

[2018] NZSSAA 15

Reference No. SSA 148/16 &  
SSAA 141/17

**IN THE MATTER** of the Social Security Act 1964

**AND**

**IN THE MATTER** appeals by **XXXX/XXXX** of  
**XXXX** against a decision of a  
Benefits Review Committee

## **BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

**S Pezaro** - Deputy Chair

**K Williams** - Member

**C Joe** - Member

**Hearing** at Hamilton on 7 March 2018

### **Appearances**

The appellant in person

R Shaw, counsel for the Chief Executive

## **DECISION**

### **Background**

[1] The issue in each of these appeals is whether at the relevant time XXXX (the appellant) had a dependent child (her son SL) and, if so, whether she was entitled to Disability Allowance on account of SL (SSA 148/16) and/or Jobseeker Support Student Hardship Allowance at the rate of a person with a dependent child (SSA 141/17).<sup>1</sup>

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<sup>1</sup> The appeals are brought only in respect to one child although the relevant court orders apply to two children.

- [2] SSA 148/16 is an appeal against the decision of the Chief Executive, upheld by a Benefits Review Committee, to cancel a disability allowance for SL from 23 May 2016.
- [3] SSA 141/17 is an appeal against the decision to decline to pay jobseeker support student hardship allowance at the rate of a single person with no dependent child on 30 October 2016.
- [4] The appellant addressed each appeal separately but documents on both files were relevant to both appeals. The following chronology which is accepted by the parties, is derived from both files and provides the common background to these appeals.

### Chronology

Date	
8 October 2012	Parenting order – not produced by either party. Appellant says it granted shared care.
29 July 2013	Signed agreement by appellant and father of children that SL returned to care of appellant pending decision of court. No amendment to 2012 order.
21 August 2013	Order varying 2012 parenting order by consent to provide for equal shared care.
24 June 2014	Appellant granted Disability Allowance for SL as dependent child.
22 April 2016	Order suspending parenting order. Court declines without notice application by father for parenting order and application to discharge parenting orders. Issues a protection order against appellant; directs that application to be heard; appoints lawyer for child.
18 May 2016	Order varying interim parenting order of 8 October 2012 - appellant shall have supervised contact.
<b>23 May 2016</b>	<i>Decision to cancel appellant's Disability Allowance paid on account of child SL.</i>
15 June 2016	Letter from lawyer for father confirming that father has day to day care of children and appellant has supervised contact only.
<b>30 October 2016</b>	<i>Decision to decline to pay Jobseeker Support Student Hardship Allowance at rate of single person with no dependent child.</i>
24 November 2016	Lawyer for appellant confirms that applications are before the Family Court to determine contact and care arrangements for children.
20 February 2017	First page of court minute recording that issue as to alternate supervisor for appellant's contact with children is not resolved.
23 May 2017	Parenting order granting father day to day care.

**Issues**

- [5] The issue for the Authority is whether at the relevant time in each of these appeals the appellant had a dependent child in her care. Section 3 of the Social Security Act 1964 (the Act) defines a dependent child in relation to any person as a child whose care is primarily the responsibility of the person and who has been maintained as a member of that person's family and is financially dependent on that person.
- [6] Section 69C(i)(d) of the Act provides that a disability allowance may be paid on account of a dependent child.

**The case for the appellant**

- [7] The appellant does not accept the meaning of the orders referred to in the chronology and says that they do not reflect the actual care arrangements for her son at the relevant time.
- [8] It is her view that her son came into her care on 21 August 2013 when the 2012 parenting order was varied by consent to provide for equal shared care. It was her evidence that she remained responsible for him until a final parenting order was issued on 23 May 2017, granting the father day-to-day care.
- [9] The appellant stated at the hearing that "even at 18 May 2016 I was still responsible for him". In her view the protection order did not mean that he had left her care.
- [10] When questioned about the nature of the Family Court hearings, the appellant accepted that there was a full hearing of the issues and that she was represented by counsel and that lawyer for child was appointed. However, she says that the department should have recognised the mutual agreement (between her and the child's father) and that it remained the status quo until the final parenting order came through. It appears that the appellant does not accept interim parenting orders as having any force.
- [11] Further the appellant argued that her consent as "previous caregiver" was required to vary the consent order of 21 August 2013. In her view, although the orders issued in May 2016 state that she is only to have supervised contact with the child, these orders do not reflect who had the care of the child at the relevant time.

