

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 WELLINGTON on 13 April 2015

APPEARANCES

The appellant in person
Mr G Moore 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 declining an application for assistance to purchase a replacement motor vehicle. The amount sought was \$3,999.

Background

[2] The appellant is aged 66 years. He is married. He suffers from severe chronic obstructive pulmonary disease. He also has urinary tract problems.

[3] Because of his medical condition he relies heavily on a motor vehicle for transport. His general practitioner has confirmed that it would be very difficult for him to access the public transport system.

[4] The appellant and his wife have three children living in their household. The children are aged 4½ years, 15 years and 17 years. The appellant notes that he also has two adult daughters who need significant support. The appellant's wife suffers from poor health. She has apparently had health problems since the birth of the couple's son four years ago.

[5] The appellant needs a vehicle for grocery shopping, to transport his son to and from kindergarten and to pick up his wife's 17 year old son when he works evening shifts at a fast food outlet some distance from the family home. The vehicle is also

needed for various medical appointments for both the appellant and his wife and to get to the pharmacy.

[6] In September 2014 the appellant's car broke down. The car's condition was terminal. The gearbox had given up. The appellant said that the problem arose in the space of a week or two. He was able to borrow a car belonging to an aunt in the short term. The appellant described this vehicle as a dodgy Mitsubishi Mirage which had been destined for the wrecker's yard. It is not ideal for his purposes because it lets in dust which exacerbates his problems.

[7] The appellant approached Work and Income for assistance. He sought an amount of \$3,990 for a replacement vehicle. He had identified a vehicle which would meet the needs of himself and his family. The appellant said that he had approached a finance company, Instant Finance, but they were not prepared to lend to him because of the existence of an outstanding loan. His application for assistance from the Ministry was also declined.

[8] The appellant sought a review of decision. 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.

[9] The appellant's position is that in the first instance he was seeking non-recoverable assistance and as he had a need for transport, the Ministry had an obligation to provide him with assistance.

Decision

[10] Provision for the payment of non-recoverable assistance under the Social Security Act 1964 (the Act) is relatively limited.

[11] The Special Needs Grant Programme (the Programme) provides for recoverable and non-recoverable assistance to meet certain immediate needs.

[12] Part 3 of the Programme makes provision for emergency food grants and certain specific medical needs. Part 4 of the Programme provides for assistance in emergency situations. There is specific provision for emergency dental and medical treatment. There is no specific provision for assistance to purchase motor vehicles.

[13] The only provision which might cover the appellant's particular situation is Clause 14 of the Programme (which is included in Part 4 of the Programme). This provides that if special circumstances exist, the Chief Executive may make either a recoverable or non-recoverable grant towards any item or service if the Chief Executive considers that without that item or service the applicant would suffer serious hardship. It is also relevant to note that the amount available under Clause 14.1A in the first instance is \$500. This amount can be exceeded only if exceptional circumstances exist. The amount of assistance specified is an indication of the type and level of assistance Clause 14.1 is intended to cover.

[14] The first issue to be considered in determining whether or not a grant should be made under Clause 14.1 is whether or not an emergency situation exists.

[15] The Concise Oxford Dictionary, 10th Edition, defines "emergency" as:

“Emergency: a serious, unexpected and potentially dangerous situation requiring immediate action.”

[16] Clause 12 provides that in deciding whether an emergency situation exists, the Chief Executive must consider whether “the situation was unforeseen, if the situation could have been foreseen or predicted whether the applicant could have been expected to make provision for the need, the extent to which failing to make a grant would worsen the applicant’s position, increase risk to the life or welfare of the applicant or cause serious hardship to the applicant”.

[17] The dictionary definition is reflected in the matters set out in Clause 12.2. For example, an unforeseen situation is an unexpected situation and the extent to which not making a grant would increase or create any risk to the life or welfare of the applicant would constitute a potentially dangerous situation.¹

[18] We accept that the financial circumstances of the appellant are such that it would have been difficult for him to make provision for expensive car repairs or a new car. Moreover, it may cause hardship to the applicant, his wife and the children living in his household if they did not have access to a motor vehicle.

[19] However, we are not satisfied that the appellant’s need was sudden, unexpected or unforeseeable. The potential for an older car to suffer serious mechanical failure is always present. Moreover, the appellant was able to secure the use of a relative’s vehicle, albeit an old and unsatisfactory vehicle, which reduced any risk or hardship to the appellant and his family. We are not satisfied that the appellant’s need for assistance to purchase a car could be considered an emergency situation.

[20] Even if we were satisfied that an emergency situation existed in this case, it is difficult to see how the appellant’s request could be satisfied. As previously outlined, the maximum amount payable must not exceed \$500 unless the Chief Executive is satisfied that exceptional circumstances exist. In the context of the other types of assistance available under the Programme it seems unlikely that it was ever intended to provide for the purchase of a car. A grant \$3,500 in excess of the limit specified in Clause 14.1A would be a highly unusual occurrence. Given the appellant’s ability to obtain the use of another vehicle it could not be said that exceptional circumstances existed.

[21] We are satisfied that it would not have been appropriate to grant non-recoverable assistance of \$3,999 under the Special Needs Grant Programme in this case.

Advance payment of benefit

[22] The alternative for the Chief Executive was to consider whether assistance might be made available by way of an advance of benefit.

