

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2025] NZERA 826

3420964

BETWEEN

VIZ

Applicant

AND

MINISTRY OF BUSINESS

INNOVATION AND

EMPLOYMENT

Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person  
Shimal Calderwood, counsel for the Respondents

Investigation: On the papers

Submissions and Other Information: 3 December 2025 from Applicant and Respondent  
10 December 2025 from the Respondent  
15 December 2025 from the Applicant

Date of Determination: 18 December 2025

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**DETERMINATION OF THE AUTHORITY**

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**The applicant's name**

[1] Three randomly generated letters have been used for the applicant instead of their name, in order to preserve their privacy.

**Employment relationship problem**

[2] The applicant, VIZ, has applied under s 71ZB of the Parental Leave and Employment Protection Act 1987 (the PLEPA) for a review of the decision by the Ministry of Business, Innovation, and Employment (MBIE) that she was not entitled to parental leave payments (PLP).

[3] The applicant's application for PLP was declined because section 71F(a) of the Parental Leave and Employment Protection Act 1987 (the PLEPA) requires a six-month gap between the end of one parental leave payment period and the start of another parental leave payment period for a different child.

[4] The parties agreed that less than six months had passed between the end of the applicant's first PLP period on 17 August 2025 and the expected due date (EDD) of her next child, which is 6 January 2026.

[5] The applicant said she was misled by information she obtained from online tools and websites, which caused her to believe that only PLP that had been paid to her personally, and not any PLP that was paid to her husband, counted towards the six months' PLP exclusion period in s 71F(a) of the PLEPA.

[6] The applicant submitted she was entitled to PLP because the last payment that was made to her personally occurred on 17 June 2025. She said the payments made after that date were made to her husband, and not her personally, because she had transferred eight weeks' PLP to him in June 2025, in accordance with s 71E of the PLEPA.

[7] The applicant said that because the last payment she had personally received occurred on 17 June 2025, her new PLP entitlement period for her next child begins more than six months after that date. She said it was unfair to take the payments made to her husband into account, because the online information she had searched had not made it clear that would occur.

[8] The applicant further submitted that if she was held to not be entitled to PLP, then the Authority should determine her application in equity and good conscience, by reversing MBIE's decision that she was not entitled to PLP for her next child.

[9] MBIE said that the applicant did not meet the PLP entitlement requirements in s 71F(a) of the PLEPA, because there was less than six months between the end of her PLP period on 17 August 2025 and 6 January 2026, which was the EDD for her next child.

## **The Authority's investigation**

[10] MBIE did not dispute the evidence the applicant provided in support of her application, so the parties lodged a Joint Memorandum and Agreed Statement of Facts (ASoF).

[11] The Authority discussed the applicant's application with the parties during a case management conference held on 4 December 2025.

[12] By agreement with the parties, this matter was determined 'on the papers' based on the ASoF. Both parties also lodged submissions.

## **Agreed material facts**

### *First entitlement and payments*

[13] The applicant gave birth to a child on 1 December 2024.

[14] The applicant applied for and was granted paid parental leave (PPL) from 17 February 2025 to 17 August 2025. She personally received the PPL payments from 17 February 2025 to 18 June 2025.

[15] On 20 May 2025, the applicant requested the balance of this first PPL entitlement be transferred to her partner, so the remaining eight weeks of the PPL payments from 19 June to 17 August 2025 were paid to her husband personally, and not her.

[16] Before requesting the transfer of her PLP entitlement, the applicant undertook multiple searches for information on paid parental leave across official websites (Employment NZ, Inland Revenue, SmartStart), including the following searches on the dates listed below:

- (a) 4 May 2025: Browsed Employment NZ website on parental leave information.
- (b) 4 May 2025: Inland Revenue website – "Who can apply for parental leave".
- (c) 5 May 2025 and 7 May 2025: Further searches on Inland Revenue website for PLP information.

[17] The applicant returned to full-time employment on 19 June 2025.

[18] The final payment under that first PPL entitlement was made on 17 August 2025. The final payment under that entitlement was made in the applicant's husband's name rather than the applicant's name as by then she was back at work.

