A's substitute during A's sickness or injury.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 7: Section 88E. Jobseeker support: on grounds of sickness, injury, or disability: medical examinations

Unofficial consolidated version of the Social Security Act 1964
-- as at 15 July 2013

88E Jobseeker support: on ground of sickness, injury, or disability: medical examination

- (1) A person making an application for jobseeker support on the ground of sickness, injury, or disability (the applicant) must include in the application a certificate that complies with subsections (2) and (3).
- (2) A certificate complies with this subsection only if it is given-
 - (a) by a medical practitioner in respect of any condition; or
 - (b) by a dentist in respect of a condition that is within the ambit of his or her profession; or
 - (c) by a midwife in respect of a pregnancy, childbirth, or any related condition that is within the ambit of his or her profession; or
 - (d) by a health practitioner of a kind specified for the purposes of this paragraph in regulations made under section 132 and in respect of a condition within the ambit of his or her scope of practice.

Consolidation notes ▼

For the Social Security (Jobseeker Support-Medical Examinations) Regulations 2010 (as retitled by section 114 and Part 2 of Schedule 5 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013), see SR 2010/59. See also clause 9 of Schedule 32 of this Act.

Consolidation notes ▲

- (3) A certificate complies with this subsection only if it-
 - (a) certifies that the applicant's capacity for work is affected by sickness, injury, or disability; and
 - (b) indicates the nature of the sickness, injury, or disability concerned, the extent to which the applicant's capacity for work is affected by it, and the length of time that effect is likely to last; and
 - (c) contains any other particulars the chief executive may under this paragraph require.
- (4) The chief executive may at any time require the applicant or a jobseeker support beneficiary to submit himself or herself for examination by a medical practitioner or psychologist. The medical practitioner or psychologist must be agreed for the purpose between the applicant or beneficiary and the chief executive or, failing agreement, must be nominated by the chief executive.

- (5) The medical practitioner or psychologist must prepare, and must send the chief executive a copy of, a report that indicates-
- (a) whether the applicant's or beneficiary's capacity for work is affected by sickness, injury, or disability; and
 - (b) the extent to which the applicant's or beneficiary's capacity for work is affected by the sickness, injury, or disability concerned; and
 - (c) whether, and if so, for how long, that capacity is likely to continue to be affected by the sickness, injury, or disability concerned.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 8: Section 88F. Jobseeker support: obligations on beneficiaries

Unofficial consolidated version of the Social Security Act 1964
-- as at 15 July 2013

88F Jobseeker support: obligations on beneficiaries

- (1) A person granted jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability) must (subject to sections 88J and 105) comply with the work test from the time that payment of jobseeker support commences.
- (2) The chief executive must after granting a person jobseeker support on the ground of sickness, injury, or disability, and may at any later time, determine whether the person has, while receiving that benefit, the capacity to seek, undertake, and be available for part-time work (as defined in section 3(1)).
- (3) A determination under subsection (2) must be made after having had regard to:
 - (a) the relevant certificate, and any relevant report obtained, under section 88E; and
 - (b) any relevant work ability assessment under sections 100B and 100C.
- (4) A determination under subsection (2) that the person granted jobseeker support on the ground of sickness, injury, or disability has, while receiving that benefit, the capacity to seek, undertake, and be available for part-time work has the consequence that the person is required to comply with the work test on and after a date specified in a written notice (of the determination's making and effects) that the chief executive must give the person.
- (5) The date specified in a written notice under subsection (4),-
 - (a) in the case of a new grant of jobseeker support, may be the date on which that benefit is first paid; but
 - (b) in any case, must not be a date before the date on which the chief executive reasonably considers the person will receive the notice.
- (6) The chief executive may at any time, whether on the application of the person or otherwise, review a determination under subsection (2), and may confirm, amend, revoke, or revoke and replace it and any related written notice under subsection (4).
- (7) A determination under subsection (2) that the person granted jobseeker support on the ground of sickness, injury, or disability has not, while receiving that benefit, the capacity to seek, undertake, and be available for part-time work has the consequence that the person is entitled to (even if he or she has not sought one) a deferral under section 88I(6) of all of the person's work test obligations.

- (8) A person must comply with the person's social obligations under section 60RA(3) if the person-
- (a) is a person with 1 or more dependent children; and
 - (b) is the person granted a benefit that is jobseeker support; and
 - (c) is not a young person on whom obligations are placed under section 171(1) or (2).

