

[2016] NZSSAA 007

Reference Nos. SSA 108/15,  
SSA 109/15 & SSA 110/15

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX AND  
XXXX XXXX** of Palmerston North  
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

**DECISION**

[1] Mr and Mrs XXXX wish to lodge an appeal against a decision of the Chief Executive to grant a Youth Payment to their daughter XXXX.

*Jurisdiction*

[2] There is a jurisdiction issue which must be considered at the outset.

[3] The jurisdiction of the Social Security Appeal Authority is provided for in s 12J of the Social Security Act 1964 as follows:

**12J Rights of appeal**

*Decisions or determinations under specified social assistance enactments*

- (1) Any applicant or beneficiary affected may appeal to the Appeal Authority against any decision or determination of the chief executive under—
  - (a) any of the provisions of Parts 1A to 1P, Part 2, Part 4, or Part 5; or
  - (b) a welfare programme approved by the Minister under section 124(1)(d); or

(c) [Repealed]

...

*General restriction on appeals under this section*

- (16) A decision cannot be appealed against under any other provision of this section unless the decision—
- (a) has been confirmed or varied by a benefits review committee under section 10A; or
  - (b) was made by the chief executive other than pursuant to a delegation.

[4] The limitation on appeals outlined in s 12J(16) is significant. Where a decision has been made by a delegate of the Chief Executive, the Authority can only consider appeals in relation to decisions of the Chief Executive which have been confirmed or varied by a Benefits Review Committee.

[5] The Benefits Review Committee decision to which the proposed appeal relates was made on 25 March 2015. The issue considered by the Benefits Review Committee was whether or not it could review a decision of 3 January 2014 to grant a Youth Payment to Mr and Mrs XXXX's daughter XXXX. In summary, the conclusion of the Benefits Review Committee in this matter was that it did not have jurisdiction to consider the appellant's appeal because it did not consider that Mr and Mrs XXXX were persons affected by the appeal in the manner anticipated by the Social Security Act 1964. The Benefits Review Committee did not confirm or vary the decision of the Chief Executive to grant a benefit to XXXX. Rather, it declined jurisdiction to consider the request by Mr and Mrs XXXX for a review. A decision about its jurisdiction is one solely for the Benefits Review Committee. No decision of the Chief Executive is involved. It cannot be said that the decision that Mr and Mrs XXXX wish to appeal is a decision which has been confirmed or varied by a Benefits Review Committee. As a result, this Authority does not have jurisdiction to review the Benefits Review Committee decision on jurisdiction or the Chief Executive's decision to grant a benefit to XXXX.

[6] An issue arises as to the remedy available to the appellants. It would be open to them to judicially review the decision of the Benefits Review Committee. The alternative would be to take the matter up with the Ombudsman's office.

*Are the appellants affected beneficiaries?*

[7] Strictly speaking it is not necessary for us to consider whether or not the

appellants are beneficiaries affected by the Chief Executive's decision, but we pass comment on this issue.

[8] The submissions made by Mr and Mrs XXXX to the Authority in support of the appeal are in many respects compelling. They are aggrieved because they consider the Chief Executive's decision has had significant consequences for their family, including the parenting of the younger children in the family, the permanent loss of the Family Tax Credit relating to XXXX and significant social and educational consequences for XXXX herself. They say the Chief Executive's decision took away their rights and responsibilities as parents without good reason, without their consent and without a fair and proper process. It is difficult not to conclude that the decision to grant a benefit to XXXX has impacted on them, at least in the social sense.

[9] A person can appeal to this Authority if they are an applicant or a beneficiary affected by a decision of the Chief Executive which has been confirmed or varied by or on behalf of the Chief Executive by a Benefits Review Committee.

[10] The approach taken by the Benefits Review Committee and advanced to this Authority by the Chief Executive is that there is a right of appeal only where the Chief Executive's decision has affected the person's benefit, and there has been some economic impact on the person appealing as a result of the decision taken.

[11] The issue of who is a person 'affected' for the purposes of s 12J(1) has been dealt with by the High Court on two occasions. In *Boulton v Director-General of Social Welfare*,<sup>1</sup> the Court was considering whether or not a husband had a right to appeal in respect of a benefit being granted to his wife in circumstances where, as a result of her application, he was assessed under the Liable Parent Contribution Scheme. The Court found that the husband was a person affected by the (then) Chief Executive's decision. Further, the Court found that "this Court should be reluctant to limit rights of appeal granted by the legislator under s 12J unless there is the clearest language".

[12] In *Wharerimu v Chief Executive of Department of Work and Income*,<sup>2</sup> the High Court again considered the issue in the context of a beneficiary's home being searched for evidence in relation to the woman's benefit. Ms XXXX was upset by the manner of the search and sought a review by a Benefits Review Committee. The Court found that the purpose of the Social Security Act 1964 is essentially financial. It accepted an analysis put forward by counsel for the Chief Executive that the language

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<sup>1</sup> [1990] NZFLR 32.

<sup>2</sup> [2000] NZAR 467.

of the statute permits a right of appeal only where there is actual or potential economic impact on a beneficiary.

[13] The provisions of the Social Security Act 1964 are directed towards paying income support to meet the living expenses of eligible persons. It seems reasonable to infer that it was intended that rights of appeal be limited to decisions which affect the income support received by a beneficiary.

[14] Parents who have never been in receipt of a benefit or are not applicants for a benefit do not have any right to appeal a decision to grant a Youth Payment to a formerly dependent child. It would be a very odd result if Mr and Mrs XXXX could appeal the grant to their daughter because they were beneficiaries at the time the decision was made, where there was no actual or potential impact on their benefit but not if they were in employment.

[15] This supports the proposition that for a beneficiary to be 'affected' by a decision of the Chief Executive, the effect must be primarily economic rather than social.

[16] There is no suggestion in this case that benefit payments to Mr and Mrs XXXX have altered as a result of the grant of Youth Benefit to XXXX. Nor has it been suggested that as a result of the decision they have been assessed to pay Child Support.

[17] A decision to grant a Youth Benefit involves a decision that a teenager's relationship with his or her parents has broken down and that the parents are unable to support the child financially. This is a very serious matter which will inevitably have significant social consequences for the parents and no doubt other children in the family if granted. It is important that the rules of natural justice are followed in such cases. That means that parents should be properly informed of claims made by their teenage son or daughter and that they have an adequate opportunity to respond to those allegations. Furthermore, the decision-maker must carefully weigh the parents' response, and if need be, investigate further. It is not entirely clear on the basis of the limited information that we have in this case that this has happened here.

[18] We recommend that the Chief Executive give close consideration to the process he has adopted in such a case and, in particular, to the need to implement the rules of natural justice in each case.

[19] For the reasons outlined, we do not have jurisdiction to entertain the appellants' appeal which is struck out.

**DATED** at WELLINGTON this 24<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

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