

[2015] NZSSAA 03

Reference No. SSA 051/14

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by XXXX of XXXX
against a decision of a Benefits
Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Ms M Wallace - Chairperson
Mr K Williams - Member

HEARING by way of telephone conference call on 10 December 2014

APPEARANCES

Ms T Corin for the appellant
Mr G Moore for the Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee to decline applications for Unsupported Child's Benefit made in respect of XXXX born on 3 January 2001 and XXXX born on 8 June 2003.

[2] This appeal relates to the period 28 March 2013 to 10 March 2014 as the appellant was granted Unsupported Child's Benefit on 10 March 2014.

[3] The issue in this case is whether or not the children's mother is able to care for them or fully provide for their financial support.

Background

[4] The appellant's daughter, XXXX (XXXX), is the mother of XXXX (XXXX) and XXXX (XXXX). XXXX (deceased) is the father of XXXX. The name of the father of XXXX is not recorded on her birth certificate and was not disclosed to the Authority in the course of the hearing although we were left with the impression that the appellant was aware of who the father was. She said he had not been involved with XXXX.

[5] XXXX was aged 17 years and still attending school at the time of XXXX birth. She lived at home with her mother, the appellant. XXXX father XXXX was

aged 16 at the time of her birth. He has since died in an accident. XXXX apparently suffered from colic as a baby and the appellant says her mother had difficulty coping with her. The appellant believes that her daughter suffered from post-natal depression. As a result the appellant was closely involved in XXXX day-to-day care from an early age. XXXX paternal grandparents were also involved in her care.

[6] XXXX was born with a cleft pallet which the appellant said also took a toll on XXXX.

[7] Despite these difficulties, while she was living at home with the appellant, we understand the appellant was working and XXXX was at home caring for her children.

[8] A third child, XXXX, was born to XXXX in 2008. The father of this child was involved with the child. In 2010 XXXX moved out of her mother's home and into her own accommodation. When XXXX left home she took XXXX and XXXX with her but XXXX remained with the appellant. This was because XXXX said that she wished to remain with the appellant and XXXX and the appellant agreed to this. Initially, XXXX lived in XXXX but a short time later she moved to XXXX.

[9] In or about May 2012 the appellant said that XXXX asked her to have XXXX. The appellant agreed to take XXXX and from May 2012 XXXX was included in the appellant's benefit. The reason XXXX asked the appellant to take XXXX was not entirely clear but the appellant said that XXXX can be hard to cope with, for example she would go to her room and not come out. She also said XXXX had wanted to try living with her children on her own but she could not cope and that was the reason that she asked the appellant to take XXXX.

[10] While she was living in XXXX, XXXX undertook a business course and a hospitality course. She obtained employment at the Watties factory. The appellant said that XXXX had arranged for the family tax credit for XXXX to be paid to her when she came into the appellant's care.

[11] The appellant said that XXXX continued to have contact with the children, primarily by ringing them from time to time.

[12] Early in 2014, XXXX third child XXXX came to live with the appellant as XXXX was moving to XXXX. XXXX now lives and works in XXXX.

[13] On 28 March 2013, the appellant applied for Unsupported Child's Benefit in respect of XXXX and XXXX. Her application was declined. The appellant sought a review of the decision. The matter was reviewed internally and by a Benefits Review Committee. The Benefits Review Committee upheld the decision of the Chief Executive. The appellant then appealed to this Authority.

[14] The primary contention of the appellant is that XXXX suffers from depression and as a result is unable to care for her children.

Decision

[15] Provision for payment of Unsupported Child's Benefit is contained in s 29 of the Social Security Act 1964. The criteria for payment of Unsupported Child's Benefit include the following:

- The applicant is the principal caregiver of the child; and
- The applicant is not a natural parent, adoptive parent or stepparent of the child; and
- Because of a breakdown in the child's family no natural parent, adoptive parent or stepparent of the child is able to care for the child or fully provide for the child's support; and
- The applicant is likely to be the principal caregiver of the child for at least one year from the date of application for Unsupported Child's Benefit.

[16] The term "principal caregiver" is defined in s 3 of the Social Security Act 1964 as meaning:

"The person who in the opinion of the Chief Executive has the primary responsibility for the day-to-day care of the child other than on a temporary basis."

