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| Right of review available to Work and Income beneficiary over advance payment to spouse |
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| Legislation Ombudsmen Act 1975, Social Security Act 1964  Ombudsman Anand Satyanand  Case number(s) W40622  Date 1998 |

*Wife of beneficiary granted advance on Invalid’s Benefit to pay power account without beneficiary’s knowledge or consent—beneficiary and wife later separated—advance recovered from beneficiary’s Invalid’s Benefit—beneficiary maintained Department had no authority to make advance—right of review available—further investigation precluded—Ombudsmen Act 1975, s 13(7)(1)(a)*

The complainant had been in receipt of an Invalid’s Benefit (IB) since July 1979 due to blindness. His wife had been included in the benefit from the date it had been granted until the date of their separation in November 1997. In early November 1997, the wife, who had completed most of the paperwork associated with the benefit since the date it had been granted, applied for assistance to pay a power account as the power supply was about to be cut off. Payment was approved and the amount released to the power company. A letter was sent to the beneficiary confirming details of the grant and how it would be recovered.

The complainant said he had neither been advised of nor consented to the amount of the power account being advanced against his IB. He believed the money had been advanced without authority and should not have been recovered from his benefit. He acknowledged that his wife had provided him with assistance completing forms which required his signature, but at no stage was she given authority to act on his behalf.

In its report, the Department advised that although it was not usual practice to accept another person’s signature on an application for assistance, there had been a long history of the complainant allowing his wife to sign application forms. On this basis, the Department had no reason to believe the complainant objected to his wife attending to his benefit matters. In addition, the Department said they had the ability to recover advance payments of benefit from either party. Although the benefit was apportioned between husband and wife, there was only one benefit. The Department explained that it had approached the power company to see what the outcome would be if it recovered the money paid to meet the power account. The company was prepared to repay the money to the Department, but would then look to the complainant for payment of the account. The Department felt it had acted in good faith in advancing the monies for the power account and also considered recovery from the complainant’s benefit was in order. The Department pointed out that the complainant could have sought a review of the decision to recover the advance from a Benefit Review Committee.

Given that the complainant had a formal right of review to a Benefit Review Committee which, if unsuccessful, gave rise to a right of appeal to the Social Security Appeal Authority, further investigation was precluded pursuant to section 13(7)(a) of the Ombudsmen Act 1975.

*This case note is published under the authority of the* [*Ombudsmen Rules 1989*](http://legislation.govt.nz/regulation/public/1989/0064/latest/DLM129834.html?src=qs)*. It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*