[23] Section 82(6) of the Act gives the Chief Executive a discretion to make an advance payment of benefit if he is satisfied that such a payment would best meet the particular immediate needs of the beneficiary for an essential item or service.

¹ See *Foster v Chief Executive of the Ministry of Social Development* HC Auckland CIV-2008-485-2395, 19 March 2009 at [22].

[24] Clause 2 of the Ministerial Direction relating to the advance payment of benefit gives guidance as to how a particular immediate need is to be identified. In particular, it provides that the Chief Executive must have regard to the effect on the beneficiary or any dependent child if the need is not met and the beneficiary's ability to meet the need from their own resources.

[25] The appellant suffers from a condition which seriously affects his mobility. Not having a motor vehicle would also impact on his wife and the children living in his household. In particular, we note the need for the appellant to pick up his wife's 17-year-old son from his work at night and for the appellant's need to get to medical appointments and for shopping. We are in no doubt that the appellant had a particular immediate need for an item that was essential to him at the time of his application.

[26] Clause 3 of the Ministerial Direction then provides guidance in determining whether an advance would best meet the immediate needs of the beneficiary. The Chief Executive is required to have regard to the following matters:

- *What other assistance was available to the appellant to meet the particular need.*

In this regard it is noted that the appellant was able to borrow another vehicle from a family member on a long-term basis, albeit the vehicle may be less than ideal. We also note that funding may be available from the Lotteries Commission to meet the appellant's need. There was no evidence that the appellant had tried this source. Assistance to get to medical appointments may also be available through the District Health Board.

- *The appellant's existing debt level and the likelihood that repayment of the advance would be sustainable.*

The appellant had an existing advance debt of \$4,300 which he was repaying at \$13.50 per week at the time of his application. In addition, he had other debt to the Ministry of over \$3,400 being repaid at \$4 per week. We are not satisfied the appellant could afford a further debt of \$3,999 to purchase a car. If repayments were to be made over the two-year timeframe specified in the Programme, the repayments would be \$38 per week. Alternatively, the Ministry have calculated that repayment of his existing advances at the current rate of \$11.50 per week will take seven years to repay and if a further \$3,999 was advanced it would require a further seven years for the new advance to be repaid. In these circumstances, we have reservations about whether an advance payment of benefit would best meet the particular immediate need of the appellant.

[27] Clause 4 of the Ministerial Direction provides that:

"In no case is the amount of any advance or the total amount of any advance and the amount of all prior advances that have not been repaid to exceed the instalments of the benefit payable to the beneficiary and his or her spouse or partner over a period of six weeks."

[28] At the relevant time a person in the appellant's position was entitled to a maximum of \$1,609 in advances. The appellant already had advances totalling in excess of \$4,300. He had therefore already exceeded his basic advance entitlement. The appellant raised the issue of whether or not his wife might be entitled to a separate advance. In this case the appellant's wife is included in her husband's benefit. She has not been granted a benefit in her own right. The amount of advances the appellant is entitled to is calculated with reference to the married rate of benefit which suggests that it is not intended that his wife have a separate advance entitlement. Even if she had a separate entitlement, repayments would need to come from the joint household income that she and the appellant receive. Given the appellant's outstanding advance balance and other debt, the family income could not support repayment of further advances to the appellant's wife.

[29] Clause 6.2 of the programme provides that if there are exceptional circumstances, an advance may be made in excess of the limit of six weeks' benefit with the requirement that the advance be repaid within 24 months, having regard to the matters set out in Clause 6.3. These are:

- (a) *The beneficiary's ability to repay the advance:*
The appellant would have difficulty repaying an advance.
- (b) *Whether the beneficiary could reasonably have been expected to have made provision for the particular immediate need:*
It would have been difficult for the appellant to make provision for the need.
- (c) *The extent to which not making an advance or an advance in excess of the limit or requiring recovery at the rate set out in Clause 5 would:*
 - (i) *Worsen the beneficiary's position:*
The appellant's financial position would be put under further strain by making an advance.
 - (ii) *Increase or create any risk to the life or welfare of the beneficiary or the beneficiary's spouse, or partner or any dependent child:*
The appellant's ability to seek assistance elsewhere such as obtaining the use of a car from a relative reduces any risk to the appellant and his family.
 - (iii) *Cause serious hardship to the beneficiary or the beneficiary's spouse or partner or any dependent child:*
We are not satisfied that serious hardship to the appellant and his family ensued as a result of the failure to make an advance.
 - (iv) *Any other matters that you consider to be relevant in the circumstances of the particular case.*

[30] The appellant's immediate need was met by being able to borrow a car from a relative. The appellant needs to explore other options which do not involve him borrowing money to secure transport. On this occasion we are not satisfied that these were exceptional circumstances which would have warranted the Chief Executive granting an advance of benefit of \$3,999 when the appellant's advance

balance was already in excess of the permitted limit. We consider the Chief Executive's decision to decline an advance of benefit of \$3,999 was correct.

[31] We do, however, have considerable sympathy for the appellant's circumstances. It is highly desirable that he has a reliable car and it is likely that the vehicle borrowed from his aunt is not a long-term solution. The Lotteries Commission² provides lump sum payments for persons with disabilities to purchase cars. The appellant may well qualify for this assistance. We strongly recommend he apply for a grant.

[32] The appeal is dismissed.

DATED at WELLINGTON this 12th day of May 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member

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² See the website www.communitymatters.govt.nz.