

[2015] NZSSAA 025

Reference No. SSA 155/14

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
Lady Tureiti Moxon - Member

HEARING at AUCKLAND on 10 March 2015

APPEARANCES

The appellant in person
Ms P Siueva 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:

- (a) Reduce the amount of Accommodation Supplement paid to the appellant from 23 June 2014.
- (b) Suspend and cancel the payment of Special Benefit to the appellant from 23 June 2014.

[2] The issues in this case are:

- (i) how the appellant's accommodation costs should be assessed; and
- (ii) whether discretion should be exercised to pay him Special Benefit.

Background

[3] The appellant is aged 47 years. He suffers from Schizophrenia. He is a long-term beneficiary in receipt of Supported Living Payment.

[4] In June 2012 the appellant took up the tenancy of a property at **XXXX**. The appellant arranged for a loan through a finance company for the bond and rent in advance to enable him to move into the property. The rent for the property was

originally \$540 per week. The property was apparently a large house and the appellant arranged for others to move into the property with him. Originally a brother and a friend moved in with him and the appellant advised the Ministry that his share of the rent was \$400. His brother was to pay the other \$140. On the basis of the appellant's advice that he was paying rent of \$400 per week his Accommodation Supplement was assessed to be \$145 and entitlement to Special Benefit \$127.50.

[5] In May 2013 the appellant advised that the rent had gone up to \$580 per week, of which his share was \$245 per week. He later changed this figure to \$340 per week. He said that his brother was paying \$150 per week rent and a flatmate was paying \$90. On the basis that the appellant's accommodation costs were assessed to be \$340 per week, he was paid Accommodation Supplement of \$145 per week and Special Benefit of \$104 per week.

[6] The appellant's Accommodation Supplement and Special Benefit entitlement was reviewed in April 2014. The appellant advised that he expected to receive income from board of \$15,660 and rent of \$24,960. The appellant provided letters from others living at his address as follows:

- (i) A letter from **XXXX** (Mr **XXXX**) saying that he paid the appellant rent of \$160 per week including power.
- (ii) A letter from **XXXX** (Ms **XXXX**) confirming that she paid the appellant \$320 per week for two rooms including power.
- (iii) A letter from his brother stating that he paid \$300 per week for full board.
- (iv) A letter from **XXXX** advising that his board was \$300 per week but he could only afford to pay the appellant \$290 per week.

[7] On the basis of this information, the Ministry assessed that the appellant's share of the rent was \$100 per week, that being the difference between the amount paid by the other people paying rent and the total rent payable. As a result the Accommodation Supplement payable to him was reassessed and reduced to \$25 per week from 23 June 2014.

[8] At the same time the appellant's Special Benefit was reviewed taking into account his reduced accommodation costs. An assessment pursuant to the formula contained in the Ministerial Directive relating to Special Benefit indicated that the appellant had a surplus of income over expenditure. As a result, Special Benefit was suspended from 23 June 2014.

[9] The appellant sought a review of the decision to suspend his Special Benefit and reduce his Accommodation Supplement. 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

[10] We understand the house rented by the appellant was a four bedroom house with a fifth bedroom under the house which the appellant himself occupied. The appellant said that as at June 2014, two rooms were occupied by his friend Ms **XXXX** and her son, plus another minor. He said that Mr **XXXX** was actually Ms **XXXX's**

boyfriend and shared these rooms with her. He said that Mr **XXXX** did not pay him rent in addition to the amount paid by Ms **XXXX**. Other rooms were occupied by his brother **XXXX** and **XXXX**, both of whom paid him board. For much of the time he was at **XXXX**, one room was empty.

[11] The appellant said that the payments received from both rent and board covered the provision of power, hand soap, toilet paper and the use of the various whiteware and appliances that the appellant had purchased including microwave, fridge, stereo, TV and washing machine.

[12] The appellant submitted that as he was personally responsible for the rent the full amount should be treated as his accommodation cost. He said that, in effect, he was running a "family home". He also submitted that his share of the rent should be assessed as being \$360 per week.

[13] On behalf of the Chief Executive it is noted that in accordance with Ministry policy the appellant's boarders were disregarded in calculating the appellant's accommodation costs. The Ministry has determined that on the basis of the letters received, two other tenants were contributing \$480 per week to the rent leaving \$100 per week payable by the appellant.

[14] Two issues arise. The first is that the appellant says that Mr **XXXX** was not paying rent to him. This should be taken into account in assessing the share of the rent paid by the other residents in the house.

