

[2016] NZSSAA 010

Reference No. SSA 164/15

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

Ms M Wallace - Chairperson
Mr K Williams - Member
Lady Tureiti Moxon - Member

HEARING at WELLINGTON on 10 February 2016

APPEARANCES

Mr G Howell for the appellant
Ms E Kirkman 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 declining to include the appellant's partner in the assessment of the rate of Accommodation Supplement payable to her in the period 23 July 2014 to 7 December 2014.

[2] The issue in this case is whether s 74A of the Social Security Act 1964 prevents the Chief Executive from including the appellant in the assessment of entitlement to Accommodation Supplement.

Background

[3] The appellant is aged 31 years. She is married. We understand the appellant originally arrived in New Zealand as a teenager on 18 March 2004.

[4] On 18 July 2013 the appellant's husband and two adopted children arrived in New Zealand. The appellant's Jobseeker Support was increased to the sole parent rate and the children were included from 18 July 2013. Her request for her husband to be included was declined as he was only lawfully present in New Zealand by virtue of holding a temporary entry class visa, namely a work visa. The Chief Executive took the view that he was precluded from including the appellant's husband in her benefit as a result of the provisions of s 74A of the Social Security Act 1964.

[5] The appellant's entitlement to Accommodation Supplement was initially assessed on the basis that two dependent children were included in the assessment. In June 2015 Orphan's Benefit was granted for the children. As a result, the appellant's entitlement to Accommodation Supplement was reassessed based on her being treated as a single person with no dependent children.

[6] It was later established that in fact, the children had been adopted in Somalia by the appellant and her husband and the New Zealand Immigration and Protection Tribunal considered the adoption orders to be valid for the purposes of s 17 of the Adoption Act 1955. As a result, the appellant, as the adoptive parent of the children, had no entitlement to Orphan's Benefit. The Orphan's Benefits were cancelled from 7 December 2015 and the appellant's Accommodation Supplement was then reassessed and increased.

[7] On behalf of the appellant it is submitted that in the period 23 July 2014 to 7 December 2014 it was an error to omit the appellant's husband from the assessment of her entitlement to Accommodation Supplement because:

- (i) the grant of Accommodation Supplement is discretionary;
- (ii) a non-beneficiary can receive Accommodation Supplement;
- (iii) the schedule relating to Accommodation Supplement refers to a married couple. The appellant and her husband are a married couple.

Decision

[8] Accommodation Supplement is paid pursuant to the provisions of s 61E of the Social Security Act 1964 (the Act). Section 61EC of the Act provides that Accommodation Supplement is payable pursuant to a rate specified in Schedule 18 to

the Act. Part 2 of that Schedule specifies the rates of Accommodation Supplement payable according to the relationship status of the applicant and the number of dependent children.

[9] Section 74A(1) provides that a person who is lawfully resident and present in New Zealand only by virtue of holding a temporary entry class visa is not entitled to receive a benefit. Sections 74(2) & (3) of the Social Security Act 1964 provide that a person who applies for a benefit (after August 2001) who is married to a person who is either unlawfully resident and present in New Zealand or lawfully resident or present in New Zealand only by virtue of a temporary class visa, may only be paid a single rate of benefit.

[10] The term "benefit" is defined in s 3 of the Act as meaning a benefit payable under any of Parts 1A to 1P or Part 2, but in any event specifically includes paragraph (b)(iii) an Accommodation Supplement payable under s 61EA.

[11] We are satisfied that the Chief Executive is required to have regard to s 74A in deciding which of the clauses of Part 2 of Schedule 18 applies to the appellant.

[12] There appears to be no dispute that the appellant's husband held a temporary entry visa at the times relevant to this appeal. Section 74A provides that in this circumstance, the appellant's marital status must be regarded as a single person for benefit purposes.

[13] In the period prior to the children being granted Orphan's Benefit, and in the period after the children ceased to be entitled to Orphan's Benefit, the appropriate rate was for the appellant to be assessed as a sole parent with two or more dependent children.

[14] In the period when the children were in receipt of Orphan's Benefit it was appropriate to assess the appellant under clause 3 of Part 2 of Schedule 18, namely "to any other person whose accommodation costs are rent or payments for board and lodgings".

[15] It is submitted that the Chief Executive has a discretion to grant Accommodation Supplement. The discretion is, however, limited by the express requirements in the Act that the rate of payment must be based on the provisions of the Act contained in s 74A and Schedule 18.

[16] It is submitted that a non-beneficiary can receive Accommodation Supplement. Whether or not a non-beneficiary can receive Accommodation Supplement is irrelevant. Section 74A clearly states that a person who holds only a temporary entry class visa to

be in New Zealand cannot be paid a benefit; and if a person is married to a person who holds a temporary entry class visa this must be paid at the single rate. A similar response applies to the argument that the schedule refers to a married couple and the appellant and her husband are a married couple.

[17] Finally, we note Schedule 18 does not use the term “household size” used by the appellant’s advocate in making his submissions. Accommodation Supplement is paid according to marital status, bearing in mind s 74A and the number of dependent children.

[18] We are satisfied that the assessment of the rate of Accommodation Supplement payable to the appellant in the period concerned was correct.

[19] We note in passing that the Authority has previously dealt with an appeal by the appellant’s husband in relation to benefit entitlement in [2014] NZSSAA 117. The appellant’s advocate did not raise the issues raised in that appeal at this hearing.

[20] The appeal is dismissed.

DATED at WELLINGTON this 2nd day of March 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member