

The invalid's benefit is one of many benefits administered by Work and Income (W & I) which is part of the Ministry of Social Development (MSD). The invalid's benefit provides income support to many disabled people.

W & I policies and procedures are intended to be supportive of disabled people who want to work and assist in finding employment that is suitable. While people can earn or receive extra money and still be entitled to the invalid's benefit, the rules can be fairly complex and a number of myths have developed around working, receiving additional income and whether eligibility to the invalid's benefit is affected.

In addition, staff at W & I can find the rules complicated. People can be given incorrect information and there may be situations where disabled people either receive less benefit than they are entitled to, including being told that the invalid's benefit will stop because of their employment. This can lead to people choosing not to take up employment opportunities.

It is important to treat each person's situation as unique and gather the facts in order to find out exactly how the person's benefit may be affected, if at all, by receiving income or entering paid employment.

Income abatement

A person receiving an invalid's benefit can earn up to \$80 per week without any impact on the invalid's benefit at all, but after that things start to get more complicated.

The benefit is generally reduced (abated) by 30 cents for every dollar of weekly income between \$80 and \$180, and then by 70 cents for every dollar over \$180 a week. This is usually done by averaging annual income over a 52-week period from the time the benefit was first granted or renewed.

In most cases, averaging income annually works to the person's advantage, especially if income fluctuates. For example, for some weeks of the year income may be more than \$80, and at other times less. If income is averaged over a year, the weekly figure may be less than \$80 in which case there is no income reduction at all.

Averaging income over a 52-week period is the usual method of assessment, unless the person requests a weekly abatement. In a limited number of cases, a weekly assessment will advantage the person, for example, if earnings are relatively high but infrequent. In these situations the person can agree with W & I on a weekly assessment. This means the benefit is fully abated during the week that relates to the earnings, leaving the full rate paid for the weeks in between.

However, W & I will sometimes try to reduce benefit payments according to weekly income without considering an annual assessment, or will not properly consider the most appropriate method for individual cases. It is important to carefully examine an individual's circumstances to ensure that the most advantageous method is used to assess income and the level of benefit that should be paid.

Disregarding up to \$20 of income earned by own efforts

People receiving an invalid's benefit can have a further \$20 a week of income disregarded if it is 'earned by the beneficiary's own efforts'. The exemption applies only to the invalid's benefit. Income earned by a person's own efforts refers generally to income from employment. For example, it excludes interest from investments.

Disregarding all income of a person who is totally blind

Being totally blind meets the medical criteria to receive an invalid's benefit. In addition, all of the person's income is disregarded for invalid's benefit purposes if the income is 'earned by the beneficiary's own efforts'. This exemption applies only to the invalid's benefit, not to any other benefit.

This exemption is under-utilised, and often W & I will fail to inform people who are entitled to it that the invalid's benefit will continue at the full rate despite having entered employment. If an invalid's benefit has been wrongly cancelled or reduced because of a failure to apply this exemption, benefit arrears ought to be paid.

Exemption of all or part of income 'as incentive to personal effort'

There is discretion for all or part of the income of a person with a severe disability to be disregarded 'as an incentive to personal effort'.

The exemption is not just to provide a person with more money. Its primary focus is to increase participation in the community by exempting all or part of the person's income that is earned by the person's own efforts. The discretion is aimed not merely at meeting financial need, rather at reward and encouragement of personal endeavour.

This means the exemption is not limited to offsetting the extra costs associated with employment that people with a disability may face. For example, a person may require use of taxis to travel to work or have other costs that people without disabilities do not have, in which case the exemption can take such costs into account.

However, it is equally possible for the exemption to be applied in a way that leaves a small level of invalid's benefit payable so that if for some reason employment cannot continue the rate payable can be easily increased without the person being subjected to a further and unnecessary medical assessment. Often people are reluctant to take up employment opportunities if it means losing the security of knowing that entitlement to the invalid's benefit will not cease.

Implications of recent High Court judgment on the 15-hour rule

Part of the criteria for an invalid's benefit is that the person is 'severely restricted in his or her capacity for work', which means a person is deemed 'incapable of regularly working 15 or more hours a week in open employment'. However, a recent High Court decision has increased the number of instances where a person can undertake employment of 15 hours or more and remain entitled to an invalid's benefit. The High Court judgment has widened the definition of 'sheltered employment'.

Because of the judgment a person with a disability may find a job on the open market, be paid above the minimum wage, work 15 hours or more and still be entitled to receive an abated invalid's benefit. The test is in how the employer accommodates the employee, not in the type of job, numbers of hours worked, where it is advertised or who else may apply.

