

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 14 April 2015

APPEARANCES

Mr G Howell – Advocate for the appellant
Mr R Signal 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 pay the appellant Temporary Additional Support.

[2] The issue in this case is whether the appellant's cash assets disqualify the appellant from entitlement to Temporary Additional Support.

Background

[3] The appellant is aged 44 years. He is separated. He has no dependent children. The appellant suffers from depression. He has also in the past suffered a back injury.

[4] He receives Jobseeker Support and the maximum rate of Disability Allowance. He has a small business from which he earns additional income. Income from his business is charged against his benefit entitlement.

[5] The issue initially raised by the appellant in this appeal arises because the appellant has disability costs in excess of the maximum rate prescribed by the Social

Security Act 1964. These additional costs can be considered to be allowable costs in the assessment of entitlement to Temporary Additional Support.

[6] The appellant made application for Temporary Additional Support on 14 February 2014. His application was declined on the basis that the assessment showed no deficiency of income and that in any event the level of the appellant's realisable assets disqualify him from entitlement to Temporary Additional Support.

[7] The appellant sought a review of decision focussing primarily on the non inclusion of certain transport costs as disability costs in the decision to decline his application for Temporary Additional Support. A full review of his disability costs has now been carried out. In respect of the period 14 May 2013 to 8 February 2015 arrears of Disability Allowance have been paid to the appellant and we understand he accepts the amount of disability costs included in the review.

[8] As a result of the review of his disability costs the only issue to be considered by the Authority is whether the appellant is entitled to Temporary Additional Support and in particular whether or not his cash assets disqualify him from entitlement.

[9] The appellant is the shareholder and director in a small company, **XXXX** Limited, which supplies firewood, mowing lawns and doing landscaping work. The company has a variety of assets related to its business. In addition the company owns two vehicles which the appellant had intended to hire out. He says it has not done so to date. The company also owns a variety of other vehicles in addition to equipment such as a chainsaw, water blaster, weed eater and lawnmowers. As at 31 March 2013 the company's accounts record the cost price of this equipment to be \$38,486. The book value as at 31 March 2012 was said to be \$25,938. These figures are of course of limited assistance in determining the actual value of the equipment owned.

[10] The Social Security (Temporary Additional Support) Regulations 2005 provide that a person is not eligible for Temporary Additional Support if their cash assets exceed the amount prescribed in Schedule 31 of the Act. In the case of a single person prior to 1 April 2014 the amount was \$1,031.36. The amount was increased from 1 April 2014 to \$1,045.59.

[11] Regulation 8 of the Social Security (Temporary Additional Support) Regulations 2005 defines "cash assets" in the following way:

"8 Cash assets defined

(1) For the purposes of these regulations and of section 61G of the Act, **cash assets**, in relation to a person, means—

- (a) the person's cash; and
- (b) the other assets of the person that can be converted readily into cash.

(2) In particular, cash assets includes all of the following:

- (a) shares, stocks, debentures, bonus bonds, and other bonds; and
- (b) bank accounts, including fixed and term deposits with any bank, friendly society, credit union, or building society; and

- (c) money invested with or lent to any bank or other financial institution or other person, whether on mortgage or other security or unsecured; and
 - (d) the net equity held in property or land not used as the person's home; and
 - (e) building society shares; and
 - (f) bills of exchange or promissory notes; and
 - (g) the person's share in any partnership.
- (3) However, "cash assets" does not include any of the following:
- (a) if the person is single, the motor vehicle or other vehicle required by the person for his or her personal use; or
 - (b) if the person is married or in a civil union, the motor vehicles or other vehicles (not exceeding 2 in total) required by the person and his or her spouse or partner for their personal use; or
 - (c) a caravan, boat, or other vehicle—
 - (i) in which the net equity is less than \$2,000; or
 - (ii) used by the person or a member of his or her family for day-to-day accommodation; or
 - (d) the personal effects of the person; or

[12] It is important to note that to be a cash asset the asset must be capable of being readily converted into cash.

[13] There are two ways of looking at the appellant's business assets. The first is that arguably the value of his shares in his company meet the definition of "cash assets" in Regulation 8(2)(a). The alternative is to consider that s 74(1)(d) of the Social Security Act 1964 applies in this case. Section 74(1)(d) gives the Chief Executive a discretion to decline a benefit where a person has directly or indirectly deprived themselves of any income or asset. All that is required for deprivation to occur is a deliberate act on the part of the person. An example of deprivation may occur where a person decides to conduct a business through a company rather than in their personal name. In practical terms in this case we conclude that in conducting his business through the auspices of a company and purchasing vehicles and equipment in the name of the company, the appellant has deprived himself of assets. In that circumstance the discretion contained in s 74(1)(d) allows the Authority to consider the appellant's circumstances as though the deprivation had not taken place.

[14] Shares in the appellant's company operating a small business may be realisable but for present purposes we consider that s 74(1)(d) applies in this case. The assets in the company should be treated as being the appellant's assets for the purpose of assessing benefit entitlement. We consider that the vehicles and equipment owned by the appellant's company are items that can be readily converted into cash, although their value might not be high.

[15] At the hearing of this matter the main focus was on the issue of what the value of the business assets might be. There was a great deal of discussion as to how the appellant could get the equipment valued. The matter was adjourned so that he could obtain a valuation of the assets and provide accounts for the year ending 31 March 2014.

[16] The appellant has now provided accounts for the year ending 31 March 2014, although these accounts lack a balance sheet. He has also provided an email detailing information he has been given by a Mr XXXX from XXXX Autoparts. The information available seems to suggest that Mr XXXX would pay a total of approximately \$1,600 for twelve vehicles apparently owned by the company. Alternatively the appellant suggests he might receive a lower amount if the vehicles were sold on Trade Me.

[17] These are somewhat surprising estimates given the purchase price of the vehicles and the depreciated value, but in any event this information has not been provided in a form that demonstrates its independence. For example Mr XXXX has not provided a written valuation of the assets.

[18] That the estimate provided is unreliable is highlighted by the fact that the 2014 accounts show that the company had purchased a Bedford furniture trailer for \$2,800 and a Ford truck for \$3,000 in the preceding 12 months. Although these were apparently modest vehicles it is perhaps surprising that they would have reduced in value to the amounts of \$30 and \$450 apparently given to them by Mr XXXX in May 2015.

[19] Moreover as Mr Signal points out it is difficult to reconcile an increase in insurance premiums to \$2,226 for assets that apparently only have a scrap value. It is equally difficult to reconcile the picture of a healthy part-time small business with a turnover of approximately \$25,000 per annum operating with equipment suitable only for scrap. Mr Signal also points to the substantial amount spent on repairs and maintenance suggesting the equipment used to operate the business is well maintained rather than scrap value only.

[20] The cash asset limit for Temporary Additional Support is very low. Temporary Additional Support is intended as hardship assistance for persons having difficulty in making ends meet. It is for the appellant to persuade the Authority with evidence of some probative value that his cash assets are less than the amount specified in the Regulations. Independent evidence of the value can be provided in a variety of ways as discussed with the appellant at the hearing.

[21] The Regulations do provide that one vehicle for the beneficiary's personal use can be excluded from the assessment. If the Ford Truck valued at \$450 is excluded it would seem that even on the basis of Mr XXXX's reported assessment the appellant's cash assets represented by the vehicles alone exceeded the limit of \$1,031.36 at the time of the original decision.

[22] We are not satisfied on the basis of the information available that the appellant was entitled to Temporary Additional Support at the time of his application.

[23] The appeal is dismissed.

DATED at WELLINGTON this 26th day of August 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member

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