

[2016] NZSSAA 048

Reference No. SSA 160/15

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 13 April 2016

APPEARANCES

Mr N Ellis for the appellant
Mr R Signal 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 declining to include the cost of specialist fees and the associated cost of travelling to the specialist in the appellant's entitlement to Disability Allowance.

Background

[2] The appellant suffers from a skin condition known as Chronic Cholinergic Urticaria. We understand that this condition was originally diagnosed by a specialist dermatologist in Auckland. Since the diagnosis the appellant has regularly travelled to Auckland once a year to consult with this particular specialist.

[3] In May 2014 and 2015 the appellant sought to have the cost of attending the specialist and the associated travel costs included in the assessment of his disability costs for the purpose of Disability Allowance. His requests were declined.

[4] The appellant sought a review of the 2015 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.

[5] The appellant says that he has been seeing the specialist in Auckland since 2000. It was this particular specialist who first diagnosed his skin condition. He does not believe that there was a suitable dermatologist in Nelson where he was living in 2014 or New Plymouth where he was living in 2015. He believes his doctor has certified that he needs a specialist, and therefore assistance for him to travel to Auckland to see the specialist and pay for his fees should be provided.

[6] On behalf of the Chief Executive, it is submitted that at the time appellant was living in Nelson there was an experienced dermatologist available and working out of Nelson hospital. Now that the appellant lives in Taranaki there is an experienced dermatologist available through the Taranaki Base Hospital.

Decision

[7] Section 69C of the Social Security Act 1964 provides for the payment of Disability Allowance. For payment to be made, the Chief Executive must be satisfied that the disability of the person is likely to continue for not less than six months and has resulted in a reduction in the person's independent function to the extent that the person requires, amongst other things, ongoing supervision or treatment by a health practitioner.

[8] In this particular case s 69C(2A)(b) of the Act is significant. It provides that a Disability Allowance is not payable for disability-related expenses except to the extent that:

- (b) the assistance towards those expenses available under this Act or any other enactment is insufficient to meet them.

[9] In addition, clause 4(c) of the Ministerial Direction on the payment of Disability Allowance provides that:

when determining whether a person has additional expenses of an ongoing kind required by section 69C(2A)(a) of the Act, [the Chief Executive] must consider:

- (c) whether there are less costly goods or services which might meet the need referred to in clause 2(d).

[10] Clause 6(a) of the Direction also requires the decision maker to consider:

- (a) the assistance that is or might be available to the applicant from other sources to pay the expenses.

[11] In short, if a District Health Board in the area the appellant is living in provides the service the appellant requires, then that is the service the appellant should be using to meet his particular need. The information available is that both in Nelson and New Plymouth there were specialist dermatologists the appellant ought to have been able to access to meet his need for oversight of his skin condition. If the appellant is required to travel away from the city he lives in to seek specialist treatment because the District Health Board cannot provide it, then the District Health Board may be able to meet the cost. In addition, funding may be available through the Ministry of Health's Travel Assistance Programme if in fact it is necessary for the appellant to travel to Auckland to see a dermatologist.

[12] In 2014 the appellant's disability certificate was completed by his General Practitioner in Nelson, Dr Hellyer. He has noted the appellant's need for a visit once a year to a dermatologist but has not specified that the only dermatologist the appellant can see is the dermatologist in Auckland.

[13] The appellant has been given an opportunity to provide confirmation from his general practitioners that he needed to visit the dermatologist in Auckland rather than local dermatologists. No confirmation has been received; either that the Auckland dermatologist is the only dermatologist the appellant can consult, or that the local dermatologists are unable to deal with his condition.

[14] We appreciate that the appellant has built up a relationship with the dermatologist in Auckland. This doctor is familiar with the appellant's history and understands the appellant. Nevertheless, we are not satisfied that the appellant's need for specialist oversight could not have been met by the District Health Boards in Nelson and Taranaki. This service would probably have been free and the appellant would not have incurred the significant cost of travelling to Auckland. The Chief Executive was therefore correct to decline to include specialist fees and the cost of travel to Auckland to visit the specialist in the appellant's entitlement to Disability Allowance.

[15] The appeal is dismissed.

DATED at WELLINGTON this 31st day of May 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

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