[15] While the appellant told the Authority that Mr **XXXX** did not pay him rent but was in fact the partner of Ms **XXXX**, this is not the information he presented to the Ministry in June 2014. It is also apparent that the appellant had told the budget adviser who prepared his budget in August 2014 that he was receiving an amount of \$160 per week from a tenant.¹ The appellant did not explain why he presented a letter to the Ministry saying that Mr **XXXX** was paying him \$160 per week rent or why he told the budget adviser that he was receiving a payment of \$160 per week and another of \$320 for two rooms by way of rent if this was not true.

[16] We consider that the Chief Executive was entitled to rely on the information the appellant provided at the time of the review in June 2014 and conclude that Mr **XXXX** was paying \$160 per week by way of rent which included power and certain other items.

[17] The second issue is that the appellant says that the rent paid includes the cost of utilities, appliances and other consumables which should be deducted from the amount included as rent from the other residents.

[18] Had the Ministry been asked to pay Accommodation Supplement to Ms **XXXX**, for example, it would no doubt have deducted an amount for power in assessing her accommodation costs. In this situation, the same rules should be applied in assessing the amount of rent paid by the other residents of the house to ascertain the appellant's share of the rent for the purpose of assessing his accommodation costs.

¹ See budget dated 20 August 2014, Section 12K report p 79.

[19] In evidence, the appellant said the power costs for the house were \$115 per week. In a budget prepared for him in April 2014,² an amount of \$100 per week has been allowed for power. The budget of August 2014 provides for \$110 per week. We do not have copies of the appellant's power bills. Information on the Consumer Powerswitch website³ suggests that a household with more than five people in the Auckland area might spend \$3,000 to \$4,000 per annum on power. On that basis expenditure of \$100 to \$115 per week (i.e. more than \$5,000 per annum), seems excessive. It is possible that the appellant had bills of \$115 per week in winter but it seems unlikely that they were that high in summer. In the absence of copies of his power bills or other independent evidence, we propose accepting that the average power bill was \$100 per week. At the time of the assessment in June 2014 there were seven people living in the house. The share of each person for power therefore would be \$14.28 per week. Ms **XXXX's** rental payment therefore should be reduced by \$42.84 per week (three people) for power and Mr **XXXX's** payment by \$14.28.

[20] The appellant said that water rates were approximately \$17 per week. The April 2014 budget allowed \$18 per week for this item and the August budget \$23 per week. Again, we have no independent evidence of the cost. We are prepared to accept an amount of \$17 per week for water rates or \$2.42 per person. A further reduction should be made for this amount.

[21] We accept the appellant's evidence that the tenants also had the use of the appellant's whiteware and television and the appellant supplied toilet paper and soap. The appellant did not put a figure on the value of these items. An amount of \$10 per room would seem to be a reasonable allowance for these items. Accordingly, the assessment of Ms Lambert's rent should be reduced as follows:

Rent	\$320.00
Less power (3 people)	\$42.84
Less water rates (3 people)	\$7.26
Less use of facilities (2 rooms)	<u>\$ 20.00</u>
Balance	\$249.90

(rounded to \$250 for two rooms)

[22] Mr **XXXX's** rent of \$160 per week should be reduced by a total of \$26.60 to \$133 (rounded). The appellant's share of the rent should then be calculated as follows:

Total Rent	\$580.00
Less amount paid by other residents	<u>\$383.00</u>
Appellant's share of rent	\$197.00

[23] The power to grant Accommodation Supplement is discretionary. The alternative to the above calculation would be to simply divide the rent amongst the adults living on the premises.

[24] The term "tenant" defined in s 61E of the Social Security Act 1964 includes a person who pays rent whether or not he or she is a party to the tenancy agreement or lease of the premises. It seems unusual that a person who is in many respects a flatmate can be classed as a boarder and the income received from boarders be

² Section 12K report P 59.

³ www.powerswitch.org.nz/powerswitch.

disregarded in assessing entitlement to Accommodation Supplement in cases such as this. In this case, if each of the adults in the house paid rent equally then their share of the rent would have been \$116 per week. However, the Ministry has not suggested the rent should simply be divided amongst the adults living at the property. Moreover, it seems that the appellant has made his arrangements relying on the Ministry policy that income from boarders would be disregarded and has accepted responsibility for payment of power, rates and other items. Moreover a question of responsibility for the rent may arise if one of the rooms was empty.

[25] In the circumstances, we accept that the appellant should have been paid Accommodation Supplement based on rent of \$197 per week. We understand that based on rent of \$197 per week the appellant would have been entitled to Accommodation Supplement of \$92 per week. We direct the Chief Executive to recalculate the appellant's entitlement to Accommodation Supplement accordingly.

[26] Pursuant to s 82(3)(b)(i) of the Social Security Act 1964 we direct that any arrears of Accommodation Supplement be paid to Instant Finance to reduce any amount owed by the appellant to that company. We understand that company was the source from which the appellant obtained the loan for bond and rent in advance. If there is any balance owing then this is to be credited against the appellant's outstanding advance entitlement owed to the Ministry.

