

Community Law **Waikato**

Te Tari Ture aa-Hapori o Waikato

Part of the National Community Law Movement



Our mission is to provide free legal help to
those who cannot otherwise access it.

WORK & INCOME BENEFITS AND THE LAW 2023



Contents

- 1. Your legal rights at WINZ
- 7. Extra financial support
- 9. Recoverable Grants
- 14. Non-Recoverable Grants
- 16. Food Grants
- 21. Disability Allowance
- 22. Emergency Housing
- 27. Supported Living
- 32. Reviews & Appeals

Legal rights at Work & Income NZ

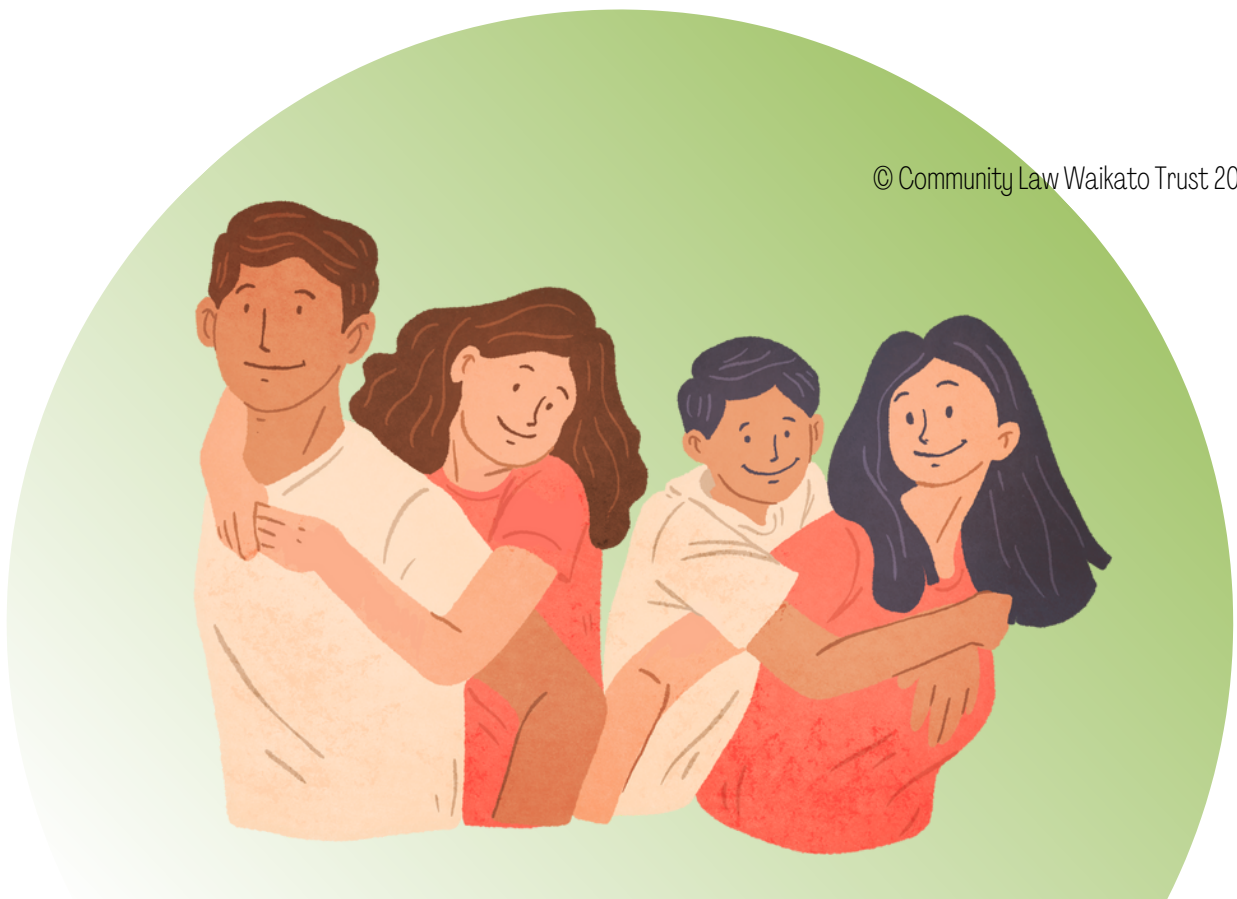
Many people don't know that there is a law that protects people who have their income paid by the Ministry of Social Development - Work and Income New Zealand (W&I). The Social Security Act 2018 is the law that W&I follows.

This guide sets out what your legal rights are when you ask Work and Income for help or receive a payment from them.

legal rights

1. W&I must tell you about all of the financial help you might be entitled to.
2. W&I must be available to help you to apply for all your entitlements.
3. W&I must pay you back - pay if you are entitled to it.
4. You have the right to appeal W&I's decisions.
5. You must be warned before W&I sanction your benefit.
6. W&I must make sure that any repayments you make will not cause you undue hardship.
7. W&I must cancel any debt caused by their mistake.
8. You have a right to silence and legal help in W&I fraud investigations.
9. W&I must keep your information private. You have the right to see the personal information W&I have about you.

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Work and Income must tell you about all of the financial help you might be entitled to.