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 9: Section 88H. Jobseeker support: application for deferral of work test obligations

Unofficial consolidated version of the Social Security Act 1964 -- as at 15 July 2013

88H Jobseeker support: application for deferral of work test obligations

- (1) A person granted jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability) may apply to the chief executive for a deferral of all of the person's work test obligations on the grounds that he or she-
 - (a) is a sole parent with a dependent child under the age of 1 year; and
 - (b) is a recipient of jobseeker support instead of sole parent support under section 20D solely because that child is an additional dependent child (within the meaning of section 60GAE(1)).
- (2) A person granted jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability) may apply to the chief executive for a deferral of all of the person's work test obligations on the grounds that he or she has, because of his or her sickness, injury, or disability (being a sickness, injury, or disability that arose or became apparent only after he or she was granted jobseeker support), either-
 - (a) no capacity for work; or
 - (b) capacity only for work that is less than part-time work (as defined in section 3(1)).
- (3) The chief executive may require an applicant to verify any particulars relevant to an application under this section in such manner as the chief executive specifies either generally or specifically.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Appendix 10: Section 88I. Jobseeker support: chief executive's powers and duties to defer work test obligations

Unofficial consolidated version of the Social Security Act 1964 -- as at 15 July 2013

88I Jobseeker support: chief executive's powers and duties to defer work test obligations

- (1) The chief executive may defer all of the beneficiary's work test obligations if satisfied, on an application under section 88H(1) or in accordance with subsection (4) of this section, that the beneficiary complies with both of paragraphs (a) and (b) of section 88H(1).
- (2) The chief executive may defer all of the beneficiary's work obligations if satisfied, on an application by the beneficiary under section 88H(2) or in accordance with subsection (4) of this section, that the beneficiary has, because of his or her sickness, injury, or disability, either-
 - (a) no capacity for work; or
 - (b) capacity only for work that is less than part-time work (as defined in section 3(1)).
- (3) A deferral under this section must be in writing and may be granted-
 - (a) for a time set by the chief executive; or
 - (b) on conditions set by the chief executive; or
 - (c) for both a time and on conditions set by the chief executive.
- (4) The chief executive may grant to a beneficiary granted jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability) a deferral under this section on the ground set out in (as the case may be) section 88H(1) or (2) whether or not a formal application is made by or on behalf of the beneficiary to whom it relates.
- (5) A determination under subsection (1) or (2) must be made after having had regard to-
 - (a) the relevant certificate, and any relevant report obtained, under section 88E; and
 - (b) any relevant work ability assessment under sections 100B and 100C.
- (6) The chief executive must grant a deferral under this section to a person who is the subject of a determination of the kind referred to in section 88F(7) (even if the person has not applied for, or otherwise sought, the deferral).
- (7) The chief executive may from time to time review a deferral granted under this section, and may extend, vary, or revoke it.

Appendix 11: Section 60Q. Certain obligations may be placed on beneficiaries and their spouses and partners

Unofficial consolidated version of the Social Security Act 1964
-- as at 15 July 2013

60Q Certain obligations may be placed on beneficiaries and their spouses and partners

- (1) This section applies to every person (other than a person who is a work-tested beneficiary or is for the time being exempted under section 105) who-
- (a) is the recipient of a benefit under section 20D (sole parent support) and has a youngest dependent child under the age of 5 years; or
 - (b) (Repealed)
 - (ba) is a sole parent with a dependent child under the age of 1 year, and is a recipient of a benefit under section 88B (jobseeker support) instead of a benefit under section 20D (sole parent support) solely because that child is an additional dependent child (within the meaning of section 60GAE(1)); or
 - (bb) is the recipient of a benefit under section 40B (supported living payment on the ground of sickness, injury, disability, or total blindness) if the chief executive is satisfied that the person has the capacity to comply with obligations under subsection (3); or
 - (bc) is the recipient of a benefit under section 40D (supported living payment on the ground of caring for patient requiring care) if the chief executive is satisfied that the person has the capacity to comply with requirements under subsection (3); or
 - (c) is the spouse or partner of a person who-
 - (i) is the recipient of an emergency benefit, a supported living payment, or jobseeker support; and
 - (ii) has a youngest dependent child aged under 5 years.
- (1A) This section also applies (despite subsection (1)) to a person who-
- (a) is a work-tested beneficiary (other than one to whom subsection (1)(ba) applies); and
 - (b) has been granted under section 88I a deferral of the person's work test obligations.
- (1B) The chief executive may require a recipient of a benefit under section 40B or 40D to attend and participate in an interview with an officer of the department, or other person on behalf of the chief executive, for the purpose of helping the chief executive to determine under subsection (1)(bb) or (bc) whether the recipient has the capacity to comply with obligations under subsection (3).

