

[2016] NZSSAA 002

Reference No. SSA 098/15 &  
099/15

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX** of Lower  
Hutt 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 10 November 2015

**APPEARANCES**

Mr G Howell for appellant  
Ms S Singh 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 relating to the calculation of and her entitlement to Temporary Additional Support.

[2] The decisions in respect of which these appeals were lodged are:

- (a) decisions made in May 2014, which related to the rate of assessment of Temporary Additional Support payable to the appellant.

- (b) a decision of 30 October 2014 to stop payment of Temporary Additional Support to the appellant.

[3] A review of the appellant's entitlement to Temporary Additional Support has been carried out for the period 5 May to 22 December 2014. As a result of this review, it has been determined that an underpayment of \$180.60 occurred. Arrears have been paid to the appellant.

[4] The particular issues raised on behalf of the appellant are:

- (i) Whether or not Child Disability Allowance should be included in the assessment of Temporary Additional Support.
- (ii) The amount of telephone costs included in the assessment of Temporary Additional Support.
- (iii) Whether the appellant's correct transport costs to and from her employment were included in the assessment of Temporary Additional Support.
- (iv) The failure to pay Disability Allowance for XXXX, one of the appellant's children, and the amount of Disability Allowance paid in respect of the appellant's children.

## **Background**

[5] The appellant receives Sole Parent Support, Accommodation Supplement, Disability Allowance, Child Disability Allowance for two children, and Unsupported Child Benefit for one child.

[6] The appellant has two children in her care, namely her son XXXX aged eight years and her foster daughter XXXX aged six years. Both children have disabilities for which Child Disability Allowance is paid. In addition, both children now receive Disability Allowance.

[7] The appellant is employed three days a week as a Teacher Aide. She says she also works additional days from time-to-time. Because the appellant is not in employment during school holidays her Temporary Additional Support payments fluctuate and she sometimes works extra days.

[8] At the outset, the appellant's advocate noted that there was a significant delay in arranging a Benefits Review Committee hearing in relation to this matter and a

further delay in the Committee delivering its decision. It is indeed difficult to understand what justification there could be for holding a Benefits Review committee hearing in relation to a decision made in May 2014. in January 2015. We draw this matter to the attention of the Chief Executive.

*Inclusion of Child Disability Allowance in assessment of Temporary Additional Support*

[9] The first issue raised on behalf of the appellant relates to the inclusion of Child Disability Allowance as chargeable income in the assessment of Temporary Additional Support. In particular, it is submitted that the Child Disability Allowance paid for the appellant's foster child XXXX should not be included in the assessment of Temporary Additional Support.

[10] The argument advanced on behalf of the appellant is that as Unsupported Child's Benefit is not included in the assessment of Temporary Additional Support and XXXX is not included in the assessment of the appellant's entitlement to Accommodation Supplement, it appears that XXXX should not be considered to be the appellant's dependent child and the Child Disability Allowance paid for her should not therefore be included in the assessment of Temporary Additional Support.

[11] Section 61G of the Social Security Act 1964 provides for the payment of Temporary Additional Support. The actual calculation of Temporary Additional Support is made according to a formula contained in the Social Security (Temporary Additional Support) Regulations 2005. In the first instance the formula requires that the applicant's chargeable income be ascertained. Chargeable income is defined in Schedule 1 of the Regulations. Clause 3(a) of the schedule specifically provides that the rate of any benefit payable to the person under the Act should be included as chargeable income with the exception of Orphan's Benefit, Unsupported Child's Benefit and Childcare Assistance. There is no specific exclusion in relation to Child Disability Allowance. Moreover, Child Disability Allowance is included in the definition of 'benefit' contained in s 3 of the Act.

[12] Section 39E of the Social Security Act 1964 specifically gives the Chief Executive a discretion to pay Child Disability Allowance granted under s 39A to the person who is the principal caregiver in respect of the child. There is no dispute in this case that the appellant is the principal caregiver of XXXX and it is entirely appropriate that Child Disability Allowance be paid to her.

[13] The Child Disability Allowance paid in respect of XXXX falls within the definition of "any benefit payable" to the person (namely the appellant) under the Act. We

further note that clause 3(a) of Schedule 1 of the Regulations relates to payment of the benefit and not entitlement to the benefit.