*Second pregnancy and application*

[19] The applicant's next child is due on 6 January 2026.

[20] The applicant applied for PPL on 22 September 2025, requesting PLP to start on 16 March 2026.

[21] Inland Revenue declined the application on 26 September 2025, stating that the applicant was caught by the restriction under s 71F(a) of the PLEPA, as less than six months had passed between the last PLP and the expected start of the next PPL entitlement.

[22] The applicant contacted Inland Revenue and Employment NZ multiple times between September and November 2025, including a face-to-face meeting at Inland Revenue in Takapuna on 29 October 2025.

[23] Following the decline of her application, the applicant raised concerns with Inland Revenue about how s 71F(a) of PLEPA applied to her situation. The applicant said that based on the information she had reviewed on official websites, she believed she was eligible for a new PLOP entitlement. She also indicated she was willing to repay eight weeks of prior payments if that would resolve the timing issue for her second PPL application.

[24] Inland Revenue advised the applicant that its decision to decline her PPL for her next child was correct, as the six-month period relates to payments made for a specific child, not the individual person who is receiving the payments. Inland Revenue did not provide the applicant with any written documentation or legislative references explaining the basis for the decline, and this explanation was given verbally.

[25] On 5 November 2025, the applicant lodged an application with the Employment Relations Authority (the Authority) to have the decision reviewed.

[26] On 20 November 2025, the applicant emailed the Authority requesting to pay back the final eight weeks of the PLP her partner received. On 2 December 2025, MBIE responded stating this option was not available for her.

## Issues to be determined

[27] The following issues are to be determined:

- (a) Was the applicant eligible to receive PLP under s 71CA of the PLEPA?
- (b) If eligible, was she entitled to receive PLP under s 71D(1)(b) of the PLEPA?
- (c) Was MBIE correct in declining the applicant PLP, and in not exercising its discretion to approve her PLP application?
- (d) Should the Authority exercise its discretion to reverse MBIE’s decision?

## Relevant law

### *Purpose and guidelines of PPL*

[28] Part 7A of the PLEPA deals with parental leave payments.

[29] Section 71A of the PLEPA provides that the purpose of Part 7A is to entitle certain persons who become the primary carer in respect of a child, and who stop working or take a period of leave, up to 26 weeks of parental leave payments out of public money.

[30] To receive, and continue receiving, parental leave payments under the PLEPA, an applicant must be both an “eligible employee” and “entitled” in accordance with the PLEPA requirements.

[31] The Full Court of the Employment Court in *MBIE v Duan*<sup>1</sup> provided the Authority with guidance in the form of a “Roadmap” consisting of a five-step process for assessing an applicant’s “eligibility” and “entitlement” to receive parental leave payments under the PLEPA.

### *Six-month stand down period between PPL entitlements*

[32] Section 71D of the PLEPA states that an eligible employee can receive parental leave payments if, during the relevant period, they are not working or if they take parental leave from their job or self-employment. However, this entitlement is limited by s 71F(a) of the PLEPA which states:

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<sup>1</sup> *Ministry of Business Innovation and Employment v Duan* [2023] NZEmpC 232 at [25] – [41].

**A person** is not entitled to a parental leave payment in respect of a child if—

- (a) fewer than 6 months have elapsed after the end of the period for which **the person** received a parental leave payment for another child. (emphasis added)

*Did the reference to “a person” or “the person” include a spouse or partner?*

[33] The applicant said the reference in s 71F(a) of the PLEPA to “a person” and “the person” was to an individual (such as herself), so it did not include a spouse or partner (such as her husband), and she relied on s 71D of the PLEPA in support of that submission.

[34] However, s 71D of the PLEPA also refers to “A person” and “the person” when addressing who is entitled to PLP. Section 71D(3) expressly states the PLP entitlement is subject to ss 71F to 71IA, which impose restrictions on PLP and deals with making an application for payment.

