

[2015] NZSSAA 028

Reference No. SSA 167/14

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

Mr R D Burnard - Chairperson
Mr K Williams - Member
Lady Tureiti Moxon - Member

HEARING at WELLINGTON on 13 April 2015

APPEARANCES

Mr G Howell – for the appellant
Ms E Kirkman for Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] This is an appeal against a decision made on 2 June 2014 in connection with the appellant's Disability Allowance which was upheld in part by a Benefits Review Committee on 15 October 2014, the Committee agreeing to the Ministry decision to include \$790.31 per annum as a cost in the appellant's Disability Allowance for additional heating but directing that it be backdated to 30 April 2014.

Background

[2] XXXX lives in Newlands near Wellington and has three dependent children. The Authority understands that as at March 2015 she was in receipt of a Benefit, Disability Allowance and Family Tax Credit totalling \$625.11 per week of which \$198.35 was deducted in respect of advances from the Ministry and payments to Meridian Energy and Housing New Zealand. XXXX's Housing New Zealand home is in a cold area of the suburb and she has had to make extensive use of a log burner to keep the house warm. This is of particular importance in view of the medical condition of her children one of whom has, amongst other disabilities a respiratory disorder.

[3] The Authority heard an earlier appeal by XXXX on 5 September 2014 relating to an application for advance payment of benefit in connection with the heating costs (2014 NZSSAA 82, 10 October 2014).

Case for the appellant

[4] XXXX was represented at the hearing by Mr G Howell who in a notice of appeal stated that *“the desired outcome is that the DA related costs be accurately measured”*. He contended that XXXX needed to purchase six cords of wood to fuel the log burner whereas earlier payments by the Ministry proceeded on the basis that less wood was required culminating however in a decision in January 2014 to adjust the Disability Allowance payments to provide for the purchase of four cords of wood.

Case for the Ministry

[5] Ms Kirkman had provided the Authority with a report under Section 12K of the Social Security Act 1964 (the Act) in which the history of the Ministry’s dealings with XXXX on the subject of heating costs was extensively surveyed with Ms Kirkman concluding that the assessment of extra heating costs at \$790.31 for the period 30 April 2014 to 28 September 2014 should be upheld.

Legislation

[6] Provision is made at s 69C of the Act for payment of the Disability Allowance, subsection 2 reading:

“(2) A disability allowance is not payable to or on account of any such person unless the [chief executive] is satisfied that the disability of the person—

(a) is likely to continue for not less than 6 months; and

(b) has resulted in a reduction of the person's independent function to the extent that the person requires—

(i) Ongoing support to undertake the normal functions of life; or

(ii) ongoing supervision or treatment by a health practitioner.”

[7] Section 69C(2A) states:

“(2A) A disability allowance is not payable to or on account of any person except to the extent that—

(a) the person has additional expenses of an ongoing kind arising from the person's disability (subject to section 68A); and

(b) the assistance towards those expenses available under this Act or any other enactment is insufficient to meet them.”

[8] There is a Ministerial Direction relating to the Disability Allowance. Clause 2 which requires verification of expenses claimed reads:

“2. Before determining whether a person has additional expenses of a kind required by section 69C (2A) (a) of the Act, you must require the applicant to provide written verification that-

(a) He or she is incurring the expenses claimed; and

(b) The expenses are of an ongoing kind; and

(c) *The expenses arise from the person's disability,-*

by way of-

(d) *A certificate from a registered health professional as to the need for the goods or services to which the expenses relate, how that need relates to the person's disability, the expected duration of that need, and the therapeutic value to the person in receiving the goods or services; and*

(e) *Invoices or receipts for payment of the expenses; and*

(f) *Any other verification that you consider necessary or satisfactory."*

[9] Clause 4 of the Ministerial Direction reads:

"4. *When determining whether a person has additional expenses of a kind required by section 69C (2A) (a) of the Act, you must consider-*

(a) *Whether the person is incurring ongoing expenses which result from the person's disability, having regard to-*

(i) *The relationship between the disability and the need to incur the expenses; and*

(ii) *The other matters referred to in clause 2 (d); and*

(iii) *Whether the person would be incurring the expenses if he or she did not have the disability; and*

(iv) *Whether the expenses or an expense of that kind was being incurred before the disability arose and the reasons for incurring that expense at that time; and*

(aa) *the extent (if any) to which the person's life or health would be put at risk, or the person's disability aggravated, if the person could not receive the goods or services because the expense was not wholly or partly met from a disability allowance; and*

(b) *Whether a person in a similar position who does not have the particular disability would incur expenses of that type or amount; and*

(c) *Whether there are less costly goods or services which might meet the need referred to in clause 2 (d); and*

(d) *Any other matters you consider to be relevant."*

[10] Finally the Chief Executive has a discretion which is incorporated in Clause 6 of the Direction as follows:

"6. *Where you consider that the applicant fulfils the requirements of section 69C of the Act, you must grant a disability allowance only if, having regard to the following matters, you believe such grant is justified:*

(a) *The assistance that is or might be available to the applicant from other sources to pay the expenses;*

(b) *The matters referred to in clause 2 (d); and*

Any other matters you consider to be relevant."

