

[2015] NZSSAA 097

Reference No. SSA 119/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of
Kawerau against a decision of a
Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Ms M Wallace - Chairperson
Mr K Williams - Member

HEARING at AUCKLAND on 30 November 2015

APPEARANCES

The appellant in person
Ms P Siueva 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 to suspend the payment of Supported Living Payment to the appellant for the period 31 May 2015 to 6 June 2015 while the appellant was visiting Australia.

Background

[2] The appellant is in receipt of Supported Living Payment and Disability Allowance. She suffers from a number of conditions including rheumatoid arthritis.

[3] Until her death in November 2014, the appellant was her mother's full-time caregiver for a number of years.

[4] Not long prior to her mother's death, the appellant took her mother to Australia to visit her mother's brother. They left on 4 September 2014 and were due to return three weeks later. Unfortunately, the appellant's mother suffered a stroke and their return to New Zealand was delayed until 24 October 2014. The appellant was absent from New Zealand for 49 days. She continued to receive benefit payments during this period.

[5] On 7 March 2015, the appellant left New Zealand again. On this occasion the reason for her travel was to visit her uncle who was seriously ill. In fact, he died the day after the appellant arrived in Australia. Again, the Chief Executive approved payment of the appellant's benefit continuing during her absence from New Zealand.

[6] On 1 April 2015, the appellant advised that she was intending to visit Australia for a holiday, leaving on 30 May 2015 and returning on 7 June. She requested her benefit payments be continued during her absence from New Zealand. Her request was declined because the appellant had already been paid a benefit while she was overseas for more than 28 days in the previous 52 weeks and her absence was not for one of the permitted reasons set out in reg 5 of the Social Security (Effect of Absence of Beneficiary from New Zealand) Regulations 2013 (the Regulations).

[7] The Chief Executive wrote to the appellant on 8 April 2015. The letter set out in detail the reasons why the Chief Executive was unable to continue paying her benefit while she was overseas. The appellant proceeded with her travel plans and spent a week in Australia during which her benefit payments were suspended.

[8] The appellant sought a review of the decision. The matter was reviewed internally and by a Benefits Review Committee. The Benefits Review Committee upheld the decision of the Chief Executive. The appellant then appealed to this Authority.

[9] The appellant told the Authority that friends in Australia had booked the holiday for her from 31 May 2015 to 6 June 2015 without discussing the matter with her. They paid for the trip. The trip was to express their appreciation for the work that the appellant had done in caring for her mother on a full-time basis over a number of years.

[10] The appellant made two points in relation to her appeal. The first was that in respect of the trip from 4 September 2014 to 24 October 2014 her absence was for longer than anticipated because of her mother having a stroke in Australia. The original intention had been to be away for only 20 days. The appellant felt that the additional time should not count against her in relation to subsequent trips, as it was

obviously appropriate that she remain with her mother and the situation was completely beyond her control. Her second point related to the calculation of the 52-week period.

Decision

[11] Generally speaking, a benefit is not payable while a beneficiary is absent from New Zealand unless the beneficiary is able to bring herself within one of the exceptions contained in the Social Security Act 1964.

[12] Section 77(2) provides that a benefit is payable to a beneficiary in respect of any one or more absences from New Zealand equal to or shorter than four weeks in total in any 52-week period, provided the benefit is not one of the benefits listed in s 77(2A). The appellant was not a work-tested beneficiary. She was not therefore prevented from travelling overseas by s 77(2A). Provided the Chief Executive was satisfied that her absences from New Zealand did not affect her eligibility for the benefit, and in the case of Disability Allowance, provided the appellant had ongoing disability-related costs, the appellant was entitled to continue receiving her benefit payments while she was absent from New Zealand for up to a total of four weeks. She could not be paid for more than four weeks unless she met certain criteria contained in s 77(3AA).

[13] Section 77(3AA) provides an exception to the rule that payment can only be made for four weeks of absence in any 52-week period. This provision gives the Chief Executive a discretion to pay a benefit for more than four weeks in any 52-week period if a qualifying circumstance (as defined in the Regulations) applies.

