

**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 10 June 2015

**APPEARANCES**

The appellant in person  
Ms J Hume 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 his daughter as a dependent child in the benefits paid to him in respect of the period August 2008 to 8 November 2010 and in the period 2 November 2011 to 28 November 2011.

[2] The appellant's daughter was not included in his benefit in these periods because she was included in her mother's benefits and the operation of s 70B of the Social Security Act 1964 meant that the child could only be included in the benefit of one parent.

[3] The issues in this case are:

- (i) Whether or not the Ministry properly investigated the mother's entitlement to receipt of a benefit at the relevant times, on the basis that the appellant alleges she was living in a *de facto* relationship and should not therefore have been receiving a benefit.
- (ii) Whether or not the Ministry could have paid a benefit to the mother taking into account only her son from a previous relationship, and could have paid the full rate of benefit to the appellant taking into account their daughter.

***Background***

[4] The appellant's daughter **XXXX** was born on 6 September 2007. The Authority has previously dealt with an appeal by the appellant regarding the Chief Executive's refusal to pay a benefit to the appellant which includes **XXXX**. In that decision, the Authority concluded that pursuant to the provisions of s 70B of the Social Security Act 1964, **XXXX**'s mother, Ms **XXXX** was the person entitled to have **XXXX** taken into account in assessing entitlement to benefit. As a result, the appellant could not be paid a benefit at the sole parent rate.<sup>1</sup>

[5] The appellant now seeks to further challenge Ms **XXXX**'s entitlement to benefit by alleging that Ms **XXXX** was in a *de facto* relationship at the time she was receiving Domestic Purposes Benefit. He claims she therefore had no entitlement to benefit and on that basis he was entitled to be granted a benefit that included **XXXX**.

### **Decision**

[6] We note at the outset that simply being in a *de facto* relationship would not necessarily have meant that Ms **XXXX** had no benefit entitlement. She would not have been entitled to Domestic Purposes Benefit but it would be necessary to know whether her partner was working and her partner's income before any final decision could be made on her entitlement to other benefits. Even if Ms **XXXX** had a partner who was working, the couple may have been entitled to Accommodation Supplement, in which case **XXXX** would have been taken into account in assessing their entitlement to Accommodation Supplement and the appellant would have been precluded from obtaining a benefit which included **XXXX**.

[7] We have, however, considered whether or not the Ministry investigated the appellant's allegations that Ms **XXXX** was living in a *de facto* relationship during periods when the appellant could have been receiving a benefit which included Paigé, and whether the investigation produced any evidence which ought to have led the Chief Executive to cancel Ms **XXXX**'s entitlement to benefit.

[8] The starting point is to consider what constitutes a *de facto* relationship. Before a relationship can be regarded by the Chief Executive as a *de facto* relationship, he must be satisfied that there is a relationship in the nature of marriage.<sup>2</sup> The courts have found that emotional commitment and financial interdependence will usually exist between a couple before it can be said that their relationship is one in the nature of marriage.<sup>3</sup> A boyfriend/girlfriend type relationship will not constitute a *de facto* relationship. Even co-habitation by a boyfriend and girlfriend in the same household for a short period, particularly in the absence of financial interdependence, will not necessarily constitute a *de facto* relationship.

[9] The appellant, at various times, supplied the Ministry with the names of three different men he alleged were in relationships with Ms **XXXX**. The s 12K report indicates that the appellant's allegations were investigated. Both Ms **XXXX** and

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<sup>1</sup> [2010] NZSSAA 70.

<sup>2</sup> See s 29A of the Interpretation Act 1999.

<sup>3</sup> *Ruka v Department of Social Welfare* [1997] 1NZLR 154..

the appellant were interviewed, as were two of the three men named. Ms XXXX's landlord was also interviewed and checks were made with Veda Advantage.

[10] The first allegation related to XXXX. He is the father of Ms XXXX's eldest child, XXXX, born in May 2002. Mr XXXX and the appellant have apparently been separated for many years but Ms XXXX agreed that there was a short attempt at reconciliation which had ended by March 2008 at the latest. The appellant did not apply for Domestic Purposes Benefit until August 2008. His application was therefore unaffected by any relationship Mr XXXX had with Ms XXXX prior to August 2008. We have serious reservations as to whether or not the attempted reconciliation could have been regarded as a *de facto* relationship in any event. The appellant makes much of the fact that a Plunkett record lists Mr XXXX as the father of XXXX. An explanation of this from Child, Youth and Family suggests that it may have been that the Plunkett nurse made an assumption based on the fact that Mr XXXX was the father of Ms XXXX's eldest child. It is also possible that the Plunkett nurse noted Mr XXXX as the father if he was in fact present for a short period around the time of XXXX's birth or subsequently. This information does not demonstrate that Mr XXXX was living in a *de facto* relationship with Ms XXXX at the time that the appellant sought Domestic Purposes Benefit in August 2008. There is simply no evidence which would substantiate the appellant's claim that Ms XXXX was in a *de facto* relationship with XXXX as at August 2008 or subsequently.

