

[2015] NZSSAA 024

Reference No. SSA 144/14

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 AUCKLAND on 10 March 2015

APPEARANCES

The appellant in person
Mr B Moodley for the Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The appellant appeals against a decision of the Chief Executive varied by a Benefits Review Committee reducing the amount for additional power included in the assessment of her disability costs.

Background

[2] The appellant is aged 68 years. She is in receipt of New Zealand Superannuation. In addition she receives Accommodation Supplement, Disability Allowance and Temporary Additional Support.

[3] The appellant suffers from Osteoarthritis and Chronic Bronchitis.

[4] When the appellant reapplied for Temporary Additional Support in November 2013, the Ministry reassessed her disability costs for inclusion as allowable costs in its assessment of her entitlement. It determined that the appellant did not have any additional power costs and declined to include an allowance for this item. This resulted in a reduction of the Temporary Additional Support payable to the appellant. The Ministry had previously allowed \$5 per week for extra power in the assessment of the appellant's disability costs.

[5] The appellant disagreed with this decision. She sought a review of decision. The matter was reviewed internally and by a Benefits Review Committee. The Benefits Review Committee varied the decision of the Chief Executive and allowed

an amount of \$0.96 per week for the cost of running a clothes dryer as additional power costs. The appellant then appealed to this Authority.

[6] In making its original assessment, the Ministry says that it relied on the Consumer Powerswitch website¹. The s 12K report states that according to the Consumer Powerswitch website, a person in a one- to two-person household on the 'Anytime with Economy (Low User) Plan' would have an estimated annual cost of power of \$1,827. This figure was based on the household having all electric heating and at least one person home during the day. The figure also allowed for a 10% prompt payment discount. A copy of the webpage from the Powerswitch website used by the Ministry has not been made available to the Authority.

[7] The writer of the Ministry's s 12K report acknowledges that in fact the appellant's power costs was originally calculated incorrectly. Her actual power costs in the year to 30 July 2013 were \$1,845.38 per annum. This exceeds the Powerswitch estimate of \$1,827 by \$18.38 per annum or \$0.35 per week. In effect the Ministry acknowledge, that the original assessment was incorrect.

[8] When the matter was considered by the Benefits Review Committee, it made an allowance of \$0.96 per week for the running a a clothes dryer. Precisely where this amount was obtained from is not clear. It appears it may be incorrect.

[9] The appellant explained that because of her health conditions she has reduced mobility and therefore leads a more sedentary lifestyle. As a result, she needs extra heating. The appellant said that her main source of heating is a heat pump and plug-in electric heaters. She primarily uses her heat pump in the evenings in winter switching it on between 5.00 pm and 7.00 pm and leaving it on until 11.00 pm - 12.00 am. She would only occasionally use it during the day. She uses "spot heating" such as an oil-filled heater during the day. In addition, the appellant uses a clothes dryer because she cannot hang out washing on the clothesline. She did, however, note that at the time of the hearing she had home help and her helper is able to hang out her washing for her.

[10] The appellant noted that she saves power by using a bench top oven and a microwave for cooking and ensuring that she does not fill the jug beyond what she needs. In addition, it is her usual practice to turn her water heater off during the day. Her water heater is turned on for approximately two hours a day. The appellant says that she believes the estimated annual usage for a person in her situation is 2,966 kilowatts per annum. She says her actual annual usage in the period 1 August 2012 to 16 August 2013 was 4,803 kilowatts and in the period 26 February 2013 to 24 February 2014 it was 4,670 kilowatt hours. The appellant's advice about these amounts is a handwritten note. Verification or independent evidence of her kilowatt hours used has not been provided. Nor are we clear about how she obtained the figure of 2,966 kilowatt hours for a person in her situation. She has provided three pages of information about estimated costs for other power companies but these do not relate to Contact Energy (her power provider) or set out precisely what factors went into obtaining the figures concerned.

¹ www.consumerpowerswitch.org.nz.

Decision

[11] The Social Welfare (Temporary Additional Support) Regulations 2005 provide that disability costs can be included as allowable costs in the assessment of Temporary Additional Support. Disability costs are defined as being “expenses of a kind for which a Disability Allowance under s 69C of the Act would be payable”.

[12] For Disability Allowance to be paid under s 69C, the person must have additional expenses of an ongoing kind arising from their disability.

[13] We accept that the appellant is a person who may need additional power because of her disabilities. The issue, therefore, is how her additional need for power should be measured. Assessing the amount of any additional power costs a person might have is not a simple matter. Any assessment can only be a best estimate in most cases.

[14] There appear to be three mechanisms used to estimate additional electricity costs:

- (i) Using the Consumer Powerswitch website the Ministry look at the average cost for similarly sized households using similar appliances and heating, and compare the costs shown on the website with the beneficiary’s actual power costs. This was the mechanism used in this case.
- (ii) The second mechanism is to enquire about what specific appliances the beneficiary uses and consider how that use might be over and above what a person without the particular disability might consume.
- (iii) From time-to-time in the past the Ministry have simply agreed that a lump sum per week should be allowed to cover a beneficiary’s additional power costs.

