

**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

**HEARING** at AUCKLAND on 2015

**APPEARANCES**

The appellant in person  
Mr R Dennett for the Chief Executive of the Ministry of Social Development

**DECISION**

***Introduction***

[1] This appeal concerns the appellant's request that he receive a backdated payment of Sickness Benefit in respect of the period 8 April 2009 to 8 December 2009.

[2] In a decision of 8 April 2013,<sup>1</sup> the Authority referred this matter to the Chief Executive for consideration pursuant to the provisions of Section 80AA of the Social Security Act 1964 (the Act).

[3] Unfortunately it took the Chief Executive 22 months to consider the matter.

[4] The Chief Executive has now determined that there was no erroneous action or inaction on the part of the Ministry which caused the appellant to fail to apply for Sickness Benefit prior to 8 December 2009 and, on that basis, the grant of benefit made to him from 8 December 2009 should not be backdated.

***Background***

[5] The circumstances of this appeal are outlined in our earlier decision, but to recap briefly: The appellant was dismissed from his employment on 7 April 2009. It

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<sup>1</sup> [2013] NZSSAA 30

is apparent that the appellant was in a very distressed frame of mind in the ensuing months. It is possible that he was in contact with the Ministry in March/April 2009 and received some general advice. There is no record of this contact. There is a record of him being in contact with the Ministry on 22 June 2009 and that he attended a 'Work for You' seminar on 29 June 2009. There is no dispute that he did not complete the seminar and did not make a written application for benefit at that stage. He did not make contact with the Ministry again or make a written application for benefit until December 2009. He was granted a Sickness Benefit from 8 December 2009.

[6] The appellant's doctor has confirmed that the appellant would have met the medical criteria for Sickness Benefit from 7 April 2009. He was not in a fit state to work. The doctor says that he himself urged the appellant to apply for a Sickness Benefit.

[7] Both Sickness Benefit and Unemployment Benefit are paid according to whether a person is single or married or living in a *de facto* relationship.

[8] It has now come to light that at the time the appellant was dismissed from his employment in April 2009 and until October/November 2009 he was living in a *de facto* relationship. His partner was in employment in secretarial work, working 30 to 32 hours per week. The appellant thought his partner was earning between \$500 and \$600 per week. His partner's children also lived with them. The significance of this is that the appellant's partner's income needed to be taken into account in assessing his entitlement to a benefit. The gross weekly income cut-out point for a *de facto* couple with or without children as at 1 April 2009 was \$534 per week. On the basis of this information it seems unlikely that the appellant would have qualified for Sickness Benefit on income grounds until he and his partner separated in October/November 2009.

[9] It is possible that the appellant and his partner were eligible for Accommodation Supplement and the appellant may also have been eligible for Disability Allowance. However, the appellant would have been required to make a written application. The family's accommodation costs and the appellant's partner's income would need to have been taken into account in assessing entitlement. If he was given information about these benefits, the appellant may have overlooked the information given, due to his level of stress at the times he had contact with the Ministry. The appellant did not point to any error on the part of the Ministry in relation to this type of assistance at the hearing of this matter.

[10] There appear to have been three primary reasons why the appellant did not apply for Sickness or any other benefit before December 2009. The first reason is that he was in a very distressed and depressed frame of mind. The second is that throughout this period the appellant was convinced that he would get his job back when a claim against his employer went through the Employment Tribunal. The third reason is that the appellant's partner was working and was able to pay the basic household expenses. There was therefore perhaps less pressure on the appellant to seek support from the Ministry. In our view, the appellant's failure to apply for a benefit was for these three reasons and not as a result of any failure on the part of the Ministry.

[11] We are not satisfied that there is any basis on which a backdated payment of Sickness Benefit or Unemployment Benefit can be paid to the appellant in respect of the period 8 April to 8 December 2009.

[12] The appeal is dismissed.

**DATED** at WELLINGTON this 28<sup>th</sup> day of May 2015

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Ms M Wallace  
Chairperson

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Mr K Williams  
Member

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