

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 9 February 2015

APPEARANCES

The appellant in person
Ms S Singh 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 to pay her Living Alone Payment.

[2] The issue in this case is whether the van the appellant lives in meets the criteria for the type of residence which would entitle her to receive a Living Alone Payment.

Background

[3] The appellant turned 65 years of age on 18 October 2013. She qualified to be paid New Zealand Superannuation from that date. She is paid at the single sharing rate. She would like to be paid Living Alone Payment.

[4] The appellant lives in a Toyota Hiace van which she has converted into accommodation for herself. The van contains a bed, kitchen facilities in the form of a gas burner for cooking and areas for the storage of food, water storage for the supply of water, provision for the storage of the appellant's clothing and other possessions and a television set. The appellant says that she also has a portable chemical toilet in the van. She uses a small electric heater if she has access to power.

[5] The appellant parks her van primarily at her daughter's house during the week because she cares for her grandson while her daughter is working. At the weekends she generally travels to other locations. While in the past she has also been free to travel during school holidays, over the past year she has been obliged to look after

her grandson over the school holidays. Sometimes her grandson stays with her in the van at the weekend and travels away with her. If she goes away at the weekends she freedom camps or stays at a DOC campsite or sometimes at her brother's property.

[6] When she is at her daughter's house she uses an extension cord to connect her van to the house so that she can use the power and run her TV and light. The appellant said that if she needs a shower she usually uses the showers at the local swimming pool. She agreed that if she was in the house caring for her grandson she would use the bathroom facilities there, but not otherwise. She does not generally cook in her daughter's house or share cooking duties with her daughter. She cooks in her van.

[7] The appellant said that she has been living in her van, on and off, for 14 years now. It is how she enjoys living. She wants to be free to move around and not restricted to living in a particular place.

[8] The position of the Chief Executive is that the appellant is not living alone because she does not live in one of the types of accommodation referred to in s 4A of the New Zealand Superannuation and Retirement Income Act 2001. In making this submission, reference is made to Clause 2 of the Ministerial Direction in relation to Living Alone Payment about what constitutes a house or a flat. The Chief Executive has compared the appellant's accommodation to a granny flat under Clause 2(b) of the Ministerial Direction.

Decision

[9] New Zealand Superannuation is paid at different rates according to whether a person is married, in a *de facto* relationship, single and sharing or single and living alone. We infer that a higher rate is paid to single persons living alone as their costs will usually be higher than a single person sharing accommodation. They must for example meet the costs of their accommodation on their own.

[10] Section 4A of the New Zealand Superannuation and Retirement Income Act 2001 sets out the meaning of "living alone". It provides that a single person is to be regarded as living alone only if they meet two particular conditions. The first is that the person occupies a principle place of residence of a kind described in subsection (6). The second is that the person does not share that residence with any person 18 years or older (with certain exceptions).

[11] Section 4A(6) provides:

"4A Meaning of living alone

...

(6) The place of residence referred to in subsection (2) is—

(a) a house or flat; or

(b) a boat or craft moored within any of the following sea or waters, whether or not it is from time to time travelling within that sea or any of those waters:

(i) the territorial sea of New Zealand or any internal waters of New Zealand; or

- (ii) any waters within New Zealand, being any lake, estuary, lagoon, river, stream, creek, or other waters; or
- (c) a hotel room, motel unit, a room in a boarding house, or a unit of accommodation in a caravan park."

[12] In addition to these specific requirements, a Ministerial Direction issued on 1 July 2006, relating to Living Alone Payment, provides that the Chief Executive should only determine that a principle place of residence occupied by an applicant is a house or a flat in circumstances where:

- "(a) That residence—
 - (i) Is a structure or part of a structure that is permanently affixed to land; and
 - (ii) Contains for the exclusive use of the occupant, adequate and distinct areas—
 - (a) Used for day-to-day living; and
 - (b) Used for sleeping – whether or not in separate rooms;
 - (iii) Contains, for the exclusive use of the occupant—
 - (a) A kitchen or kitchenette with—
 - (i) A sink with a tap connected to an adequate supply of portable water; and
 - (ii) Adequate means of preparing food and cooking food including by boiling or baking; and
 - (iii) Adequate space for the proper storage of food and utensils;
 - (b) A bathroom with a bath or shower and an adequate supply of hot water; and
 - (c) A toilet."

[13] In summary 'Living Alone' is defined in the first instance by reference to the type of residence a person lives in. If the person lives in one of the types of residence specified, the Chief Executive must also be satisfied that the person is not sharing that accommodation with someone over the age of 18 years before Living Alone Payment can be made.

[14] The Chief Executive concluded that, because the van is not permanently affixed to land and apparently does not contain a bath or shower and an adequate supply of hot water it cannot be regarded as a house or a flat. The appellant does not therefore live in one of the types of accommodation specified in s 4A(6) as a requirement to be regarded as living alone.

