

[2015] NZSSAA 029

Reference No. SSA 027/12A

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 10 November 2014

APPEARANCES

Mr G Howell for the appellant
Mr R Signal for Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The Authority in a decision dated 19 July 2012 dismissed an appeal by XXXX against a decision of a Benefits Review Committee upholding the cancellation by the Ministry of her Special Benefit from 7 February 2011. The benefit was reinstated at a reduced rate of \$5.50 per week from 7 February 2011 to 31 March 2011 but was then cancelled from 1 April 2011.

[2] XXXX appealed to the High Court and the parties agreed that the Authority had not undertaken what was described as “*Stage 2*” of the procedure set out in the Ministerial Direction in relation to Special Benefit, namely looking at the position overall before making a final decision.

Second hearing on 10 November 2014

[3] The Authority heard from both parties again on 10 November 2014 and after some discussion regarding the scope of the second hearing the Authority heard further evidence from XXXX and extensive submissions from both parties were presented. Whilst Mr Signal for the Chief Executive objected to new evidence being presented in relation to items (a) to (h) of Clause 3.3 of the Ministerial Direction he consented to the introduction of a letter by Mr Howell from a **XXXX** dated 19 October 2012. **XXXX** is a resource teacher of learning and behaviour in Hamilton and wrote in support of XXXX taking her son **XXXX** to school by car rather than on the school bus.

The Authority's findings

[4] It is noted that no challenge is now made to what is described as the formula assessment which is designed to identify whether or not XXXX has a deficiency of income over expenditure. The Authority is required to consider whether there is justification for exercising its discretion to pay a rate of Special Benefit other than that produced by the formula assessment having regard to the principles set out in Clause 1 of the Ministerial Direction and the eight matters listed in Clause 3.3.

[5] It is convenient for the Authority to deal with each of the items in Clause 3.3 in the order in which they are stated in the Clause.

(a) *Whether the applicant has any special or unusual financial expenditure compared to others in a similar general position to the applicant and the extent of any such expenditure.*

[6] At the forefront of the Authority's consideration of this issue is the cost to XXXX of having to transport her son XXXX to XXXX School. The letter from XXXX mentioned above records that XXXX has ADHD and other behavioural and social challenges. XXXX states:

"It is problematic if he travels on the school bus – he is easily unsettled, over-stimulated and finds it hard to follow the bus rules. The bus ride is around an hour long. As a result he can arrive at school in a negative, emotional state and not ready to learn. This then impacts on the rest of his day. If XXXX arrives by car he is more settled, calm and ready for his day of learning. This has proved to be the best option for him."

[7] We have no hesitation in accepting the force of these observations. Clearly the bus trip has negative implications for XXXX and it is reasonable for XXXX to regularly drive him to school. The Authority regards the cost of XXXX taking her son to school each day as a special financial expenditure compared to others in a similar general position but we are reviewing a decision made by the Ministry in early 2011 and according to the evidence given by XXXX at the Authority's first hearing of this matter on 14 June 2012 it was not until the school year of 2012 that XXXX commenced driving XXXX to the school. She said (at page 5 of the transcript) that when her daughter attended the school XXXX travelled on the bus but her daughter left at the beginning of 2012 and it was found that it was too much stimulation for her son on the bus and she said "I now transport him to and from". The Authority has accordingly concluded that this particular expenditure cannot be advanced to justify setting aside the Ministry's decision to cancel the Special Benefit in early 2011.

(b) *Whether the applicant has any special or unusual reasons for any expenditure items that has caused or contributed to his or her deficiency.*

[8] In contending that there was a deficiency on the formula assessment in respect of XXXX's position her advocate Mr Howell relied on the transport costs, which we have already dealt with in (a) above, and also on additional childcare costs. We

can find no reason to depart from our original conclusion at paragraph [13] of our decision on 19 July 2012 that on the material before the Ministry at the time of its decision to cancel the Special Benefit the Ministry's approach to childcare assistance was correct. As the Ministry has pointed out XXXX was not in employment when the decision was made to cancel the benefit and she had not suggested to the Ministry that she was unable to provide for the care of her children because of her medical condition. As we note in para [10] below we accept that XXXX has significant health issues but these do not appear to have prevented XXXX from caring for her children. She had not incurred the cost of "essential childcare" because of being "seriously disabled or seriously ill" as the definition section of the Ministerial Direction in relation to Special Benefit allowable costs in respect of child care requires.

