

[2015] NZSSAA 089

Reference No. SSA 081/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of Hamilton
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 13 October 2015

APPEARANCES

The appellant in person
Ms P Siueva for 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 to:

- (a) charge an annuity payment of \$11,516.91 as income against the appellant's entitlement to benefit.

Background

[2] The appellant is a teacher of English as a second language. He moved from Christchurch to Ngaruawahia early in 2013, primarily as a result of the Christchurch earthquakes in 2011. His job prospects in Christchurch were poor.

[3] Prior to applying for benefit, the appellant received an annuity of some \$9,241.05 in February 2013 which he used to meet his living costs. The issue of whether or not this money should be charged against the appellant's entitlement to benefit when he applied for a benefit in June 2013 was considered by the Authority¹. The Authority concluded that the annuity received in February 2013 should not have been charged against the appellant's entitlement to benefit when he began receiving benefit in June 2013. The reason for this was that the appellant was entitled to use this money to meet his living costs before he applied for benefit.

[4] Following delivery of its decision in September 2014, the Authority understands that the appellant received reimbursement for the benefit wrongly deducted for the period from August 2013 to 12 February 2014. However, as a result of ascertaining the appellant had received an annuity payment of \$11,516.91 in February 2014, commencing with a payment due on 30 October 2014, his benefit payments were charged with a weekly amount, based on the lump sum payment of \$11,516.91. This resulted in his weekly payments being reduced from \$207.21 per week to \$181.31 per week.

[5] The appellant sought a review of the decision to further charge his benefit entitlement.

[6] A further development occurred in February 2015 when the appellant applied for and was granted Supported Living Payment. Payment was backdated to 16 July 2014. As with Jobseeker Support, Supported Living Payment is subject to an income test, but the income test is different.

[7] We understand that the appellant's concern relates to the charging of his annuity against his entitlement to benefit. He is particularly concerned about the period from February 2014 to 16 July 2014, while he remained in receipt of Jobseeker Support. He is concerned about the overall level of benefit payment made to him.

Decision

[8] While the Authority is satisfied that the Chief Executive should not have taken into account the annuity payment received by the appellant in 2013 prior to the appellant applying for benefit, which he had largely spent by the time he applied for benefit, the same considerations do not apply to the annuity received in February 2014.

[9] The Social Security Act 1964 (the Act) defines income in the following way:

¹ [2014] NZSSA 73.

income, in relation to any person,—

- (a) means any money received or the value in money's worth of any interest acquired, before income tax, by the person which is not capital (except as hereinafter set out); and
- (b) includes, whether capital or not and as calculated before the deduction (where applicable) of income tax, any periodical payments made, and the value of any credits or services provided periodically, from any source for income-related purposes and used by the person for income-related purposes;
- (c) except where section 71A(2) applies, includes, whether capital or not and as calculated before the deduction (where applicable) of income tax,—
 - (i) any periodical income-related insurance payments; and
 - (ii) any lump sum income-related insurance payment to the extent of the income lost by the person as a result of, and within a period of 10 weeks from, the occurrence of the contingency in respect of which the payment was made; and
 - (iii) any payment referred to in subparagraph (i) or subparagraph (ii) which the person would have been entitled to receive under an accident insurance contract within the meaning of section 13 of the Accident Insurance Act 1998 but for the existence of a risk sharing agreement referred to in section 185 of that Act (as it read immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000); and

.....

[10] The definition of “*income*” expressly excludes certain payments listed in sub-paragraphs (f)(i) to (xviii) but the appellant did not point to any of these exclusions as applying to his annuity. We do not consider that the payment received by the appellant meets any of the exceptions to the definition of income.

[11] The New Zealand Oxford dictionary defines “*annuity*” in the following way:

1. a yearly grant or allowance.
2. an investment of money entitling the investor to a series of equal annual sums.
3. a sum payable in respect of a particular year.

[12] The payment the appellant receives is from Prudential Annuities Limited. A document at pages 23 and 24 of the Section 12K Report has the heading “Income Choice Annuity”. The document indicates that the appellant receives a lump sum payment on 13 February each year, the amount of which apparently varies from year to year. A document at page 24 of the Section 12K Report states:

“You can see below how your income has been impacted by your new smooth returns.

We’ve split your income between non-protected rights and protected rights to show how your total income has been calculated. A tax deduction certificate is also enclosed.”

