

# HOW TO MAKE AN APPEAL TO THE SOCIAL SECURITY APPEAL AUTHORITY

## **INTRODUCTION**

### **[1] WHAT DOES THE SOCIAL SECURITY APPEAL AUTHORITY DO?**

- 1.1. The Social Security Appeal Authority (“the Authority”) is an independent body that hears and determines appeals of decisions made by the Ministry of Social Development (MSD) which have been confirmed or varied by a Benefits Review Committee (BRC).<sup>1</sup> When it hears an appeal, the Authority has all the powers, duties, functions and discretions that MSD had in relation to the same matter.<sup>2</sup>
- 1.2. The Authority may determine its own procedures, subject to the Social Security Act 2018 (“the Act”), regulations and practice notes made under the Act.<sup>3</sup>
- 1.3. The Authority may modify the procedures in these Practice Guidelines during an appeal.
- 1.4. It is expected that these Practice Guidelines will be complied with. However, if it is more practical to vary them, the Authority encourages persons to contact the Secretary of the Authority using one or more of the methods listed in clause [6] of these Practice Guidelines.

### **[2] WHO CAN MAKE AN APPEAL?**

- 2.1. A person has the right to appeal any decision made in relation to them by MSD which has been upheld (or partially upheld) by a BRC.
- 2.2. The full range of matters that can be appealed are listed in sections 397-399 of the Act; and for social housing matters in section 132 of the Housing Restructuring and Tenancy Matters Act 1992.

### **[3] PARTIES TO AN APPEAL**

- 3.1. The parties to the appeal are:<sup>4</sup>
  - the person making the appeal (“the appellant”); and
  - MSD.

### **[4] REPRESENTATION**

- 4.1. The appellant may represent themselves or be represented by a lawyer or another authorised person.<sup>5</sup> If an appellant wants a non-lawyer to represent them, they must provide the Authority with a completed Ministry of Justice [Authority to Act form](#). This

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<sup>1</sup> Social Security Act 2018, s 395.

<sup>2</sup> Social Security Act 2018, s 401(3).

<sup>3</sup> Social Security Act 2018, s 403.

<sup>4</sup> Social Security Regulations 2018, reg 248(4).

<sup>5</sup> Social Security Regulations 2018, reg 252(b).

form must state that the authority is given for this appeal. The form must also provide up-to-date information, including the current contact details and email address (if available) of the appellant and their representative. If the correct form is not provided, the appeal will proceed without the involvement of a representative.

- 4.2. MSD may be represented by a lawyer or employee of MSD (for example, an appeal officer).<sup>6</sup>

## **MAKING AN APPEAL**

### **[5] NOTICE OF APPEAL**

- 5.1 An appellant must provide a completed [Notice of Appeal form](#) to the Secretary of the Authority within 60 working days of being notified of the decision they wish to appeal.<sup>7</sup> The appellant should include a copy of the decision of the BRC and any documents that they sent to the BRC.

- 5.2 The Notice of Appeal must state in detail:<sup>8</sup>

- (a) the decision that is being appealed;
- (b) the reason(s) for the appeal (the background to the decision being appealed, why the appellant believes the decision is wrong, and the facts and law supporting the appeal);
- (c) the outcome being sought from the Authority; and
- (d) the current contact details of the appellant and their lawyer or authorised representative. If an appellant is represented by someone who is not a lawyer, the appellant must provide their own contact details as well as those of their representative, together with a completed [Authority to Act form](#) (see clause [4.1] above).

- 5.3 If an appellant does not provide their Notice of Appeal within 60 working days of the decision, they must apply to the Authority for more time and provide reasons for the delay. If the Authority considers that there is good and sufficient reason for the delay, the Authority may allow more time for the appellant to provide the Notice of Appeal to the Authority.<sup>9</sup>

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<sup>6</sup> Social Security Regulations 2018, reg 252(a).

<sup>7</sup> Social Security Regulations 2018, reg 248.

