

[2016] NZSSAA 039

Reference No. SSA 007/16 &
008/16

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of Lower
Hutt 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 11 April 2016

APPEARANCES

Mr P Hoetawa for the appellant
Ms E Kirkman for the Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The appellant appeals against decisions of the Chief Executive upheld by a Benefits Review Committee as follows:

- (i) A decision made on 31 July 2015 to decline an application for an advance payment of benefit for car registration and car warrant of fitness.
- (ii) A decision to decline an application made on 13 October 2015 for an advance payment of benefit for car towing and associated daily storage costs.

Background

[2] The appellant is aged 45 years. He is in receipt of Jobseeker Support.

[3] The appellant has an obligation to seek employment. We understand the appellant has previously worked as a truck driver and his search for employment is primarily as a truck driver.

[4] On 31 July 2015, the appellant made an application for an advance of benefit to enable him to pay for the registration and warrant of fitness for his car. The appellant noted that he needed this assistance because he needed his car to search for employment.

[5] His application was declined as it was determined that the need was not immediate or essential.

[6] It transpires that the appellant continued to drive his car without a warrant of fitness and registration. He was caught and his car was towed away and impounded.

[7] On 31 October 2015, a further application for an advance of benefit or Special Needs Grant was made in relation to an invoice from Supreme Towing Limited for \$510. The application noted that the appellant was also incurring storage costs of \$10 a day. He advised that he needed a vehicle to progress his job search.

[8] This application was also declined on the basis that the costs were not considered to be an essential and immediate need. It was considered that the appellant had put himself in a position of losing his car by continuing to use the vehicle in circumstances where public transport was available.

[9] The appellant sought a review of these decisions. The decisions were 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. The notice of appeal prepared by the Benefit Education Service Trust is very thorough.

[10] The appellant did not attend the hearing of this matter but was represented by Mr Hoetawa, an advocate who has been working with the appellant. Mr Hoetawa confirmed the appellant was a truck driver by trade. He said the appellant had decided that his best option for obtaining employment was to go from job site to job site seeking work and to keep in touch with the employing personnel at these job sites personally.

[11] Mr Hoetawa noted that it was easier for the appellant to talk face-to-face with potential employers rather than on the phone and that ultimately, using his car was less costly than catching the bus to get to job sites. Mr Hoetawa said that the appellant did not have an email address or confidence in using a computer and the option of using the library computer to search for work was therefore limited. Searching for work without the use of a car would be more difficult for the appellant.

[12] The notice of appeal records:

- The appellant needed assistance with a warrant and registration so that he could use his car legally for job search purposes.
- Due to the fact that the appellant had no access at home to the internet and no finance to cover the cost of using the internet, his only way of accessing job vacancies was by travelling to a free internet site or by travelling to prospective workplaces to apply for work.
- The cost of travelling to internet sites or workplaces on public transport was as much, if not more, on a regular bus than travelling in a private car.
- A private vehicle allows for a number of stops at a number of sites, whereas public transport will only take the appellant to one place.
- The appellant was well motivated by his financial hardship to find work and was doing so in the best way he knew how.
- The appellant was already paying fines for non-registration of his car and was attempting to avoid further fines by seeking assistance.
- The appellant had a particular immediate need to register his vehicle. The vehicle was essential to his ability to coldcall on worksites and places of employment.
- The effect of not granting assistance to pay the towing fee and storage costs for his towed vehicle was that he lost the only asset he had, which was also a backup source of accommodation for him.

Decision

[13] Section 82(6) of the Social Security Act 1964 gives the Chief Executive a discretion to make an advance payment of benefit if he or she is satisfied that a payment would best meet the particular immediate need of the beneficiary for an

essential item or service. In exercising this discretion, the Chief Executive is required to have regard to the Ministerial Direction relating to the advance payment of benefit.

[14] The Direction requires that the Chief Executive have regard to a number of matters in determining whether or not there is an immediate need for an essential item or service. This includes the effect on the beneficiary if the need is not met, when that effect is likely to have an impact on the beneficiary, and the beneficiary's ability to meet the need from his or her own resources.

