

[2016] NZSSAA 008

Reference No. SSA 041/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

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

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Mr R D Burnard - Chairperson
Mr K Williams - Member
Lady Tureiti Moxon - Member

HEARING at WELLINGTON on 11 November 2015

APPEARANCES

Mr G Howell for the appellant
Mr R Signal for the Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] Mr XXXX has appealed against a decision declining his application for Temporary Additional Support made on 17 December 2014. The decision was upheld by a Benefits Review Committee after a hearing on 18 February 2015.

Background

[2] Mr XXXX is 38 years old and has no dependent children. At the time of his application he was receiving a Supported Living Payment, Accommodation Supplement and Disability Allowance totalling \$406.94 each week. The case manager's assessment for Temporary Additional Support for Mr Marshall led to no deficiency of income and his application for Temporary Additional Support was declined.

[3] In a notice of appeal dated 5 May 2015 to this Authority Mr XXXX's agent stated that the grounds of the appeal were that the Ministry had failed to reduce either in part or in full wages paid to Mr XXXX "*after consideration of s 66A*". This section, which we will deal with later in this decision, creates a special exemption for severe disablement.

Case for the appellant

[4] At the hearing before the Authority Mr XXXX's advocate Mr G Howell argued that s 66A of the Social Security Act 1964 ("the Act") allowed for the whole or partial disregard of income earned from the individual's own effort when they are deemed to have a severe disability. In Mr XXXX's case he works as a caregiver for an elderly couple, generally six hours per week over three days. Mr Howell argued that all this income should be disregarded from the Temporary Additional Support assessment because of Mr XXXX's severe disablement.

[5] Mr Howell also raised an issue as to whether part of the appellant's cash assets should be disregarded as the funds concerned represented a capital grant for a specific purpose relating to the purchase of capital equipment for a self-employment programme.

Case for the Ministry

[6] Mr Signal for the Chief Executive told us that when the issue of a s 66A exemption was raised the Ministry arranged for Mr XXXX to be interviewed. He was assessed by Ms Peta Nathan who gave evidence. She had concluded following an interview on 9 June 2015 that Mr XXXX did not meet the criteria for being severely disabled.

[7] At the conclusion of the Authority's hearing Mr Howell was given leave to provide the Authority with bank statements of his client's accounts and a letter setting out the terms of the advance relating to the self-employment programme. Leave was also given to Mr Signal to reply to this material.

[8] The Authority in due course received a considerable further volume of material from Mr Howell and submissions in reply from Mr Signal.

The Authority's findings

[9] At issue in this appeal is whether or not the Chief Executive should have exercised his discretion under s 66A of the Act and disregarded all or part of Mr XXXX's income.

[10] The section reads:

66A Special exemption for severe disablement

For the purposes of computing any benefit payable, the chief executive may in the chief executive's discretion, as an incentive to personal effort, disregard all or part of the income of any severely disabled person derived from such effort.

[11] In giving evidence Mr XXXX said that he had Asperger's Syndrome. He had worked as a caregiver for an elderly couple from 2005 until the present time working usually six hours per week. His work involved making them drinks and carrying out housekeeping duties such as cleaning the floors, washing and doing dishes. He said he believed that it was unusual to have employment in a role such as this for 10 years but the work was permanent and secure because of his relationship with the couple. Although he might start work at 10.00 am and was only employed for two hours, he might still be there by 3.00 pm and could spend time reading books or using his client's internet connection so long as he got his work done. He said that he had tried working for others but found that difficult and stressful. He found it difficult to multitask and do new tasks with new routines.

[12] Mr XXXX said that he lived by himself in one of a block of four flats and takes care of himself. He takes a bus to work and does not need help with transport. He said he was not supervised at work and managed the workload on his own.

[13] Given this background was Mr XXXX a "*severely disabled person*" in terms of s 66A of the Act? No medical evidence was produced by the appellant. He was interviewed by Ms Nathan for the Ministry and appears to have been asked the relevant questions in order for her to make an assessment. From the note she took of the interview, which appears at page 154 of the report to the Authority under Section 12K(4)e) of the Act, Ms Nathan appeared to the Tribunal to have conscientiously assessed Mr XXXX's condition and gave her evidence in a straightforward manner.

[14] As this Authority noted in decision 146/04 (at paragraph 29):

The term 'severely disabled' is a very strong statement. We think that the description 'severely disabled' suggests that the beneficiary's disability must be extreme to a degree where their ability to participate in employment, take care of themselves and participate in the community is extremely limited. The exemption contained in s 66A is designed as an incentive to such individuals to participate in the community by working.

[15] We do not accept that Mr XXXX is severely disabled. He is able to live by himself and does not require assistance for his personal care. He is able to take public transport to his work by himself on Monday, Wednesday and Friday of each week and carries out the duties for which he is paid. Mr Howell suggested that he was working longer hours for his two hours of paid work but Mr XXXX himself said that he is comfortable with the elderly couple and spends extra time there reading books and using the internet.

[16] Mr XXXX gave his evidence before the Authority truthfully and coherently. Whilst compared to the average single man of his age Mr XXXX might have some degree of

disability, this could certainly not be described as severe. We hasten to record that we make this finding on the basis of our own observations of Mr XXXX and consideration of his evidence but in the absence of any professional evidence relating to his condition.

[17] The Authority accordingly concurs with the Ministry decision to decline Temporary Additional Support as, if the appellant's wages are included in the calculation and not disregarded in terms of s 66A the result is a surplus and there is no entitlement to the support.

[18] In view of this finding the Authority does not consider it necessary to deal with the second issue raised during the course of the appeal relating to the level of cash assets as any finding on that issue would not assist Mr XXXX in obtaining the support.

Conclusion

[19] For the reasons given above this appeal is dismissed.

DATED at WELLINGTON this 2nd day of March 2016

Mr R D Burnard
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member