



## Lack of review mechanism for community participation services funding unreasonable

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Ministry for Social Development
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	550114
<b>Date</b>	23 March 2022

---

*Complaint about the level of funding provided by the Ministry of Social Development for Community Participation Services – level of support based on Ministry of Education Ongoing Resourcing Scheme - Chief Ombudsman found that the absence of a mechanism to reassess Community Participation Services support needs after a person had left school was unreasonable, and raised issues in relation to the United Nations Convention of the Rights of Persons with Disabilities.*

### Background

The Chief Ombudsman received a complaint about the level of Community Participation Services provided by the Ministry of Social Development (MSD). At the time that the complainant's son left school in 1999, he was classified as High Needs under the Ministry of Education's Ongoing Resourcing Scheme (ORS). However, MSD did not have a mechanism to reassess funding entitlement to reflect changes in support needs.

MSD used the ORS assessment to determine funding for Community Participation Services for people with disabilities from the time they leave school until they turn 65. A classification of High Needs provides access to bulk-funded community participation programmes at an average rate of \$4,100 per contracted place per year. A classification of Very High Needs

entitles the person to individualised funding for community participation support, to a maximum of \$15,676.80 per person per year.<sup>1</sup>

The complainant considered that the ORS assessment was incorrect and his son should have been classified as Very High Needs during his school years. He also considered that his son's needs had increased and the bulk-funded programme was not suitable for him. However, MSD had advised that it could provide funding based only on the ORS assessment as it had no mechanism to review ORS assessments.

## Investigation

The Ombudsman notified MSD of his investigation under the Ombudsmen Act. The Ombudsman sought information about why there was no mechanism to reassess the need for community participation funding when the person had left school.

In response, MSD advised that no specific legislation or regulatory framework covered its Community Participation Services funding. The Education and Training Act 2020 allows ORS classifications to be appealed and reviewed. However, this can occur only while the disabled person is enrolled at a school. MSD acknowledged that ORS assessments are focused on measuring the level of support needed to access education. The operational policy settings that link eligibility to ORS assessments were created many years ago. In instances where individual support needs increase after schooling is completed, discretionary or individualised funding may be available through the Ministry of Health.

The Ombudsman formed the opinion that it was unreasonable for MSD to use ORS assessments to determine funding for Community Participation Services for people with disabilities. It was not fair for MSD to make important decisions that directly affect disabled people's day-to-day lives without providing any avenue to review or challenge the level of funding awarded. While MSD may refer individuals whose needs have increased to the Ministry of Health, the funding of Community Participation Services is the responsibility of MSD. The Ombudsman considered that MSD was obliged to provide an avenue for people to challenge the accuracy of the ORS assessment. It is important that disabled people have access to Community Participation Services funding that matches their current needs.

## United Nations Convention on the Rights of Persons with Disabilities

In coming to his conclusion, the Ombudsman cited article 19 of the United Nations Convention on the Rights of Persons with Disabilities (the Convention), which states that:

*States Parties [...] recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this*

---

<sup>1</sup> When Pay Equity is included, the total annual Ministry of Health funding for a person with very High Needs may increase to \$21,567.00 per annum excluding GST.

*right and their full inclusion and participation in the community, including by ensuring that: [...]*

*c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*

The Ombudsman considered it was difficult to see how using an assessment carried out more than 20 years ago for education purposes, to determine funding for Community Participation Services, particularly when that person's needs have changed, was responsive to their current needs.

The Ombudsman also referred to Article 26 of the Convention, which states that:

*States Parties shall take effective and appropriate measures [...] to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:*

*a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;*

The Ombudsman noted that, in this case, Community Participation Services funding was not based on a multidisciplinary assessment of current needs and strengths, as the ORS assessment was more than 20 years old.

## Outcome

MSD acknowledged that it does not have a mechanism to reassess a person's needs. It undertook to apologise, provide a flexible payment and engage with the complainant to explore other existing assessment options. In the longer term, MSD will undertake a review of its vocational support, including Community Participation Services, and develop advice for ministerial consideration.

In light of MSD's commitments, the Ombudsman did not make any recommendations. He commended the manner in which MSD responded to the investigation and its willingness to work towards a positive outcome.

## Disclaimer

*This case note is published under the authority of the Ombudsmen Rules 1989. 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.*