

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
Lady Tureiti Moxon - Member

HEARING at WELLINGTON on 10 February 2015

APPEARANCES

Mr G Howell for the appellant
Mr R Signal 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 an advance payment of benefit to meet the cost of course fees.

Background

[2] At the time relevant to this appeal, the appellant was in receipt of Domestic Purposes Benefit. The appellant is a school teacher. She took stress leave from teaching in 2010 as she was burnt out. For a period, she focused on the needs of her family but at the beginning of 2014 she was looking at moving back into teaching. She concluded that to give herself the edge she would need to resume work as a teacher, she would undertake a course in teaching English as a second language (ESOL). She enrolled in two papers in what we understand was a certificate level online course at Massey University commencing on 24 February 2014.

[3] She then sought assistance from the Ministry for payment of course fees. We understand that initially she contacted StudyLink to seek assistance but was informed by them that it would be best for her to see if she could get assistance from Work and Income New Zealand (WINZ). She then met a case manager at WINZ either on 19 or 25 February seeking assistance. It appears that at the interview on 25 February, a case manager advised her that she would not qualify for a Training Incentive Allowance or Course Participation Allowance and that although the appellant had completed a Course Participation Allowance application form it was not lodged. The case manager concerned contacted StudyLink who indicated to him that the appellant could apply for assistance through them. The appellant was told to return to StudyLink. The appellant

was, however, given non-recoverable assistance of \$270 to enable her to re-register as a teacher.

[4] Unfortunately, when StudyLink gave the telephone advice that the appellant could obtain assistance for her course through them, they were unaware that the appellant was an undischarged bankrupt. Accordingly, when her formal application for assistance was lodged with StudyLink it was declined for that reason. The appellant then returned to WINZ on 6 March 2014 to again discuss with the case manager what assistance might be given with course fees. There is no reference to this in the notes of the meeting; however, as this was clearly the purpose of the meeting we are prepared to accept that the issue of course fees was discussed again.

[5] The appellant says that on this occasion she sought assistance by way of an advance of benefit. The Ministry have no record of an application for an advance payment of benefit to cover the course fees being lodged. Before she left the WINZ premises that day, however, the appellant lodged a request for review of the decision to decline her application for an advance for course fees.

[6] The appellant told the Authority that in subsequent weeks she contacted the Ministry on several occasions asking for an urgent Benefits Review Committee hearing. The importance to her of having a Benefits Review Committee hearing promptly was because if she did not withdraw from the course within a certain period of the course commencement date, the course fees would need to be paid (we understand the period may have been four weeks but the appellant was not precise about this).

[7] A Benefits Review Committee hearing did not take place until 23 July 2014. In the meantime the appellant was obliged to discontinue the course because her fees had not been paid and because she had not withdrawn before the required date. The appellant says the fees remain owing, although we understand she has arranged to repay them by instalment. The appellant says she is now viewed as a bad debtor by Massey University, and that may impact on her ability to work or study at Massey University in the future. She therefore continues to seek assistance to meet the cost of the first term course fees.

[8] The position of the Ministry is that, in fact, no written application for an advance of benefit was ever lodged by the appellant and therefore no reviewable or appealable decision was made. The Ministry point to the fact that the Benefits Review Committee suggested that the appellant lodge an application at that point, but that the appellant did not take up this suggestion.

[9] We were advised on the day of the hearing that the amount of advance that the appellant is now seeking is \$655.09 for course fees, \$197 for study fees and \$50 for stationery.

Decision

[10] Section 11D of the Social Security Act 1964 provides that a benefit must not be granted unless the applicant has completed an application form provided by the Chief Executive for the purpose, which has been completed by or on behalf of the applicant to the Chief Executive's satisfaction, together with appropriate supporting evidence.

[11] The appellant is adamant that she lodged a written application for advance payment of benefit along with written applications for Course Participation Allowance and Training Incentive Allowance. She provided a copy of the Course Participation

Allowance application she says she lodged but not the applications in relation to Training Incentive Allowance and advance payment of benefit.

[12] The reason recorded for the appointment being made was to discuss assistance with course costs. Moreover, when she left the meeting with her case manager, she immediately filed her request for review of decision in relation to the decision not to pay an advance payment of benefit. On 10 April 2014, the appellant was advised that an internal review had been completed in relation to the decision not to pay an advance payment of benefit. No issue in relation to the failure to make a written application was raised.

