

[2016] NZSSAA 046

Reference No. SSA 077/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

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

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Ms M Wallace - Chairperson
Mr K Williams - Member

DECISION ON THE PAPERS

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee to grant a Special Needs Grant for food of \$40.

[2] The issue in this appeal is whether or not \$40 was sufficient to meet the appellant's immediate need for food.

Background

[3] The appellant is in receipt of Supported Living Payment - Carers. She provides care for an adult daughter. The Benefits Review Committee report states at the time relevant to the appeal she had two children in her care.

[4] On 5 August 2014 the appellant attended a "Special Impact Day" at the Mangere Community Link Centre. She made an application for assistance with food. Her application stated that she wanted to buy some food before her next benefit payment which was due the following day. A grant of \$40 for food was made.

[5] A request for review of the decision to pay the food grant of \$40 was lodged by Auckland Action Against Poverty on the appellant's behalf.

[6] 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. The grounds of appeal made on behalf of the appellant state:

- The Ministry was wrong to pay a food grant for less than the maximum amount available.
- The Ministry did not investigate the appellant's claim properly.
- The Ministry failed to establish how much of the benefit payment the following day was committed to immediate deduction for other essential requirements such as power and rent.
- The Ministry's approach was overly bureaucratic and failed to take account of all of the appellant's financial circumstances.
- A criteria of exceptional circumstances was incorrectly considered in determining the appellant's application.

Decision

[7] There is specific provision for the payment of food grants in clause 11.2 of the Special Needs Grant Programme. The Programme provides that in the case of a sole parent with one to two children, grants of up to \$450 in a 26-week period can be made where:

- (a) the applicant has an immediate need to purchase food;
- (b) the applicant has no resources to meet that need and would otherwise have to rely on a food bank to meet that need; and
- (c) the lack of resources was caused by an essential expense that had to be met which left insufficient money to buy food.

[8] We have no information as to precisely how much the appellant's advocate considers the appellant needed or should have received by way of a food grant.

[9] It is a misunderstanding of the role of the Authority to submit, on the one hand, that the Ministry did not properly investigate the appellant's circumstances, but on the

other hand, fail to give an account of the appellant's circumstances and why the grant made was inadequate. Hearings of this Authority are by way of rehearing. Section 12M of the Social Security Act 1964 provides that the Authority has the powers, duties, functions and discretions of the Chief Executive for the purpose of reviewing and determining the appeal.

[10] In *Arbuthnot v Chief Executive of the Department of Work and Income*¹ the Supreme Court found that s 12M provides for the Authority "to conduct a rehearing (including, if necessary, rehearing the evidence or any part of it or receiving new evidence on questions of fact) which opens up for further consideration the whole of the decision made by the BRC [Benefits Review Committee] (or by the Chief Executive personally)". The Court also found that there was no right of appeal against the reasons for a judgment, only against the judgment itself.

[11] If an appellant seeks to challenge a decision of the Chief Executive, then the Authority stands in the shoes of the Chief Executive, considers the evidence available and seeks out further evidence if further evidence is required to make a decision. The process is inquisitorial rather than adversarial.

[12] The appellant has been given an opportunity to provide the evidence which she says the Chief Executive failed to elicit at the time of her application. She was given the opportunity to either attend a hearing or provide a written statement. She was requested to provide answers to certain questions relevant to a determination of her appeal. The appellant's advocate has declined to provide any further information relating to the appellant's circumstances which would assist the Authority in making a decision. That is unfortunate.

[13] The following matters are relevant to a decision in this case:

- There is no evidence of the expense that the appellant had to meet which left her with insufficient money to buy food.
- The day after her application, the appellant received \$341.75 in her bank account. This was after payment of her rent and an advance repayment.
- There is no information about what commitments the appellant had which had to be paid from this amount.
- The Benefits Review Committee accepted the submission made on behalf of the appellant that the Otago University Food Cost Survey at the

¹ [2007] NZSC 55, [2008] 1 NZLR 13 at [20].

relevant time provided that the moderate food costs for a household with one adult and two children was \$209 per week.

- There is no information about any special requirements the appellant might have for food or an explanation about why the amount granted of \$40 was inadequate to meet her need.

[14] We are not satisfied, on the basis of the information available, that the amount of \$40 was insufficient to meet the appellant's need for food until her benefit was paid the following day.

[15] We note in passing that the grant made to the appellant appears to have been inconsistent with grants made to other beneficiaries who attend the Special Impact Days at Mangere Community Link in 2014 from the cases known to the Authority. That may have been as a result of verbal discussions about the precise needs of the beneficiaries concerned, but we draw the Ministry's attention to this.

[16] The appeal is dismissed.

DATED at WELLINGTON this 19th day of May 2016

Ms M Wallace
Chairperson

Mr K Williams
Member