Employees with an intellectual disability may have support from a supported employment service or utilise job support funds. These situations may well meet the definition of 'sheltered employment', but it is important to know that the definition is not limited to such cases. For example, a person who finds employment on the open market and is paid above the minimum wage may still be deemed to be working in 'sheltered employment' if the employer has made some kind of concession that allows the disabled person to be employed.

It is important to note that the term 'sheltered employment' used here is a separate concept to sheltered workshops and the two should not be confused.

If any employer, regardless of the circumstances, has accommodated an employee's disability in a way that allows the person to work, a case should be made to W & I for the employment to be deemed 'sheltered employment' in order to allow employment of 15 or more hours per week to be undertaken as well as continued entitlement to the invalid's benefit.

The judgment is fairly recent and its effects haven't been fully tested. There are concerns that W & I is interpreting the decision differently to the High Court by not accepting some situations to fall within the definition of 'sheltered employment'. In those cases, the person would have to challenge the decision through the review and appeal process.

For further information or assistance contact one of the beneficiary advocacy groups listed on the sheet in this toolbox.

Invalid's benefit can be paid for up to 26 weeks on a trial basis to a person working 15 hours a week or more in open employment

A person can continue to receive an invalid's benefit for up to 26 weeks after starting work in 'open employment' for 15 or more hours a week. This gives people an opportunity to see whether working in 'open employment' is a realistic option.

The provision was introduced because people were deciding not to take up employment opportunities for fear of losing the invalid's benefit and having to start the application process from the beginning, including the medical assessment, if the job should not work out.

Before considering whether this provision should be used, it is essential to establish whether the employment is 'open employment'. Given the widening of the definition of 'sheltered employment' as outlined above, it may be that the employment is not 'open employment', in which case it would be unnecessary to use this provision.

If this provision does apply, income from the employment reduces the invalid's benefit in the normal way, as outlined above. For example, the \$20 weekly exemption applies, and the assessment period is still generally 52 weeks. Depending on the level of income, it may be the case that the benefit is not reduced at all if the total amount received over the trial period is under the annual exemption. The exemption of all or part of a person's income 'as an incentive to personal effort' should also be explored. All of the usual methods of assessing income apply during the period over which the trial takes place and should not be ignored simply because benefit payments are continuing on a trial basis.

Advocacy

If you think a disabled person may be disadvantaged by receiving less than they are entitled to you may need to act as an advocate or get assistance from an advocacy service.

To contact a beneficiary advocacy service in your area refer to the list in your toolbox or contact IHC Advocacy on 0800 442 442.

Review and appeal process

Any decision made by Work and Income about benefit entitlement can be appealed.

The rules around benefit entitlement are complex, and often Work and Income staff do not fully understand how the system works. Therefore it is important to query any decision that might appear as unfair or that you do not agree with. There is a review and appeal process that people can use to ensure decisions are correct. The process is meant to be an easy and efficient way for people to access independent reconsideration of any decision.

While any decision can be reviewed, the process has two different avenues depending on whether or not the decision was made on medical grounds.

Decisions on medical grounds

Decisions on medical grounds regarding the invalid's benefit, child disability allowance and sickness benefit are appealed directly to the Medical Appeal Board. The Board is made up of three people who are medical professionals, rehabilitation professionals or people with expertise in vocational training or support for people with sickness, injury or disability.

All other decisions

All decisions appealed against that are not made on medical grounds are reconsidered under the general review and appeal provisions.

To begin the process you must lodge your objection by writing to Work and Income. Doing this means that you are asking for a Benefits Review Committee (BRC) to reconsider the decision. But before this happens, Work and Income will look at the decision again to decide whether the situation can be fixed without the need for a BRC hearing.

If Work and Income still believes that their decision is correct it will refer the matter to the BRC for a hearing. The BRC has three members: two Work and Income staff who must not have had any involvement with the original decision, and a community representative appointed by the Minister of Social Development.

After the hearing the BRC issues a decision in writing that either confirms, varies or revokes the decision under review.

If you are not satisfied with the outcome of the BRC hearing there is a right of appeal to the Social Security Appeal Authority (the Authority) which is part of the tribunals division at the Wellington District Court. Appeals must generally be filed within 3 months of receiving the decision of the BRC.

After the hearing the Authority will issue its decision, from which both parties have a right to appeal to the High Court on a question of law only. It is advisable at this stage to consult a lawyer.

Below is a diagram setting out the structure of the review and appeal process under the Social Security Act 1964:

REVIEW AND APPEAL PROCESS