Sometimes it feels like the person on the other end of the phone, or across the desk from you is just making the rules up as they go along. But W&I has to follow the law (The Social Security Act 2018) when making decisions about someone's benefit and entitlements.

When you call W&I to ask for financial help they are required by law to look very carefully at your case and make sure you have been made aware of EVERY available benefit available to you.

Sometimes, the law also allows W&I to decide if your situation means that you are allowed a little more help than others - this is called "discretion"

Work and Income must also choose the BEST type of financial help available (e.g. a non-recoverable grant if it is available instead of a recoverable grant).

Work and Income must help you apply for all of your entitlements

Work and Income must help you apply for everything you are (or might be) entitled to. A verbal (spoken) application is fine, but you may also be asked to apply in writing.

If W&I ask you to apply in writing they must give you a paper application if you ask for one, and be available to offer any other help you need for your individual situation (that is reasonable).

Examples are helping you understand and fill out forms, telling you what documents you need, or paying for a birth certificate.



Please note

If Work & Income don't make you aware of, or help you apply for every entitlement that you should be getting, then you may be eligible for back-pay.



Work & Income must back-pay any benefits you don't get because they have not told you about them.

You *may* be able to get back-pay if W&I don't pay you for something that you were entitled to get.

If you think this applies to you, ask W&I to backdate the benefit under **section 318 of the Social Security Act**. W&I should then investigate and make a new decision.

Please note

Backdating a benefit due to a W&I mistake can be complicated, so it is a good idea to ask us for help.

Our lawyers and advocates help for free with benefit issues in the greater Waikato. Call us (free) on 0800 529 482, email reception@clwaikato.org.nz. We will be happy to see how we can help.

You have the right to review and appeal decisions Work and Income have made.

If W&I decline you, or make a decision you do not agree with, you do not have to just accept it. You have the right to ask for a review. You can also appeal most review decisions to an independent tribunal (the Social Security Appeal Authority) to check if the decision followed the law.

If the tribunal think that W&I have made a mistake, they will tell them to change it.

Nobody can punish you for exercising your rights, and it is free.

There is more information on page 32 on how to do this.





You have a right to be warned before benefit sanctions or suspensions.

A '**sanction**' is where W&I reduces or cancels your main benefit because it believes you haven't complied with your obligations, such as work-test requirements or your "social obligations" as a parent.

If you get a warning about an obligation you have not made (like a work test), you have **five working days** to tell W&I why you had a good reason for not doing it. You can contact them and explain that you have a good reason for not meeting your obligation.



A '**suspension**' is where W&I will stop your main benefit if you have an outstanding arrest warrant.

If you get a warning about a warrant, you have **ten working days** to show you are trying to sort it out (contact the court straight away). W&I can suspend your benefit if you still have an outstanding warrant 28 days after it was issued.

There is one exception where W&I can suspend your benefit immediately without a warning. This is if you have an active warrant and the Police think you are an immediate danger to public safety. This should only apply if you are charged with a violent crime or you have a history of violent convictions.

Please note

W&I **must** send you a warning if they are going to sanction or suspend your benefit so that you have time to fix the problem. They can send you the warning through MyMSD. If you receive a warning from W&I then try and deal with it ASAP.



Repayments to W&I should not create undue hardship

If you owe W&I money they will arrange an amount for you to repay them out of your benefit every week. W&I are not allowed to make the repayment to be so much money that it places you and your whaanau in difficulty.



For example, if you got an advance from W&I and owed them \$600, they are not allowed to make the repayments so high that you can't afford to buy food for your whaanau, or put petrol in the car to take your tamariki to school.

These can be lowered to an affordable amount, or suspended until things improve. The law does not set a minimum amount you have to repay each week. The law does not say the minimum repayment is \$1 per week per advance..

You have a right to have a debt cancelled if the debt was caused by W&I

Ok, so no-one is perfect, we all make mistakes, and W&I does too sometimes. If W&I makes a mistake and that mistake leads to you being in debt with them then they can cancel that debt at any time.



An example of this would be if W&I have incorrectly decided your benefit start date, or they have wrongly calculated the money you earned from your part-time job. If you can show that they were wrong they are able to cancel the debt and you don't have to meet the write-off criteria.

In some specific circumstances where the original decision to create the debt is legally correct, W&I can write it off if it was caused by their error and you meet other conditions. For example, if you declared net (after tax) income because nobody told you to declare gross income (before tax).

These situations can quickly become very complicated and confusing. If you have a W&I debt that you don't agree with, contact us as soon as possible so we can see how we can help.



Your rights if you are accused of benefit fraud

Benefit fraud is deliberately lying to get money from W&I. It's a serious crime. The two most common areas that are investigated are undeclared income and relationship status.

If you're suspected of fraud, you'll be asked for an interview with an Investigator.

W&I must begin the investigation by contacting you in writing, giving you at least five working days' written notice (sometimes referred to as a "Section 11 letter") so that you have time to provide them with the information they're seeking, as well as seek legal help.

W&I has very clear rules for how they should behave during their investigations. At the beginning of any interview they must explain that anything you say can be used as evidence against you, that you have the right to remain silent, and that you can stop the interview at any time.

WARNING

DO NOT talk to an Investigator without seeking legal support first. What you say to them is evidence they can use against you in court and/or to create a debt.



