

[2016] NZSSAA 006

Reference No. SSA 112/14

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of Levin
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 June 2015

APPEARANCES

No appearance for the appellant
Ms J Hume 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 grant Child Disability Allowance in respect of XXXX XXXX XXXX from 1 April 2014 rather than 21 April 2013.

[2] That decision was later amended by the Chief Executive and the commencement date for Child Disability Allowance for XXXX was backdated to 25 November 2013.

[3] The issue in this case is whether the Child Disability Allowance should be backdated to 21 April 2013 when XXXX came into the appellant's care.

Background

[4] The appellant's grandchildren XXXX and XXXX came into her care in April 2013.

[5] On 21 April 2013 the appellant was granted Unsupported Child's Benefit in respect of both children. Child Disability Allowance was granted in respect of XXXX from the same date, as his previous caregiver had received this benefit on his behalf.

[6] On 1 April 2014 the appellant made contact with the Ministry to apply for Child Disability Allowance for XXXX. In support of her application she provided a medical certificate dated 1 April 2014 in which XXXX's medical conditions were recorded as Post Traumatic Stress Disorder and bed-wetting. The doctor completing the Disability Certificate, indicating the disabilities were serious, that XXXX needed attention and supervision substantially in excess of that normally required by a child or young person of the same age and sex, and that this level of care and attention would be needed for a period exceeding 12 months.

[7] Child Disability Allowance was granted for XXXX from 1 April 2014. The appellant sought a review of decision requesting that the grant of Child Disability Allowance for XXXX be backdated to 21 April 2013.

[8] The appellant and her husband did not attend the Benefits Review Committee hearing but made a submission pointing out that they took charge of XXXX and XXXX after an instance of inappropriate behaviour from the parents on 21 April 2013. The submission records:

It is well documented with Child, Youth and Family that XXXX and XXXX were subject to domestic violence ..., both parents have a history of alcohol and drug abuse ... domestic violence will also be on record with the local office.

[9] The submission points out that it is highly unlikely that XXXX developed her post-traumatic stress disorder while in the care of the appellant and her husband. At that time, the Benefits Review Committee upheld the decision of the Chief Executive.

[10] The appellant then lodged an appeal with the Authority. The appeal documentation included a medical report from Mid-Central Health completed by a Consultant Paediatrician on 25 November 2013. As a result of the receipt of this report, Child Disability Allowance was backdated to 25 November 2013. The appellant was subsequently invited to provide medical evidence showing that XXXX suffered from the conditions that qualified her for Child Disability Allowance back to 21

April 2013 in the form of a medical report. No separate medical report has been forthcoming.

[11] The appellant was notified of the appeal hearing but did not attend the hearing and did not communicate with the Authority.

[12] On behalf of the Chief Executive it is submitted that s 11D(1) and (2) of the Act provide that an applicant shall not be granted a benefit unless the department has received supporting evidence reasonably required by the Chief Executive. In the case of Child Disability Allowance this means an application and a medical certificate confirming eligibility for this allowance. A further Child Disability Allowance can only be granted from the date of application or the date the Chief Executive is satisfied the applicant became entitled to receive it, whichever is later. The Ministry's position is that the medical report provided confirmed entitlement to Child Disability Allowance only from 25 November 2014. The report focuses primarily on XXXX's bed-wetting but does not suggest that XXXX was showing signs of Post Traumatic Stress Disorder (PTSD) when she first came into her grandparents' care. It is not unreasonable for the Ministry to require medical evidence that supported the extent of her PTSD and her bed-wetting in April 2014. The Ministry are unable to interview the social worker responsible for the care of XXXX and her brother at the time they were moved to their grandparents' care, as requested by the Authority, because this person is no longer employed by the Ministry.

[13] The Chief Executive accepts that the appellant made a request for financial assistance on 21 April 2013 which extended to Child Disability Allowance (see the s 12K Report).

Decision

[14] Child Disability Allowance is payable pursuant to the provisions of ss 39A–39E of the Social Security Act 1964. In particular, it is payable in respect of a child with a serious disability, which means a dependent child who—

- (a) has a physical or mental disability;
- (b) because of that disability needs constant care and attention; and
- (c) is likely to need such care and attention permanently or for a period exceeding 12 months.

[15] Section 39A(2) provides that in determining whether a child with a serious disability needs constant care and attention, the Chief Executive shall consider whether the child requires—

- (a) from another person, frequent attention in connection with his bodily functions; or
- (b) attention and supervision substantially in excess of that normally required by a child of the same age and sex;

[16] Section 39C gives the Chief Executive a discretion to determine that an application for a Child Disability Allowance be supported by the certificate of a medical practitioner certifying whether or not, in the opinion of the medical practitioner, the child in respect of whom the application is made is a child with a serious disability.

[17] In this particular case, the Chief Executive accepts that the requirements of s 39C were met by the completion of the Disability Certificate by Dr Hull as at 7 April 2014.

