

# Terugwerkende kracht



Soms koopt of realiseert de cliënt een voorziening. Het kan dat cliënt wil dat de gemeente die voorziening met terugwerkende kracht toekent. Of je een voorziening met terugwerkende kracht moet toekennen, hangt af van het lokale beleid. Ook is het van belang wanneer de cliënt de voorziening kocht of realiseerde.



## Wat zegt de rechtspraak?

Er is weinig rechtspraak onder de Wmo 2015 over dit onderwerp. De experts van Schulinck verwachten dat Wmo 2007-rechtspraak van toepassing is:

### Aanschaf/realisatie vóór melding

Geen noodzaak voor toekennen met terugwerkende kracht:

- Als cliënt deze voorziening voor de aanvraag realiseerde. *Uitzondering: acute situatie (1).*
- Achteraf vaststellen noodzaak niet nodig (2).

**Let op!** Bovenstaande geldt niet als de gemeente ruimer beleid hanteert (3).

De Wmo 2007 kende geen meldingsprocedure. De experts van Schulinck verwachten dat rechtspraak over aanschaf/realisatie vóór aanvraag van toepassing is.

### Voorbeeldbeleid:

"Geen maatwerkvoorziening wordt verstrekt als de cliënt de gevraagde voorziening voor de melding heeft gerealiseerd of geaccepteerd, tenzij er sprake is van een acute noodsituatie waardoor het voor de cliënt dringend noodzakelijk was de voorziening te treffen"

Melding

### Aanschaf/realisatie tussen melding en aanvraag

De experts van Schulinck verwachten dat rechtspraak over aanschaf/realisatie tussen aanvraag en besluit van toepassing is (4).

### Voorbeeldbeleid:

"Geen maatwerkvoorziening wordt verstrekt als de cliënt de gevraagde voorziening na de melding en vóór datum van besluit heeft gerealiseerd of geaccepteerd, tenzij het college daarvoor schriftelijk toestemming heeft gegeven of de noodzaak en passendheid van de voorziening en de gemaakte kosten achteraf nog kan beoordelen;"

Aanvraag

### Aanschaf/realisatie tussen aanvraag en besluit

- Gemeenten kunnen in verordening bepalen dat zij weigeren bij aanschaf/realisatie tussen aanvraag en besluit.
- Een uitzondering geldt wanneer:
  - de gemeente vooraf schriftelijke toestemming geeft of;
  - de noodzaak en passendheid achteraf te beoordelen is.

Besluit



## Tip: maak beleid!

- Breng verordening in lijn met bovenstaande rechtspraak



(1) CRvB 11-02-2017, ECLI:NL:CRVB:2017:433

(2) Rechtbank Oost-Brabant 23-5-2014, ECLI:NL:RBOBR:2014:3092

(3) CRvB 13-5-2020, ECLI:NL:CRVB:2020:1099

(4) CRvB 11-05-2011, ECLI:NL:CRVB:2011:BQ6485

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**Marco Casella**



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