[13] The report of the Benefits Review Committee states that the Ministry believe that a verbal decline had been made. The appellant terminated the interview before formal notification could be given.

[14] It is difficult to believe that the appellant would make an appointment to discuss assistance for course fees and lodge a review of decision in relation to the decision to decline an advance for course fees if the appellant did not in fact discuss course fees with the possibility of an advance with her case manager on 6 March.

[15] It is surprising that there is no evidence of a written application for an advance being lodged with the Ministry, as if it was received it would have usually been scanned into the Ministry's systems. Not even a copy of an invoice for the fees for which assistance is sought is available. However, the case manager concerned also dealt with an application for a food grant on 6 March. It is possible that the written application for advance payment was overlooked, particularly as the appellant apparently departed from the meeting before it was concluded. We propose to give the appellant the benefit of the doubt and accept that an application for an advance of benefit was made on the appropriate form on 6 March. We infer from the information provided by the appellant at the hearing that the request for the advance would have been for \$1,559.18 to meet the cost of courses in semesters 1 and 2, study fees and stationery.

[16] Section 82(6) of the Social Security Act 1964 gives the Chief Executive a discretion to make an advance payment of benefit if he is satisfied that such a payment would best meet the particular immediate needs of the beneficiary for an essential item or service. In exercising this discretion the Chief Executive is required to have regard to the Ministerial Directive relating to the advance payment of benefit.

[17] The first issue to be considered is whether the appellant had an immediate need for an essential item or service.

[18] The High Court has previously found that "essential means indispensable or absolutely necessary".¹ Thus, while a need may be highly desirable, the term "essential" denotes a high threshold.

[19] Clause 2.2 of the Ministerial Directive requires that we have regard to a number of matters in determining whether or not there was an immediate need for an essential item or service. This includes the effect on the beneficiary or the beneficiary's child if the need is not met, when that effect is likely to have an impact, and the beneficiary's ability to meet the need from her own resources.

¹ *Te Aonui v Chief Executive of the Department of Work and Income* HC Wellington CIV-2004-485-1982, 11 August 2005.

[20] The appellant's position was that to undertake the ESOL courses she enrolled for at Massey University would enhance her employability. We have no independent evidence confirming that to be the case. The appellant has in the past worked as a mathematics teacher. We understand that she was already working part-time as a project co-ordinator with a small research company in the period immediately prior to her application, and apart from holding this part-time employment she also obtained relief teaching positions during 2014. She had undertaken administration work in the census and the elections previously.

[21] Whether or not the appellant would have in fact secured more permanent, full-time employment by virtue of having completed a paper or papers in teaching English as a second language is completely speculative, in the absence of any evidence about the job market for teachers of this type or other independent information as to how completion of the course or courses would improve the appellant's employability. On 25 February 2014 the appellant had been given assistance to update her teacher registration and she was able to obtain some relief teaching work. We accept from the appellant's point of view that there may have been benefits in her completing ESOL papers but we are not persuaded on the basis of the information available that it was essential that she undertake the papers concerned or that she had an immediate need to complete the papers.

[22] Had we been required to consider the further requirements of the Ministerial Directive relating to the advance payment of benefit, we note that we would have also been required to consider the amount of the advance. Clause 4 of the Ministerial Directive provides that the amount of any advances must not exceed the instalments of benefit payable to the beneficiary over a period of six weeks. In this case, as at 6 March 2014 the maximum amount of advances that could be paid to the appellant was \$1,772.22. She had an advance debt owing to the Ministry of \$1,807.31. In effect, she had exceeded her entitlement by \$35.09.

[23] Clause 6.2 of the Ministerial Directive provides that if a beneficiary has exceptional circumstances, the advance entitlement may be exceeded, bearing in mind the matters outlined in 6.3 of the Ministerial Directive.

[24] We note that the appellant did not provide a detailed explanation of her financial circumstances at the time of her application. She said that she was not able to save for course fees because her budget was already in deficit and even though she had part-time employment, because the part time work abated the supplementary benefits she was receiving she was not significantly better off.

[25] We are not satisfied that if we had determined that the appellant had a particular need for an essential item or service, that it would have been appropriate to determine that there were exceptional circumstances in her case which would have justified the Chief Executive in making an advance beyond the limits contained in the Ministerial Directive.