<sup>8</sup> Social Security Regulations 2018, reg 248(2).

<sup>9</sup> Social Security Act 2018, s 400(3).

[6] **WHERE DO I SEND MY DOCUMENTS?**

6.1. An appellant must send their Notice of Appeal to the Secretary of the Authority, by one or more of the following methods:

(a) **Post:**

Social Security Appeal Authority  
Tribunals Unit  
DX SX 11159  
Wellington

(b) **Delivery:**

Social Security Appeal Authority  
Tribunals Unit  
Level 1  
86 Customhouse Quay  
Wellington 6011

(c) **Email:**

The Notice of Appeal can be scanned or electronically signed and emailed to:

[tribunals@justice.govt.nz](mailto:tribunals@justice.govt.nz)

The heading of the email must be addressed to the Secretary of the Social Security Appeal Authority. The email must state:

- the name of the party sending the email;
- the subject of the email, and
- what the Notice of Appeal relates to.

6.2. Appellants are encouraged to provide copies of their documents in electronic form only, unless requested to provide originals. They must also provide an electronic copy to MSD.

## **AFTER AN APPEAL HAS BEEN MADE**

### **[7] SERVING DOCUMENTS**

- 7.1. The appellant must provide a copy of their notice of appeal to MSD either before or immediately after it has been provided to the Authority.<sup>10</sup>
- 7.2. After it receives a copy of the Appellant's notice of appeal, MSD must send as soon as possible all relevant documents (via post or delivery) to the Secretary of the Authority and the appellant.<sup>11</sup> These documents must be bundled with an index and tabbed.
- 7.3. The relevant documents include those listed in reg 249(1) of the Social Security Regulations 2018:
  - (a) any application, documents, written submissions, statements, reports, and other papers lodged with, received by, or prepared for, MSD and relating to the decision or determination appealed against;
  - (b) a copy of any notes made by or by direction of MSD of the evidence given at the hearing (if any) before MSD;
  - (c) any exhibits in the custody of MSD;
  - (d) a copy of the decision or determination appealed against; and
  - (e) a report setting out the reasons for the decision ("the regulation 249 report").
- 7.4. In addition, MSD must also email an electronic copy of the above documents to the Secretary of the Authority.
- 7.5. Where MSD is required to give any document(s) to an appellant, it must do so using the method best suited to the appellant's circumstances.

### **[8] LODGING OF REGULATION 249 REPORT**

- 8.1. The regulation 249 report sets out MSD's reasons for its decision.
- 8.2. The Authority will give MSD a date for filing its regulation 249 report in response to the appeal. MSD may provide the regulation 249 report at the same time as the relevant documents referred to in clause [7] above, if it is more practical for the parties to do so.
- 8.3. The Authority may require MSD to provide a further report.<sup>12</sup>
- 8.4. MSD must promptly send to the appellant a copy of every report provided.<sup>13</sup>

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<sup>10</sup> Social Security Regulations 2018, reg 248(5).

<sup>11</sup> Social Security Regulations 2018, reg 249(1).

<sup>12</sup> Social Security Regulations 2018, reg 249(2).

<sup>13</sup> Social Security Regulations 2018, reg 249(3).

[9] **TELEPHONE CALL**

- 9.1. After receiving a Notice of Appeal, the Authority will schedule a telephone call with all the parties to identify the issue in the appeal. The parties must attend the call unless the Authority consents to their non-attendance.
- 9.2. It is expected that the telephone call will take approximately 30 minutes.
- 9.3. The purpose of the telephone call is to clarify the issues to be determined in the appeal and set a timetable for filing further evidence and a hearing date. The telephone call will identify any matters required to be determined prior to the appeal, such as rulings on evidence or witnesses or whether the appeal may be decided on the papers. The telephone call will also be an opportunity for the parties to raise any concerns they have relating to the process leading to the appeal.
- 9.4. After the telephone call, the Authority may, if necessary, issue a minute making directions addressing the discussion in the telephone call. The appellant and MSD must comply with any directions made by the Authority. If the appellant or MSD is unable to comply with any directions, they must inform the Secretary of the Authority before that direction is due to be complied with.

