



MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

Medical Appeals Board

A resource for Board Members

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Introduction

The intended audience of this document are members of the medical appeals board.

This guide provides an outline of the:

- purpose of the medical appeals board
- roles and responsibilities of each individual involved in the medical appeals process and
- processes to follow to ensure medical appeals are managed in a consistent and appropriate manner.

What is a medical appeals board?

Section 53A of the Social Security Act 1964 gives a client of the Ministry the right of appeal on medical grounds in respect of:

- Child Disability Allowance
- Invalid's Benefit or
- Sickness Benefit.

An appeal may be heard by the medical appeals board where a decision made by the Ministry to decline or cancel one of the above benefit types is based on medical grounds or on grounds relating to a person's capacity for work.

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

The medical appeals board takes a fresh look at all the information about an appellant's medical circumstances or incapacity. The medical appeals board must decide whether the appellant meets the medical criteria or work capacity criteria for the relevant benefit and consider whether the right decision was made to decline or cancel the benefit.

Legislation

The Social Security Act 1964 section 53A sets out the right of appeal on medical grounds in respect of Child Disability Allowance, Invalid's Benefit and Sickness Benefit.

[53A. Right of appeal on medical grounds in respect of child disability allowance, and invalid's benefit

(1) If—

(a) any claim for a **[[child disability allowance]]** is declined on the grounds that the child is not a **[[child with a serious disability]]** within the meaning of subsections (1) and (2) of section 39A of this Act, or if any such allowance is cancelled on those grounds; or

(b) any claim for an invalid's benefit is declined on medical grounds or any such benefit is cancelled on medical grounds; or

[(ba) any claim for a [sickness benefit] is declined on medical grounds or on grounds relating to a person's capacity for work, or a [[person's sickness benefit]] is cancelled on medical grounds or on grounds relating to the person's capacity for work; or]

(bb) Repealed by s.4(2) of the Social Security Amendment Act 2001.

(c) Repealed by s.5(3)(b) of the Social Security Amendment Act (No 3) 1993.

(d) Repealed by s.7(2) of the Housing Restructuring (Income-Related Rents) Amendment Act 2000.

[(e) any claim for a veteran's pension under [section 70 of the War Pensions Act 1954], on the grounds of the applicant's mental or physical infirmity, is declined, or any such pension is cancelled on those grounds—]

the applicant or beneficiary shall, at any time within 3 months after the decision of the **[[chief executive]]** has been communicated to that person [or (if the Board considers there is good reason for the delay) within such further period as the Board may allow on application made either before or after the expiration of that period of 3 months], have a right of appeal to a Board [...].

[(1A) The Board referred to in subsection (1) is to comprise 3 members to be appointed by the chief executive for the particular purpose, being medical practitioners, rehabilitation professionals, or other persons having appropriate expertise in the fields of vocational training or vocational support for persons with sickness, injury, or disability.]

(2) On any appeal heard pursuant to subsection (1) of this section, the **[[chief executive]]** shall be bound by the decision of the Appeal Board.]

[(3) In this section, **rehabilitation professional means a person—**

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

(b) registered as—

(i) an occupational therapist under the Occupational Therapy Act 1949; or

(ii) a physiotherapist under the Physiotherapy Act 1949; or

(iii) a nurse under the Nurses Act 1977; or

(iv) a psychologist under the Psychologists Act 1981.]

