

NOTES ON APPEALS TO THE HIGH COURT
FROM A DECISION OF THE SOCIAL SECURITY APPEAL AUTHORITY

Preliminary

[1] If you think the Authority has made an error of law in their determination, you may lodge an appeal to the High Court against that determination.

[2] The essential steps to start an appeal to the High Court against a decision of the Authority are:

Notice of appeal

[2.1] You must prepare a document called a notice of appeal. A form for this notice is attached.

[2.2] You must file a notice of appeal with the Authority within 10 working days of the date of the Authority's decision (Social Security Act 2018, s 406).

[2.3] You must also "promptly deliver or post a copy of the lodged notice of appeal to every other party to the proceedings" (Social Security Regulations 2018, reg 257(2)).

The case stated on appeal

[2.4] You must "state in writing, and lodge with the Secretary of the authority, a case stated for the court's opinion on a question of law only" (Social Security Regulations 2018, reg 258(1); Social Security Act 2018, s 405).

[2.5] That case stated is to be lodged within 10 working days of the appeal beginning (Social Security Act 2018, s 406(2)), but the chairperson or deputy chairperson of the Authority may allow further time (s 406(3)). The High Court may also allow for a further period (s 406(2)).

[2.6] You must "promptly deliver or post a copy of the lodged written case stated to every other party to the proceedings" (Social Security Regulations 2018, reg 258(4)).

[3] It is essential to recognise that the time limits are important. Only the High Court can allow further time if you do not file the first document, the **notice of appeal** in time (s 406(1) and (4) of the Social Security Act 2018). If you do not lodge the second document, **a case stated**, within the specified time or within a further period allowed, the authority's chairperson or deputy chairperson may confirm that an

appeal has not been prosecuted (Social Security Act 2018, s 406(5); Social Security Regulations 2018, reg 258(5)).

- [4] The process for filing an appeal with the High Court does involve legal work of some complexity. The High Court requires that appellants comply with the rules. The Authority is responsible for ensuring the appeal only raises questions of law and that other formalities are completed correctly.
- [5] Legal Aid may be available to some appellants. You may also be able to get assistance from a Community Law Centre.
- [6] All appellants are entitled to present their own documents. The Authority will endeavour to ensure that parties understand if there are any errors in the documents and will give an opportunity for correction. However, the Authority cannot provide legal advice regarding appeals.

Where to find the relevant rules

- [7] There are two main sets of rules relating to preparing an appeal for the High Court. The main provisions are found in Subpart 4 of the Social Security Act 2018 and Part 7 of the Social Security Regulations 2018. To the extent they do not conflict with those specific provisions (Regulation 260 of the Social Security Regulations 2018), Part 21 of the High Court Rules 2016 also applies. All of these provisions can be located at www.legislation.govt.nz
- [8] Two decisions of the High Court also give a good overview of the procedure: *Crequer v Chief Executive of the Ministry of Social Development* [2012] NZHC 2575 and *Crequer v Chief Executive of the Ministry of Social Development* [2015] NZHC 1602. These decisions can be located at <https://forms.justice.govt.nz/jdo/Search.jsp>.

What is a notice of appeal?

- [9] The requirements (Regulation 248 of Social Security Regulations 2018) for the notice of appeal are:
 - [9.1] it must be in writing;
 - [9.2] it must state the grounds of appeal; and
 - [9.3] it must say what you want the High Court to do.

[10] We have attached a form for a notice of appeal.

What is a case stated on appeal?

[11] The form of the case is determined by reg 258 of the Social Security Regulations 2018. The case on appeal must:

[11.1] be in writing;

[11.2] ask the High Court's opinion on "a question of law only";

[11.3] state what the facts found by the Authority were and the grounds for its determination; and

[11.4] specify the question of law on which the appeal is made and why you think that question of law suggests an error of law has been made by the Authority.

[12] We have provided a form that may assist you to draft an appropriate case stated on appeal.

What is an error of law?

[13] Generally, an error of law is where a decision maker misinterprets or incorrectly applies the relevant law. For example, if the Authority makes a mistake about the meaning or application of a section of the Social Security Act 2018, this is usually an error of law.

[14] An error of law can also be where a decision maker applies an incorrect or inappropriate principle of law when deciding an issue of fact (see s 405 of the Social Security Act 2018 for examples).

[15] An error of law does differ from an error of fact. An error of fact is typically where a decision maker reaches a *wrong* view of what the facts are, or interprets them incorrectly. An error of law usually occurs where the decision maker applies the law incorrectly; or, applies the wrong law to the *right* facts.

What the Authority does when you lodge a case on appeal

The duties on the Authority

- [16] The High Court has made it clear that the Authority has duties to ensure that it only files a case on appeal that meets the High Court's requirements. The Authority is expected to:
- [16.1] remove surplus material (duplication and unnecessary text), particularly irrelevant factual material;
 - [16.2] confine the case to errors of law alone;
 - [16.3] narrow the breadth of the case to the issues genuinely in dispute between the parties. Any issues with obvious answers or a long and settled history are excluded; and
 - [16.4] the Authority may receive input from the other party, or parties, as appropriate (in the Authority's discretion).
- [17] If the appellant does not identify proper questions of law for the appeal, then the Authority's duty is to refuse to state a case. The High Court in *Lawson v Chief Executive of the Ministry of Social Development* [2016] NZHC 910 emphasised the Authority is required to retain final control over a case stated. This involves ensuring the case is confined to errors of law alone and that such issues are genuinely in dispute between the parties.