[17] Consideration of whether or not there has been a breakdown in the child's family such that his or her natural parents are unable to fully care for the child or support the child is central to a consideration of eligibility for Unsupported Child's Benefit.

[18] On behalf of the Chief Executive, in the course of the hearing, the appeals officer submitted that there was no breakdown in the relationship between the children and their mother and there was no breakdown in XXXX family. The inference to be drawn from the Ministry's submission was that XXXX and the appellant were XXXX family.

[19] It is fundamental to a determination under s 29 that in the first instance the child's "family" be determined.

[20] The reference in s 29(b) of the Act to "the parents of the child", whether they be the natural parents, adoptive parents or stepparents suggests that in the first instance what is meant by the term "family" means the immediate family, namely a child's mother and father. The reference to natural, adoptive and stepparents suggest that these are the people with a natural responsibility for the child and legal responsibility for the child's care and financial support. While a grandparent might also be regarded as part of the child's extended family, the fact that the inability of an extended family member to care for the child is not specified as a condition for Unsupported Child's Benefit to be paid suggests that a breakdown in the wider family is not required by s 29(b). Moreover extended family members such as grandparents, aunts and uncles do not have a duty to maintain a grandchild, niece or

nephew. We therefore consider that the term “family” in s 29(b) refers to immediate family rather than extended family.

[21] The question then is whether there has been a breakdown in the child’s immediate family. The Authority has previously found that the breakdown of a child’s family involves a failure or collapse of the normal family dynamic which results in both parents being unable or unwilling to fulfil the role of parent to their child or children.

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[22] In the case of XXXX, her father is deceased and although Mr XXXX has apparently had a relationship with XXXX there is no suggestion that he has been in the role of or should be considered as a stepfather to XXXX. We are not aware of what involvement XXXX father had with her prior to his death but the appellant was clear that his parents were involved in XXXX care and continue to be involved in her care. In any event XXXX natural father is now deceased. His death has broken any family bond that existed between himself, XXXX and XXXX. We are in no doubt that there has been a breakdown in XXXX immediate family. However s 29 also requires there to be a relationship between the breakdown in XXXX immediate family and the inability of one or other of her parents to care for her or financially support her.

[23] In the course of preparing for the appeal, a Ministry staff member spoke to XXXX. XXXX completed a questionnaire for the Ministry. In this questionnaire we understand XXXX response to be saying that before 2010 she made all decisions for XXXX with her mother making some decisions. She describes her mother as “guiding her into motherhood”. XXXX says she loves her children and is not a bad mother. She has suffered from depression and instead of exposing her children to it she has decided to have them live with her mother until she has “found her way”. She states “after XXXX father and grandfather passed away XXXX found a close bond with my mum and found that after I decided to move away that she wanted to stay with her Nanny so that her Nanny wouldn’t be alone”.

[24] In an e-mail dated 10 November 2014, XXXX says that in the event that her mother was unable to take care of her children she would return home to care for them.

[25] The Ministry note that they have not been able to find any concerns in Child, Youth and Family records in relation to XXXX care for XXXX. It also questions whether XXXX depression is so severe that she cannot care for the children. This submission is made on the basis that the appellant has studied, worked and has now shifted countries and is working in XXXX.

[26] There is evidence of a medical record that the appellant was suffering from depression in July 2011. The record states:

“... has noted it over last 4 weeks (though I suspect more) tearful, poor sleep, irritable with children, shutting her boyfriend out, no libido there appears to be no specific trigger.”

[27] There is also a short letter from a doctor in XXXX dated 9 October 2013 which states:

"Was seen and examined by me on 9 October 2013 and is suffering from depression. For this reason her mother needs to take care of her three children."

The briefness of this letter and the lack of detail of any treatment offered lead us to conclude that this certificate is of limited value to the Authority in determining whether or not the appellant is able to care for her children.

[28] In her further application for Unsupported Child's Benefit of March 2014, the appellant states that following her move to Australia XXXX "still having her down days".

[29] A Ministry of Health pamphlet on depression included in the s 12K report refers to mild, moderate and severe depression. Neither the doctor's record in 2011 or the brief letter from the XXXX doctor in 2013 indicate the severity of XXXX depression.