[11] The appellant's second allegation was that Ms XXXX was in a *de facto* relationship with someone called XXXX. This person was later identified by Ms XXXX to be XXXX. Ms XXXX appears to have agreed that Mr XXXX was a good friend but says that he did not live with her. Ms XXXX's landlord (who lives next door to Ms XXXX) says that a person known as XXXX did not live at Ms XXXX's address. The appellant alleges that Mr XXXX had a dog registered in his name at Ms XXXX's address. We do not have written evidence of this, and in any event, this information would fall well short of demonstrating that Ms XXXX and Mr XXXX were in a *de facto* relationship. There is no evidence of financial interdependence between Ms XXXX and Mr XXXX. Credit checks suggest that Mr XXXX and Ms XXXX have never had the same address. The Ministry had every justification for concluding that Mr XXXX and Ms XXXX were not in a *de facto* relationship at a time when the appellant's entitlement to benefit was determined.

[12] The third allegation made by the appellant is that Ms XXXX was in a relationship with Mr XXXX from sometime in 2011. Ms XXXX says that she started seeing Mr XXXX in May 2011 and commenced a girlfriend/boyfriend type relationship with him at that time. Mr XXXX moved into her home at the end of November 2011. At that point, Ms XXXX advised of Mr XXXX's presence in her home and cancelled her Domestic Purposes Benefit. The Ministry did not uncover any evidence, including evidence from the landlord, that Mr XXXX lived in Ms XXXX's home prior to November 2011 and there is no evidence of financial interdependence. The Ministry investigated the appellant's claim and concluded that Ms XXXX was not living in a *de facto* relationship with Mr XXXX at a time which impacted on the appellant's entitlement to receive a benefit which included his daughter.

[13] The Ministry's investigation of the appellant's various allegations was more than adequate. The conclusion that Ms XXXX was not in a *de facto* relationship during the particular periods was justified. It appears that the appellant's situation was not affected by Ms XXXX's relationship with Mr XXXX prior to August 2008. Neither was his situation affected by any alleged relationship with Mr XXXX prior to 2 November 2011, as he was paid a benefit which included his daughter in the period 6 May 2011 to 2 October 2011. Furthermore, he was not in receipt of benefit in the periods 8 November 2010 to 5 May 2011 and 3 October 2011 to 1 November 2011.

[14] In our view, this appeal has come about as a result of the appellant's misunderstanding of what constitutes a *de facto* relationship. On the basis of the evidence available we are not satisfied that payment of benefits to Ms XXXX during the periods concerned was incorrect.

[15] The appellant has also raised the issue of whether or not Ms XXXX could have been paid a Domestic Purposes Benefit on the basis of her care for her older child, leaving the appellant to be paid a benefit on the basis of his care of XXXX. That is an issue that was dealt with by the Authority at paragraphs [43] and [44] of its decision of 22 December 2010. Although Ms XXXX was not dependent on having care of XXXX to receive a Domestic Purposes Benefit, XXXX was taken into account in assessing her entitlement to Accommodation Supplement and Temporary Additional Support. Section 70B of the Act provides that only one parent may have a child taken into account in assessing that parent's entitlement to a benefit and the rate of benefit payable at any one time.<sup>4</sup> Put another way, if the parent entitled to have the child included in their benefit pursuant to s 70B receives any type of benefit – whether it be supplementary assistance such as Accommodation Supplement or a parent benefit such as Domestic Purposes Benefit – the child cannot be included in the other parent's benefit.

[16] Taking into account our earlier decision and our findings above, we are not satisfied that there was any basis on which the Chief Executive ought to have paid a benefit to the appellant which included his daughter in the period August 2008 to 7 November 2010 or in the period 2 November 2011 to 27 November 2011.

### Costs

[17] The Authority has power to award costs against an appellant where an appeal is "frivolous or vexatious or one that ought not to have been brought". In our view this was an appeal which ought not to have been brought. It has no doubt caused distress to Ms XXXX and has put the Ministry of Social Development to unnecessary time and trouble. We are particularly concerned that the appellant may have used the appeal to harass Ms XXXX. The notice of appeal itself and some of the communications received from the appellant have been extremely difficult to understand. On this occasion, we will not award costs against the appellant but warn him that an order for costs may be made against him if any further appeal seeking to have his daughter included in his benefit in relation to the period August 2008 to November 2011 is brought.

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<sup>4</sup> See *Wolfaardt v Chief Executive of the Ministry of Social Development* [2009] NZFLR 793..

[18] The appeal is dismissed.

[19] We direct that Ms **XXXX** be provided with a copy of this decision.

**DATED** at WELLINGTON this 1<sup>st</sup> day of July 2015

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Ms M Wallace  
Chairperson

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Mr K Williams  
Member

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Lady Tureiti Moxon  
Member

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