Historical notes ▼

In subs. (1), para. (a) the words "child disability allowance" were substituted for the words "handicapped child's allowance" by s.12(4)(a) of the Social Security Amendment Act 1998; the words "child with a serious disability" were substituted for the words "seriously handicapped child" by s.12(4)(b) of the Social Security Amendment Act 1998; para. (ba) was substituted for the former para. (ba) by s.23 of the Social Security Amendment Act 1998, the words "sickness benefit" substituted for the words "community wage on the grounds of sickness, injury, or disability" and the words "person's sickness benefit" substituted for the words "person's community wage" by s.15 of the Social Security Amendment Act 2001; para. (bb) was inserted by s.16(1) of the Social Security Amendment Act 1998; in para (d) the words "Act; or" were substituted for the word "Act—" by s.10(1)(b) of the Social Security Amendment Act (No 4) 1997; para. (d) was added by s.6(1) of the Social Security Amendment Act (No 3) 1993; para. (e) was added by s.10(1)(c) of the Social Security Amendment Act (No 4) 1997; in para (e) the words "section 70 of the War Pensions Act 1954" were substituted on 15 April 2003 for the words "section 8 of the Social Welfare (Transitional Provisions) Act 1990" by s.12(1) and Schedule 2 of the War Pensions Amendment Act 2003; the words in the first set of single square brackets after para. (e) were inserted by s.10(1)(d) of the Social Security Amendment Act (No 4) 1997; the words "of 2 medical practitioners and a rehabilitation professional, to be appointed for that purpose by the Director-General" were omitted by s.16(2) of the Social Security Amendment Act 1998.

In subss. (1) and (2) the words "chief executive" were substituted for the words "Director-General" by s.11 and the Schedule of the Employment Services and Income Support (Integrated Administration) Act 1998.

Subs. (1A) was inserted by s.16(3) of the Social Security Amendment Act 1998.

Subs. (3) was added by s.10(2) of the Social Security Amendment Act (No 4) 1997.

See s.7 of the Employment Services and Income Support (Integrated Administration) Act 1998 regarding continuation of existing proceedings after 1 October 1998.

See s.9 of the Employment Services and Income Support (Integrated Administration) Act 1998 regarding continuation of certain appointments after 1 October 1998.

Board membership

Who is on a medical appeals board?

The Board is made up of three of the following:

- medical practitioners (preferably not more than one designated doctor)
- rehabilitation professionals which includes:
 - occupational therapists
 - physiotherapists
 - nurses
 - psychologists and
 - other persons having 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 appellant's capacity to undertake work.

Appointing members of the board

The Ministry will identify suitable members to participate on the medical appeals board. It is then the responsibility of the Board to appoint a chairperson.

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

Board members will be suitably qualified to hear an appeal when they have knowledge and expertise in a medical speciality to which the appeal relates, and have an interest in participating in the appeals process.

Impartiality and disqualification

The Board must review the appellant's eligibility for benefit on medical grounds 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.

A board member may not:

- currently be the appellant's medical practitioner or have been for a significant period in the past
- currently be the appellant's designated doctor
- have had any prior involvement in the case

- have some personal connection with the appellant
- have a personal prejudice for or against a person(s) involved in the case; or
- have pre-decided the case and come to it with a closed mind.

Roles and responsibilities

Board members

Board members are required to:

- attend the hearing
- appoint a chairperson
- work with the Ministry when setting a date, time and location for the hearing
- review the written application and evidence
- 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
- sign the final decision report.

Chairperson

We recommend that the Board appoint a chairperson. The chairperson plays a pivotal role in ensuring that a fair and impartial decision is reached.

The chairperson is responsible for:

- chairing the hearing
- establishing the rules for the hearing in consultation with the other board members
- ensuring that the hearing is conducted in a fair and professional manner
- discussing the information presented
- making a decision in equal partnership with other members of the Board
- documenting the decision (using the decision template designed for this purpose) and
- ensuring that all members of the Board sign off on the final decision report and promptly advise the Ministry of the decision.

