

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

DECISION ON THE PAPERS

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee to suspend and then cancel payment of Child Disability Allowance to the appellant from 23 February 2014.

[2] The payment of Child Disability Allowance was discontinued when the appellant failed to return a medical review form.

Background

[3] The appellant's daughter, XXXX, was born on XXXXX. She was diagnosed at birth as suffering from a number of congenital anomalies. Child Disability Allowance was granted to the appellant for XXXX from 23 February 2004. We understand that over the ensuing years XXXX has had a number of operations to correct her condition.

[4] XXXX's entitlement to Child Disability Allowance has been reviewed from time-to-time and medical review forms have been completed. The medical review forms provided in February 2008, 2012 and 2013 were all provided by a paediatric surgeon at Starship Children's Hospital. The review forms included recommendations that XXXX's condition should be reassessed or reviewed at a later date.

[5] The appellant was sent a review form on 31 December 2013 with a request that it be returned by 23 February 2014. A further reminder was sent on 29 January 2014. No response was received from the appellant and the review forms were not returned by 23 February 2014 as requested. The payment of Child Disability Allowance was suspended from 23 February 2014.

[6] The appellant sought a review of decision. She noted in her request for review of decision that she had taken steps to have the medical review form completed by XXXX's medical specialist but the form had not been returned to her. The appellant

submitted that further information should not be requested because a large number of medical review forms completed in the previous 10 years certified that XXXX had a serious disability of a congenital nature and that she needed constant care and attention. The appellant requested that XXXX be exempt from further regular medical reviews.

[7] The Ministry confirmed with the appellant that XXXX was not attending a special school and offered to make contact with the medical specialist directly. The appellant's consent was sought. The appellant declined to allow the Ministry to contact the specialist directly. Child Disability Allowance was subsequently cancelled.

[8] The request for review was referred to a Benefits Review Committee who considered the matter and made a decision on 31 July 2014 confirming the Chief Executive's decision to suspend and cancel payment of Child Disability Allowance to the appellant. The appellant then lodged an appeal with this Authority.

[9] The submission made strongly on behalf of the appellant is that the Ministry's decision has been made on medical grounds and therefore the matter should have been referred to the Medical Appeals Board, rather than a Benefits Review Committee. In support of the proposition that this was a matter which ought to have been referred to the Medical Appeals Board, the appellant submitted that the Ministry made reference to the Ministry's Regional Health Adviser. The Ministry considered the fact that in the 2012 review the doctor noted that the appellant's daughter's condition would settle within a year and the Ministry generally referred to old medical review forms in reaching its decision. The appellant says, therefore, that the decision is one that has been made on medical grounds, and any review or appeal should be referred to the Medical Appeals Board. It is submitted that the Benefits Review Committee acted outside its jurisdiction and the Social Security Appeal Authority should refer the matter to a Medical Appeals Board.

[10] Alternatively, the appellant requests that XXXX be exempt from further medical review and Child Disability Allowance be continued.

Decision

[11] The Chief Executive of the Ministry of Social Development is the person charged with administering the Social Security Act 1964, which provides, amongst other things, for the payment of Child Disability Allowance.

[12] In practice, the Chief Executive delegates the power to make decisions about individual benefits to Ministry staff.

[13] Section 81(1) of the Act provides for the Chief Executive to review any benefit from time-to-time in order to ascertain:

- (a) whether the beneficiary remains entitled to receive it; or
- (b) whether the beneficiary may not be, or may not have been, entitled to receive that benefit ...

[14] Section 81(1) goes on to provide that, for the purpose of receiving benefit entitlement, the Chief Executive may require the beneficiary to provide any

information orally or in writing or in a manner specified by the Chief Executive. It also provides that if the beneficiary fails to provide any information requested within a reasonable period specified by the Chief Executive, he may suspend or terminate the benefit.

[15] In addition, s 12(1A) of the Act charges the Chief Executive with investigating the circumstances of any person who has been in receipt of a benefit during the period that the benefit was paid.

[16] These provisions relating to the review and investigation of entitlement to benefit are matters relating to the proper administration of the Act.

[17] In this particular instance, the Chief Executive has requested the appellant to provide an updated medical review form in relation to her daughter. This request for information has been made as a result of the Chief Executive's decision to review the appellant's benefit pursuant to s 81(1).

[18] The decision to request an update on the child's condition has been informed in part by a form completed by the paediatric surgeon on 11 January 2013. Question 7 of that form asks the medical practitioner to indicate when a child or young person's disability should be reassessed for entitlement to Child Disability Allowance. The surgeon has indicated that XXXX should be reassessed in one year. Given this advice, it was not unreasonable that the Chief Executive or his delegate took steps to ensure that XXXX continued to meet the criteria for entitlement to Child Disability Allowance in February 2014.

[19] In this day and age, medical science has made many advances, and a child who may have had a severe disability at an early age may, after medical treatment, no longer meet the criteria for Child Disability Allowance.

[20] The decision to request the appellant to provide information from XXXX's doctor, to enable a decision to be made regarding ongoing entitlement to Child Disability Allowance is not a decision about the medical condition of the child. It is simply an administrative decision related to the proper administration of the Act.

[21] The Medical Appeals Board has a specific jurisdiction relating to Child Disability Allowance. Section 10B(1)(a) of the Act provides that where a Child Disability Allowance is declined or is cancelled because it has been found that the child is not a child with a serious disability, an appeal may be made to the Medical Appeals Board.

[22] No decision was made in this case as to whether or not XXXX is a child with a serious disability, before Child Disability Allowance was suspended and subsequently cancelled. Neither the Chief Executive, the Benefits Review Committee or this Authority had sufficient information on which to make such a decision. Child Disability Allowance has been suspended and then cancelled pursuant to the provisions of s 81(1) in this case simply because the appellant has failed to provide the information requested by the Chief Executive. Because the requested information was not provided, neither the Chief Executive nor this Authority can be satisfied that the appellant's child has ongoing eligibility for Child Disability Allowance.

[23] We further note that not only has the appellant failed to provide a medical review form from the child's specialist as in the past, but the appellant (both before this Authority and the Benefits Review Committee) has elected to have the matter dealt with on the papers and has provided no information about the child's condition, such as why the child still needs substantial care and attention beyond the norm or why her disability should still be regarded as serious.

[24] The matter of reinstatement of Child Disability Allowance is a matter that could be easily resolved by the appellant obtaining completion of the medical review form by a doctor involved in XXXX's treatment or a fuller medical report. This has not occurred.

[25] In our view, particularly given the recommendation of the paediatric surgeon in 2013 that XXXX's situation be reviewed in 12 months' time, it was entirely appropriate for the Chief Executive to suspend, then cancel, the payment of Child Disability Allowance to the appellant when the relevant medical review form requested was not returned completed.

[26] The appeal is dismissed.

DATED at WELLINGTON this 13th day of August 2015

Ms M Wallace
Chairperson

Mr K Williams
Member