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

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

CIV-2025-485-011

UNDER THE	Judicial Review Procedure Act 2016
IN THE MATTER OF	The Judicial Review of Administrative Action
BETWEEN	KELLY ALEXANDRA ROE Applicant
AND	THE SOCIAL SECURITY APPEAL AUTHORITY First Respondent
AND	THE ATTORNEY-GENERAL Second Respondent

MEMORANDUM OF COUNSEL FOR ABIDING PARTY

5 June 2025

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MAY IT PLEASE THE COURT:

1. By Minute of 26 May 2025, his Honour McHerron J directed the Social Security Appeal Authority (**Authority**) to advise the Court when it expects to state a case. The Minute went on to direct that once an appeal proceeding had been commenced in this Court, the respondents are to seek an order for consolidation of the two proceedings.
2. By way of update in respect of the case stated process, counsel for the Authority are instructed:
 - 2.1 Ms Roe filed a notice of appeal with the Authority on 6 February 2025 to commence an appeal by way of case stated in the High Court from the Authority's decision [2025] NZSSAA 02. At the same time, Ms Roe also filed a Case Stated document.
 - 2.2 The Authority issued a Minute dated 18 February 2025 which recorded:
 - 2.2.1 Ms Roe's appeal has been brought on the grounds that the Authority's decision was delivered out of time.
 - 2.2.2 The case stated must identify an error of law that is a mistake about the meaning or application of the law, in the Authority's decision.
 - 2.2.3 An appeal based on the timing of the decision does not engage with the determination of the Authority and does not constitute an error of law that can form the basis of an appeal by way of case stated.
 - 2.2.4 If the appellant does not identify proper points of law for appeal, then the Authority's duty is to refuse to state a case and certify that the appeal has not been prosecuted in accordance with regulation 258(5) of the Social Security Regulations 2018.

- 2.2.5 Ms Roe will be given a further opportunity to provide a compliant draft case stated.
- 2.3 Through that Minute, the Authority directed:
 - 2.3.1 Ms Roe is to submit a revised case stated within 15 working days of the Minute.
 - 2.3.2 If the case stated sets out the material facts, grounds for the Authority's decision; and also identifies a tenable question of law arising from those facts and determination, the Ministry will be invited to comment.
 - 2.3.3 Unless there is a compliant draft case stated within the time allowed, which justified state a case for the High Court, a certificate of non-prosecution under regulation 285(5) of the Social Security Regulations 2019 may be issued. In such case the appeal process will end, subject to an order of the High Court pursuant to s 406(4) of the Social Security Act 2019.
 - 2.3.4 If Ms Roe requires additional time, she can request it, and provide reasons for the extension of time.
- 2.4 The Authority has no record of receiving a revised case stated from Ms Roe nor a request for an extension of time.
- 2.5 Whilst the Authority referred in its Minute of 18 February 2025 to a certificate of non-prosecution under regulation 258(5), the Chair of the Authority has now determined that is not the correct process when a non-compliant draft case stated has been filed. Instead, the correct process is to decide whether to state a case.
- 2.6 The Authority expects to complete the decision on whether to state a case or not within the next two weeks.

3. Counsel for the Authority can provide a further update to the Court and parties once that decision has been issued.

5 June 2025



M W McMenamin / L E Sinclair
Counsel for the first respondent

TO: The Registrar of the High Court of New Zealand.

AND TO: The applicant.

AND TO: The second respondent.