- (2) A person to whom this section applies (other than a person to whom subsection (1)(bb) or (bc) applies) has a general obligation to take all steps that are reasonably practicable in his or her particular circumstances to prepare for employment and (in particular) an obligation to comply with any requirement under subsection (3).
- (3) The chief executive may, from time to time, require a person to whom this section applies (including, without limitation, a person to whom subsection (1)(bb) or (bc) applies)-
- (a) to undertake planning for employment:
 - (aa) to attend and participate in an interview (other than one for the purpose specified in subsection (1B)) with an officer of the department or other person on behalf of the chief executive:
 - (ab) to report to the department or to any other person acting on behalf of the chief executive on the person's compliance with the person's obligations under this section as often as, and in the manner that, the chief executive reasonably requires:
 - (b) to participate in or undertake (as the case requires) any of the following activities specified by the chief executive that the chief executive considers suitable to improve his or her work-readiness or prospects for employment:
 - (i) a work assessment:
 - (ii) a programme or seminar to increase particular skills or enhance motivation:
 - (iii) a work-experience or work-exploration activity:
 - (iv) employment-related training:
 - (v) an education programme:
 - (vi) any other activity (including rehabilitation) other than medical treatment, voluntary work, or activity in the community.

Appendix 12: Section 100B. Chief executive may require person to undergo assessment

Unofficial consolidated version of the Social Security Act 1964 -- as at 15 July 2013

100B Chief executive may require person to undergo assessment

- (1) This subsection applies to a person who is, or who is the spouse or partner of, a beneficiary in receipt of-
- (a) sole parent support; or
 - (b) a supported living payment (except as provided in subsection (2)); or
 - (c) an emergency benefit; or
 - (d) jobseeker support.
- (2) Subsection (1)(b) does not apply to a person receiving a supported living payment on the ground of sickness, injury, or disability if, in the chief executive's opinion,-
- (a) the person is terminally ill; or
 - (b) the person has little or no capacity for work, and the person's condition is deteriorating or not likely to improve.
- (3) The chief executive may at any time require a person to whom subsection (1) applies to attend and participate in a work ability assessment made to determine, or help to determine, all or any of the following matters:
- (a) whether the person is entitled to a benefit and, if so, what kind of benefit;
 - (b) if the person is in receipt of jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability), whether the person is entitled on an application under section 88H, or under section 88I(4), to a deferral of work test obligations under section 88I;
 - (c) if the person is in receipt of jobseeker support granted on the ground of sickness, injury, or disability, whether the person has for the purposes of section 88F(2) the capacity to seek, undertake, and be available for part-time work;
 - (d) whether the person is entitled on an application under section 105 on the ground of limited capacity to meet those obligations to an exemption from work test obligations or work preparation obligations under section 60Q;
 - (e) whether the person, being a person who is subject to work test obligations or work preparation obligations under section 60Q, has the capacity to meet those obligations;
 - (f) what is suitable employment for the person for the purposes of section 102A(1)(a), (b), or (c):

- (g) what are suitable activities for the person for the purposes of section 60Q(3) or 102A(1)(f):
 - (h) what assistance and supports the person needs to obtain employment.
- (4) An assessment under subsection (3) must be undertaken in accordance with a procedure determined by the chief executive.
- (5) After an assessment under subsection (3) is made, the chief executive may determine the matter or matters in subsection (3) for which that assessment was made-
- (a) in reliance on that assessment; or
 - (b) having regard to the assessment and to any alternative assessment under subsection (3).

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 13: Section 102A. Work test obligations

Unofficial consolidated version of the Social Security Act 1964
-- as at 15 July 2013

102A Work test obligations

- (1) The work test obligations are-
- (a) to be available for, and take reasonable steps to obtain, suitable employment; and
 - (b) to accept any offer of suitable employment, including temporary employment or employment that is seasonal or subsidised; and
 - (c) to attend and participate in an interview for any opportunity of suitable employment to which the beneficiary is referred by the chief executive; and
 - (d) when required by the chief executive, to attend and participate in any interview with an officer of the department or other person on behalf of the chief executive; and
 - (e) when required by the chief executive, to undertake planning for employment; and
 - (f) when required by the chief executive, to participate in or, as the case requires, undertake any of the following activities that the chief executive considers suitable for the beneficiary to improve the beneficiary's work-readiness or prospects for employment:
 - (i) any work assessment specified by the chief executive;
 - (ii) any programme or seminar specified by the chief executive to increase particular skills or enhance motivation;
 - (iii) a work experience or work exploration activity specified by the chief executive;
 - (iv) employment-related training specified by the chief executive;
 - (v) any other activity specified by the chief executive (including rehabilitation but not medical treatment); and
 - (g) to report to the department on his or her compliance with his or her work test obligations as often, and in the manner, as the chief executive from time to time reasonably requires.
 - (h) (Repealed)
- (1A) The drug testing obligations under section 102B(1) are included in, and form part of, each of the work test obligations under subsection (1)(a), (c), and (f)(ii) and (iv) (each of which obligations is extended, and not limited, by this subsection).
- (2) Subsection (1)(f) applies whether or not a beneficiary is subject to a sanction for failing to comply with the work test.

