

[2016] NZSSAA 038

Reference No. SSA 147/15

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

HEARING at WELLINGTON on 12 April 2016

APPEARANCES

The appellant in person
Ms J Hume for 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 treat her investment in silver as a cash asset in considering her entitlement to Special Benefit.

Background

[2] The appellant is in receipt of Supported Living Payment and supplementary benefits including Special Benefit.

[3] On 16 June 2014, the appellant received a lump sum payment from the Accident Compensation Corporation (ACC) of \$29,019.25. The appellant informed the Ministry of her receipt of this money. She advised that \$6,600 had been used to repay a credit card debt and \$10,000 had been used to purchase silver offshore. She had purchased 402.759 ounces which was stored in a vault in Singapore. Further funds were set aside with the intention of purchasing a car in the future.

[4] The appellant was advised that the \$29,019.25 received from ACC would not be taken into account in assessing her entitlement to Accommodation Supplement and Special Benefit for a period of 12 months. It would be taken into account in considering one-off assistance such as Special Needs Grants. She was advised that the funds would be treated as a cash asset from 16 June 2015.

[5] On 27 January 2015, contrary to the advice that her assets would not affect her entitlement to Special Benefit until 16 June 2015, the appellant was advised that her cash assets would be taken into account and Special Benefit would be cancelled from 4 March 2015. The appellant sought a review of decision.

[6] On 9 March 2015, Special Benefit was renewed at \$268 a week. An expiry date was added to stop Special Benefit from 16 June 2015, that being 12 months from the date the appellant received the ACC payment and in line with the earlier advice to the appellant.

[7] On 20 June 2015, the payment of Special Benefit to the appellant was suspended as it was considered that her assets exceeded the cash asset limit; however it was reinstated a little more than a week later when the appellant advised that her silver had been sold and it would no longer be registered in her name. As a result, her cash assets had reduced below the cash asset limit for Special Benefit. At the time of hearing the appellant continued to receive Special Benefit.

[8] At the hearing of this matter the appellant sought rulings that:

- (i) precious metals, bought for the purpose of retirement, should not be regarded as a cash asset;
- (ii) discretion should be exercised to continue paying the appellant Special Benefit in any event;
- (iii) the Ministry should provide standard information to all recipients of lump sum payments for whole person impairment from ACC about the effect of any lump sum payment on their benefit entitlement.

[9] The appellant says that she purchased the silver as a retirement saving. Precious metals can be used to protect against inflation, deflation, hacking and other forms of fraud. The Ministry needed to advise her of their position regarding the expectation that the money would be used in place of Special Benefit before the 12 months ended. The decisions made around the silver punishes her for her medical condition, in particular as she has symptoms which impact on her ability to make decisions. A compensation payout should be available to the appellant to compensate for loss of enjoyment of life.

Decision

[10] The former s 61G of the Social Security Act 1964 provided for the payment of Special Benefit. Special Benefit is third-tier assistance directed towards alleviating hardship. A Ministerial Direction provides for matters to be taken into account in exercising the discretion to pay Special Benefit.

[11] In the first instance, when assessing entitlement to Special Benefit, the decision-maker must carry out an assessment pursuant to the formula contained in the Ministerial Direction. This requires the Chief Executive to take into account the appellant's assessable income and allowable costs.

[12] If, as a result of the assessment, it is demonstrated that an applicant has a deficiency of income over expenditure, the Ministerial Direction provides that the Chief Executive would be justified in granting Special Benefit at the lesser of the deficiency rate or 30% of allowable costs, if the appellant's cash assets are less than a certain amount.

[13] The cash asset limit applicable as at June 2014 was \$1,742.24 and as at June 2015 was \$1,751.13.

[14] The Ministerial Direction provides that a cash asset is an asset of the beneficiary that can be readily converted into cash.¹ The provision goes on to include a number of specific examples of cash assets. None of the specific examples includes investment in precious metals but the list is not exhaustive.

[15] The first issue is whether or not silver can be readily converted into cash. We note the following:

- (i) Since the issue first arose, the appellant has apparently sold the silver. There is no suggestion this was a difficult sale.

¹ Clause 2.1.

- (ii) The appellant did not dispute the Ministry's claim that she had advised the Benefits Review Committee that the silver could be converted into cash within 24 hours.
- (iii) Precious metals have been defined as operating as a "negotiable store of value".²

[16] We are in no doubt that the appellant's investment in silver can be readily converted into cash and should be regarded as a cash asset for the purpose of assessing entitlement to Special Benefit, whether or not the purchase was intended to provide for the appellant's retirement.

[17] The Social Security (Income and Cash Assets Exemption) Regulations 2011 provides for income and cash asset exemptions in certain specific situations. Regulations 14 and 15 provide exemptions for certain compensation payments paid by the Crown.

[18] ACC is a Crown entity defined in s 7(1) of the Crown Entities Act 2004. It also meets the definition of Crown in 3(d) of the Regulations. However, we do not think it necessary to explore this issue. The exemptions available under Regs 14 and 15 are only for the first 12 months after the payment is made. In this case the appellant has been afforded that exemption regardless of whether the payments meet the criteria for Regs 14 and 15.

[19] The second issue that arises is, having determined that the silver constituted a cash asset, whether or not the Chief Executive should exercise discretion to grant or refuse to grant Special Benefit. Even though the appellant's cash assets exceeded the specified limit, the Chief Executive still has a discretion to grant or refuse to grant Special Benefit.