[14] The Regulations provide that the relevant qualifying circumstances are those circumstances set out in subclauses (2), (3) and (4) of reg 7. Subclause (2) provides that the absence from New Zealand must be solely for one or more reasons permitted by reg 5. Regulation 5 sets out the permitted reasons as follows:

5 Permitted reasons for absence

The permitted reasons for absence for the purposes of regulation 4(a) are 1 or more of the following:

- (a) to attend a job interview or follow up on a job prospect:
- (b) to attend a significant event relating to a family member that a person with the beneficiary's relationship to the family member would reasonably be expected to attend:
- (c) to attend a court case that the beneficiary is required to attend as a party or a witness:

- (d) to receive, in the case of a beneficiary with a disability, vocational training, or disability assistance dog training, that is not available in New Zealand at the time of the absence:
- (e) to compete, in the case of a beneficiary with a disability to whom section 77(3A) of the Act does not apply, in any overseas multinational or international Special Olympic or Paralympic Games competition:
- (f) to provide aid or assistance to a family member immediately following a natural disaster or adverse event.

[15] The appellant was paid for more than four weeks in total in the 52-week period prior to her 31 May departure on the basis that her first two trips to Australia fell within the circumstances provided for under s 77(3AA) of the Act and reg 7 of the regulations.

[16] The legislation does not allow the Chief Executive to take account of the fact that the appellant's first trip to Australia, in the 52-week period, was extended for reasons beyond her control. Once the four-week period has been exceeded, each new departure needs to meet the criteria of reg 7. The starting point in deciding whether a particular trip is one that the Chief Executive can exercise discretion to continue payment of benefit outside the four-week maximum, is whether the trip is a permitted trip under reg 5.

[17] A holiday, no matter how well deserved, does not fall within any of the reasons specified in reg 5. Because the trip starting on 31 May 2015 did not fall within the permitted reasons outlined in reg 5, the Chief Executive was not able to exercise his discretion to continue paying the appellant's benefits during that period of absence.

[18] The second point raised by the appellant related to how the 52-week period is calculated. The appellant said that she had been given varying explanations as to how this period was calculated, including advice that it related to the financial year. The 52-week period was calculated from the day after the appellant was intending to leave New Zealand, by counting back 52 weeks from that date. On behalf of the Chief Executive it is submitted that the 52-week period in this case is from 1 June 2014 to 31 May 2015.

[19] Section 77(3AA) provides that the timeframe in which a benefit can be paid is "4 weeks in total in any 52-week period". The term "any 52-week period" is not defined in the Act. The period is clearly not a calendar year or a financial year. Nor is it a period defined by the time of grant of benefit to the beneficiary. The only way of identifying the 52-week period is by reference to the particular date of departure from New Zealand. It seems reasonable to infer that "any 52-week period" means the 52 weeks immediately prior to the departure which is under consideration. We accept

that the Ministry's approach of considering the date of departure and looking back 52 weeks from the day after departure, to ascertain how many days a beneficiary has been out of New Zealand during that period, is correct.

[20] The appellant referred to the circumstances in which she travelled overseas on the first two occasions, the unexpected nature of the third trip paid for by her friends, and the significant contribution that she made to her mother's care. She pointed out that had she not been available to care for her mother, there may have been a significant cost to the taxpayer. However, these are not matters which can be taken into account. The legislation around absences of more than 28 days in any 52-week period is very prescriptive. At the time of her departure from New Zealand in May 2015, the appellant had already received benefit payments during periods of absence for more than 28 days in the previous 52 weeks. A holiday was not a permitted reason under reg 5 of the Regulations. A benefit, whether it be a Supported Living payment or a Disability Allowance, could not be paid during a further period of absence in the particular circumstances of this case.

[21] We are satisfied that the Chief Executive was correct to suspend payment of the appellant's benefits in the week commencing 31 May 2015.

[22] The appeal is dismissed.

DATED at WELLINGTON this 10th day of December 2015

Ms M Wallace
Chairperson

Mr K Williams
Member