- (3) A person cannot be required under subsection (1) to undertake activity in the community.
- (4) (Repealed)
- (5) If the chief executive requires a beneficiary to undertake an activity under subsection (1)(f), the chief executive must take reasonable steps to arrange for the beneficiary to undertake that activity.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 14: Section 102B: Work test obligations: drug testing obligations

Unofficial consolidated version of the Social Security Act 1964
-- as at 15 July 2013

102B Work test obligations: drug testing obligations

- (1) The drug testing obligations referred to in section 102A(1A) are to undertake, and to pass, a drug test that a potential employer or a training provider requests candidates for employment or training to undertake, and to pass, by a specified time, and that is recognised by this Act because it is a drug test-
- (a) of a kind described in subsection (2); and
 - (b) requested, and undertaken, lawfully (in particular, for a lawful health or safety purpose, or other lawful purpose), even though the employer or provider is not authorised or required by or under this Act to compel the candidate to undertake it.
- (2) A drug test is of a kind described in this subsection for the purposes of subsection (1)(a) if the drug test is-
- (a) a screening drug test of the candidate undertaken without any associated later evidential drug test of the candidate; or
 - (b) an evidential drug test of the candidate if he or she has failed any associated prior screening drug test under paragraph (a); or
 - (c) an evidential drug test of the candidate undertaken without any associated prior screening drug test of the candidate.
- (3) A drug test undertaken by a candidate for employment or training on a request by the potential employer or training provider is for the purposes of subsection (1)(b) presumed to be requested, and undertaken, lawfully, unless the contrary is proved.
- (4) A candidate for employment or training is taken for the purposes of this Act to have failed an evidential drug test requested by a potential employer or a training provider if the candidate-
- (a) fails an associated prior screening drug test requested by the employer or provider; and
 - (b) waives (in any manner) the evidential drug test.

Consolidation notes ▼

For the Social Security (Work Test Obligations-Drug testing Obligations) Regulations 2013, see SR 2013/253.

Consolidation notes ▲

- (5) For the purposes of subsection (1), the chief executive may, in the absence of evidence available to the chief executive and to the contrary effect, act on information given by the potential employer or training provider to the effect that a candidate has failed a screening drug test, an evidential drug test, or both.

Appendix 15: Section 102C: Work test obligations: drug testing obligations on referral to opportunity of suitable employment

Unofficial consolidated version of the Social Security Act 1964 -- as at 15 July 2013

102C Work test obligations: drug testing obligations on referral to opportunity of suitable employment

- (1) This section applies to a work-tested beneficiary who has a work test obligation,-
 - (a) under section 102A(1)(c), to attend and participate in an interview for any opportunity of suitable employment to which the beneficiary is referred by the chief executive; and
 - (b) that, under section 102A(1A), includes the drug testing obligations under section 102B(1).
- (2) The employer providing the opportunity of suitable employment may, or may authorise the appropriate drug testing provider to, provide to the department (with or without the beneficiary's consent) the results of a screening drug test, an evidential drug test, or both if-
 - (a) that employer has (in accordance with section 102B(1) to (3)) requested the beneficiary to undergo, and to pass, by a specified time, a screening drug test, an evidential drug test, or both; and
 - (b) the beneficiary has by the specified time failed that drug test, or both of those drug tests.
- (3) The chief executive may reimburse the employer for the actual and reasonable costs (if, or insofar as, they do not exceed the maximum reimbursement amount prescribed for the purposes of this subsection by regulations made under section 132) of a screening drug test, an evidential drug test, or both that the employer has (in accordance with section 102B(1) to (3)) requested in respect of a work-tested beneficiary, if the chief executive-
 - (a) is provided under subsection (2) with the results of that drug test or those drug tests; and
 - (b) is satisfied that those results relate to the beneficiary, and that the beneficiary has failed that drug test or those drug tests.

Consolidation notes ▼

For the Social Security (Work Test Obligations-Drug testing Obligations) Regulations 2013, see SR 2013/253.

Consolidation notes ▲

- (4) Regulations made under section 132 prescribing maximum reimbursement amounts for the purposes of subsection (3) may, without limitation, prescribe different amounts of that kind based on either or both of the following:
 - (a) different kinds of drug tests:

- (b) the same or different kinds of drug tests having been provided by different providers or by different agents or employees of the same or different providers.
- (5) Costs of a screening drug test requested (in accordance with section 102B(1) to (3)) by an employer in respect of, and failed by, a work-tested beneficiary cannot be reimbursed under subsection (3) if the beneficiary has undertaken, and passed, an associated later evidential drug test requested (in accordance with section 102B(1) to (3)) by that employer.
- (6) Costs reimbursed under subsection (3) are a debt due to the Crown from the beneficiary for the purpose of section 85A(e).

