

[2015] NZSSAA 027

Reference No. SSA 152/14

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 9 March 2015

APPEARANCES

The appellant in person
Mr A Singh for the Chief Executive of the Ministry of Social Development

INTERIM DECISION

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee declining to backdate payment of Orphan's Benefit to 15 October 2009.

Background

[2] The appellant is the guardian of **XXXX** born on 13 January 1998. He became guardian of **XXXX** on 18 May 2010 following the death of **XXXX**'s mother (Ms **XXXX**) on 15 October 2009. **XXXX**'s father died in Australia in February 2007. It was the wish of the appellant's mother that the appellant take responsibility for **XXXX** following her death.

[3] The appellant became aware of the availability of Orphan's Benefit to assist with **XXXX**'s financial support in 2013 as a result of a casual conversation. As a result the appellant first contacted the Ministry in December 2013 and in March 2014 made formal application for an Orphan's Benefit on behalf of **XXXX**. Orphan's Benefit was granted from 19 March 2014.

[4] The appellant requested that the grant be backdated to the date that he commenced caring for **XXXX** following his mother's death on 15 October 2009. His request was declined.

Interim Decision

[5] Section 80 of the Social Security Act 1964 contains provisions concerning the commencement of benefit. In particular s 80(1) provides that a benefit shall commence on the later of the date on which the appellant became entitled to receive it or the date on which the application is received whichever is the later date. In this case there was no application prior to contact with the Ministry being made on 10 December 2013 and on that basis Orphan's Benefit could not be paid prior to that date.

[6] The only exception to this rule is contained in s 80AA of the Social Security Act 1964 which allows a benefit to be backdated where an applicant could not reasonably have been expected to apply at an earlier time because of some erroneous action or inaction on the part of the department. Section 80AA(3) provides that for the purposes of subsection (2) examples of erroneous action or inaction are:

- (a) giving wrong advice.
- (b) erroneously failing or refusing to provide information, help or some document or form.

[7] The question that arises in this case then is whether or not the provisions of s 80AA apply as a result of erroneous action or inaction on the part of the Chief Executive such as failing to provide information about the availability of Orphan's Benefit.

[8] On behalf of the Chief Executive it is submitted that he only became aware of Ms **XXXX**'s death as a result of a data match with Internal Affairs on 4 November 2009. The Ministry then wrote to Ms **XXXX**'s estate care of a post office box number. It transpires it is the appellant's post office box number. The executors of Ms **XXXX**'s estate were requested to contact the Ministry about payments of the Domestic Purposes Benefit Ms **XXXX** had been receiving. No response was received by the Ministry to this request on this occasion or to subsequent letters sent. Neither the appellant nor the Trustee company acting for Ms **XXXX**'s estate contacted the Ministry.

[9] The Ministry say that information about Orphan's Benefit is available on its website, at its offices, and to persons contacting its 0800 number.

[10] The appellant submits that the Ministry ought to have considered the issue of support for Ms **XXXX**'s child when they cancelled her Domestic Purposes Benefit.

[11] Upon being questioned by the Authority the appellant noted that:

- (i) Prior to Ms **XXXX**'s death he spoke to a social worker who wanted to ensure what arrangements had been made for **XXXX**'s care when his mother died. The social worker did not advise him of the availability of Orphan's Benefit.
- (ii) Ms **XXXX**'s estate had been looked after by Guardian Trust (now Guardian Perpetual). He had never been advised by the person who had handled the matter of the availability of Orphan's Benefit.

- (iii) The lawyer who handled his application to be appointed **XXXX**'s guardian did not advise him of the availability of Orphan's Benefit.

[12] That none of these people apparently alerted the appellant to the availability of Orphan's Benefit suggests they were unaware of the benefit. This raises a question as to whether there is sufficient information in the community about this type of benefit, particularly for people who do not usually have contact with Work and Income New Zealand.

[13] However we cannot make a decision on the issue at this point. A jurisdiction issue arises. Only the Minister or the Chief Executive can make a decision to allow a benefit to be backdated pursuant to s 80AA. This case has not been considered by the Chief Executive. We cannot give full consideration to this matter until it has been considered by the Chief Executive. Accordingly the matter is remitted to the Chief Executive for consideration pursuant to s 80AA of the Act.

[14] The Chief Executive is directed to report to the Authority on the outcome of his consideration by 1 August 2015.

WELLINGTON this 20th day of April 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member