

**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 12 May 2015

**APPEARANCES**

No appearance by the appellant  
Mr A 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 include car repayments in the assessment of his entitlement to Temporary Additional Support.

[2] The issues in this case are whether the appellant was a beneficiary at the time he purchased the car and whether or not public transport was available to him.

***Background***

[3] The appellant is aged 40 years and lives in a *de facto* relationship.

[4] The appellant was in receipt of Supported Living Payment until 22 December 2013 when it was cancelled, as he was to commence employment that day. He reapplied for Supported Living Payment on 22 January 2014, which was granted from 23 December 2013.

[5] On 29 January 2014 he made an application for Temporary Additional Support. In his application he listed car repayments of \$70 per week as an essential employment cost. He provided a copy of an agreement for sale and purchase in respect of his motor vehicle. This document showed that his vehicle, a 1994 Nissan Pulsar had been purchased on 17 January 2014, a few days prior to his written application for benefit. A decision was made to exclude the car repayments from the assessment of the appellant's entitlement to Temporary Additional Support on the basis that the purchase of the vehicle had occurred while the appellant was receiving a benefit and at the time of the purchase he did not require it for travel to employment. As a result of the car repayments being excluded as allowable costs in assessment of the appellant's entitlement to Temporary Additional Support, it was assessed the appellant did not have any entitlement to that assistance.

[6] 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.

[7] On behalf of the appellant, it is submitted that the Ministry has failed to exercise discretion in reaching its decision. The appellant purchased a vehicle to enable him to secure and maintain employment. The lack of flexibility in getting to and from worksites in a timely manner if he does not have access to a car is an impediment to his employment. It is submitted that the Ministry's actions have hindered or sabotaged the appellant's efforts to obtain employment and its actions are contrary to the objectives of Section 1A of the Social Security Act 1964.

[8] On behalf of the Chief Executive, it is submitted that the car repayments could not be included as an allowable cost in the assessment of Temporary Additional Support by virtue of clause 3(h) of the Social Security (Temporary Additional Support) Regulations 2005. The car was acquired while the appellant was a beneficiary. Moreover, it cannot be said that there was no public transport reasonably available to the appellant.

[9] The appellant originally elected to have his appeal heard on the papers. In the course of considering the case it became apparent to the Authority that it needed to know more about the appellant's reasons for purchasing the vehicle at the time it was purchased, what public transport options might be available to him in his area and what sort of work he was seeking. The appellant was requested to attend a hearing at short notice in March 2014. He agreed by telephone to attend this hearing but did not attend. The matter was adjourned on that occasion. A further Notice of Hearing was sent to the appellant's advocate for a hearing at 3.00 pm on 12 May 2014. When contacted, the appellant's advocate said he had not heard from the appellant for nine months, although we note that the advocate had not notified the Authority that he was no longer acting in the matter and that he had been contacted in relation to the March hearing. An attempt was made to contact the appellant by cellphone. That attempt was not successful. The Authority continued with the hearing in the appellant's absence.

### ***Decision***

[10] Temporary Additional Support is calculated according to a formula contained in the Social Security (Temporary Additional Support) Regulations 2005. In the first instance, the formula requires a person's allowable costs to be ascertained. Schedule 2 of the Regulations defines "allowable costs". Clause 1 of Schedule 2 provides that allowable costs:

"(a) means the regular essential expenses (as defined in clause 2) (if any) of the applicant and his or her family reckoned on a weekly basis; and therefore

(b) does not include an expense that is not an essential expense (as so defined)."

[11] Clause 2 of Schedule 2 defines "essential expenses" as meaning an expense of a kind, and within the relevant limits (if any), specified in clause 3 and that .... in the Chief Executive's opinion:

"(a) is essential for a person to pay or incur in order to meet the daily living needs of the person, or members of the person's family, or both; and

- (b) could not, when the expense or the liability for the expense was incurred, readily be avoided or varied."