Reviews and appeals co-ordinator

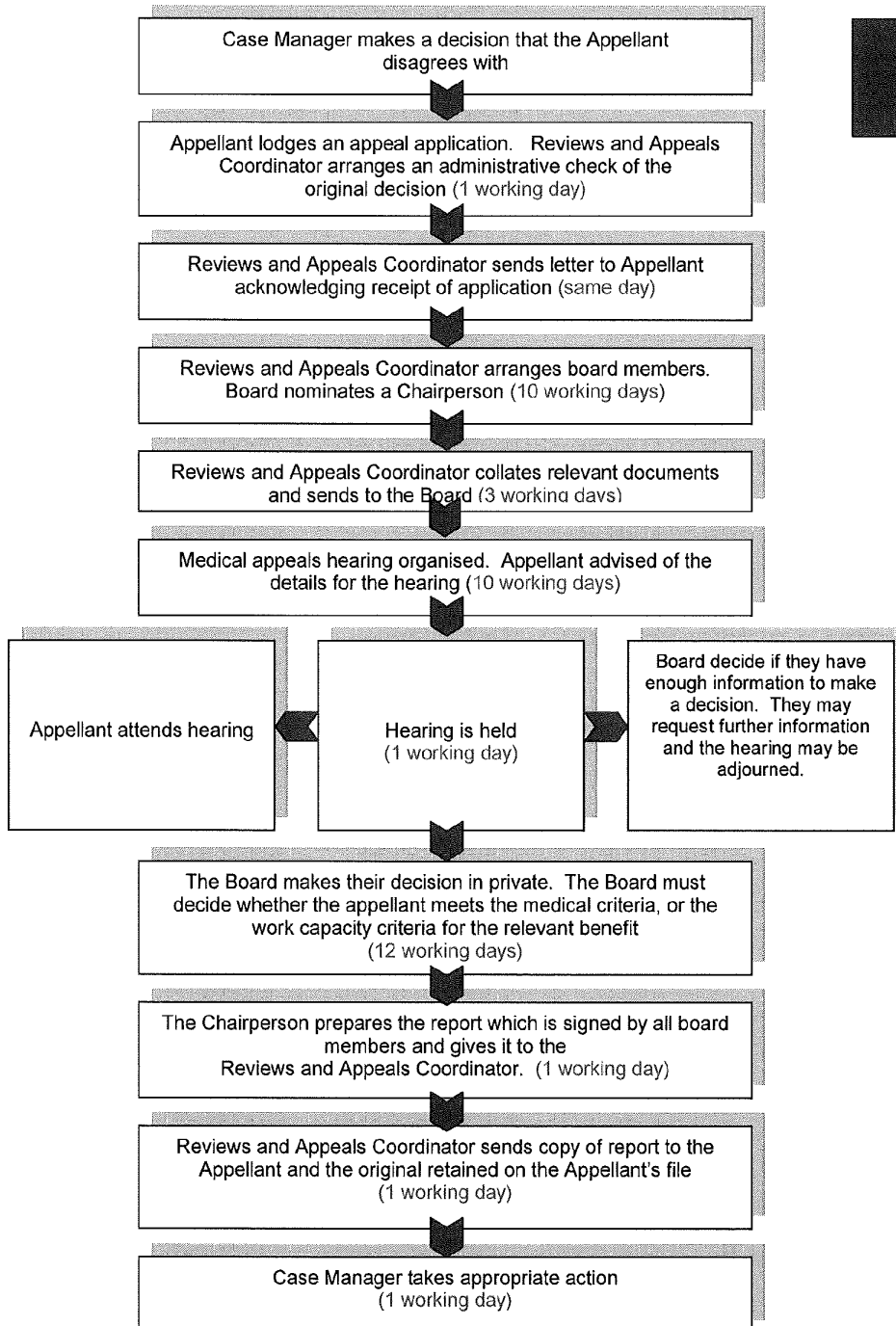
The Ministry will appoint at least one reviews and appeals co-ordinator for each Work and Income region. Regions that are more geographically spread may have more than one co-ordinator. In these instances, the reviews and appeals coordinator would service a specific area, or site, within their region.

The reviews and appeals co-ordinator:

- is the primary point of contact for the Board, staff of the Ministry and the appellant
- identifies board members
- provides training and advice to board members
- provides the Board with a copy of the appellant's application, medical assessment/certificate and supporting documentation
- works with the Board and appellant when setting a date, time and location for the hearing
- ensures the overall hearing process runs smoothly for their region
- advises the case manager of the Board's decision
- maintains regional database of hearings and outcomes
- organises travel for the appellant to attend a hearing
- advises the appellant of the hearing details and
- reports to National Office.

The medical appeals process

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



Guiding principles

Natural justice

As a member of the Board it is very important that you act in accordance with the principles of natural justice.