[14] The rate of Accommodation Supplement payable under s 61EC of the Social Security Act 1964 varies according to whether or not the applicant has one or two dependent children. The definition of "dependent child" specifically provides that for the purposes of Schedule 18 of the Act (which relates to the assessment of Accommodation Supplement rates) a child in respect of whom an Orphan's Benefit or an Unsupported Child's Benefit is being paid is not to be included in the assessment. This exception does not mean that XXXX is not the dependent child of the appellant in other circumstances, simply that she is not to be included as the dependent child of the appellant for calculation of entitlement to Accommodation Supplement. This is possibly because Unsupported Child's Benefit includes a component for accommodation costs.

[15] In short, the exclusion of XXXX as a dependent child in the calculation of entitlement to Accommodation Supplement and the exclusion of Unsupported Child's Benefit in the calculation of Temporary Additional Support are specifically provided for in the legislation. By comparison, there is no such exemption for Child Disability Allowance in the calculation of Temporary Additional Support.

[16] Child Disability Allowance is a benefit payable to the appellant and must therefore be considered to be chargeable income in the assessment of Temporary Additional Support.

[17] Having ascertained the appellant's chargeable income, it then is necessary to ascertain allowable costs.

#### *Telephone*

[18] Since the appeal was first filed, the Ministry have agreed to include telephone costs of \$20 per month or \$4.61 per week as an allowable cost in the assessment of Temporary Additional Support. We understand this cost was first claimed by the appellant on 25 July 2014. The appellant confirmed at the hearing that at the time she made this claim she had only a cellphone. While she has recently acquired a landline, she did not have a landline at the time relevant to this appeal. It appears that the appellant's advocate may have misunderstood the situation. In the circumstances, we accept that the inclusion of the cost of \$20 per month relating to a cellphone was correct.

#### *Travel costs*

[19] The appellant raised the issue of whether or not the correct allowance for travel to and from her employment was included in the assessment of Temporary Additional Support. The Ministry allowed \$39.60 for the appellant's motor vehicle running costs in the assessment of May 2014 and subsequently. Since the hearing the Ministry have advised that based on the route described by the appellant, a return trip each day she goes to work is 30.4 kilometres. If she works three days per week this is 91.2 kilometres per week. At 30 cents per kilometre this amounts of \$36.48 a week. The assessment is based on Wises maps. This is a little less than the amount that was included in the assessment of Temporary Additional Support, but the Ministry have agreed to leave this amount in the assessment until the next review.

[20] The appellant's advocate questioned the accuracy of the distance used and advised the Authority in November 2015 that the appellant would provide the Authority with further information about this. As at 10 February 2016, she had not done so. We are not satisfied that the Ministry's calculation for travel three days a week is incorrect.

[21] Following the hearing the appellant's advocate also submitted that, on occasion, the appellant works more than three days a week. It is submitted that the Ministry must have a record of this as the appellant reported her income. If the appellant wishes to claim mileage costs for more than three days per week then she is the person who has primary knowledge of how many days she has worked and it is for her to quantify her claim. If the appellant provides a record of the additional days worked then the Chief Executive is directed to include an additional amount in the assessment of her mileage.

[22] Subject to this comment, we are not persuaded that any adjustment needs to be made to the amount of travel costs for employment purposes included in the assessment of Temporary Additional Support.

#### *Disability Allowance*

[23] In the course of preparing for this appeal, the disability costs relating to the cost of attending doctors, the hospital and hospital parking in relation to the appellant's children was reassessed. Evidence of such costs was provided to the Ministry in October 2014 but was not actioned. Arrears have now been paid to the appellant. The Ministry have acknowledged fault and apologised to the appellant.

[24] We are concerned at the lengthy delay by the Chief Executive in dealing with this matter. The appellant spoke of the challenges she has to parent two children on her own, maintain employment, and the need to constantly battle Work and Income to receive her correct entitlements. The appellant says that while she enjoys working,

the frustrations associated with the financial side of working and receiving partial benefits makes it very difficult.

[25] Parents working part-time need timely and appropriate support from the Ministry. To pay arrears of Disability Allowance a year after the payment should have been commenced places the appellant in a particularly difficult situation. Reimbursement a lengthy time after the money ought to have been paid does not put the beneficiary in the position they would have been in had the assistance been paid at the correct time. We recommend that the Chief Executive make an *ex gratia* payment to the appellant for the substantial delay in processing the children's Disability Allowance payments.

[26] To the extent that as a result of this appeal adjustments have been made to the Disability Allowance paid for the children and an arrears payment of Temporary Additional Support has been paid, the appeal is allowed.

**DATED** at WELLINGTON this 12<sup>th</sup> day of February 2016

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Ms M Wallace  
Chairperson

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Mr K Williams  
Member

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Lady Tureiti Moxon  
Member