[30] The pamphlet records that a person with moderate depression may have significant difficulty continuing with normal activities while a person with severe depression will have significant functional disability. XXXX ability to study, obtain employment and move to XXXX suggests her depression (which was diagnosed after XXXX left her care in any event) was mild rather than moderate or severe. This would not necessarily impair her ability to look after her children to the point where it could be said she was not able to care for her children. The only matter mentioned as arising from her depression which is particularly relevant to the children's care was that she was at times short tempered and angry with the children. The criteria of being unable to care for a child is a high one. Simply being less than an ideal parent will not suffice. The Authority has previously found:

"Where the safety of the child is at risk then it will be best that the child live away from their parents and the State can legitimately be called upon to provide financial assistance if required. In other cases where there is no immediate risk to the child's physical or mental health but there might simply be advantages for the child living elsewhere then the criteria for Unsupported Child's Benefit are unlikely to be met and it will not be paid."¹

[31] XXXX responses to the Ministry's questionnaire, the appellant's account of her care for XXXX in her early years, and XXXX request to remain with the appellant to keep the appellant company when XXXX decided to leave home lead us to conclude that XXXX residence with the appellant is a result of the choice made by XXXX and her caregivers rather than a situation of XXXX being unable to care for her.

[32] We have not been provided with any significant evidence about XXXX ability to provide financial support for XXXX. We understand XXXX was in employment in 2013. She has also been in employment following her move to XXXX. We were told that XXXX is sending money back to New Zealand to pay off historic debt but no details of her income or outgoings demonstrating an inability to support XXXX was provided.

[33] We are not satisfied on the basis of the evidence that has been provided that XXXX mother was unable to care for her or fully provide for her support at the time of the appellant's application for Unsupported Child's Benefit in March 2013.

¹ [2012] NZSSAA 56 at para [28].

[34] We are satisfied that the Chief Executive was correct to decline the application.

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[35] XXXX was approximately nine years old when she came into the appellant's sole care in May 2012. Like XXXX, she was born in her grandmother's household and lived there until she was seven years old when her mother took her and her younger brother to live, firstly, elsewhere in XXXX and later to XXXX. In June 2012, shortly after XXXX left her care, XXXX commenced a full-time hospitality course in XXXX. The inference which might be drawn from this is that XXXX wished to be free to study and take up employment rather than that she was unable to care for XXXX.

[36] XXXX has completed a form related to her ability to care for XXXX. We accept that some care must be taken with this form. In answer to a question about her relationship with XXXX from the time that she was born until the time she was placed in the appellant's care in 2012, the appellant describes her relationship with XXXX as being and remaining very close and loving. She says that she made all decisions in relation to XXXX wellbeing and the relationship of the appellant to XXXX was that of a grandmother. She explains, however, that she became depressed and did not want the children to see her in that situation. She says that "I love my babies and they love me. If I could choose not to have depression and have my babies I would in a heartbeat but for now it is in the best interests of them to stay with their Nanny until Mummy gets better. We talk every day and they know how much their Mummy loves them".

[37] We refer to our earlier discussion and findings in relation to XXXX depression. While we accept that she has suffered from depression, the information about her depression must be viewed against the background that she has been able to study, work and move to XXXX. We are not satisfied that in March 2013 XXXX was receiving treatment for depression or suffering a level of depression which meant she was unable to care for XXXX.

[38] The appellant was a schoolgirl when she had her first two children. Since leaving her mother's home she has spread her wings by living in XXXX, undertaking study, obtaining employment and then moving to XXXX where she has set herself up in a flat and obtained employment.

[39] Given XXXX ability to work and study in 2012 and the limited evidence about her depression we think the Chief Executive considering this matter in March 2013 could not have been satisfied that XXXX would remain in the appellant's care for a further 12 months. Nor would the evidence have been sufficient to persuade the Chief Executive that XXXX was unable to care for XXXX.

Conclusion

[40] It appears that the appellant has gone to XXXX to start a new life. She intends to return to New Zealand at some time in the future and says that she would resume care of the children if her mother was unable to do so. She says she remains in close contact with the children. We are not satisfied on the balance of probabilities that XXXX is unable to care for XXXX or XXXX.

[41] The appeal in relation to the March 2013 application for Unsupported Child's Benefit for both children is dismissed.

DATED at WELLINGTON this 13th day of February 2015.

Ms M Wallace
Chairperson

Mr K Williams
Member