

[2015] NZSSAA 06

Reference No. SSA 111/14

**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 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 decisions of the Chief Executive upheld by a Benefits Review Committee to decline applications for Unsupported Child's Benefit in respect of her three grandchildren.

***Background***

The appellant is the principal caregiver of three of her grandchildren. The grandchildren are the children of the appellant's daughter, **XXXX**.

[2] The children are:

**XXXX** born on 7 May 1998; **XXXX** born on 25 February 2003; and  
**XXXX** born on 8 June 2004.

**XXXX** is the father of **XXXX** and **XXXX** is the father of **XXXX** and **XXXX**.

[3] The appellant first applied for Unsupported Child's Benefit in respect of **XXXX** in 2007 and for **XXXX** in February 2008. Both applications were declined.

[4] In 2013, the appellant lodged a fresh application for Unsupported Child's Benefit in respect of all three children. In support of her application, the appellant provided a Family Court Order giving the appellant and her husband additional guardianship of all three children from 15 January 2013. The application for Unsupported Child's Benefit was declined.

[5] On 22 January 2014 the appellant made a further application for Unsupported Child's Benefit in respect of all three children. The reason given for the decline of the application was that there was no breakdown in the children's relationships with their fathers. The appellant sought a review of 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.

### ***Decision***

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

- the applicant is the principal caregiver of the child;
- the applicant is not a natural parent, adoptive parent or step-parent of the child;
- because of a breakdown in the child's family no natural parent, adoptive parent or step-parent 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 in respect of the child for at least one year from the date of application for Unsupported Child's Benefit.

[7] 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".

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

[9] An issue then arises as to what is considered "family" in s 29 of the Act.

[10] The reference in s 29(b) to the parents of the child, whether they be the natural parents, adoptive parents or step-parents, suggests that in the first instance what is meant by the term "family" means the immediate family, namely a child's mother and father or step-parent. These are the people with a natural responsibility for a child and legal responsibility for the child's care and financial support. While a grandparent might also be regarded as part of a 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). 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. The question then is has there 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 a parent to their child or children.

### XXXX

[11] The appellant said that her daughter and XXXX father separated when XXXX was approximately three months old and XXXX did not see or meet his biological father again until he was eight years old. The appellant said that she had had a lot to do with XXXX as a baby as at that time the child's mother was still living in the appellant's family home. The appellant said that she removed XXXX from the home of his mother and stepfather in 2007 because of drug abuse and violence in the household and the stepfather's attitude and treatment of XXXX. She was aware that XXXX was most unhappy. The appellant said that XXXX mother did not resist her removing XXXX from her care.

[12] Since that time, XXXX mother has moved to XXXX and has no contact with him. XXXX spends time with his natural father during school holidays and has telephone contact with him. XXXX natural father also pays Child Support. The natural father is now married with two children from his new relationship. The appellant said that there had never been any suggestion that XXXX go to live with his natural father.

[13] We are in no doubt that there has been a breakdown in XXXX family. The issue is whether his mother or his father are unable to care for him as a result of that breakdown. On the basis of the appellant's evidence we accept XXXX mother is unable to care for him. The position with XXXX natural father is less clear. There is no information before us as to whether or not XXXX natural father is able to care for him or provide fully for his support. The father indicated to the XXXX assessor that he preferred to leave things as they were. That, however, does not demonstrate that he could not look after XXXX if required. The arrangement whereby XXXX spends time with his father at weekends and during holidays is apparently a happy one. It suggests that his father is able to look after XXXX if required. We are not satisfied that XXXX father is unable to care for him.

### XXXX and XXXX

[14] The appellant said that XXXX was visiting her home shortly prior to Christmas 2007 when XXXX asked if she could live with the appellant. The appellant agreed that XXXX could stay with her. The appellant said that at the time her daughter and XXXX father (XXXX) had an on-again/off-again relationship characterised by violence and drug abuse. On 11 January 2008 the Family Court at XXXX made, on a formal proof basis, a final parenting order in favour of the mother and giving XXXX supervised access only. The order outlines that, in fact, the children would be living with their grandmother during the week and spending only weekends with their mother. The order records that XXXX was living with her father and paternal grandmother at that point in time.

[15] The appellant said that her daughter and XXXX continued their on-again/off-again relationship until 2010 when they finally separated and her daughter, the children's mother, moved to XXXX. Since then both XXXX and XXXX have spent weekends with their father XXXX on a regular basis. In fact, we understand XXXX was spending most weekends with his father until January 2014.

[16] A problem occurred around Christmas 2013. The appellant had made an arrangement for XXXX to have the children. It seems that an agreement was made for XXXX to pick up the children so that the appellant could travel to look after her other grandchildren. XXXX did not arrive at the appointed time and he has not seen the children since. We are not entirely sure of the reason for this. The circumstances in which contact between XXXX and XXXX and their father ceased seems to be the result of a dispute between the appellant and XXXX. The appellant said that XXXX employer had also rung around the middle of the year to find out where XXXX was as he had simply failed to turn up for work one day. In any event, the appellant says that XXXX has now moved to Christchurch. He has a new family.

[17] There can be no doubt that there has been a breakdown in XXXX and XXXX family in that their parents have separated. The issue is whether either of the children's natural parents is able to care for them or provide fully for their support.

[18] We accept the appellant's evidence that the children's mother now lives in Australia and has addiction issues which mean she is unable to care for her children.

[19] As to whether or not XXXX is able to care for or fully support the XXXX and XXXX, the position is not as clear. XXXX has certainly cared for XXXX and XXXX in the past. The XXXX assessor was unable to make contact with XXXX but her efforts were apparently limited to ringing a telephone number supplied.

[20] We direct the Chief Executive to make further inquiry as to XXXX whereabouts with a view to him being interviewed about his ability to care for or support XXXX and XXXX. The appeal is adjourned for that purpose. The Ministry are to report to the Authority as to the outcome of their investigation by 1 April 2015.

**DATED** at WELLINGTON this 13<sup>th</sup> day of February 2015

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Ms M Wallace  
Chairperson

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Mr K Williams  
Member