[13] We conclude that the payment received by the appellant is a lump sum payment of annual income. It is apparent that it is paid to the appellant for income-related purposes and used by him for income-related purposes. As a result, it must be taken into account in assessing the appellant's entitlement to benefit.

[14] The way in which this income is charged against the appellant's benefit entitlement is not something decided arbitrarily by the Chief Executive.

[15] Section 64(2B) of the Act gives the Chief Executive a discretion to determine the period over which income is to be calculated, as follows:

- (2B) For the purposes of determining a person's weekly income under subsection (2A), the chief executive may determine the period or periods to which any income relates, having regard to—
- (a) the extent to which it was earned in that period or those periods; or
 - (b) the extent to which any other entitlement to it arose in, or in respect of, that period or those periods; or
 - (c) the period or periods for which it was otherwise received, acquired, paid, provided, or supplied.

[16] The annuity paid to the appellant is paid to assist the appellant with his living costs over a 12-month period.

[17] It is therefore reasonable for the Chief Executive to divide the total annual payment by 52 to ascertain the appellant's weekly income.

[18] Section 88L of the Act provides for the payment of Jobseeker Support and s 88M provides that Jobseeker Support is to be paid at the rate specified in Schedule 9 of the Act. In short, payment of Jobseeker Support to someone in the appellant's circumstances is subject to Income Test 3.

[19] Income Test 3 is defined in s 3 of the Act. The definition provides that the applicable rate of benefit must be reduced by \$0.70 cents for every dollar of total income of a beneficiary or his or her spouse or partner, which is more than \$80 a week. We accept that any annuity payment received by the appellant after (as opposed to before) he began receiving a benefit, constitutes income which must be taken into account in assessing his benefit entitlement. Jobseeker Support is a weekly benefit. It was appropriate to ascertain the weekly amount of the appellant's income from the annuity payment of income by dividing the total by 52 and to charge that income against the appellant's entitlement to benefit.

[20] Once the appellant became entitled to Supported Living Payment, from July 2014, a different income test applied. Supported Living Payment is paid in accordance with Schedule 6 of the Act and in the appellant's case is subject to Income Test 1.

[21] Income Test 1 is also defined in s 3. The definition provides that the applicable rate of benefit will be reduced by \$0.30 cents for every dollar of the total income of the beneficiary and his or her spouse or partner which is more than \$100 a week but not more than \$200 a week, and by \$0.70 cents for every \$100 that is income which is more than \$200 a week.

[22] The appellant received arrears of Supported Living Payment from July 2014 onwards. At the request of the Authority, the Ministry have provided details as to how the arrears payment was calculated. A letter dated 21 October 2015 sets out in some detail the way in which the arrears paid to the appellant were calculated, including the way in which the income has been charged. We are satisfied it has been charged in accordance with the more favourable income test rate applicable to Supported Living Payment, and the appellant has received a larger payment as a result.

[23] From the appellant's point of view, by February 2014 he would have been well aware that while he was receiving an income-tested benefit, any income he received would be charged against his benefit entitlement and he would need to conserve his annuity to supplement his weekly income.

[24] The appellant points to the fact that in the Authority's previous decision, the Authority suggested the appellant could not live on the payments he received from the Ministry. At the particular time the Authority was referring to the fact that the appellant had already spent his annuity money prior to applying for benefit. However, once he began receiving a benefit the appellant needed to conserve the annuity received in February 2014 to supplement his weekly benefit payments. The appellant's ability to do this was arguably undermined by the fact that, from June 2013 until he received his annuity payment in February 2014 the appellant's circumstances were particularly difficult due to underpayment by the Ministry. We accept this would have had an impact on his ability to ration his annuity over the period from February 2014 onwards.

[25] When a beneficiary is underpaid for a period, as in this case, the overall impact on their finances will be significant. They may, for example, incur debt and interest associated with that debt. A simple reimbursement of the underpaid amount will not put the beneficiary in the same position as they would have been in had the mistake in failing to make a proper payment not been made.

[26] In recommending to the Chief Executive that an *ex gratia* payment be made to the appellant in our earlier decision, the Authority hoped that some of the effect on the appellant could be ameliorated by such a payment. The Authority was extremely concerned to learn that it took seven months for the Chief Executive to make an *ex gratia* payment to the appellant. We would expect the Chief Executive to consider recommendations from the Authority more promptly.

[27] We are satisfied that the Chief Executive's decision to charge the annuity paid in February 2014 against the appellant's entitlement to benefit was correct.

[28] The appeal is dismissed.

DATED at WELLINGTON this 13th day of November 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member