

**THE RESIDENTIAL CARE SUBSIDY—AN UPDATE**



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If a person goes into a rest home then they may be eligible to receive the residential care subsidy to assist with the cost of their care. In order to determine if an applicant is eligible for the residential care subsidy the Ministry of Social Development carries out a means assessments of the person, which includes two stages:

- (a) An assets assessment; and
- (b) An income assessment.

**Assets Assessment**

In order to pass the assets assessment stage, the assets of the applicant or the couple need to be below the applicable threshold.

As at the 1<sup>st</sup> July 2019, the applicable threshold for a single person and for a couple where both require long-term care is \$230,495.00. Where only one requires care, then a couple can choose between the following thresholds:

- (a) \$126,224.00 with the value of the family home and car not being taken into account; or
- (b) \$230,495.00 with the value of the family home and car being taken into account.

If the applicant's assets are under the asset threshold then an income assessment will be undertaken.

**Assets Assessment and Trusts**

An applicant can gift \$27,000.00 per year (allowed gifting rate). If an applicant gifts more than the allowed gifting rate, then the amount over \$27,000.00 is still considered the applicant's asset and may mean that the applicant's assets are over the threshold. For example, if Mrs West gifts the full value of her home of \$280,000.00 to her Trust as a one off gift, then \$253,000.00 will still be considered her asset and will put her over the threshold making her ineligible for the subsidy.

**Income Assessment**

An applicant's income determines the amount of the subsidy they receive and what they must contribute themselves. If an applicant's weekly income is greater than the maximum, which in the Wellington region ranges between \$1,037.68 to \$1,096.55, (depending on the District Health Board), then they will not receive the subsidy.

The Ministry takes into account both the applicant's and their partner's income but does not include any income from assets up to \$992.00 for a single person, \$2,009.00 for a couple (where both require care) and \$3,013.00 for a couple (where only one requires care).

**Income Assessment and Trusts**

The Ministry can determine that an applicant has in certain situations deprived themselves of income and can add this deprived income to their actual income. This has occurred frequently in cases where an applicant or their partner have transferred assets into a trust.

An example of this is the recent Court of Appeal case of *Ministry of Social Development v Broadbent*. Mrs Broadbent had sold her family home, bach, and investments to her family trust at market value. She had loaned the purchase price to the Trust and had forgiven that debt each year at the allowed gifting rate, so that the debt was fully forgiven by 2013. When Mrs Broadbent applied for the residential care subsidy, her assets (ie those not in the Trust) were below the asset threshold meaning she passed the asset assessment stage.

However, when the Ministry came to assess her income, it determined that:

- (a) the assets in the Trust were earning an annual income of \$81,093.50;
- (b) Mrs Broadbent had deprived herself of this annual income by transferring the assets to the Trust;
- (c) if she had not transferred those assets to the Trust then she would have been earning that income herself therefore the Trust's income could be considered her income;
- (d) this income when added to her other income was greater than the income threshold; and
- (e) she was not eligible for the residential care subsidy.

The Court of Appeal overturned the Ministry's decision and held that if assets are validly gifted (ie at \$27,000.00 per year) then the Ministry cannot treat the income from those assets as being the income of the applicant. So, since Mrs Broadbent's had validly gifted the assets to the Trust then the income could not be considered Mrs Broadbent's income.

The Court has sent the case back to the Ministry for reassessment and has left open the possibility for the Ministry to determine that Mrs Broadbent deprived herself of income in other ways, as a result of transferring assets to her Trust.

We will update you further once the reassessment has taken place.