Your right to have your information kept private

When you apply for a benefit you have to give W&I a lot of personal information and it is normal to wonder about how they keep that information safe. W&I have lots of rules that they have to follow to keep the information you give them while you are on a benefit safe and private.

Here is a brief list of rights about your personal information held by W&I and what they must do to keep it safe and secure:

- 1.They must collect information for proper purposes and must ask you first (limited exceptions apply).
- 2.They must keep it safe and only access it for a proper purpose. W&I cannot 'just go looking' at your files because they are curious about you.
- 3.You have the right to see a copy of it. Ask by emailing privacyofficer@msd.govt.nz, using a Personal Details form or online at www.msd.govt.nz/feedback.

Extra financial support available from Work and Income

Advances (recoverable assistance payment)

An Advance Payment of a benefit is a one-off payment to help you pay an essential or important cost you do not have the money to pay.

We go into more detail on page 9 about what you need to qualify for this financial support, and what you can get an advance for.

Advances are approved for a variety of reasons or needs. Payments are made directly to suppliers/shops/landlords or indirectly through a payment card provided to you by W&I.

Special needs grants (Non-recoverable assistance payment)

Special Needs Grants are paid for a variety of purposes and are available to non-beneficiaries as well as beneficiaries. There are both income-test limits and a cash-asset limit.

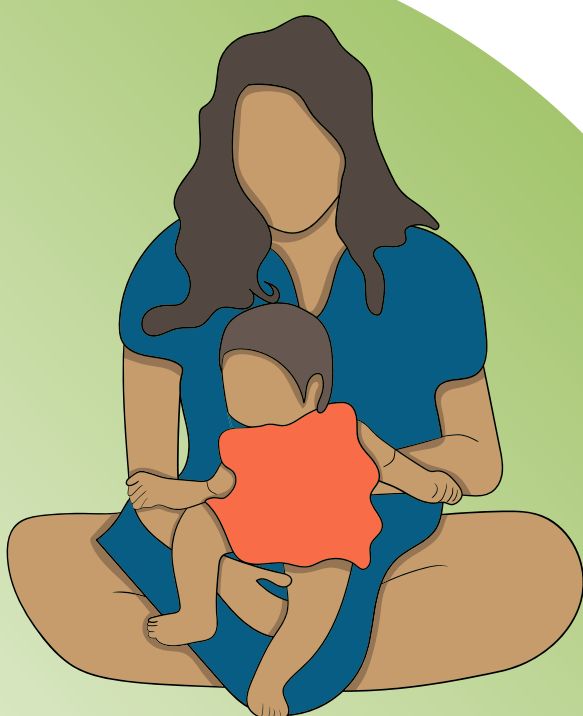
There is more information on page 14 about how to qualify for a Special Needs grant.

You usually don't have to repay a Special Needs Grant. In some situations, a Special Needs Grant *and* an Advance of Benefit (or Recoverable Assistance Payment) can be paid, if the Special Needs Grant is insufficient to meet the entire need.

Food grants

Food grants are paid for when you don't have enough money to buy food because you have had to pay for an essential cost that means you don't have enough money to pay for food.

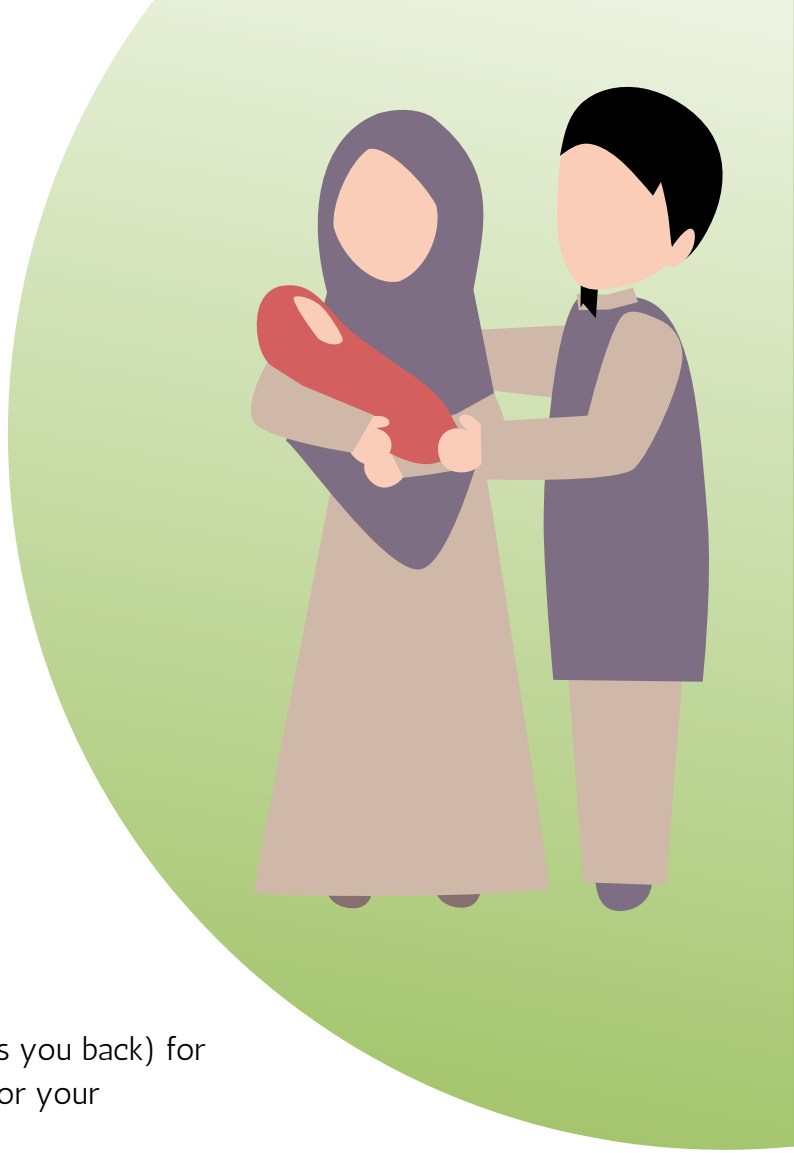
We go into more detail later in this handout about what you need to qualify for this particular hardship assistance.