- [12] We questioned the appellant as to the reasons for her lawyer not telling the Ministry where the child was living when it requested this information in November 2016. This query related to the rate of entitlement for Jobseeker Support Student Hardship.
- [13] We asked the appellant whether she instructed her lawyer not to answer the question put by the Ministry. The appellant said that as the matters before the Family Court were sensitive, she wanted them kept private. She stated that she would have instructed her lawyer to wait for a Judge's decision.
- [14] In relation to the decision on JSSH, the appellant raised her dissatisfaction with the manner in which entitlement is allocated based on age, however this issue is not relevant to the question of whether she was entitled to JSSH at the rate of a person with a dependent child.

#### **The case for the Ministry**

- [15] It is the Ministry's position that both decisions under appeal were based on the Family Court orders in force at the relevant time. In relation to SSA 148/16, the entitlement to Disability Allowance for a dependent child, the Ministry states that the protection order issued against the appellant on 22 April 2016 varied the earlier parenting order. As the appellant was permitted only supervised contact with her children, she could not have day-to-day care or primary responsibility for the child in question.
- [16] In relation to SSA 141/17, Ms Shaw stated that this appeal is relevant to JSSH which is only awarded over the Christmas holiday period when a student ceases studying. It is the Ministry's position that the order of 18 May 2016 was in force at this time and the appellant would have been in breach of that order if she had primary or day-to-day care of her child. Further the Ministry points out that, had the appellant's lawyer confirmed that the child was in her care or dependent on her at this time, the lawyer would have known that a court order was being breached.
- [17] The Ministry relied on the High Court case of *Samuels v Chief Executive of the Ministry of Social Development*<sup>2</sup> as establishing the requirement for finding that a child is dependent.

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<sup>2</sup> [2006] NZFLR 223.

**Discussion**

- [18] In *Samuels* the court held that the definition of dependent child under the Act requires the child to be financially dependent on the applicant for the benefit, and that a determination of financial dependency involves an evaluation of factors, including the provision of food and other necessities. The concept of responsibility for care of children is distinct from the day-to-day care.
- [19] We accept that the Act does not require the person on whom the child is dependent to have day-to-day care. However, other than the appellant's assertion that the child was dependent on her, we have no evidence before us that at the time relevant to either appeal she had primary responsibility for the child, or that he was maintained as a member of her family or was financially dependent on her. The appellant stated that she made sure that he went to school and was fed. However, we have no evidence from the school or witnesses to confirm this statement nor any evidence of her spending on his personal needs.
- [20] The appellant's interpretation of the interim court orders as having no effect and the order of 23 May 2017 as being the only order affecting the day-to-day care of the child is flawed. If the appellant had care or contact with the child other than in accordance with the orders requiring supervised contact in May 2016, she was in breach of those court orders.
- [21] Given the clear record of parenting proceedings through the Family Court, and the limitation that the court placed on contact by the appellant with her child, we do not accept her evidence that the child was dependent on her as credible.
- [22] For these reasons we are satisfied that at 23 May 2016 and 30 October 2016 the appellant did not have a dependent child in her care. Accordingly, these appeals are dismissed.

**Orders**

- [23] The appeal SSA 148/16 is dismissed as the appellant was not entitled to a disability allowance on account of a dependent child on 23 May 2016.

[24] The appeal SSA 141/17 is dismissed as the appellant had no entitlement on 30 October 2016 to jobseeker support student hardship allowance at the rate of a single person with a dependent child.

**Dated at Wellington** this 15th day of March 2018

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**S Pezaro**  
Deputy Chair

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**K Williams**  
Member

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**C Joe**  
Member