Process of the Authority

- [18] The usual process will be that when a case on appeal is lodged, the Authority will review it and identify whether it appears to comply with the relevant rules (see above). If not, it will identify why it does not comply and provide you with an opportunity to file a case on appeal that does comply.
- [19] If you file another draft (or the first case on appeal appears to comply), that will be referred to the other party for comment. You can reply to those comments, and the Authority will then decide whether the case on appeal can be lodged.
- [20] At that point, if the case on appeal does not appear to comply, the Authority will make a decision as to whether it should issue a certificate under s 406(5) of the Social Security Act 2018 that the appeal has not

been prosecuted because it has not received a case on appeal which meets the requirements.

**BEFORE THE SOCIAL SECURITY
APPEAL AUTHORITY**

SSA [Reference No.]

IN THE MATTER OF

the Social Security Act 1964.

BETWEEN

[The appellant's name]

Appellant

AND

[The Respondent's name]

Respondent

NOTICE OF APPEAL

[Date Signed]

[The Appellant or their Lawyer]

[Address]

[Telephone]

[Fax (if any)]

Contact Person:

Name of Contact person/s

Email Address of Contact Person/s

TAKE NOTICE that the appellant appeals against a decision of the Social Security Appeal Authority being decision [201X] NZSSAA XXX, reference number SSA 000/00, delivered by the Social Security Appeal Authority on [Date of Decision].

The appellant:

- a) Appeals on the grounds that [set out the one or more grounds on which the appeal is brought].
- b) The appellant will seek an order from the High Court that [set out the order/s that you want the High Court to make, such as setting aside the order of the Authority, and instead making another order that you identify].

Dated at [where signed] this xx day of xx 201X

[Name of appellant or lawyer signing]

Appellant

TO: The Social Security Appeal Authority

[The other party]

This notice of appeal is filed by [Name of lawyer or appellant], [solicitor for the appellant or appellant, [Name of firm if a lawyer].

The address for service of the appellant is [physical address]. Documents for service on the appellant may be left at this address for service or may be:

- (a) posted to [postal Address]; or
- (b) left at a document exchange for direction [Address],
- (c) emailed to [email address].

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-201

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

IN THE MATTER OF

An appeal by way of Case Stated from the determination of the Social Security Appeal Authority under section 405 of the Social Security Act 2018.

BETWEEN

[The appellant's name, place of residence, and occupation]

Appellant

AND

[The Respondent's name, place of residence, and occupation]

Respondent

CASE STATED ON APPEAL

From Determination of the Social Security Appeal Authority

Social Security Appeal Authority
Tribunals Unit
Private Bag 32 001
Wellington 6001

Telephone (04) 462 6660
Facsimile (04) 462 6686

The following is a case stated on appeal. The appeal is from a decision of the Social Security Appeal Authority, for the opinion of the Court on a question of law, pursuant to s 405 of the Social Security Act 2018. It arises from a decision of the Social Security Appeal Authority dated XX XXX 201X.

The facts of the case determined by the Authority

Identify the relevant facts determined by the Authority in its decision.

If the point of law includes a contention that there was no evidence on which the Authority could reach its decision, is inconsistent with or contradictory of a specified part of the evidence, or it contradicts the only true and reasonable construction of fact available on the evidence; then (and only then) copies of the documents, affidavits and exhibits that were placed before the Authority must be attached (Rule 21.9 of the High Court Rules).

Refer to Bryson v Three Foot Six Ltd [2005] NZSC 34 for a discussion on the extent to which a factual determination can be challenged in an appeal limited to a question of law.

The grounds of the Authority's determination

Set out why the Authority made its decision, as far as is relevant to the question of law set out below.

The question/s of law

The appellant must set out the question or questions of law. The questions should be set out with sufficient particularity, so the High Court can understand precisely what is in dispute, and why.

A copy of the Authority's decision is attached.

Dated at Wellington this ____ day of _____ 201__

[Name of Chairperson]

Chairperson

The parties have nominated the following addresses for contact, and service:

APPELLANT

This notice of appeal was filed by [Name of lawyer or appellant], [solicitor for the appellant or appellant, [Name of firm if a lawyer].

The address for service of the appellant is [physical address]. Documents for service on the appellant may be left at this address for service or may be:

- (a) posted to [postal Address]; or
- (b) left at a document exchange for direction [Address],
- (c) emailed to [email address].

RESPONDENT

The Respondent is represented by [Name of lawyer or appellant], [solicitor for the appellant or appellant, [Name of firm if a lawyer].

The address for service of the appellant is [physical address]. Documents for service on the appellant may be left at this address for service or may be:

- (a) posted to [postal Address]; or
- (b) left at a document exchange for direction [Address],
- (c) emailed to [email address].