[35] The applicant submitted that if s 71F(a) of the PLEPA was intended to aggregate parents into a single unit for the purpose of calculating the subsequent child stand-down period, then it would have used similar language/wording as that used in s 71D of the PLEPA.

[36] That submission was not accepted. Section 71D makes it clear ss 71F – 71IA of the PLEPA set out specific limitations. Section 71D also makes it clear the PLP only applies to “a person” or “the person” who is an eligible employee or eligible self-employed person; or to someone who has had all or part of the PLP entitlement transferred to them; or who has succeeded to some or all of the PLP entitlement.

[37] There is only one person who can receive the PLP at a time. The words used in s 71D of the PLEPA did not support the applicant’s interpretation of the Inland Revenue online tool she had relied on.

[38] Interpreting the six months’ stand-down period in s 71F(a) of the PLEPA required consideration of the overall legislative scheme. The PLEPA is designed around one entitlement and one payment period per child. In the applicant’s case, in accordance with s 71K of the PLEPA, this period begins on the earlier of the date parental leave starts or the date of birth, and ends (in accordance with s 71L) either when the entitlement holder returns to work or after 26 weeks, whichever occurs first.

[39] Initially, this entitlement belonged to the applicant as the biological mother. However, s 71E of the PLEPA permitted her to transfer all or part of her entitlement to her spouse or

partner. The applicant transferred eight weeks of her PLP to her husband, which meant the PPL period did not end when she returned to work on 19 June 2025, because her husband used the balance of the first PLP, which were paid up to 17 August 2025.

[40] However, this transfer of part of the 12 months' PLP entitlement from the applicant to her husband did not create a new entitlement for him as the spouse or partner receiving part of the original PLP entitlement. A transfer only gives a spouse or partner whatever portion of the original PLP entitlement that remains. Section 71EA of the PLEPA confirms that once transferred, the PLP entitlement is treated as belonging to the spouse or partner for the purposes of the PLEPA entitlements.

[41] Section 71J(1)(b) of the PLEPA reinforced this was the case, by stating that PPL payments must be made in one continuous period of up to 26 weeks. If part of the PPL entitlement is transferred, the receiver gets one continuous PPL period, but the person who receives a transferred portion of the PLP entitlement cannot transfer it back.

[42] Section 71J of the PLEPA makes clear that the total payment period for PPL cannot exceed 26 weeks. This confirms that the PLP entitlement is capped per child, not per parent, and transfers between parents do not create additional weeks of PLP entitlements.

[43] Section 71D of the PLEPA clarifies that a person cannot receive parental leave payments for a child if they or their spouse or partner have already received payments for that child (unless the entitlement is to be lawfully transferred or passed on by succession). Again, this confirms there is only one PLP entitlement per child.

[44] Reading these sections together, the PLEPA clearly contemplates a single entitlement per child, not separate entitlements for each parent. Section 71D and 71EA make it clear that transfers do not create new rights, they simply allow the remaining portion of the original entitlement to be used by the spouse or partner. Section 71J reinforces this by capping the total payment period at 26 weeks per child.

[45] Therefore, the reference to "person" in section 71F(1)(a), as read within the context of the entire PLEPA scheme, refers to the entitlement holder in respect of the child. It did not create a separate, individual right to PLP that separately crystallised for each individual parent. The real focus of section 71F(1)(a) is the period of the PPL.

[46] When applying section 71F(1)(a) of the PLEPA, the relevant point is therefore the last payment made under the original 26-week entitlement period. That is the payment that determines whether the six-month restriction applies. In the applicant's case, the relevant date is 17 August 2025, which is the last PLP her husband received for the first PPL entitlement period.

**Was the applicant eligible under s 71CA of the PLEPA to receive PLP?**

[47] The applicant is eligible to receive PLP. She will be the primary carer of the child and will have worked over 10 hours a week for over 26 weeks before the child's expected due date, therefore meeting the parental leave payment threshold.

**Was the applicant entitled under 71D(1)(b) of the PLEPA to receive PLP?**

[48] The applicant is not entitled to receive parental leave payments because fewer than six months have elapsed since the end of her previous payment period for another child, as required by section 71F(1)(a).