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

It has two parts:

- 1 The rule that a person should not be a judge in their own case. This means that you must act impartially when you sit on the Board.
- 2 The rule that a person must always be given a chance to be heard. There are a number of aspects to this, which you should keep in mind at all stages of the review process; these are discussed below.

You should ensure that the appellant is given the opportunity to explain their view of the case. This means that the appellant is able to state their case and that you, as the Board, take into account what the appellant 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 appellant to move on to the next point, but you should ensure that they still get the opportunity to state their case. You should tell them that you have understood the point that they are making but explain that you need to move the process on.

It will often help to summarise the main points of the case made by the appellant at the end of their submission. This lets them know you have taken on board what they have said.

Rules

Members of the Board may decide on the rules for a hearing.

- Prior to a hearing, as members of the Board you should familiarise yourselves with medical reports and any supporting documentation and ensure that the room is appropriate taking disabilities considerations into account.
- Proceed with the hearing once the appellant arrives (or at the date specified if the appellant has previously said they do not want to attend). Unless the appellant has said they will not attend, allow at least 10 minutes past the scheduled time for them to arrive. If the appellant has still not arrived, phone the appellant to confirm whether they still wish to attend. If the Board are satisfied that the appellant will not be attending, then proceed.
- If the appellant is present, ensure that everyone has been introduced.

- Explain the format of the hearing and ask the appellant if they have any questions about the process.
- Invite the appellant to present their case - both verbally and in written format including providing any supporting documentation.
- Explain that board members may seek clarification by asking questions.
- Check that there is nothing further the appellant wishes to add and excuse them from the hearing.
- The Board must determine if they need further information.
- The Board must discuss the information and make a decision.

Conduct

A medical appeals board decides what acceptable conduct is by those present at a hearing. The following is recommended:

- The Board should always deal with the appellant and their support persons with the same respect.
- If the Board consider that the appellant's behaviour is unacceptable, such as threatening or abusive behaviour, the chairperson can advise the appellant to modify their behaviour.
- If problems continue, it is suggested that the chairperson adjourn the hearing for 10 minutes. At this point, the chairperson may suggest that the appellant appoint an agent to represent them. The chairperson should also warn the appellant that if their behaviour is not modified that the hearing may be adjourned.
- If problems still persist the Board should adjourn the hearing.
- The hearing should continue on the material that the Board has before them. The appellant should be given time to provide a written submission.

Adjournments

Some cases referred to the medical appeals board may not be finalised at the hearing. The Board may decide that further time is needed to consider all submissions made to the Board, or they may request further information be provided by the appellant.

If the Board considers there is good reason; the Board may allow a request from the appellant to adjourn for a short time or to a later date.

If the hearing is adjourned, it is important that a time to reconvene is agreed upon. It is recommended that a hearing be reconvened within a fortnight of the original hearing.

Decisions

Making decisions

When an appeal has been heard and all submissions considered, the Board will decide the outcome of the hearing. The Board must decide whether the appellant meets the medical criteria or work capacity criteria for the relevant benefit and consider whether the right decision was made to decline or cancel the benefit.

The Board should discuss the appeal and make their decision. This should be done in the absence of the appellant, agent or support person. The final decision must be based on the written evidence provided in the original appeal application and evidence given at the hearing. The Board must also provide a written report which clearly states their reasons for making the final decision.

The final decision will direct what the Ministry are required to do.

It is accepted that although the Board may seek a medical opinion from external sources; the Board is responsible for making the final decision.

To assist with the process copies of the relevant guides for medical practitioners and the relevant legislation are provided in brochures in Appendix B and C.

Split decisions

Two board members need to agree to make a decision in cases where the Board may not be able to reach a unanimous decision.

Writing up the decision

A 'decision template' is provided for writing up the Board's decision. The chairperson is responsible for writing up the decision using the template and ensuring that all three members sign it. When complete, the chairperson should send the report to the Ministry. The report should be typed and written in plain language which explains any medical terminology used. This makes it easier for both the appellant and the Ministry to read and understand.

When the chairperson returns the report to the Ministry, it should not include any medical reports or supporting documentation.