[15] Each of these mechanisms has problems associated with it.

Consumer Powerswitch website

[16] The appellant points to a number of difficulties in using the Consumer Powerswitch website to judge whether or not a beneficiary has additional power costs which are outlined as follows:

- (i) The Consumer Powerswitch website estimate used in this case applied to a one- or two-person household. The appellant says that a one-person household will simply not have the same power costs as a two-person household. In fact, since the assessment was first made in her case, the website has begun suggesting that a 10% discount on its estimate figure be made to give a more accurate figure for a one-person household. We accept the point made by the appellant and agree that a 10% reduction in the website figure before making the comparison with a person’s usage may assist in overcoming this particular issue.
- (ii) The appellant says that rather than use cost to compare usage, the Ministry should compare kilowatt hours used. This is because a consumer may be able to obtain a “deal” or a discount. We accept that a beneficiary

might not be able to take advantage of the prompt payment discount factored into the Consumer Powerswitch website figure or be able to utilise a discount attached to the method of payment. There is merit in the appellant's suggestion. At some point, of course, the amount involved would need to be turned into dollars and cents. There would be practical difficulties in doing this. Using the kilowatt figure to obtain a percentage difference between the beneficiary's use and average use for a similar household could be useful.

- (iii) The appellant says that she is particularly economical in her power use in that she turns her hot water off for most of the day to save on the cost. The Authority questioned the appellant as to whether or not there was a cost saving involved. The appellant confirmed that she believed she pays more when she leaves her hot water heating on all the time. We accept that using the Powerswitch website apparently does not take into account the fact that a beneficiary might make savings in some areas of power use but not be able to make savings in relation to other areas such as heating because of their disability.

[17] In this particular case, while the Ministry state that they used an amount calculated by Powerswitch of \$1,827 to make their assessment in the appellant's case, they are not able to provide the "screenshot" or a printout which gave this figure. We are unable to determine precisely what was included and excluded in this estimate to assess how accurate it might be. However, if the Powerswitch estimate was reduced by 10% as suggested, the estimate would be \$1,645. The appellant's costs of \$1,845 exceed this amount by \$200. It might be appropriate to reduce the estimate by a further 5% for the factors referred to in paras [16] (ii) and (iii). Reduction of the Powerswitch figure by 15% would result in a \$249 reduction of the estimate to \$1,578. The appellant's costs over and above this figure were \$267.

[18] The difficulty about this approach is that we have reservations as to whether or not the figures the Ministry used to make its assessment in this case are correct because we have not seen the webpage material on which it was based.

Cost of specific appliances

[19] In this particular case the appellant has identified her clothes dryer and heating as being the two items for which she needs to spend more on power than might otherwise be the case. The Benefits Review Committee identified the cost of running the clothes dryer as being \$0.96 per load. Since the hearing the Ministry have increased the amount allowed in the appellant's disability costs to three loads per week at 99 cents per load

[20] The difficulty about assessing the appellant's additional costs in relation to heating is that the appellant did not describe a pattern of using her heating appliances in a way that demonstrated she uses heaters or the heat pump more than a person without her disability.

[21] The list of the appellant's monthly power bills set out in paragraph 2.7 of the s 12K report tends to show that in the summer months she has very modest power costs and that her costs are higher in the winter. On the other hand, the appellant might use her heating more often if she could afford to. We also acknowledge that the impact of turning off her hot water will be reflected in her power bills.

[22] Using the cost of running specific appliances can be a useful tool in assessing additional costs in some circumstances but because of the variables is not practical in this case.

Lump sum

[23] As previously noted in the past the Ministry have on occasions simply agreed that a lump sum of perhaps \$5 or \$10 per week should be allowed to cover a beneficiary's additional heating costs. An alternative to this would be to assess a percentage of their total annual bill taking into account the person's disability.

[24] There will always be variables which are difficult to quantify in assessing additional power costs. The assessment must be both fair to the appellant and administratively practicable. In this case the need to use the clothes dryer is an additional cost only when there is no one to hang out her washing. The appellant has a need for heating and cannot economise on this but she has not described a pattern of use that is out of the ordinary. In this particular case we consider the most appropriate option is to simply set a percentage figure based on the appellant's actual costs, her level of disability and need for additional power. In this case we assess the appellant's additional power costs to be 15% of her total usage. Fifteen percent of \$1,845.38 amounts to \$276.80 per annum. The appellant's additional power costs for the 52 weeks commencing on 8 November 2013 are to be assessed on this basis and included as a disability cost in the assessment of her entitlement to Temporary Additional Support.

[25] We note that the appellant has already been paid some arrears. This amount will need to be deducted from any further arrears due.

[26] The appeal is allowed. Costs are reserved.

DATED at WELLINGTON this day of 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member