[15] We accept that the appellant's van is not permanently affixed to the land. It cannot be considered to be akin to a house or flat.

[16] The Authority has also considered whether the appellant's situation fits within s 4A(6)(c) of the definition of the type of residence which a person can live in and be regarded as living alone. Section 4A(6)(c) provides that the appellant can be considered to be living alone if her place of residence is "a unit of accommodation in a caravan park".

[17] What constitutes a caravan park is not defined in the legislation or the Ministerial Direction. The New Zealand Oxford Dictionary defines "Caravan park" in the following way:

"A place where caravans are parked as dwellings, often with special amenities."

[18] The words "*a unit of accommodation in a caravan park*" are wide enough to include a converted van such as the appellant's, a motor home, a cabin, a caravan or a house truck. It is possible that the term 'caravan park' was used instead of camping ground to exclude tents but it is conceivable that there may be tents in caravan parks.

[19] The issue is whether or not the words "a unit of accommodation in a caravan park" are intended to cover any place that a motor home or caravan is parked or whether it means only sites where caravans, campervans or motor homes etc are gathered together. We have also considered whether the provision might be read as simply referring to the type of accommodation akin to that found in a caravan park.

[20] In this day of changing lifestyles it is not uncommon for people to live in motor homes, campervans or house trucks which can in some circumstances be parked in a variety of places, with few or no facilities. Parking a van or motor home or a caravan or a house truck on a farm or in an orchard on a long term basis is not uncommon. The legislation does not appear to exclude the possibility of living alone when some facilities are shared, e.g. boarding houses.

[21] In considering whether or not the appellant's residence, namely her van, "is a unit of accommodation in a caravan park" we note the following:

- (i) The text of s 4A(6)(c) provides "The place of residence is a unit of accommodation in a caravan park." (emphasis added).
- (ii) A literal reading of the text suggests that the residence must be "in" a caravan park. This suggests that the accommodation must be located in a place designated for caravans, campervans and the like.
- (iii) The term "caravan park" is usually understood as meaning an area known or designated as a place where accommodation such as caravans and motor homes can be parked.
- (iv) If the words "a unit of accommodation" are removed we are left with the clear statement that the place of residence must be in a caravan park.
- (v) There is no need to read words into the text to make sense of it.

[22] These factors satisfy us that a campervan which is not parked in a caravan park will not meet the criteria of s 4A(6). In this case the appellant is not parked in a location where other mobile accommodation is parked. It is not therefore necessary to consider whether the caravan park is formal or informal.

[23] We conclude that because the appellant's van is not parked in a caravan park the appellant does not live in one of the types of residence which determines whether or not she qualifies for Living Alone Payment. She is not eligible for Living Alone Payment.

[24] If the appellant's preference is to live in her van then she needs to park it in a caravan park.

[25] We have also considered whether s 4A(6)(c) should be read as providing for accommodation "akin to a unit of accommodation in a caravan park". The words suggest that it is the type of accommodation that s 4A(6)(c) is intending to describe rather than its location.

[26] For the sake of completeness s 4A(1) requires not only consideration of the type of accommodation the appellant lives in, but also consideration of whether the appellant shares her accommodation with anyone over the age of 18 years.

[27] In this case we accept that the appellant lives primarily in her van. We have some reservations about the appellant's evidence around her use of the facilities in her daughter's house and where she takes the van to during the day. In any event the appellant lives in a van on land rented by her daughter. Her daughter occupies the house on the property. The appellant and her daughter are in effect jointly raising the daughter's son, in that the appellant cares for him while his mother is working. The appellant does not contribute towards the rent for the property. Nor is she paid for her childcare work. Her van is connected to the power in the house. She pays the power bill. The appellant admits to some use of the facilities in the house. Arguably in this scenario her accommodation is the combination of the property rented by her daughter and her van and she shares this accommodation with her daughter. In this scenario we have serious reservations about whether it can be said the appellant is living alone however in view of our finding about the type of accommodation she lives in it is not necessary for us to make a final decision about that aspect of this matter.

[28] On the face of it the text of the legislation seems to give rise to a number of anomalies. It is difficult to see why a campervan, motor home or house truck parked other than in a caravan park should be treated differently from a boat. A literal interpretation of s4A and the Ministerial Direction means a hermit living in the bush in a cabin, which does not have running hot and cold water or a shower or bath would not qualify for Living Alone Payment. There have been significant changes in people's permanent accommodation choices in recent years. A purposive approach to the interpretation might suggest that a person living in self-contained mobile accommodation or in mobile accommodation who shares communal facilities in certain situations would meet the criteria of s 4A(6)(c). We recommend that the Chief Executive give further consideration to the legislation as it affects people living in mobile land-based accommodation.

[29] The appeal is dismissed.

DATED at WELLINGTON this 18th day of May 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member

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