(c) *The nature of the financial difficulty and the likely duration of the deficiency.*

[9] Consideration of this issue necessarily proceeds on the basis that the beneficiary has a financial difficulty. The Authority accepts that XXXX is in the position of large numbers of beneficiaries in finding difficulty in making ends meet and having to carefully harbour her resources to live within her income. At the time of the Authority's first hearing XXXX was receiving \$924.70 each week. The Authority asked XXXX following the second hearing to present a budget statement of her position and this was subsequently received dated 5 November 2014. Whilst the Authority readily accepts the submissions of both parties that XXXX's current financial position is not directly relevant to this appeal because the Authority is required to review the Ministry's decision three years earlier we were nevertheless concerned to obtain some material giving a broad indication of whether or not XXXX was in significant financial hardship. We noted from the budget that her income has increased to \$941.31 (an increase of \$16.61 per week compared to the position as at 24 April 2012). Our overall impression from the recent budget and the evidence presented at the two hearings is that XXXX is managing on her current income (now at a rate of \$48,948 per annum) and was doing so in 2011 when the decision we are reviewing was made and her actual income totalled \$48,084. We concur with the Ministry's position that she was not in particular financial difficulty when the Special Benefit was cancelled.

(d) *The age and health of the applicant and his or her dependents and any special needs arising from that age or health.*

[10] XXXX plainly has significant health issues herself as do her children. We were told that in 2012 she was 33 years of age (now 34 or 35) and she told us at the first hearing that she has been battling depression for three years. It is plain that her depression has at times been severe according to her evidence. She said (page 57 of the transcript) that at times she had to "actually call in the crisis team" because she "needed help and couldn't physically make herself go to the doctor". She described having friends come over and sit with her and look after her children when she could not get out of bed. She also said that for days at a time she would not sleep because of anxiety and had not been able to deal with her emotions. XXXX's children have also suffered health issues. She said (page 3 of the transcript) that her oldest daughter suffered from allergies and skin conditions and "quite a lot of anxiety from living in a high stress household". Her son XXXX as we noted above suffers from

ADHD and also Opposition Defiance Disorder. She said he also has allergies and skin disorders. Her youngest child Eden has mild asthma and skin conditions and “*there has been a diagnosis of ADHD which we are currently in the process of taking through the Paediatricians to get it officially recognised*”. On this evidence there is plainly justification for the various additional allowances XXXX has been receiving. XXXX has in the past, and will no doubt in the future, have the opportunity of applying for increases in her own and the children’s Disability Allowances if she presents evidence in support of expenditure incurred in meeting any special needs arising from the state of health of the family.

(e) The ability of the applicant to improve his or her financial situation.

[11] XXXX has extremely limited opportunities to improve her financial situation. We did note that she is studying part time and told us that she was doing a Bachelors degree in Social Science majoring in Social Work. This is commendable. The Ministry argue that she could reduce her outgoings by applying for accommodation as a Housing New Zealand tenant. We heard evidence of the reasons XXXX chose to rent a house in the private sector which were understandable. We do not consider that her ability or otherwise to improve her financial circumstances is particularly material to the Ministry’s decision to cancel the Special Benefit.

(f) The causes of the applicant’s financial difficulty.

[12] As noted above the Authority has reservations in concluding that in fact XXXX had any financial difficulty when compared to beneficiaries in a similar position and in the light of her income and expenditure at the time relevant to this appeal.

(g) The extent to which the basic necessities of life for the applicant or his or her dependents would be at risk if a grant of Special Benefit at the rate calculated or another rate was not made.

[13] The Authority considers that no evidence has been produced supporting the proposition that XXXX’s basic necessities of life would be at risk or those of her dependents by the Ministry’s decision to cancel the Special Benefit in 2011. She has managed to support herself with the income received from WINZ for a number of years at a reasonably satisfactory level, albeit with a need to carefully budget her resources.

(h) Any other matters that in the circumstances of the particular case you consider to be relevant.

[14] The parties to this appeal have already accepted that the Authority was entitled to take into account (as it did in its decision of 19 July 2012) the length of time the appellant had been in receipt of Special Benefit. We continue to consider that this is a material factor, XXXX having been on a Special Benefit for almost eight years despite the provisions of Clause 5.1 of the Ministerial Direction.

[15] The Authority has concluded when regard is had to the general principles in Clause 1 of the Ministerial Direction, and the matters dealt with above that the Ministry's decision to cancel the Special Benefit should not be interfered with. We nevertheless ask the Ministry to note our observations on the transport costs associated with XXXX's son XXXX at para [7] of this decision so that proper consideration is given to any future request for reimbursement of these transport costs as disability costs provided of course full details of the relevant expenditure are provided by the appellant.

Conclusion

[16] 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