Temporary Additional Support

If you're experiencing ongoing hardship, you may qualify for Temporary Additional Support (TAS). This is other help that's available if you don't have enough money left after paying your bills and debts to pay for expenses like food and power.

Temporary Additional Support is available for a maximum of 13 weeks at a time. You need to reapply every 13 weeks if your circumstances haven't changed.



Disability Allowance

The Disability Allowance reimburses you (pays you back) for what your doctor has agreed that you need for your ongoing health issue.

The Disability Allowance is a "reimbursement" system (that is, it pays you back for what you've spent), and is non-taxable. There is more information on the Disability Allowance further on in our booklet on page 21.

Contact us for more help

Community Law often helps people to prepare for reviews and appeals and represents them in the process. Please contact us straight away to see how we can help you.

Our lawyers and advocates help for free with benefit and other legal issues in the greater Waikato. Call us (free) on 0800 529 482, email reception@clwaikato.org.nz. We will be happy to see how we can help.

Advances (money you have to pay back)

To be eligible for an advance you will need to meet four different criteria.

The following four things are the 'core' criteria you must meet to be eligible for an Advance:

1

You receive one of the following benefits:

- Jobseeker or Sole Parent Support, or
- Supported Living Payment, or
- Youth or Young Parent Payment, or
- Emergency Benefit instead of one of the above, or
- New Zealand Super or a Veterans Pension, or
- Orphan or Unsupported Child Benefit.

and

2

You need something right away (immediately) that is very important (essential) for you or your tamariki.

and

3

An Advance is the best way to pay for it. You have no other option that is sensible to use instead.

and

4

If you don't meet the need right away, it will cause you, your partner, tamariki, or whaanau to be worse off, suffer serious hardship, and/or cause or increase a risk to your (or their) life or welfare.

but

There are other non-core criteria, but when there are '**exceptional circumstances**' W&I can ignore them. These other non-core criteria are:

- Your income and cash assets are under a set amount (usually only an issue for people receiving a pension).
- You can't get more than six times your full benefit (less any advances you have already been granted).
- It will not put you in more financial hardship to repay that money over 2 years (104 weeks).
- The amount of advance that you have asked for should be the (but does not have to be) the cheapest option to meet all of your need. This does not apply to fridges, freezers, washing machines, and glasses because these have a set price.



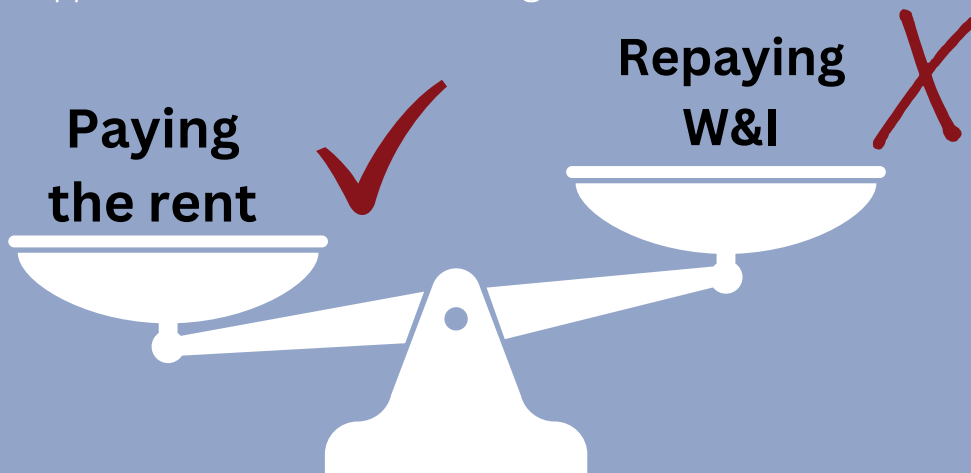
The Law

The law **does not** say that you are limited to only one Advance per year for the same thing. e.g. you can get more than once advance to cover the cost of travelling to a tangi, or your tamariki might need more than one pair of shoes in a year.

The law **does not** say that your need must be an emergency, unusual, or 'exceptional circumstances' to get an advance. e.g. you can get an advance if you need to take your car to the mechanic for a service, even though it has not broken down.