[18] The Chief Executive also now accepts that a medical report completed by a Paediatrician at Palmerston North hospital dated 25 November 2013 provides sufficient evidence that XXXX met the criteria for Child Disability Allowance at the date of that report. However, he is not prepared to accept the report establishes XXXX's conditions in the period leading up to the report.

[19] It is a little difficult to understand why the date of 25 November 2013 assumes such importance. The contents of the report are significant. Such a report would have required someone to make a referral to the Paediatrician in the first instance. It is perfectly apparent that the issues referred to did not simply arise on the day of the report. It is also apparent that the Paediatrician relied on information provided by the appellant in compiling the report.

[20] XXXX was aged seven years, five months at the time of the report and the report lists major concerns/risks in relation to XXXX as follows:

- Exposed to ongoing domestic violence with parental drug and alcohol abuse.
- XXXX showing signs of PTSD when first in her grandmother's care.
- Oppositional behaviour, anger and lying relating to past trauma.
- Night-time bed-wetting.

Potential for development

- XXXX to continue in a consistent, positive, safe environment free of drugs and alcohol and parental conflict.

- XXXX to have counselling to deal with effects of past trauma.

Recommendations

1. XXXX needs to live in safe, stable home environment free of drugs and alcohol and violence.
2. Referral to Manuka, primary mental health service to help with emotional problems related to previous exposure to domestic violence and parental drug and alcohol abuse, and living away from mother.
3. If XXXX is still wetting her bed at the age of 8 years, for GP to make referral through Mid-Central Paediatric Enuresis Service.

Summary

Health Problems

- XXXX was small at birth but is now a good size. She is fully immunised and dental hygiene is reasonable. She was soiling and wetting when she first went to live with her grandmother. The day-time problems have stopped but she is still still bed-wetting at night.

Emotional Issues

- XXXX has learnt some oppositional and antisocial behaviours when growing up with her parents. It will take some time for her to learn to be totally truthful at home. She does show signs of some emotional problems that mean it is important for her to continue living in a safe, predictable, nurturing environment. She is likely to also require some counselling.

[21] At page 3 of the report it is noted that:

“Child, Youth and Family have had ongoing concerns since 2005 about parental drug and alcohol abuse, domestic violence and the children lacking basic medical care. In 2009 report about parental alcohol issues and neglect of children.”

[22] Also noted at page 4:

“When first went into grandmother’s care was soiling and wetting pants during daytime and hiding soiled knickers. However, her grandmother was calm and encouraging and the soiling and wetting has stopped. XXXX is still wetting every night unless she is lifted twice during the night.”

[23] And also noted at page 6:

“XXXX often loses her temper, is only moderately compliant and frequently tells lies. She gets nervous in new situations and is impulsive, struggles to keep still and focus on her work.”

[24] It is apparent that the Paediatrician accepted that at the time XXXX went into her grandmother’s care she had significant conditions, and as the appellant points out it is highly unlikely that she developed these conditions after coming into their care. It is reasonable to infer that the conclusion of the Paediatrician – that XXXX showed signs of PTSD when she went into her grandmother’s care – was based on the symptoms described by the grandmother. Given the information contained in the report it is difficult not to conclude that XXXX was suffering from PTSD and bed-wetting at the time she went into her grandmother’s care.

[25] The conclusion by Ministry staff that XXXX can only be seen to have suffered from the PTSD and bed-wetting from 25 November 2013, that being the date of the report, seems on the face of it to be unduly bureaucratic and contrary to the evidence. Requiring the appellant to provide a further medical report was in our view unreasonable.

[26] A particular concern is the fact that it is highly likely that the Child, Youth and Family Service would have been aware of XXXX’s conditions at the time that she moved to her grandmother’s care. The Chief Executive apparently did not check with Child, Youth and Family (CYF) files to corroborate the evidence that XXXX was suffering from these conditions as at April 2013. The file includes a reported concern on 13 December 2012 (p 82) that XXXX had started bed-wetting “about the time mum left home 3 months ago”. Other references refer to XXXX being exposed to emotional abuse, family violence and neglect over a number of years.

[27] Persons in the position of the appellant, taking on the care of children damaged by parental neglect and abuse, need the proactive support of the Chief Executive and not have barriers put up to receiving assistance to which they are entitled.

[28] In our view, the report of 25 November 2013 provides ample evidence to satisfy the Chief Executive that XXXX:

- (i) At the age of seven years, was bed-wetting and needed to be lifted at least twice a night. Indeed, she was still wetting her pants during the day-time at the time that she came into her grandmother’s care.
- (ii) Was showing symptoms of PTSD at the time she entered her grandmother’s care. There were problems with lying and temper

tantrums beyond that which might normally be expected of a seven-year old child and she exhibited oppositional and anti-social behaviours which she had learned growing up with her parents.

[29] These matters all satisfy us, on the balance of probabilities, that XXXX met the criteria for Child Disability Allowance at the time the appellant began caring for XXXX on 21 April 2014.

[30] The Chief Executive is directed to pay Child Disability Allowance to the appellant in respect of XXXX from 21 April 2013 to 25 November 2013.

[31] The appeal is allowed.

DATED at WELLINGTON this 17th day of February 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member