[20] The Ministerial Direction relating to Special Benefit gives the decision-maker guidance about a wide variety of factors to be taken into account in assessing whether or not the discretion to grant Special Benefit should be exercised. These include the general principles in clause 1 that:

- The benefit should not be granted unless the applicant would suffer financial hardship.

² See Pearson, Keating and Macalister *GST in New Zealand* (Thomson, Reuters, Wellington, 2015) at 31.

- The applicant's deficiency of income over his or her expenditure and commitments is reasonably substantial.
- The deficiency is likely to continue for a period that justifies Special Benefit being granted.
- Special Benefit should be considered only in respect of costs that are essential and not reasonably avoidable.
- Consideration should be given to the ability of the applicant to meet the deficiency from the applicant's own resources or assistance available from other sources.

[21] In addition, the decision-maker is required to have regard to the matters in clauses 3.3(a) – (h) of the Direction. These include: whether or not the applicant has any special or unusual financial expenditure, whether the applicant has special or unusual reasons for any expenditure which has caused or contributed to his or her deficiency, the nature of the financial difficulty and likely duration of the deficiency, the age and health of the applicant, the ability of the applicant to improve his or her financial situation, the causes of the applicant's financial difficulty, the extent to which the basic necessities of life would be at risk, and any other relevant matters.

[22] The appellant's primary submission is that she wished to set the money aside for her retirement. A person such as herself who has been severely impaired has comparatively limited ability to put aside money for their retirement. Requiring her to use the money to meet everyday costs previously covered by Special Benefit has the effect of denying the person enjoyment of their money and would amount to a departure from the expected use of a compensation payout. She notes that she has particular needs in relation to her accommodation; she requires a home with privacy in a quiet and safe area. Although she has high health costs the cost of the personal trainer and physiotherapist currently included in the assessment of her Special Benefit as disability costs have been transformational for her and have resulted in an improvement in her condition.

[23] On behalf of the Chief Executive, it was submitted that the purpose of the Social Security Act 1964 is a matter to be taken account of when considering eligibility for Special Benefit, in particular Section 1A(c) which provides that the purpose is:

- (c) to ensure that the financial support referred to in paragraphs (a) and (b) is provided to people taking into account—

- (i) that where appropriate they should use the resources available to them before seeking financial support under this Act;

[24] Given that the government has specifically addressed the situations in which compensation payments should be excluded from any assessment in relation to a person's financial means, clearly it is anticipated that recipients of compensation payments may be expected to use these payments to support themselves, and for such payments to be taken into account in assessing benefit entitlement.

[25] At the present time, the appellant has high disability costs amounting to \$267.78 a week. The largest portion of these costs relates to the cost of a personal trainer and physiotherapist totalling \$180 per week. Of these costs, the appellant receives \$61.69 per week by way of Disability Allowance to assist with these costs. The balance is met by way of Special Benefit. Her teenage daughter has disability-related costs of \$63.13 per week. She also receives Disability Allowance. The appellant's other significant cost is her housing. There is an issue as to whether she should be obtaining social housing to reduce her accommodation costs.

[26] The availability of a cash asset significantly in excess of the limit previously referred to suggests that the appellant could not be described as suffering financial hardship and the basic necessities of life would not be at risk if Special Benefit was not granted, as the appellant could use her investment to meet part of her living expenses.

[27] We further note that if the appellant wished to make provision for her retirement then the Regulations make an exemption in respect of Kiwisaver. Her suggestion that Kiwisaver may be a more risky investment than silver seems doubtful. Many would regard investment in precious metals as a high risk investment strategy.

[28] Taking into account the appellant's circumstances and the provisions of the Ministerial Direction, we consider it was an appropriate exercise of the Chief Executive's discretion to disregard the appellant's cash asset for a year. We are also satisfied that a decision by the Chief Executive to take the asset into account after the first year was correct. We make no comment on whether the sale, which was apparently to the appellant's son, was in fact genuine.

Provision of information

[29] At various times, the appellant received conflicting and incorrect information about how her investment would be treated. This is most unsatisfactory. On the one hand the appellant appears to have been seeking advice about how to avoid having

money from her compensation payment affect her benefit entitlement. It is not the role of the Ministry to give advice on how to deal with assets in a way which will not impact on entitlement to benefit. Beneficiaries are expected to use their resources to support themselves in the first instance. That is clear from the objects of the Act. On the other hand it is important that the Ministry provide accurate and consistent information. The Chief Executive may wish to review the information available to beneficiaries regarding the effect of lump sum compensation payments from ACC such as the one received by the appellant, on benefit entitlement. It is important that accurate and consistent information is provided to beneficiaries.

Summary of findings

[30] The Authority finds as follows:

- (i) The appellant's silver investment was a cash asset.
- (ii) The Chief Executive decision to defer taking the silver payment into account as a cash asset in exercising discretion to grant Special Benefit for a period of 12 months was a reasonable exercise of the discretion to continue granting Special Benefit.
- (iii) It would not have been appropriate to continue paying the appellant Special Benefit after the 12-month period where the appellant continued to retain her cash asset in the particular circumstances.

[31] The appeal is dismissed.

DATED at WELLINGTON this 16th day of May 2016

Ms M Wallace
Chairperson

Mr K Williams
Member