Special Benefit

[27] Entitlement to Special Benefit is calculated taking into account the person's chargeable income and allowable costs. Allowable costs are defined in Clause 2.1 of the Ministerial Directive relating to Special Benefit.

[28] In this case, using accommodation costs of \$197 and disability costs of \$27.85, the formula assessment produces a deficiency of income over expenditure of \$14.61.

[29] The Ministerial Direction provides that the Chief Executive will be justified in granting Special Benefit at the lesser of the deficiency rate or 30% of allowable costs in these circumstances.

[30] However, the Direction also requires the decision-maker to take into account a wide variety of factors in assessing whether or not the discretion to grant Special Benefit should be exercised. These include the general principles in paragraph 1 that:

- (a) the benefit should not be granted unless the applicant would suffer financial hardship;
- (b) the applicant's deficiency of income over his or her expenditure and commitments is reasonably substantial;
- (c) the deficiency is likely to continue for a period that justifies Special Benefit being granted;
- (d) Special Benefit should only be considered in respect of costs that are essential and not reasonably avoidable; and

- (e) having regard to the ability of the applicant to meet the deficiency from the applicant's own resources.

[31] In addition, the decision-maker is required to have regard to the matters contained in Clause 3.3(a) to (h) of the Direction. These include whether or not the applicant has any special or unusual financial expenditure, whether the applicant has special or unusual reasons for any expenditure which have caused or contributed to his or her deficiency, the nature of the financial difficulty, the age and health of the applicant, the ability of the applicant to improve his or her financial situation, the causes of the applicant's financial difficulty, the extent to which the basic necessities of life would be at risk, and any other matters.

[32] A budget prepared for the appellant in April 2014 shortly prior to the decision to suspend the appellant's benefit includes the information that the appellant was spending \$130 per week for tobacco at this time. A debt analysis prepared at the same time showed the appellant owed \$26,254.07 including his debts to Work and Income.

[33] A further budget prepared for the appellant on 20 August 2014 notes total income of \$1,394.56 and total expenses of \$1,458.88 indicating a deficiency in the appellant's weekly budget of \$87.82 per week. This includes an allowance of \$170 a week for tobacco. There is also an allowance of \$320 a week for food for three people. We assume this includes the two boarders. It seems relatively high. A significant feature of the appellant's budget is the amount being repaid to finance companies. We do not have a complete explanation of why all these loans were obtained but the appellant advised that he now owes \$15,220 to GM Money and that this has been used to purchase various consumer items over the years.

[34] In short, significant factors contributing to the appellant's financial situation include his extremely high costs for 'tobacco consumption' and his debt to finance companies. In addition, it seems likely that the appellant did not think carefully enough about what he would need to charge for utilities, water rates and for the other items he provided in setting his rents. Requiring his tenants to share the power and water rates and other costs equally would have been a better option.

[35] The appellant has been on Special Benefit for a long time and apparently regarded it as part of his standard entitlement. His idea to rent a large home and rent out rooms/take in boarders was an idea which should have freed him from dependence on Special Benefit. In many respects the idea was a sound one, however careful financial management and careful budgeting were required. It was a scheme which should have provided the appellant with a surplus. It should not have required the Ministry to subsidise the appellant's enterprise. It is unfortunate that the appellant could not see his scheme surviving without the assistance of Special Benefit.

[36] We further note that while the appellant's boarders were not taken into account in assessing his accommodation costs, payments from them are not treated as chargeable income in the assessment of Special Benefit and the receipt of \$590 per week from that source is a relevant consideration to take into account in exercising the discretion to grant Special Benefit. If the boarders were paying an equal share of the rent the appellant would not have a deficiency pursuant to the formula assessment and his entitlement to Accommodation Supplement would be much reduced.

[37] Taking into account all the circumstances, including the matters referred to in the Ministerial Direction, we are not satisfied that the Chief Executive should have continued payment of Special Benefit to the appellant. However, the appellant had been in receipt of Special Benefit for many years. He had clearly come to rely on it. Rather than cancel the payment immediately we consider a more appropriate course would have been to give notice that it was to be cancelled after two months, to give the appellant an opportunity to undertake stricter budgeting measures.

[38] The appeal as it relates to the calculation of entitlement to Accommodation Supplement is allowed. The appeal as it relates to the payment of Special Benefit is allowed only to the extent that the Chief Executive is directed to pay Special Benefit for two months from 23 June 2014 at the rate being paid immediately prior to that date. Payment of the arrears is to be made in reduction of the appellant's debt as previously outlined in paragraph [26]. In all other respects the appeal as it relates to Special Benefit is dismissed.

DATED at WELLINGTON this 20th day of April 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member