Information that can be requested and presented

Appellants should be encouraged to speak freely, be given reasonable opportunity to explain their case in full and supply supporting documentation. Any information provided by the appellant and the Ministry should be related to the decision being appealed, such as all documents used to make the original decision about benefit entitlement.

The Board may request information from the appellant or from the Ministry that they consider will assist in making a decision. The Board does not have power to enforce their request for information. The Board should not form any adverse opinion about the

case based on the appellant's failure or refusal to attend; ability to supply information; or refusal to undergo a medical examination.

Where information is received from the Ministry, it should be provided to the appellant for comment before the final decision is made.

Record keeping

The Ministry will keep a copy of the Board's decision but the chairperson should also keep a copy of the decision for 12 months. All information received from the appellant should be treated as private and confidential. Any information destroyed after 12 months should be disposed of securely.

Medical reports or other supporting documentation provided to the Board should not be provided to the Ministry as this may contain information considered private and confidential.

Medical examinations

If there are doubts about whether the appellant meets the medical criteria for the relevant benefit, the Board may ask the appellant to undergo an additional medical examination. If the appellant agrees, the hearing should be adjourned. In this case, the appellant should be referred to a specialist or other medical professional.

Notes:

- The medical examination may not be completed by any member of the Board.
- The requirement to make a final decision must not be dependent on whether the appellant agrees to undergo an additional medical examination.

If there are further costs as a result of the appellant being examined by another person, the Ministry will meet this cost.

Agents or support persons

The appellant should be invited to bring along support. The appellant should confirm in writing their intention to bring along support. Written confirmation should state whether the support person is an agent or not.

Appointing an agent

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

The agent may:

- have an existing arrangement with the appellant and been involved in all of the appellant's meetings with Work and Income.
- be appointed for the purpose of appearing before the Board.
- be any person appointed by the appellant such as relative, friend, advocate or legal representative.

An agent may represent the appellant at the hearing both in the presence or absence of the appellant.

Support person

In the case of a support person, they may speak on behalf of the appellant but only in the presence of the appellant.

Valid Appeals

An appeal is valid if it:

- is lodged within three months of the original decision and
- has not been heard by a medical appeals board previously and
- is an appeal within the jurisdiction of the Board.

Out of time

If the Ministry advises the Board that an appeal was received more than three months after being notified of an original decision a hearing must still be arranged. The Board must then decide if there is good reason for the delay.

The Board should only go on to consider the substantive application if satisfied that there is good reason for the delay.

Withdrawals

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

If the appellant advises that they wish to withdraw their appeal, then the Ministry will notify the Board immediately and confirm this in writing.

Appeal heard previously

If a decision has been appealed previously the Board can not hear the appeal. The Ministry will advise the appellant in writing that the appeal will not be forwarded to the Board. There is no discretion for the Board to hear these cases.

Outside jurisdiction of medical appeals board

The Board may hear an appeal only when a decision has been made, based on medical grounds or on grounds relating to a person's capacity for work, to decline or cancel the following types of financial assistance:

- Child Disability Allowance
- Invalid's Benefit or
- Sickness Benefit.

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

On occasion an application 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 their jurisdiction.

Matters relating to areas outside the jurisdiction of the Board should be reviewed separately. If the Board determines that they have received an appeal that is outside their jurisdiction, the chairperson should advise the Ministry.

Legal arguments

The medical appeals board hear appeals based on the medical evidence that was used to make the original decision about benefit entitlement.

When making decisions, please refer to the section entitled 'Legislation' which is a copy of section 53A of the Social Security Act. The brochures in Appendix B explain the legal criteria for eligibility for Child Disability Allowance, Invalid's Benefit and Sickness Benefit.

In the event that an appellant presents arguments about the correct legal interpretation of these criteria or the Board requires legal submissions about the correct interpretation of these criteria, the chairperson should adjourn the hearing to a later date and

- seek legal submissions from the Ministry and the appellant
- specify the legal issues that need to be addressed
- provide all parties involved in the hearing a copy of the submissions obtained and give them an opportunity to comment.

When this process has been completed the Board needs to consider submissions received and form a clear view of the legal criteria that must be established for entitlement to the relevant benefit. This view should be clearly stated in the Board's report. The Board must then go on to establish whether the appellant meets the medical criteria or the work capacity criteria for the relevant benefit.