[15] Clause 5 of the Direction provides that every advance is to be recovered from the beneficiary at a rate that will ensure that the advance is repaid within 24 months after making the advance. In addition, there are limits on the amount of advances that can be made. At the time of the appellant's application, the maximum available to a person in his circumstances was \$1,260.78 unless exceptional circumstances could be found to exist.

[16] The first issue is whether or not the appellant had a particular immediate need for an essential item or service. The appellant is obliged to look for work but there are some limitations on his ability to do so. We accept that because he is trespassed from Work and Income offices there are some barriers for him in his job search. For example he is limited to accessing the internet at the library. Moreover, he apparently does not have an email address. There may be limitations on the appellant's computer skills but searching the internet for job opportunities at the library may be a more efficient and cheaper way of identifying opportunities than driving from worksite to worksite. We understand there is also a telephone-based service, 'Job Connect', which the appellant is able to use. The cost of running a car is possibly more expensive than the appellant realises. Precisely where the appellant was calling to seek work and how often we do not know, as we do not have a job search diary for the appellant and the appellant did not attend the hearing to give evidence.

[17] In *Te Aonui v Chief Executive of the Department of Work and Income*,¹ the Court found that the term "essential" means "indispensable or absolutely necessary".

[18] The car was not essential for the appellant to get to work or to travel for medical reasons. We accept that having the use of a vehicle may have been highly desirable for the appellant in his job search activities. We are not satisfied that having the use of a car can be described as indispensable or absolutely necessary and therefore essential. It follows that the registration, warrant of fitness, tow and storage

¹ HC, Wellington CIV-2004-485-1982, 11 August 2005.

fees could not be described as essential either. The Chief Executive was correct to decline his applications for advances on this basis alone.

[19] We note in passing that at the time of his applications the appellant had debt to the Ministry of \$4,977.42. This amount is substantially in excess of the maximum amount of advance available to a single person of \$1,260.78. The Ministry have not been able to confirm precisely that all of this debt related to advance payments of benefit. That is unsatisfactory, as the Direction for the Advance Payment of Benefit requires a precise determination of the existing level of advance debt. It appears that in October 2014, when his benefit was cancelled there were advance balances totalling \$2,026.66 outstanding. It also appears that this amount remained outstanding at the time that his benefit resumed on 2 February 2015. It is more likely than not that this advance balance would not have reduced to below \$1,260.78 at the time of his applications for advances on 31 July 2015 and subsequently. To make an advance on either occasion would have required the Chief Executive to find that there were exceptional circumstances in the appellant's case which would have warranted making the advances. Because of our finding that the car-related costs were not essential, it is not necessary for us to make a decision on that issue.

Special Needs Grant

[20] It would also have been open to the Chief Executive to consider assistance to the appellant under the Special Needs Grants Programme. The Programme includes provision for both recoverable and non-recoverable assistance. The Programme is complimentary to the Direction for the advance payment of benefits.

[21] The Chief Executive would have been obliged to consider the appellant's application under Part 4 of the Programme which relates to recoverable and non-recoverable grants for emergency situations. The *Concise Oxford dictionary 10th Edition* defines emergency as "a serious, unexpected and potentially dangerous situation requiring immediate action".

[22] Clause 14 of the Programme provides for recoverable and non-recoverable grants to be made up to \$500. In short, the criteria which must be met for a grant to be made under clause 14 are that:

- (i) There is an emergency situation.
- (ii) Special circumstances exist.
- (iii) Without the item or service the applicant will suffer serious hardship.

[23] The appellant's need for a car related primarily to his job search, although we note that on occasions he also used it as his home. There is no suggestion that the appellant needed the vehicle to get to his actual employment or for medical purposes. We are not satisfied that the need for car registration and warrant of fitness could be considered unforeseen and therefore an emergency. These costs are part of the regular cost of running a car. Likewise, the possibility that his car may be impounded if he continued to drive it while it was unregistered and unwarranted was predictable.

[24] We are not satisfied that the circumstances that arose in this case constituted an emergency situation which would have warranted the Chief Executive making a grant under clause 14 of the Special Needs Grants Programme.

[25] The appeal is dismissed.

DATED at WELLINGTON this 16th day of May 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

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