The law **does not** say that you should have saved up for your need and you should not be declined for this reason.

The law **does** say that W&I must check to see which option is best for you. e.g. if W&I give you an Advance that has to be repaid, and the repayments mean that you can't pay your rent, then W&I should have approved a Non- recoverable grant instead.



please note

W&I work with a set of guidelines, but these guidelines **are not** the law and are meant to be flexible.

What can I get an advance for?

You can get an advance if you need something right away (immediately) that is very important (essential) for you or your children. You can get more than once advance, and you do not have to have '*exceptional circumstances*' (that means that your situation is unusual, or not typical).

There is **no** set list in the law. Below are common things people get Advances for.

FRIDGES & FREEZERS

LOAN REPAYMENTS

CAR REPAIRS

DENTAL TREATMENT including
dentures

TELEVISION

MOVING HOUSE

HEARING AIDS

SCHOOL UNIFORMS

MOBILITY/HEALTH AIDS

OVERDUE RENT

WASHING MACHINES

CLOTHING for you or your
tamariki

FURNITURE beds, bedding
dining/lounge suite

READING GLASSES

RELEASING CAR from
impound

HOUSE REPAIRS if you are liable
to pay for them

TRAVEL e.g. to a tangi if you are
stranded

SCHOOL STATIONERY

How to respond to common problems

Below are things W&I may say to people who ask for an Advance, and a suggestion of what you can say to help resolve the situation. You should be firm but polite.





If this does not resolve the problem, politely insist on talking to a manager. If you do not like what the manager decides, you should accept the decision and apply for a **review of decision** - see page 32.

Non-recoverable grants

You may be able to get a non-recoverable grant from W&I. A non-recoverable grant is money you **do not** have to pay back. It is better than an advance which is money you **do** have to pay back.

W&I should give you a non-recoverable grant (if you are eligible) instead of an advance.

The Law

The law requires W&I to check to see if a non-recoverable grant is available instead of an Advance (or to reduce the amount of an Advance). They must do this even if you don't ask.

please note

Specific eligibility criteria apply. Some grants are normally limited to once in a 52-weeks period **but** you can have one more frequently if there are '**exceptional circumstances**'. For most, it is also possible to waive the maximum amount if you have '**exceptional circumstances**'

What you can get a non-recoverable grant for

These are some (but not all) of the things that you can get a special needs grant for.

AMPUTEE TRAVEL TO THE LIMB CENTRE, COSTS ASSOCIATED

BEDDING E.G. BECAUSE OF A NEW BABY, OR HEALTH CONDITION

CHILD CUSTODY DISPUTE BETWEEN PARENTS

HOUSE BOND SO YOU CAN MOVE OUT OF SOCIAL/TRANSITIONAL HOUSING

EMERGENCY DENTAL TREATMENT THAT YOU OR YOUR TAMARIKI NEED RIGHT AWAY

MEDICAL TREATMENT THAT YOU OR YOUR TAMARIKI NEED RIGHT AWAY

TRAVEL TO A HEALTH SPECIALIST IF NOT COVERED BY A DISABILITY ALLOWANCE, ACC, OR DHB

SEPTIC TANK (OR EFFLUENT SYSTEM) REPAIRS AND/OR MAINTENANCE

WATER TANK REFILLS IF YOU RUN OUT OF WATER

VASECTOMY, TERMINATION, OR LASER BIRTHMARK REMOVAL

RESETTLING IN THE COMMUNITY IF YOU ARE:

- ESCAPING DOMESTIC VIOLENCE
- A LONG-TERM PATIENT OR LEAVING ORANGA TAMARIKI CARE
- RELEASED FROM CUSTODY AFTER A 31-DAY SENTENCE
- A REFUGEE, PROTECTED PERSON, OR AFGHAN INTERPRETER

Food Grants (non-recoverable)

You are entitled to a food grant each time you meet the residence, income, and asset criteria below.

- You must be a New Zealand citizen, resident, or permanent resident, and New Zealand is your permanent home.
- You do not have a current benefit sanction for an obligation failure, AND
- You have no money (like savings) you can use right now is *sensible* for you to use to buy food, AND
- Your last income payment (before tax, not including benefits, Working For Families or Best Start, Independence Allowance or Child Support paid to sole parent beneficiaries) was less than
 - Single 16 or 17 with no children: \$514.41.
 - Single 18+ no children: \$591.20.
 - Couple with or without children: \$858.72.
 - Sole parent with only one child: \$717.40.
 - Sole parents more than one child: \$755.82.



Exceptional Circumstances

An 'exceptional' situation is just something different or unusual from normal. The law does not have a list of what these are. W&I must look carefully at your circumstances when deciding if you have an exceptional situation or not.

The situation does not have to be "more exceptional" just because you get food grants frequently. The law does not require this for you to get a food grant.

Food grants and the Law

This guide explains the law on food grants, when you are entitled, how to apply, and your rights about challenging W&I if you are unhappy with their decision.

Here are some common myths about food grants and why they are not true.

MYTH

VS

FACT

It is normal to be declined

NO

In reality being declined only happens in very specific situations so should be very rare.

You are only allowed a certain number of food grants

NO

This has not been true since 1991.