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 16: Section 116C. Good and sufficient reasons for failures to comply

Unofficial consolidated version of the Social Security Act 1964 – as at 15 July 2013

116C Good and sufficient reasons for specified failures to comply

- (1) A beneficiary has for the purposes of section 116B a good and sufficient reason for not undertaking or completing an activity if-
- (a) doing so was dependent upon the provision by the department of any assistance specified by the department; and
 - (b) that assistance was either not supplied, or not supplied to the extent, or in the manner, specified by the department.
- (2) A beneficiary has for the purposes of section 116B a good and sufficient reason for not complying with a drug testing obligation under section 102B(1), or for failing to apply for suitable employment that requires candidates to undertake drug tests, or for both, if the chief executive is satisfied-
- (a) that the person is addicted to, or dependent on, 1 or more controlled drugs; or
 - (b) that the person is undertaking treatment
 - (i) for addiction to, or dependence on, 1 or more controlled drugs; and
 - (ii) provided by a health practitioner, or other person, who is professionally engaged in the treatment or rehabilitation of people using, or who have used, controlled drugs; and
 - (iii) of a kind approved by the chief executive; or
 - (c) that the person should be treated as one to whom paragraph (b) applies because he or she is awaiting assessment for, or an opportunity to undertake, treatment of the kind specified in paragraph (b); or
 - (d) that, insofar as the person is using a particular controlled drug of a kind the presence of which in the person's body can be or may be detected by an evidential drug test, that particular controlled drug has been lawfully prescribed, and the person is using only the dosage of that particular controlled drug lawfully prescribed, for the person by a health practitioner; or
 - (e) that the person falls within, or the person's circumstances fall within, another ground or other grounds specified for the purposes of this paragraph by regulations made under section 132.

Consolidation notes ▼

For the Social Security (Work Test Obligations-Drug testing Obligations) Regulations 2013, see SR 2013/253.

Consolidation notes ▲

- (3) A beneficiary who has 1 or more dependent children has for the purposes of section 116B a good and sufficient reason for not participating in or completing any activity required under section 102A(1)(f) if the activity involves participation during hours when it would be unreasonable to expect any dependent child of the person to be without that person's supervision.
- (4) This section does not limit the generality of section 116B.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 17: Social Security (Work Test Obligations—Drug Testing Obligations) Regulations 2013 – section 7. Good and sufficient reasons for failures to comply

Unofficial version of the Social Security (Work Test Obligations-Drug Testing Obligations) Regulations 2013
– as at 15 July 2013

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

- (1) This regulation prescribes for the purposes of section 116C(2)(e) of the Act a ground on which a beneficiary may for the purposes of section 116B of the Act have a good and sufficient reason for (as the case may be) either or both of the following specified failures:
- (a) not complying with a drug testing obligation under section 102B(1) of the Act;
 - (b) failing to apply for suitable employment that requires candidates to undertake drug tests.
- (2) The ground prescribed by this regulation is that-
- (a) the person has completed a screening process that has identified the person (based on information the person provided) as
 - (i) a user of (even if not dependent on, or addicted to) 1 or more controlled drugs; and
 - (ii) a person who does or may require support in addressing the person's use (including, without limitation, the causes of the person's use) of 1 or more controlled drugs; and
 - (b) the person has (in any manner) agreed to receive services for drug issue assessment and assistance for a period that-
 - (i) is reasonable for that purpose; and
 - (ii) has been recommended by a suitably qualified provider of services of that kind; and
 - (c) the period referred to in paragraph (b) has not expired.

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

- (a) to (as the case requires) assess any needs of the recipient for support in addressing the recipient's use (including, without limitation, the causes of the recipient's use) of 1 or more controlled drugs, give the recipient support of that kind, or both; and
- (b) that will be, or have been, provided by a suitably qualified provider of services of that kind.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 18: War Pensions Act 1954

70 Entitlement to veteran's pension

- (1) Subject to this Part and to the Social Security Act 1964, a person is entitled to receive a veteran's pension if,—
- (a) in any war or emergency in which New Zealand forces have served, that person either—
 - (i) served as a member of the forces, a member of the mercantile marine, or a member of the Emergency Reserve Corps; or
 - (ii) served as a member of the forces or as a member of the mercantile marine of any Commonwealth country (other than New Zealand) outside that Commonwealth country, and was ordinarily resident in New Zealand at the commencement of that war or emergency, and
 - (b) that person either—
 - (i) has attained the age at which he or she is entitled to receive New Zealand superannuation if otherwise qualified to receive it and is qualified to receive a pension under Part 2, Part 4, or Part 5 at a rate of not less than 70% of the maximum rate of pension that would be payable for total disablement; or
 - (ii) because of any mental or physical infirmity is, in the Secretary's opinion, prevented from undertaking employment and, because of that infirmity, is likely to be prevented from undertaking employment permanently or for a substantial period.
- (2) If a person is entitled to receive a veteran's pension on account of his or her own service, or would have been entitled to receive it had he or she been alive, the spouse or civil union partner or de facto partner of that person is entitled to receive a veteran's pension in the spouse's or civil union partner's or de facto partner's own right if the spouse or civil union partner or de facto partner has attained the age at which he or she would be entitled to receive New Zealand superannuation if otherwise qualified to receive it.
- (3) A person is not entitled to receive a veteran's pension if he or she has at any time been in receipt of New Zealand superannuation unless he or she—
- (a) is qualified to receive a pension under Part 2, Part 4, or Part 5 at a rate of not less than 70% of the maximum rate of pension that would be payable for total disablement; or