The Authority's findings

[11] This appeal in essence involves determination of the extra heating costs XXXX has to incur in warming the home to provide a healthy environment for herself and her children. The Authority readily appreciates the importance of having a warm

environment for the family, particularly for the two older children XXXX and XXXX but also for XXXX and her six month old baby.

[12] As noted above XXXX's case as presented by Mr Howell proceeded on the basis that XXXX's firewood usage was six cords a year, whereas the Ministry has eventually agreed to four cords being appropriate which Mr Howell argued was insufficient. Having regard to his statement in the Notice of Appeal that the desired outcome "is that the DA related costs be accurately measured" the Authority was somewhat surprised to find that no accurate particulars of the purchase of wood or usage were provided by Mr Howell on behalf of the appellant. During the course of the hearing we accordingly invited Mr Howell (with Ms Kirkman's consent) to confer with XXXX and establish a list of purchases of wood and the cost of such purchases from October 2013 (when XXXX first moved into the house in Newlands) until the date of the Authority's hearing. This covered a period of approximately 18 months. The Authority was conscious that its role on this appeal is confined to determining whether or not the Benefits Review Committee was correct in its decision on 15 October 2014 relating to a Ministry decision in June of that year, whereas the material we were asking for covered a further period, but the Authority considered that obtaining the benefit of hindsight for the total usage over the 18 month period would present an overall picture of wood usage which would be of assistance to both parties.

[13] After an adjournment of approximately a quarter of an hour Mr Howell produced a list (Exhibit A) but later amended the list to include some monetary sums for the various purchases. The list shows that between October/November 2013 and November 2014 approximately four cords were used. In her evidence XXXX said that following a Strengthening Family Conference a further cord of wood was purchased which she has now used and she is commencing to use a further four cords of wood which were purchased in January 2015, being two cords of pine and two cords of macrocarpa. A note on the Ministry's file produced with the Section 12K report as Exhibit 13 records that advice was sought from Firewood Frenzy, the Fireplace, and the EECA – Energywise website with the two wood supply organisations informing the Ministry enquirer that a small truckload of wood estimated at between 3.6 m³ and 4 m³ of firewood was typically enough wood for a wood burner for the winter. The New Zealand Oxford dictionary defines a cord of wood as 3.6 m³.

[14] Whilst the Ministry information suggests that something over one cord of wood is enough for a winter the Authority accepts from XXXX's description of the position of her home backing onto a cliff and the area in which she lives exposed to the south that she would require a greater supply of wood than average and that her use of the wood burner would not be confined to the winter months.

[15] The assessment of four cords for the year is supported by the actual usage for the first year of approximately four cords and the use of a further cord from November 2014 to March 2015 during the summer months. We consider that Mr Howell's assertion that six cords of wood is required is excessive and unsupported by any material he produced.

[16] Having regard to our assessment that fixing the Disability Allowances on the basis of the use by XXXX of four cords of wood a year is appropriate, the Authority has given consideration as to whether the appeal should be upheld in part and the Disability Allowances backdated to incorporate an allowance at the rate of four cords

per year from the date of XXXX's move into the property in Newlands. We consider however that this course cannot be taken as the bulk of the firewood supplied to her during the first year came by way of a gift from a church of two cords in late April 2014. This is accordingly not an expense she has herself incurred in terms of s 69C of the Act and the verification provision in the Ministerial Direction.

[17] Our conclusion therefore is that there are no grounds on which this appeal can be allowed.

Future position

[18] As noted above the Authority accepts that XXXX is living in a cold house that needs heating for the health of herself and her children above the average required for a three-bedroom home. The Authority trusts that in the future she will take careful note of the cost of wood purchases, retaining all invoices so that these can be assembled and presented to the Ministry in case an adjustment of the Disability Allowances is required.

Conclusion

[19] For the reasons given above the appeal is dismissed.

DATED at WELLINGTON this 22 day of April 2015

Mr R D Burnard
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member