You are only allowed a certain amount every six months

NO

There is no absolute limit.

W&I can just decide what they feel like

NO

They must follow the law.

Whatever W&I decides I just have to accept it.

NO

You have the legal right to challenge their decision.

The Law

W&I **can not** decline you only because you do not have an unexpected cost. The law does not require this for you to get a food grant. You do not require an emergency to get a food grant. The exception to this is if your partner is on strike or you have a benefit non-entitlement and are not in extreme hardship. In these two situations you will require an **emergency**.

The law's purpose is to stop you from suffering hardship. W&I **can not** decline you a food grant 'just because' you have not saved up for what you needed or have not been to budgeting. The law around this is a little complicated, but your need for a food grant should mean W&I does not decline you.

Food grant = not suffering

How much will they give you?

Ok, so W&I have agreed that you need a food grant, but how much do you get?

W&I *must* grant a *reasonable* amount to buy food to last until your next pay. The amount you receive should not be just what W&I *think* is enough. We suggest you request an amount based on the **University of Otago research**.

The University of Otago has calculated the average cost to eat healthy food for a week. The Social Security Appeal Authority confirmed this is a useful guide when deciding about how much food grant money to give you.

The 2021 Otago amounts are below. Add them together to work out how much to ask for. These amounts are for food only. You can get extra for non-food things like cleaning and period products (the average cost of these is \$35 per week, but you can get more if you need it). You can quote these amounts to W&I as they are the best evidence of average food costs.

Adult man: \$111.

Adult woman: \$94.

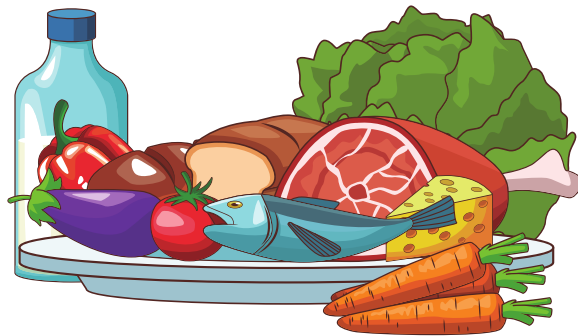
Teenage boy: \$117.

Teenage girl: \$96.

10-year-old: \$82.

Five-year-old: \$70.

One year old: \$45.



Example:

A family with an adult man, an adult woman, and a 10-old, and a four-year old normally needs to spend \$343 to buy healthy food for one week (plus extra for any non-food items).

Unless you genuinely don't need it **Always ask for the Otago amount**. If you tell W&I that you spend *less* every week on food (which is often true because it is often all there is left) then W&I may think that how much you usually spend on food is all you need.

If you get paid sooner than a week away, W&I can grant you less than the amount for a full week of food, but it should not be much less.

If you or your whaanau need to spend extra on special food because they are always sick, ask W&I to cover this in a Disability Allowance.

How to respond to common problems

Below are things W&I sometimes say to people applying for a food grant and some responses. Remember, you should be firm but polite.



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If this does not fix the problem, politely insist on talking to a manager. If you do not like what the manager decides, you should accept the decision and apply for a review. 20

Disability allowance

The Disability Allowance pays you back for the costs of goods and services that directly help you with an ongoing health issue.

To qualify, you must have an impairment that:

- is likely to continue for at least six months, **and**
- has reduced your ability to be independent to the point that you need ongoing support for the normal functions of life or need ongoing supervision or treatment by a health professional.



A doctor will need to assess you and certify that you qualify, and give you evidence of that to give to W&I. You'll also need to provide W&I with invoices, quotes or receipts, so it's a good idea to save them before you apply.

The allowance is paid as a weekly amount, up to a maximum. If your actual costs are more than the maximum, the difference can be covered by **Temporary Additional Support**.

Examples of costs includable in Disability Allowance
(these are examples only – not an exhaustive list)

ALTERNATIVE TREATMENTS

e.g. Physio, osteopath, occupational therapy

AMBULANCE FEES AND SUBSCRIPTIONS

HEALTH RELATED SUPPLIES

e.g. batteries, guide dog food (and vet bills), needles & syringes

CLOTHING

due to wear and tear - (e.g. nocturnal incontinence)

COUNSELLING

TRANSPORT

DOCTOR'S FEES FOR ONGOING, REGULAR APPOINTMENTS

GYM & SWIMMING POOL FEES

MEDICAL ALARMS & MEDICALERT COSTS

POWER, GAS, AND HEATING

RENTAL EQUIPMENT

not paid for by DHB or other agency (e.g. walker, shower stool)

SPECIAL FOOD

(e.g. for celiac disease or diabetes – includes vitamins and supplements)

TELEPHONE

Emergency housing and the Law

When you are entitled to emergency housing

The law entitles you to emergency housing if you:

1. Are a New Zealand citizen, resident, or permanent resident and New Zealand is your permanent home; **and**
2. You and your whaanau have nowhere adequate to stay (now or in the next week); **and**
3. You and your whaanau cannot afford to pay for somewhere adequate to stay.