- (b) had elected to receive New Zealand superannuation under section 66M (as inserted by section 4 of the War Pensions Amendment Act 1986) and either,—
 - (i) before 1 April 1990, sent a written request to the Secretary to forgo national superannuation paid or payable under the Social Security Act 1964 and to receive instead a war service pension; or
 - (ii) on or after 1 April 1990, sent or sends a written request to the Secretary to forgo New Zealand superannuation and to receive instead a veteran's pension.

- (4) In subsection (3), **New Zealand superannuation** means—
 - (a) New Zealand superannuation paid or payable under the New Zealand Superannuation and Retirement Income Act 2001; or
 - (b) New Zealand superannuation paid or payable under the Social Welfare (Transitional Provisions) Act 1990 before the commencement of the New Zealand Superannuation and Retirement Income Act 2001; or
 - (c) national superannuation or guaranteed retirement income paid or payable, before 1 April 1994, under the Social Welfare (Transitional Provisions) Act 1990; or
 - (d) national superannuation paid or payable, before 1 April 1990, under the Social Security Act 1964.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Appendix 19: Report for the Medical Appeals Board

Report for the Medical Appeals Board

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

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

Medical Appeals Board Co-ordinator details:

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

Community Link/Service Centre: _____

Client details:

Client name: _____

Client number (SWN): _____

RELEASED UNDER THE ACT
OFFICIAL INFORMATION ACT

Section 1 – Decision being appealed

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

- The decision to decline or cancel on medical grounds [Child Disability Allowance; OR Jobseeker Support; OR Supported Living Payment on grounds of sickness, injury, disability, or total blindness]
- The decision to require the client to comply with part-time work obligations – [Jobseeker Support; OR partner of a main beneficiary; OR Sole Parent Support]
- The decision to require the client to comply with full-time work obligations – [Jobseeker Support; OR partner of a main beneficiary]
- The decision to require the client to comply with work preparation obligations – [Jobseeker Support; OR Supported Living Payment on grounds of sickness, injury, disability, or total blindness; OR Supported Living Payment on the ground of caring for a patient requiring care; OR partner of a main beneficiary; OR Sole Parent Support]
- The decision that the client does not have a good and sufficient reason for not complying with a drug test obligation and/or failing to apply for work that requires drug tests, on the basis that they are addicted to or dependent on controlled drugs – [Jobseeker Support; OR partner of a main beneficiary; OR Sole Parent Support]

Date of Decision: [DD/MM/YYYY]

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

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Section 2 – Summary of facts

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

Note: Information should be provided in chronological order.

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

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

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

List the client's full benefit history:

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

Attach:

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

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

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

Section 3 – Case for the client

Note: Do not introduce elements of the Ministry's case in this section.

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

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

For example:

- **The Ministry has the facts wrong** (set out the facts the client claims the Ministry has wrong and the reasons for this)
- **The Ministry has not considered all the facts** (set out the facts including those which the client claims have not been considered and show how they have been)
- **The Ministry has wrongly interpreted the law** (set the client's interpretation of the relevant legislation)
- **The Ministry has not properly exercised discretion in relation to work obligations for Jobseeker Support** (set out how the client believes the discretion should have been exercised)

State why the client wants to review the original decision.

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

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Section 4 – Case for the Ministry of Social Development

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

State how the legislation and/or policy are applied to the appeal.

Justify your decision based on law, policy and the facts of the case.

You should explain clearly how the facts as presented by the Ministry "fit" with the law and policy.

Outline the client's capacity to work (if relevant):

For example:

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

Defend the Ministry's reasons on this page.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Section 5 – Conclusion

In this section:

- state that the Ministry considers the decision under appeal to have been made correctly
- provide a brief and concise statement which outlines the reasons for the decision.

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

Title:

Signature:

Date:

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 1 – Information

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

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

For example and not limited to:

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

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Appendix 20: Report for the Medical Appeals Board – Hearing on the reason for the delay

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

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

Medical Appeals Board Co-ordinator details:

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

Community Link/Service Centre:

Client details:

Client name:

Client number (SWN):

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Section 1 – Summary of facts

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

Note: Information should be provided in chronological order.