[49] The applicant's previous entitlement period ran from 17 February 2025 to 17 August 2025. She transferred the final eight weeks of her entitlement to her husband, who received PPL payments from 19 June to 17 August 2025.

[50] This transfer of PLP on 19 June 2025 did not end the applicant's original entitlement period and create an entirely new entitlement PLP period for her husband. It simply allowed the remaining portion of the applicant's original PLP entitlement period to be used by her husband.

[51] Section 71J confirms that the total payment period for a child cannot exceed 26 weeks, regardless of whether the entitlement is shared. The final payment under the applicant's original PLP entitlement period was made on 17 August 2025, so that is the date that applies regarding the s 71F(a) restriction in the PLEPA. It did not matter that her husband had received that last PLP, and not her personally.

[52] The applicant's next child is due on 6 January 2026, meaning fewer than six months have passed between the last payment of her previous PLP entitlement period and the start of her next PLP entitlement period.

[53] Therefore, under section 71F(1)(a) of the PLEPA, the applicant is not entitled to receive parental leave payments for her next child because the statutory six-month gap has not elapsed. The fact that her husband received part of the previous PLP entitlement did not alter this outcome, as the entitlement remained a single, capped period for one child.

[54] The roadmap outlined in *Duan* established that if a person is not entitled to parental leave payments at step 2, they cannot progress to steps 3–5 in the Court’s roadmap.

### **Did MBIE have discretion to approve the PLP application?**

[55] Section 71IA of the PLEPA gives MBIE a discretion to approve the making of a parental leave payment despite an “irregularity” in the application.

[56] Section 71IA(5) of the PLEPA defines what an “irregularity” means. For the purposes of this matter there was no difficulty with the timing of the PLP application, so the only potential irregularity is “otherwise applying irregularly in matter of form”, as per s 71IA(5)(e) of the PLEPA.

[57] However, the problem with the applicant’s PLP application was not a matter of form, it was a matter of substance, being that she was not entitled to a parental leave payment under s 71SD of the PLEPA.

[58] Section 71IA of the PLEPA does not allow MBIE to exercise its discretion to move relevant dates, being the end date of the applicant’s first PLP entitlement or the date of her next child’s EDD, from which the next period of PLP would start (had she been entitled to it).

[59] The discretion is narrowly confined to irregularities of form. It does not permit MBIE to waive, override, or alter substantive eligibility or entitlement requirements, including the entitlement requirements in s 71 D or the six-month restriction in section 71F(a) of the PLEPA. Accordingly, MBIE did not have the statutory discretion to approve the making of parental leave payments to the applicant.

[60] The reason the applicant’s PLP application was declined was not due to any irregularity of form. It was declined because the statutory six-month requirement had not been met. MBIE was therefore not permitted to use the s 71IA discretion to approve the applicant’s application.

**Should the Authority exercise its discretion to reverse MBIE’s decision?**

[61] Section 157(3) of the Employment Relations Act 2000 (the Act) permits the Authority to act “as it thinks fit in equity and good conscience”.

[62] Previous decisions of the Authority in paid parental leave cases confirm that its discretion:<sup>2</sup>

- (a) must be exercised in a principled manner, having regard to the policy and purpose of the Act;
- (b) does not permit the Authority to re-write the legislation;
- (c) must be applied consistently with the express and prescriptive provisions of the Act; and
- (d) does not allow the Authority to approve an application where the applicant does not meet the eligibility criteria set out in PLEPA.

[63] The Authority in *McClure v MBIE* observed that a common thread in cases where discretion was exercised: the applicant had suffered an “injustice” that prevented them from meeting the threshold test, despite otherwise being eligible.<sup>3</sup>

*Has the applicant suffered an injustice?*

[64] If the applicant had returned to work without transferring the remainder of her PLP entitlement to her partner, her payment period would have ended at that point and she would now be entitled to parental leave payments for her next child.