When W&I can decline emergency housing

W&I can decline emergency housing only in four limited circumstances. These are:



1. You do not meet the residence requirements. The law **does not** give W&I discretion to waive these criteria.
2. If W&I think you have somewhere else to stay (now or in the next week) that is adequate.
3. If W&I believe that you have made yourself homeless without a good reason. If W&I decline you for this reason they must also know that declining you will not cause serious hardship, a risk to your life or welfare, or worsen your situation.
4. If W&I think you have enough money to afford to pay for somewhere adequate to stay (now or within the next week).

Please note

W&I must carefully consider and investigate your situation before declining you. You should always point out to W&I why declining you would cause a risk to your welfare, place you in serious hardship, and worsen your situation.

Our lawyers and advocates help for free with benefit issues in the greater Waikato. Call us (free) on 0800 529 482, email reception@clwaikato.org.nz. We will be happy to see how we can help.

When W&I can make you pay back an emergency housing grant

Usually, you do not have to pay back emergency housing (except for a bond). The law only allows W&I to make you pay back an emergency housing grant in three limited situations (called making a 'recoverable' grant). These are:

- 1.If they think you have not made a **reasonable** effort to find a house yourself (e.g. a private rental house).
- 2.They think that you need emergency housing because of something **unreasonable** you have done.
- 3.You do not use the grant for emergency housing.

The important words here are 'reasonable' and 'unreasonable' 'Reasonable' means something sensible, or something that everybody else would do. For example, if you refused to leave emergency housing even if you were offered a private rental, that would be 'unreasonable'. Or, if you were given an emergency housing grant but you stayed somewhere else instead.

What you can do if W&I make you pay back your emergency housing grant.

If W&I make your grant recoverable, you should tell them why you do not agree and explain what you did (or did not do) and why it was sensible for you. If this does not work, you have the option of challenging the decision and having it independently checked.

We explain further in this booklet about what to do if you disagree with W&I.



Shared rooms or shared facilities

There is **no law** that says you are entitled to a private room.

Emergency housing only has to be "adequate" (basically clean and comfortable compared to sleeping rough) .

Tell W&I straight away if you genuinely need a private room e.g. due to age, gender, health (including mental health) or work hours. It helps to have supporting evidence. W&I will try its best to find you a private room.

Help with extra costs in emergency housing.

Several payments can help with the extra cost that comes with being in emergency housing. These are:

1. Food grants: including W&I using discretion to pay more than the normal maximum in a six month period.
2. Assistance with additional costs such as storage. This could be with a non-recoverable Special Needs Grant or the cost included in your Temporary Additional Support.
3. Non-recoverable Flexible Funding for people with children to meet education, health, or wellbeing needs (this package expires in November 2023).
4. An advance if no other option is available.

Paying part of the cost of your emergency housing

After seven nights, the law says that you must pay some of the cost of your emergency housing (if you're not already paying). This is called an Emergency Housing Contribution.

- You'll pay about 25% of your income (after tax).
- If you have a partner, they'll also pay about 25% of their income (after tax).

Your income may include payments from W&I, wages, salary or other income, or Family Tax Credits.

If the cost of your emergency housing is LESS than 25% of your income (after tax), then you will pay the lesser amount.



Your (limited) rights in emergency housing

Where you are staying must be of acceptable quality and reasonably "fit for purpose" (this means OK for the average person). Speak to the manager if you think it is not. If this does not fix the problem, you could ask W&I to move you, but be aware they might not be able to find you somewhere else.

The emergency housing supplier cannot treat you worse than other people **'just because'** you are there for emergency housing. But they can decide the rules about who can visit you, or if you are allowed alcohol on the premises.

The supplier must stick to any promises they made about the place you are staying (e.g. laundry or cookware). The law requires these to be of acceptable quality and reasonably fit for purpose. E.g. if there is a washing machine available to use it must work properly, if there is a fridge then it must be able to keep your food cold.

IMPORTANT: In emergency housing, you do not have the rights of a tenant, so there is not a minimum period of notice you must get before being told to leave and you cannot take any problems to the Tenancy Tribunal.

If you have a dispute with the emergency housing supplier (a common example is responsibility for damage) you may be able to apply to the Disputes Tribunal. Contact us for advice about this.

How to respond to common problems

Below is a list of things W&I may say to justify why you are not entitled. For each, there is a suggestion of what you can say (as long as it is true). Be firm but polite.



If this does not fix the problem, politely insist on talking to a manager. If you do not like what the manager decides, you should accept the decision and then apply for a review.

Supported Living payment

You are entitled to Supported Living Payment (SLP) if you meet the residency, age, medical, and income requirements:

Residency requirement

You meet the residency requirement for the SLP if:

- You are a New Zealand citizen or New Zealand resident visa holder **and**,
- New Zealand is your permanent home **and**
- One of the following three criteria apply:

1. You have lived in New Zealand continuously for at least two years. During this two years you must be a New Zealand citizen or resident visa holder. (Some time away during the two years is OK as long as your permanent home continued to be here) **OR**
2. You have resided in a country New Zealand has a social security agreement with that counts time in that country as time in New Zealand (not all do) **OR**
3. You are a refugee or protected person.

Age Requirement

You meet the criteria for age if:

- You are 16 or older **OR**
- For the Supported Living Payment (Caring for sick or infirmed) you are 18 with no dependent children OR 20 with dependent children.