[10] **EVIDENCE**

- 10.1. The Authority has the power to receive and hear any evidence (factual material) which, in the Authority's opinion, may assist it to determine an appeal.<sup>14</sup>
- 10.2. The parties to the appeal are entitled to be heard and give evidence on any relevant matter.<sup>15</sup>

*Appellant*

- 10.3. An appellant does not need to provide all evidence with their Notice of Appeal. A timetable will be set for providing documents in support of the appeal. This timetable allows the appellant to provide further evidence that he or she wants to refer to at the hearing.
- 10.4. If an appellant wants to rely on further evidence, he or she must give a copy of that evidence to the Secretary of the Authority and to MSD.
- 10.5. An appellant must include an updated list of documents that they will refer to at the hearing with the further evidence they intend to rely on.
- 10.6. The Authority understands that some appellants may have difficulties in assembling information. It will be flexible, and one of the reasons for the telephone call is to help appellants identify what is relevant to support their appeal. These guidelines are intended to ensure an appellant's appeal is presented in a way that best puts forward

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<sup>14</sup> Social Security Regulations 2018, reg 253(6).

<sup>15</sup> Social Security Regulations 2018, reg 249(4).

their case. In particular cases, the Authority will make changes to the usual rules to assist appellants.

#### *MSD*

- 10.7. MSD may provide further evidence that it wants to rely on in the appeal.
- 10.8. An updated index must be included with any further evidence intended to be relied on.
- 10.9. If MSD wants to rely on further evidence, it must give a copy of that evidence to the Secretary of the Authority and to the appellant.

#### *Witnesses*

- 10.10. The parties may call new witness evidence that was not provided to the Benefits Review Committee with the Authority's consent. The Authority will hear any evidence that will assist it to decide the appeal.
- 10.11. At the telephone call the Authority will discuss the information that is needed to support the appeal.
- 10.12. If the appellant or MSD want to call new witness evidence in the appeal hearing (not identified in the telephone call), they must notify to the Secretary of the Authority and to the other parties.
- 10.13. For all people who are giving evidence to the Authority at a hearing, the Authority will expect to receive a written statement setting out what the person will say, and a copy of any documents they will refer to (unless the Authority already has a copy of the document).
- 10.14. If the appellant has difficulty complying with clause [10.13], they must inform the Secretary of the Authority using one or more of the methods listed in clause [6].
- 10.15. The Authority may ignore the requirement to produce witness statements if it is satisfied that it is not practicable for the appellant to comply with that requirement.

**[11] UPDATING ARGUMENTS**

*Appellants*

- 11.1. If the grounds of the appeal do not reflect the appellant's argument, the appellant should give an updated statement of argument to the Secretary of the Authority, setting out in detail the argument that the appellant intends to make in the hearing of their appeal.

*MSD*

- 11.2. If the response of MSD to the appeal does not reflect the argument that MSD intends to make at the hearing, MSD must give an updated statement of argument to the Secretary of the Authority, setting out in detail the argument that MSD intends to make in response to the appeal.

**[12] WHERE A HEARING IS NOT NECESSARY**

- 12.1 Where the Authority is satisfied that an appeal can be properly determined without a hearing, it may decide to determine the appeal 'on the papers'. In these circumstances, the Authority will not hold a hearing and will make a decision on the appeal based on all the evidence provided and the relevant law.
- 12.2 If an appellant does not want to attend a hearing, they should contact the Secretary of the Authority using one or more of the methods listed in clause [6]. This is also something that can be discussed at the telephone call in clause [9]. If the Authority is satisfied that the appellant is not required to be at a hearing, the Authority may decide to determine the appeal on the papers.
- 12.3 Before a decision to determine an appeal on the papers is made, the Authority will give the appellant and MSD the opportunity to comment on the matter.