

LEGAL UPDATE

Result-oriented care needs assessment under Social Support Act 2015 is now 'questionable'

Date: 25 October 2018

In its [judgment](#) of 8 October 2018, the Central Appeals Tribunal ruled on the question as to whether the municipal executive of Steenberghe had laid down a sufficiently objective and concrete basis for an individual administrative decision by making use of a result-oriented care needs assessment. This judgment has far-reaching consequences for the legal practice. The facts and circumstances that are central to this judgment are as follows.

In the municipality of Steenberghe, since 2015 domestic help under the Social Support Act 2015 is no longer granted in hours but in terms of a result to be achieved. This also applies in the present case. On 15 February 2017, the municipal executive provided a tailor-made facility to the person concerned through which this person could receive domestic support. The help was aimed at achieving a certain result (including a clean and liveable house) and was not granted in time units

What was meant by a clean and liveable house was elaborated in the municipality's Social Support Act policy rule. It states: *"A clean and liveable house means that the house must be clean according to generally accepted hygiene standards. Everyone who lives in the house should have access to a clean living room, a clean bedroom, clean bedding, a clean kitchen, a clean shower, toilet and corridor. Liveable also means tidy and functional."* Under the policy rule, the task of determining the specific scope of the domestic support to be provided in an individual case is left to the (contracted) care provider. In the present case, it did not follow from the contested decision and/or the policy rule how many hours of domestic help the person concerned is entitled to.

In May 2016, the Central Appeals Tribunal already ruled in a number of cases that the granting of domestic help in terms of results, such that a person has the right to a clean and liveable house, for example, should not be arbitrary and that the policy must be based on objective criteria and sound research (see also our [Legal Update of 24 May 2016](#)).

As a result of the judgments of May 2016, many municipalities have changed their policy and a number of municipalities have stuck to the result-oriented care needs assessment. The case law subsequently developed further, and from recent case law, such as the judgment of the Northern Netherlands District Court of 9 February 2018, it follows that under certain circumstances it is still permitted to use result-oriented care needs assessments, without specifying concrete time units for the domestic support (see also our [Legal Update of 6 March 2018](#)). In the present judgment of the Central Appeals Tribunal, this starting point is modified.

In this judgment, the Central Appeals Tribunal has ruled that the standards included in the policy rule are not based on sound research. In its judgment, the Central Appeals Tribunal holds that: *"However, these rules must not be arbitrary and, in view of Section 3:2 and 3:46 of the General Administrative Law Act, must be based on objective criteria, supported by sound research. In these judgments, it was also held that there was insufficient consultation with contracted care providers and client boards. Now that it has not been established that the criteria for a clean and liveable house mentioned in the Policy Rules are based on such research, there is no insight into the question as to which level of cleanliness is appropriate for a household, which concrete activities need to be carried out for this, how frequently these activities should be carried out and, in particular, how much time is needed to carry out the activities required to achieve what can be considered a clean and liveable home"*.

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In view of the above, the Central Appeals Tribunal concludes that the contested decision lacked a sufficiently concrete basis and that the contested decision therefore qualifies for annulment. In the present case, the Central Appeals Tribunal has issued an order whereby the care needs assessments must be conducted on the basis of hours instead of results, by referring to the Domestic Care Protocol of the Care Needs Assessment Centre (CIZ Protocol Huishoudelijke Verzorging).

It is important for the legal practice that it follows from the discussed judgment that those municipalities which, based on their policy, use result-oriented care needs assessments, must also include time units in their policy and/or in the decision. These time units must be based on sound research.

This is a Legal Update from Wouter Koelewijn and Bastiaan Wallage (with thanks to Javier Crijnen, legal assistant in administrative law).

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