Non-recoverable Special Needs Grant

[26] The appellant's advocate also urged the Authority to give consideration to non-recoverable assistance.

[27] The Special Needs Grant programme provides for recoverable and non recoverable assistance to meet the immediate needs in emergency situations set out in

Part 4 of the programme. There is no provision for assistance with course costs in the programme.

[28] The only provision which might cover the appellant's particular situation is Clause 14 of the programme. This provides that if special circumstances exist, the Chief Executive may make either a recoverable or non-recoverable grant towards the cost of any item or service if the Chief Executive considers that without that item or service the applicant would suffer serious hardship.

[29] In deciding whether a grant should be made recoverable or non-recoverable under this provision, the Chief Executive must have regard to the purpose of the grant, the nature of the need, whether it would be equitable with other applicants to require or not require repayment, and the effect on the applicant of requiring or not requiring repayment of the grant. It is also relevant to note that Clause 2 of the programme specifically provides that the programme is complimentary to the provisions for the advance payment of benefit provided for in s 82(6) of the Act.

[30] The first issue to consider in determining whether or not a grant should be made under Clause 14.1 is to consider whether an emergency situation existed. Clause 12.2 of the programme gives the Chief Executive guidance as to when he might consider an emergency situation exists. The criteria include whether the situation was unforeseen, if the situation could have been foreseen or predicted whether the applicant could have been expected to have made provision for the need, and the extent to which making a grant would worsen the applicant's position, increase risk to the life or welfare of the applicant or cause serious hardship to the applicant.

[31] On behalf of the Chief Executive it is submitted that the Concise Oxford dictionary, 10th edition, defines "emergency" as:

"Emergency: a serious, unexpected and potentially dangerous situation requiring immediate action".

[32] It is submitted that this definition is reflected in the matters set out in Clause 2.2 that the Chief Executive must have regard to. For example, an unforeseen situation is an unexpected situation and the extent to which not making a grant would increase or create any risk to the life or welfare of the applicant would constitute a potentially dangerous situation.

[33] We do not consider the appellant's desire to study ESOL papers at university during 2014 constituted an emergency situation. The appellant had enrolled in the course by 6 March 2014 and had discovered that she was not eligible for assistance through StudyLink, Training Incentive Allowance or Course Participation Allowance. In those circumstances it may have been wise for the appellant to withdraw from the course until she could be certain of funding for the course rather than proceed with the programme. We do not consider that this was an emergency situation. We do not consider that payment under the Special Needs Grant programme would have been appropriate.

Ex gratia payment

[34] That is not the end of the matter. The appellant says that on seeking the review decision and on a number of occasions subsequently, she sought an urgent Benefits Review Committee hearing because of the need to pay the fees before the withdrawal date. In this case, it was noted at the time of the internal review that no application had

been taken. If the Ministry had concerns that no application had been taken in light of the appellant's very clear request for review of decision, then she should have been contacted immediately and asked to lodge an application. Moreover, on the internal review the case manager appears to have ignored the fact that the review related to a request for advance payment of benefit. The appellant was advised of the outcome of the internal review on 10 April 2014, almost five weeks after the initial decision. The report to the Benefits Review Committee again refers solely to the application for Training Incentive Allowance and Course Participation Allowance and not to the request for advance payment of benefit clearly set out in the request for review of decision and in the Ministry's letter to the appellant of 10 April.

[35] The report to the Benefits Review Committee was completed on 20 May 2014 but the Benefits Review Committee hearing did not take place until July 2014, more than five months after the request for assistance. This was unsatisfactory because the appellant needed to know where she stood promptly. As previously noted, it was open to the appellant to withdraw from the course when she became aware that assistance would not be immediately forthcoming. It would always have been open to her to enrol again when she had sorted out how she was going to pay for the course fees. However, this case highlights the need for prompt attention to reviews of decision in these particular circumstances.

[36] It is questionable whether a Benefits Review Committee could have been convened in the three weeks the appellant had available to make a decision to withdraw from the course. However, the fact of the matter is that the processing of the appellant's request for review of decision was inadequate in this particular case.

[37] The Chief Executive may wish to consider whether an ex gratia payment to the appellant would be appropriate in these circumstances.

[38] The appeal as it relates to an application for an advance of benefit is dismissed.

DATED at WELLINGTON this 13th day of March 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member