Options if the appellant doesn't agree with your decision

The decision made by the medical appeals board is binding and there is no further right of appeal on medical grounds or on grounds relating to an appellant's capacity to work for the relevant benefit. However, the appellant does have the ability to apply for judicial review of the decision.

Judicial review requires an application to the High Court by the person affected by a decision. The Court will then consider whether the principles of administrative law have been applied by the decision maker. The principles of administrative law require that the decision maker:

- a) applied the correct legislation and acted within the scope of their powers under that legislation
- b) did not make a decision so unreasonable that no reasonable person could have made that finding or
- c) followed a fair procedure in making their decision. This is where the principles of natural justice would be considered.

The appellant also has the right to request a formal review of other decisions made by the Ministry. In most cases these requests are reviewed by applying to the Benefits Review Committee and subsequently, the Social Security Appeal Authority.

Glossary of terms

Administrative check

An administrative check of the appeal application will be completed in two stages.

The first stage will include a check 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 appeal application was submitted within the three month timeframe or not.

The second stage of the administrative check allows the reviews and appeals coordinator to ensure that all documents pertaining to the original decision are collated and sent to the Board.

Appellant

A person who has lodged an application with the medical appeals board regarding the decision to cancel or decline an application for Child Disability Allowance, Invalid's benefit or Sickness benefit on medical grounds or on grounds relating to a person's capacity for work.

Agent

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

Reviews and appeals coordinator

The Ministry will appoint at least one reviews and appeals coordinator for each Work and Income region to coordinate medical appeals board. The reviews and appeals coordinators are the primary point of contact for the Board, the appellant and staff of the Ministry.

Appendix A – Template - Report of the Medical Appeals Board

Appendix B – Brochures

- Child Disability Allowance
- Invalids Benefit
- Sickness Benefit

Appendix C – Social Security Act 1964

- Child Disability Allowance
- Invalids Benefit
- Sickness Benefit

Child disability allowance

Section 39A Child disability allowance

Unofficial consolidation of the Social Security Act 1964
-- as at 1 October 2003

[Section 39A. Child disability allowance

(1) For the purposes of this section and of sections 39B to 39F of this Act, [[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) of this section 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 of this Act, 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.]

Historical notes ▼

The heading above this section was inserted by s.12(5) of the Social Security Amendment Act 1998.

This section was inserted by s.9(1) of the Social Security Amendment Act 1978.

In subs. (1), (2) and (3) the words "child with a serious disability" were substituted for the words "seriously handicapped child" by s.12(1) of the Social Security Amendment Act 1998.

In subs. (1) the words "dependent child" in double square brackets were substituted for the former words by s.8 of the Social Security Amendment Act 1991.

In subs. (2) and (3) the words "chief executive" were substituted for the words "Director-General" by s.11 and the Schedule of the Employment Services and Income Support (Integrated Administration) Act 1998. In subs. (3) the words "child disability allowance" were substituted for the words "handicapped child's allowance" by s.12(2) of the Social Security Amendment Act 1998.

For transitional provisions see s.12(3) of the Social Security Amendment Act 1998.

Section 39C Medical examination may be required

Unofficial consolidation of the Social Security Act 1964
-- as at 1 October 2003

[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 of this Act.

(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.]

Historical notes ▼

This section was inserted by s.9(1) of the Social Security Amendment Act 1978.

In subss. (1) and (2) the words "chief executive" were substituted for the words "Director-General" by s.11 and the Schedule of the Employment Services and Income Support (Integrated Administration) Act 1998.

In subss. (1) and (2) the words "child disability allowance" were substituted for the words "handicapped child's allowance" by s.12(4)(a) of the Social Security Amendment Act 1998.

In subs. (1) the words "child with a serious disability" were substituted for the words "seriously handicapped child" by s.12(4)(b) of the Social Security Amendment Act 1998.

Invalid's benefit

Section 40 Invalid's benefit

Unofficial consolidation of the Social Security Act 1964
-- as at 1 October 2003

[40. Invalid's benefit

(1) A person who is aged 16 years or more is eligible for an invalid's benefit if the chief executive is satisfied that—

(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 from accident or congenital defect.

