

[2015] NZSSAA 032

Reference No. SSA 150/14

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 B Moodley 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 suspend his Supported Living Payment from 22 May 2014 to 15 June 2014 while the appellant was visiting Australia.

Background

[2] The appellant is originally from Bosnia. He arrived in New Zealand in 1995. He is separated from his wife but has regular contact with his teenage son who lives in Auckland. He lives alone in a Housing New Zealand house. We understand that the appellant suffered a “breakdown” in 1998. A decision of the Medical Appeals Board states that his diagnoses include:

“Post-traumatic Stress, Bipolar Disorder, depression, anger, alcohol abuse and sleep disorders.”

He has received treatment through the Mental Health Services in Auckland over a number of years but there has apparently been little improvement in his condition.

[3] In 2013 he established contact with a woman from his home town in Bosnia living in Melbourne. He told this woman about his problems and the woman said that she believed that there was a psychiatrist in Melbourne who could help him. This woman paid for the appellant to travel to Melbourne and apparently arranged for him to see the psychiatrist. The appellant made two trips to Australia in 2013.

[4] From 15 July 2013 the law relating to payment of benefit while a beneficiary is temporarily overseas changed and became more restricted. Early in 2014 the appellant was given some information about the changes. This information included the advice that if he was receiving medical treatment overseas which was being funded by the Ministry of Health he may be able to continue receiving his benefit while he was overseas.

[5] On 21 May 2014 the appellant advised that he was leaving New Zealand and would be returning on 17 June 2014.

[6] Because the appellant had been absent from New Zealand on four occasions in the previous 52 weeks and had been paid benefit for a total of 31 days during that period it was considered that the appellant was not entitled to receive benefit during this particular absence from New Zealand and his benefit was suspended from 21 May. When the appellant returned to New Zealand payment of his benefit resumed.

[7] The appellant sought a review of the decision to suspend his benefit. 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.

[8] The appellant submits that he received medical treatment in Australia during his period of absence. He also draws attention to an article on the Stuff website reporting statements of the Minister of Social Development which suggest that "it may be possible for payment to be made on compassionate grounds" and specifically referred to the case of a man who had visited Australia 11 times.

Decision

Section 77(1) of the Social Security Act 1964 provides that a benefit is not payable while a beneficiary is absent from New Zealand unless the beneficiary is able to bring himself within one of the exceptions set out in the Social Security Act 1964.

[9] From 15 July 2013 as a result of changes to the legislation governing the payment of social security benefits, the ability of certain beneficiaries to continue receiving benefit payments while they are overseas has been curtailed.

[10] The position now is that a person receiving Supported Living Payment can continue to receive payments while absent from New Zealand for no more than a total of four weeks in any 52 week period. The Chief Executive must also be satisfied that the one or more absences from New Zealand do not affect the beneficiary's eligibility for the benefit.

[11] Sections 77(3A) and (4) of the Social Security Act 1964 provide for certain circumstances in which the Chief Executive has a discretion to pay a person in receipt of Supported Living Payment for a period of up to two years while they are absent from New Zealand in circumstances where:

- (a) The person is receiving medical treatment overseas for which the Ministry of Health is granting assistance; or
- (b) The person is receiving vocational training or disability assistance dog training.

[12] The appellant did not dispute that he had received Supported Living Payment while overseas for a total of four weeks in the previous 52 week period. The main thrust of his argument was that he had in the past received treatment for his condition in New Zealand and this had been unsuccessful. The opportunity therefore to see the Bosnian psychiatrist in Melbourne was important to him and should be considered in deciding whether he should continue to receive benefit payments while he is absent from New Zealand. He says that the purpose of his travel to Australia was to seek medical treatment. His visits have been very beneficial for him. He noted that being able to talk with the woman he has established a friendship with has been particularly helpful. He has not sought assistance for his treatment through the Ministry of Health.

[13] From time to time the Ministry of Health provides assistance for persons having medical treatment overseas in situations where that treatment is not available in New Zealand. This assistance is granted where an application has been made to the Ministry of Health and that the Ministry has granted assistance to the person to travel overseas for treatment. The appellant has not been granted assistance by the Ministry of Health for treatment in Australia. The appellant cannot therefore bring himself within the exception contained in s 77(4) of the Act.

[14] The appellant points out that it is not possible for him to move to Australia because he wishes to be near his son who lives in New Zealand. On the other hand the treatment and support he receives in Australia has been very beneficial for him. The failure of any treatment that has been offered to him in New Zealand, and the rules which restrict his travel outside New Zealand in terms of his receipt of benefit, make him feel as though he is in jail.

[15] He refers to a Stuff report where the then Minister of Social Development is reported as stating "Work and Income were open to considering cases on compassionate grounds". The Ministry have been asked to comment on this article. The Ministry now say the article misrepresented the situation and is incorrect.

[16] There is no provision in the legislation for a general discretion on compassionate grounds for a person to continue receiving benefit while they are overseas. The exceptions which allow payment to be made overseas are very specific. The appellant is free to travel out of New Zealand on more than one occasion but he cannot be paid for a total of more than four weeks in every 52 weeks while he is absent.

[17] We are not satisfied that there is any basis on which the appellant could be paid Supported Living Payment during the period of absence 22 May 2014 to 17 June 2014.

[18] We note in passing that the appellant also raised an issue relating to the Benefits Review Committee hearing. The appellant said that he was contacted about a Benefits Review Committee hearing two days before he was due to leave on a trip for Australia. He requested that the hearing be deferred until he returned and he understood from the person he spoke to that this would occur, however the hearing proceeded on 8 September 2014 in his absence. The Ministry have advised that the appellant was first contacted on 28 July to say a hearing was to be held on 25 August. The appellant advised that he was due to leave New Zealand on 6 August and he was unable to provide a return date. The appellant was advised that the hearing could not be deferred indefinitely. He was advised that the hearing would be on 8 September. The hearing was convened on 8 September. The appellant did not attend. We agree with the Ministry that the hearing could not be deferred indefinitely. The appellant had sufficient notice of the hearing.

[19] The appeal is dismissed.

DATED at WELLINGTON this 8 day of May 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member