[65] The applicant relied on online information, which she had accessed prior to returning to work, when deciding to transfer her entitlement to her husband. She said that, had she been informed that transferring her entitlement would render her ineligible for payments for her subsequent child, she would not have transferred her entitlement and would have simply returned to work, thereby ending her PLP payments earlier than what has occurred.

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<sup>2</sup> See, for example: *NRT v MBIE* [2024] NZERA 421, at [18]; *Malhi v MBIE* [2023] NZERA 663 at [39]-[41]; *Foo v MBIE* [2024] NZERA 386, at [23]; *Don v MBIE* [2024] NZERA 163, at [17]; *Walworth v MBIE* [2021] NZERA 579 at [16]-[18]; and *Maber v MBIE* [2021] NZERA 580, at [22]-[26].

<sup>3</sup> *McClure v MBIE* [2022] NZERA 654, at [55].

[66] The applicant provided screenshots of Inland Revenue's eligibility questionnaire, which asked whether "you" had received paid parental leave payments in the last six months. She answered "no," as she personally had not received payments, even though her husband had. The question did not clarify that eligibility is assessed based on the last payment of the previous entitlement period, not based on payments made to the individual recipient.

[67] This eligibility tool was not intended to be specific legal advice. The Inland Revenue tool included disclaimers and links to further information, and the applicant also accessed accurate information on Employment New Zealand's website.

[68] The Employment New Zealand website, which under the heading "Payments for another baby" states:

"Parental leave payments are available for the next child as long as at least 6 months have passed since the end of the last parental leave payment period. This includes parental leave payments that had started before a stillbirth or miscarriage. There needs to be a 6-month gap between the end of those payments and the start of payments for another child."

[69] This information aligns with MBIE's position that the six-month calculation is based on the last payment of the previous entitlement period, not the person who received it. This was clear advice that should have put the applicant on notice that there had to be a six months' gap between the end of one parental leave payment period and the start of the next parental leave payment.

[70] The Authority acknowledges that the applicant's reliance on her interpretation of the Inland Revenue tool has adversely impacted her eligibility to PLP. That has adverse financial consequences for her in terms of not being entitled to PLP for her next child. That decision will also adversely impact on her contractual eligibility to 14 weeks of employer salary top-up, as the applicant said that contractual payment was contingent on receipt of the statutory PLP.

[71] Although the Authority has previously exercised discretion where applicants were misinformed, this is not a similar situation to such cases as the applicant made assumptions based on information that was on the Inland Revenue website, instead of following the advice on the Employment New Zealand website or seeking her own personalised advice.

[72] The applicant did not receive personalised external advice, so she was reliant on the quality of her own online searches and on her own interpretation of the information she found.

[73] In *LEH v Ministry of Business, Innovation and Employment*, the Authority declined to exercise its discretion to reverse MBIE’s decision where incorrect information was provided to the applicant in that case via online guidance and eligibility tools.<sup>4</sup> The Authority in *LEH* noted that the tool was for general purposes only, included disclaimers, and provided links to further information. This is similar to the applicant’s situation.

[74] The Authority considers it is bound to follow the decision of the Full Employment Court in *Duan*, which made it clear the discretion in s 71IA(5) limited the meaning of “irregularities” to technicalities, so it could not be used to fix substance issues where an applicant was found to not be eligible and entitled to receive parental leave payments.<sup>5</sup>

[75] The applicant’s application did not succeed. Accordingly, MBIE’s decision that she is not entitled to PLP is not modified or reversed.

#### **What costs and disbursements should be awarded?**

[76] As per the current Practice Direction of the Employment Relations Authority which states this category of proceeding is one in which parties should generally bear their own costs, MBIE did not seek costs.<sup>6</sup> Accordingly, costs lie where they fall.

Rachel Larmer  
Member of the Employment Relations Authority

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<sup>4</sup> *LEH v MBIE* [2025] NZERA 206.

<sup>5</sup> *Duan*, above n1, at [14] and [60]-[62].

<sup>6</sup> Practice Direction of the Employment Relations Authority, February 2024, at page 5, paragraph 6 viii