(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.

(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.

(4) A person who is not both permanently and severely restricted in his or her capacity for work must not be granted an invalid's benefit, unless he or she is totally blind.

(5) A person must not be granted an invalid's benefit 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.]

Historical notes ▼

This section was substituted for the former section 40 by s.13 of the Social Security Amendment Act 1998.

For the Social Security (Invalid's Benefit) Regulations 1998, see SR 1998/241.

Section 44. Medical examination of invalids

Unofficial consolidation of the Social Security Act 1964
-- as at 1 October 2003

[44. Medical examination of invalids

(1) The chief executive may require an applicant for an invalid's benefit, or a person in receipt of an invalid's benefit, 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.

(2) The medical practitioner or psychologist must certify whether, in his or her opinion, the applicant or beneficiary is, or is not, or whether there is doubt about whether he or she is or is not, permanently and severely restricted in his or her capacity for work, or totally blind.

(3) A certificate given under this section must state the grounds upon which the opinion is founded.

(4) A certificate given under this section must, in the case of doubt referred to in subsection (2), 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.]

Historical notes ▼

This section was substituted for the former s.44 by s.14 of the Social Security Amendment Act 1998.

Sickness benefit

Section 54 Sickness benefit standard eligibility requirements

Unofficial consolidation of the Social Security Act 1964
-- as at 1 October 2003

[54. Sickness benefit: standard eligibility requirements

(1) A person is entitled to a sickness benefit if he or she satisfies the criteria in subsections (2), (3), and (4), and—

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

(b) is in employment, but is losing earnings because, through sickness or injury, he or she is not actually working, or is working only at a reduced level.

(2) An applicant for a sickness benefit must be-

(a) aged 18 years or over; or

(b) aged 16 years or over, be married, and have 1 or more dependent children.

(3) An applicant for a sickness benefit must have resided continuously in New Zealand for at least 2 years at any time.

(4) An applicant for a sickness benefit must have-

(a) no income; or

(b) an income of less than the amount that would fully abate the benefit.

(5) Nothing in subsection (4) affects the entitlement of a person to receive a sickness benefit if, during a temporary period, the person has income sufficient to fully abate the benefit but otherwise fulfils the conditions of entitlement to the benefit.

(6) For the purposes of subsection (1)(b), any payment made by a person to any other person who acts as his or her substitute during a period of sickness or injury may be treated as a loss of earnings by the first-mentioned person.]

Historical notes ▼

This section was inserted by s.14 of the Social Security Amendment Act 2001. See s.54F for transitional provisions relating to the transfer of existing persons in receipt of a community wage on the grounds of sickness, injury, or disability to a sickness benefit.

The former s.54 was repealed by s.24(1) of the Social Security Amendment Act 1998. See s.54 of that Act for transitional provisions relating to the transfer of existing beneficiaries to the community wage.

Section 54B Sickness benefit: medical examinations

Unofficial consolidation of the Social Security Act 1964
-- as at 1 October 2003

[54B. Sickness benefit: medical examinations

(1) A person who applies for a sickness benefit must include in the application a certificate by—

(a) a medical practitioner; or

(b) a registered dentist (in respect of a condition that is within the ambit of his or her profession); or

(c) a registered midwife (in respect of a pregnancy, childbirth, or any related condition that is within the ambit of his or her profession).

(2) The certificate under subsection (1) must—

(a) certify that the applicant's capacity for work is affected by sickness, injury, or disability; and

(b) indicate the nature of the sickness, injury, or disability, 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) contain such other particulars as the chief executive may require.

(3) The chief executive may at any time require an applicant for a sickness benefit or a sickness 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.

(4) A medical practitioner or psychologist who conducts an examination under subsection (3) must prepare a report which states whether the applicant's or beneficiary's capacity for work is affected by sickness, injury, or disability, and how long that effect is likely to continue; and must send a copy of the report to the chief executive.]

Historical notes ▼

This section was inserted by s.14 of the Social Security Amendment Act 2001.