

[2016] NZSSAA 013

Reference No. SSA 137/15

**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 February 2016

**APPEARANCES**

The appellant in person  
Mr G Moore 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 decline her application for a Community Services Card. The appellant's application for a Community Services Card was declined on the basis that her income was over the prescribed limit.

**Background**

[2] The appellant suffers from Multiple Sclerosis. Prior to 2015 she held a Community Services Card.

[3] As the holder of a Community Services Card, the appellant was able to access assistance with household help through Enable.

[4] She has also previously received Disability Allowance, which has enabled her to pay for a St John Ambulance alarm at approximately \$30 per fortnight and provided assistance with other costs.

[5] On 16 June 2014 the appellant became eligible for New Zealand Superannuation in her own right. Prior to this, the appellant was included in her husband's New Zealand Superannuation as a non-qualified spouse. Following the grant of New Zealand Superannuation to the appellant, her entitlement to Disability Allowance was checked. It was determined that the joint income of the appellant and her husband was \$47,699.92 per annum and, as this exceeded the income cut-off point of \$957 per week, she was no longer eligible for Disability Allowance.

[6] In March 2015 the appellant reapplied for a Community Services Card. The Ministry calculated the joint income of the appellant and her husband to be \$50,199.92. This calculation included the full amount of her husband's private United Kingdom Police pension. As from 1 April 2014 the income cut-off point for a married couple to be eligible for a Community Services Card was \$40,590. As a result, the appellant's application for a Community Services Card was declined.

[7] The appellant sought a review of decision. The matter was reviewed internally and by a Benefits Review Committee. The Benefits Review Committee upheld the decision of the Chief Executive. The appellant then appealed to this Authority.

[8] In the course of preparing for this appeal, a decision was made to determine the joint income of the appellant and her husband differently. It was decided that only 50% of Mr XXXX's United Kingdom Police pension should be included in the assessment rather than the full amount.

[9] As a result of this reassessment, the income of the appellant and her husband was assessed to be \$41,471.60. This still exceeded the income cut-off point of \$40,590. A similar assessment for the 2015 year found the couple's joint income was \$42,206.88. The income limit for a Community Services Card from 1 April 2015 was \$41,327.

## **Decision**

[10] The income limits for a Community Services Card are provided for in the Health Entitlement Cards Regulations 1993. Regulation 8 sets out the eligibility criteria for a Community Services Card. A person who is in receipt of New Zealand Superannuation may receive a Community Services Card if their income is less than the amount specified

in reg 8(50) of the Regulations. Regulation 8(5)(c) for the relevant period stated that in the case of a married person the income limit is \$40,590 per annum.

[11] In this case there is in theory an issue as to whether the full amount of the appellant's husband's United Kingdom Police pension should be included as income or whether only 50% of the amount should be included. At the time of the assessment, while the Ministry's website stated that only half of a private pension would be included, the Chief Executive now considers this may be incorrect and, in fact, the reference to including only 50% of a pension referred to in the definition of "net income" in the Regulations relates only to certain New Zealand pensions and not overseas private pensions. It is not necessary for us to make any determination on this point because regardless of whether the full amount of the appellant's husband's United Kingdom Police pension is included in the calculation of the couple's income, or whether only 50% is included, the total of their income exceeds the income cut-off point for a married couple seeking a Community Services Card.

[12] Mr XXXX, on behalf of the appellant, submitted that:

- their individual circumstances should be taken into account in calculating the appellant's income;
- the appellant is wheelchair-bound and has not been able to work for many years;
- the amount Mr XXXX receives in respect of his United Kingdom pension fluctuates;
- the loss of both the Community Services Card and Disability Allowance is a loss of income of approximately \$400 a month to the household.

[13] There is no provision in the Regulations for either the Chief Executive or this Authority to exercise discretion in relation to income limits imposed by the government in relation to eligibility for a Community Services Card. The same applies to Disability Allowance. Unfortunately, there will always be people whose income is only slightly in excess of the limits imposed. The loss of the card may well impact on such a person more acutely than a person on a higher income.

[14] The fact that the income of the appellant and her husband now exceeds the cut-off point is in part because of the increased rate of New Zealand Superannuation that the appellant and her husband now receive. One way of looking at the situation is that some of the sources of state assistance the appellant received before she became eligible for New Zealand Superannuation in her own right have been replaced by a different form of

state assistance. The additional income received by way of New Zealand Superannuation is approximately \$1,763 per annum.

[15] The other reason for the increase in the appellant's income appears to be that whereas the United Kingdom Police pension was previously calculated to be \$14,500 per annum, in fact during 2015 the value of this pension was substantially more than that. If there is a serious drop in the value of this pension in the future, it will be open to the appellant to apply for a Community Services Card again.

[16] We accept that not being able to access the assistance formerly provided through Enable will be a blow to the appellant, but for the reasons outlined we do not have any discretion in this matter. Whether the full amount of Mr XXXX's overseas pension is included in the income assessment or half of the amount is included, the combined income of the appellant and her husband exceeds the income cut-off point for eligibility for a Community Services Card.

[17] The appeal is dismissed.

**DATED** at WELLINGTON this 2<sup>nd</sup> day of March 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