Medical requirement

There is no set list in the law that says which health conditions are or are not 'allowed' for SLP. It just needs to meet one of these criteria:

- You have "restricted work capacity" **OR**
- You are 'totally' blind (regardless of if you can work) **OR**
- You are caring for someone else (not your spouse or partner) who would otherwise need full-time care (this person can also apply for SLP for themselves)



What does 'restricted work capacity' mean?

Restricted work capacity means your health stops you from regularly working 15 hours a week (or more), **AND** this is expected to last at least two years from when you apply.

It does not matter if you can *sometimes* work 15 hours a week or more. It only matters if you can *regularly* work 15 hours a week (or more).

Your ability to work must be based on **current** expectations. It does not matter if you **might** improve in the next two years. The improvement must be expected (i.e. a 51% or more likelihood you will improve)

Being unable to regularly work 15 hours a week or more must be in jobs that are on the 'open' market anybody qualified could get and pay the minimum wage or more. It doesn't include 'sheltered' work for people with health conditions or where the employer could get a minimum wage exemption due to your health condition.

The law does not define 'totally blind'

W&I have created their own criteria for what it means to be 'totally blind'. W&I's definition of 'totally blind' is that you need to have either (or both) of the following:

1. A best visual acuity (sharpness) corrected with glasses of 3/60 (6/120) or more in the better eye; and/or
2. A visual field (width of vision) of no more than 5° from the fixation point in your better eye.

The Law

The Law (Social Security Act) does not say what 'totally blind' means.

Because this is what W&I created and is not from the law, the court could say it is wrong. But it has not been challenged in Court yet.

Caring for someone full-time

To be able to get the SLP for caring for someone else (not your spouse/partner) the person needs to meet the following medical criteria:

- They need full-time care at home. This means you need to be available full-time but you can have some time away e.g. during when a care worker comes in (respite care).
- If you weren't caring for them, they'd need full-time care in one of the following:
 - A hospital, rest home, or residential care (including extended care arranged by Oranga Tamariki), or
 - The same level of care at home (e.g. full-time care workers paid by the government).



The Law

The Law (Social Security Act) says you do not qualify if you are looking after your spouse or partner.

If you're caring for your spouse or partner, contact your local Needs Assessment service (NASC) as you may be eligible for Funded Family Care instead. Find your local NASC at www.health.govt.nz/nasc or call 0800 725 463.

You may be eligible for other help from W&I too.

Applying for SLP: How to avoid problems

If you are applying for yourself



It is easiest if your GP completes a medical certificate.

It is important they list the condition that most causes you to meet the criteria as the "primary" condition. The law doesn't say specifically that you need a medical certificate, so you can also use other reports to show that you meet the criteria.

If your condition can differ in severity between people or could be expected to improve, it is important your GP (or other health practitioner) explains in a note how the condition means you meet the criteria.

Some examples of when this is important include mental health problems not requiring compulsory treatment, orthopaedic (bone and joint) conditions, autoimmune problems or non-terminal cancers.

If you are applying because you are caring for someone else

Their GP, doctor or nurse practitioner must fill in the paper SLP-Caring medical certificate. If the person has a specialist we recommend they complete this as they can give the best opinion. If they have other reports or letters, it is a good idea to include this as part of your application too.



How to respond to common problems

If MSD decline you for allegedly not meeting the medical criteria, here is a suggested step-by-step approach to try to resolve the dispute

1

Ask W&I why they think you don't qualify. Understanding clearly what evidence W&I needs will give you the change to seek out the evidence and get it to them.

2

Get a detailed letter from your GP (or other treating practitioner e.g. your specialist) about why you qualify.

Information from medical professionals will give W&I a good 'picture' to reconsider the decision. The writer needs to address the specific reasons W&I don't think you qualify

3

Ask W&I to pay for a second opinion from a second designated doctor. You should take any reports or letters about your condition.

4

As a last resort, seek legal help about a medical appeal.

A medical appeal is an independent check of the decision. This is final (you cannot appeal again) so it is very important to get legal help with this.



What if W&I declines you?

Reviews

If Work and Income (W&I) decline you, or make a decision that you don't agree with, you don't have to just accept it. W&I can't punish you for using your rights and if you win your case they must change the decision so we strongly encourage this. There are steps that you can take to try and have the decision changed.



You must apply within three months of being told the decision, but if a good reason stopped you (e.g. not being told the decision or being sick) a late application may be accepted. To apply, write what the decision was, why you think it's wrong (if you can) and send it to W&I:

1. On a "review of decision" form or a note and hand it in at any of their offices. Get a date stamped copy.
2. Email helpline_workandincome@msd.govt.nz (the "_" is an underscore). Keep a copy of the email.
3. Use the online form at www.msd.govt.nz/feedback.

Appeals

If you are not happy with the review outcome, you have the right to continue (appeal) to the Social Security Appeal Authority. The Authority is entirely independent of W&I. You must apply within sixty working days of W&I telling you to review the outcome unless a good reason means you could not. To apply, use the form at www.justice.govt.nz or email ssaa@justice.govt.nz.

Community Law often helps people to prepare for reviews and appeals and represents them in the process. Please contact us straight away to see how we can help you.



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