Outline the decision made:

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

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

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

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

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

Date of Decision: [DD/MM/YYYY]

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

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Section 2 – The law

Section 10B of the Social Security Act 1964 states:

Section 10B. Right of appeal on medical grounds

- (2) An appeal under this section must be made within-
- (a) 3 months after the decision has been communicated to that person; or
 - (b) any further period the Board may (if it considers there is good reason for the delay) allow on application made before or after the end of that 3-month period.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Section 3 – Case for the client

Note: Do not introduce elements of the Ministry's case in this section.

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

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

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Section 4 – Case for the Ministry of Social Development

Outline why the Ministry considers the appeal cannot be heard.

For example:

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

Defend the Ministry's reasons on this page.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Section 5 – Conclusion

In this section:

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

Set out:

- *The outcome required by the Ministry*
- *The reasons for the desired outcome*
- *The reasons why the applicant's desired outcome is inappropriate/appropriate*

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

Title:

Signature:

Date:

____/____/____

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 1 – Information

List all the documents attached to this report that relate to the out of time request for an appeal:

- a copy of the letter regarding the original decision being appealed
- any communications to or from the client in the three months following the original decision.

For example and not limited to:

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

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 21: Report of the Medical Appeals Board



MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an application for Appeal by
Client title and full name
Client Address
Town/City

against a decision of The Ministry of Social Development

REPORT OF THE MEDICAL APPEALS BOARD

MEDICAL APPEALS BOARD MEMBERS

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

HEARING AT

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

HEARING DATE

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

APPEARANCES

Please delete the statement that does not apply:

No appearances were made at the hearing.

OR

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

DECISION BEING APPEALED

Give details of the decision being appealed.

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

FINDINGS

The Board considered all the information that was presented.

The report should:

- *provide clear reasons for the decision*
- *summarise all the points raised by both parties*
- *state the findings of facts that relate to the appeal*
- *refer to the relevant legislation*
- *ensure the facts support the decision and are consistent with the relevant legislation.*
-
- *Note: A copy of your report will be provided to Ministry staff and the client, therefore your finding must provide clear reasons for your decision.*

RELEASED UNDER THE OFFICIAL INFORMATION ACT

DECISION

Please delete the statements that do not apply:

The Board agreed to uphold the original decision.

OR

The Board agreed uphold a part of original decision.

OR

The Board agreed to overturn the original decision.

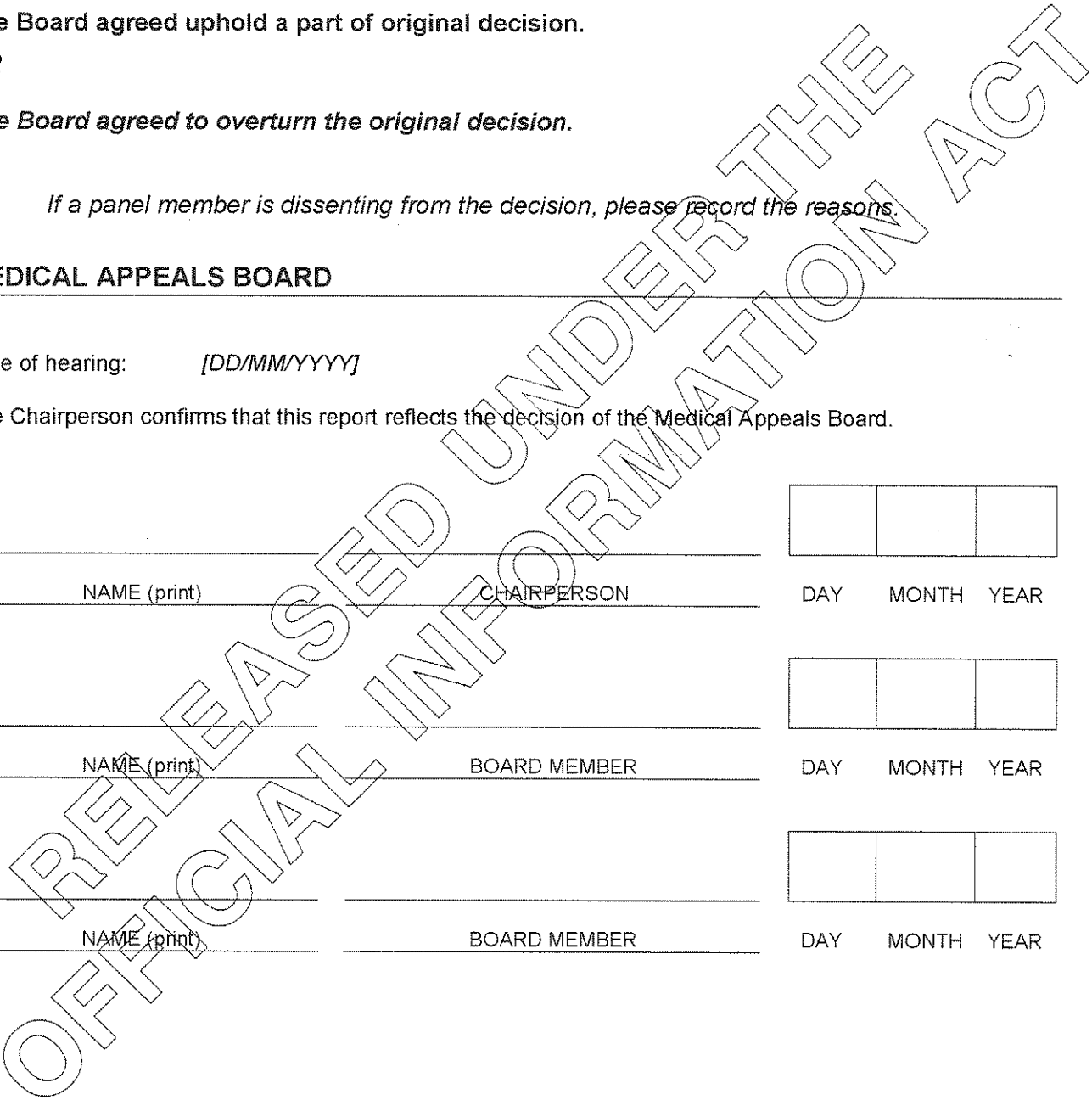
- If a panel member is dissenting from the decision, please record the reasons.