[12] Clause 3(h) of Schedule 2 is relevant in this case as it provides for payments made in connection with the acquisition of a motor vehicle to be considered as essential expenses in certain limited circumstances. Payments made in connection with the acquisition of a motor vehicle can be treated as allowable costs where there is no suitable public transport available and the vehicle is essential:

- (A) for the purpose of transporting the applicant or his partner to and from their places of employment; or
- (B) for the purpose of transporting the applicant or a member of his or her family who is chronically ill or has a disability. (Option 1)

Alternatively, in the case of an applicant who is a beneficiary, where:

- (A) There is no public transport reasonably available to the applicant; and
- (B) The contract or arrangement to acquire the vehicle was entered into before the applicant became a beneficiary. (Option 2)

[13] There is no evidence that the car was required to transport the applicant or his partner to and from their places of employment at the time the appellant made his application for Temporary Additional Support. Nor is there a suggestion that the applicant or a member of his family had a disability or was chronically ill and a vehicle was required for transport for that reason.

[14] Option 2 requires that before the appellant's car repayments can be regarded as 'essential expenses' we must be satisfied that the vehicle was acquired before the appellant became a beneficiary and there was no public transport reasonably available to him.

[15] The appellant made formal application for, and was granted, Jobseeker Support on 22 January 2014. The grant of benefit made to him was backdated to 23 December 2013. It is submitted on behalf of the Chief Executive that because of the backdated grant the appellant was in effect a beneficiary as at 17 January 2014 when he purchased his car. We are not satisfied that this is a correct analysis of the situation. We do not know the circumstances around the appellant's decision to purchase a car on 17 January or his decision to defer his formal application for benefit until 22 January 2014. It is conceivable that he had a job in mind when he purchased the car. In any event, we are satisfied that the appellant was not a beneficiary at the time he purchased the vehicle on 17 January 2014. That he later became a beneficiary on that date does not alter the situation. To claim that the appellant was a beneficiary because his benefit had been backdated would be very unfair to a beneficiary who purchased a car at a time that he was not a beneficiary, in expectation of obtaining employment, only to find that the job had fallen through after the purchase of the vehicle.

[16] The issue we must then consider is whether or not there was public transport reasonably available to the appellant. We have not received any direct evidence from the appellant on this point. Rather, his advocate has concentrated on the flexibility a car would give the appellant in searching for work. The submission suggests that the appellant does not apply for work, such as farm work where

accommodation is not provided, in nearby districts not served by public transport. The lack of a vehicle is therefore a limiting factor to his obtaining employment. The Authority considers that this is a matter of evidence which needed to come from the beneficiary, not his advocate. It is also submitted that public transport in Auckland is notoriously unreliable and that it is one thing to travel to work on a public utility when one is already in a secure job and in receipt of a working wage, but it is an entirely different matter when someone is required to come from behind the advantage line after a period of unemployment.

[17] At the hearing of this matter it was submitted on behalf of the Chief Executive that the appellant lives close to the large industrial areas of South Auckland and that public transport is available. Evidence was provided of the cost of a trip to the central city area where the appellant had job prospects in December. The Ministry estimate provided at the hearing was that the cost of a trip from the appellant's home to Auckland central by public transport would be approximately \$21 per day. This cost could be reduced by the purchase of a monthly pass or a Hop Card. The cost of travel to the city by private vehicle including parking would be at least \$24 a day. The Ministry assess that the time taken for travel from the appellant's residence into the centre of Auckland by either public transport or by private vehicle would be similar, despite the appellant having to change from a bus to a train. This is of course travel to the central city as opposed to other areas where the appellant might obtain employment.

[18] On the basis of the evidence available we are not satisfied that there was no public transport reasonably available to the appellant or, we might add, connecting the appellant's home to areas of employment. As a result, the car repayments could not be regarded as an essential expense to be included in the assessment of the appellant's entitlement to Temporary Additional Support.

[19] The appellant's advocate has submitted that the Chief Executive failed to exercise discretion to include the vehicle costs in the assessment of Temporary Additional Support or in granting Temporary Additional Support. The issue of what costs are to be included in the assessment of Temporary Additional Support are highly prescriptive and there is no general discretion to include a cost if it does not satisfy the criteria laid down in the Regulations.

[20] 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