MEDICAL APPEALS BOARD

Date of hearing: [DD/MM/YYYY]

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

_____	_____	<table border="1"><tr><td> </td><td> </td><td> </td></tr></table>			
NAME (print)	CHAIRPERSON	DAY MONTH YEAR			
_____	_____	<table border="1"><tr><td> </td><td> </td><td> </td></tr></table>			
NAME (print)	BOARD MEMBER	DAY MONTH YEAR			
_____	_____	<table border="1"><tr><td> </td><td> </td><td> </td></tr></table>			
NAME (print)	BOARD MEMBER	DAY MONTH YEAR			



Appendix 22: Report of the Medical Appeals Board – Hearing on reason for delay



MINISTRY OF SOCIAL DEVELOPMENT

Te Manatū Whakahiato Ora

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an application for Appeal by

Client title and full name

Client Address

Town/City

against a decision of The Ministry of Social Development

REPORT OF THE MEDICAL APPEALS BOARD

Hearing on the reason for the delay

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

MEDICAL APPEALS BOARD MEMBERS

Chairperson/Board Member *[Name]*

Board Member *[Name]*

Board Member *[Name]*

HEARING AT

[Physical location, eg office/site]

[Physical location, eg street address]

[Town/city]

HEARING DATE

Date: *[DD/MM/YYYY]*

Start time: *[HH:MM]*

APPEARANCES

Please delete the statement that does not apply:

No appearances were made at the hearing.

OR

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

SUMMARY OF FACTS – REASON FOR THE DELAY

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

Include a summary of:

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

FINDINGS

The Board considered all the information that was presented.

The report should:

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

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

RELEASED UNDER THE OFFICIAL INFORMATION ACT

DECISION

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

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

OR

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

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

MEDICAL APPEALS BOARD

Date of hearing: [DD/MM/YYYY]

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

_____	_____	<table border="1"><tr><td> </td><td> </td><td> </td></tr></table>			
NAME (print)	CHAIRPERSON	DAY MONTH YEAR			
_____	_____	<table border="1"><tr><td> </td><td> </td><td> </td></tr></table>			
NAME (print)	BOARD MEMBER	DAY MONTH YEAR			
_____	_____	<table border="1"><tr><td> </td><td> </td><td> </td></tr></table>			
NAME (print)	BOARD MEMBER	DAY MONTH YEAR			



Appendix 23: Glossary of Terms

Internal review

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

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

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

Agent

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

Co-ordinator

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

Deferral

Some clients on Jobseeker Support will have some of their work obligations temporarily deferred. Clients on Jobseeker Support with a deferral do not have work obligations until they are no longer eligible for the deferral.

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

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

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

Judiciary

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

Jurisdiction

The authority of a body to decide a particular issue. The sorts of disputes that the MAB may consider are set out in section 10B of the Social Security Act 1964.

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

Legislation

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

Regulations, Ministerial Directions and Welfare Programmes are also legislation.

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

MAP

MAP stands for Manuals and Procedures.

MAP contains the Ministry's policies on how to apply legislation – primarily the Social Security Act 1964.

Ministry presenter

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

Policy

Policy has two parts:

1. Policy made by governments. In 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.

Substantive decision

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

Appendix 24: Frequently Asked Questions

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

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

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

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

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

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

RELEASED UNDER THE
OFFICIAL INFORMATION ACT