

[2016] NZSSAA 52

Reference No. SSA 005/16

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
Lady Tureiti Moxon - Member

HEARING at AUCKLAND on 11 May 2016

APPEARANCES

The appellant in person
Ms P Siueva 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 declining to include the cost of car repayments as allowable costs in the assessment of his entitlement to Special Benefit.

Background

[2] The appellant is 37 years of age. He receives a single rate of Supported Living Payment. He suffers from certain mental health conditions. We understand the appellant was under the care of Child, Youth and Family during his childhood and in the care of mental health services in his early adult years. The appellant is currently a client

of the Ministry's Remote Client Unit which he says causes him difficulty in accessing appropriate assistance.

[3] His former partner and two children live in the same suburb as the appellant. The appellant apparently has regular contact with the children. He participates in their care by transporting them to their childcare centres from time-to-time, although we note that the children also spend part of each week with their grandparents.

[4] It is apparent that the appellant has had difficulty in organising his finances for a number of years. He currently has debt of at least \$17,000. In addition, he owes approximately \$4,140.30 to the Ministry. He attributes his difficult financial circumstances in part to his frequent moves.

[5] The appellant's recollection of the history of his motor vehicle ownership is that in 2006 he purchased a Holden Vectra for a cost of approximately \$8,500.

[6] This vehicle was a mechanical disaster. The appellant claims he spent \$11,000 in repair costs over a period of three years. These repair costs were largely financed by the company which financed the purchase of the vehicle. In or about April 2007 the Ministry agreed to include the payments relating to this vehicle in the assessment of the appellant's entitlement to Special Benefit. At that time, Work and Income accepted that the appellant was in employment and needed a car to get to work. He had had problems with getting to work on time.

[7] In 2010 or thereabouts the appellant replaced the Holden with a Mazda 6 which was more reliable. At the point he acquired the Mazda, \$7,000 still remained owing on the Holden Vectra. The cost of the Mazda was approximately \$10,000. The appellant still owns the Mazda 6 which has apparently been a more reliable vehicle. A letter from XXXX states that as at 18 August 2015 an amount of \$7,843.57 remained owing in respect of the car.

[8] The Ministry have provided a summary of the dates and amounts for which car repayments have been included in the appellant's Special Benefit:

Table: Summary of car payments included in Special Benefit:

Date cost added	Car payment weekly amount	End date	Expiry date for Car Hire Purchase
03/04/2007	\$88	11/04/2008	26/10/2009
11/04/2008	\$88	17/08/2009	
21/9/2009	\$60	26/10/2009	
22/11/2010	\$120	17/02/2011	22/11/2011
05/05/2011	\$100		01/06/2015
11/06/2015	\$100	21/08/15	

[9] The Ministry note that its computer records indicate:

- The earliest record there is of car payments being included in Special Benefit is 3 April 2007. On this date the Ministry included car payments of \$88 per week until 21 September 2009, when the amount was adjusted to \$60 per week and continued until 26 October 2009, when the amount was deleted (presumably because that was the date the car hire purchase payments expired).
- On 22 November 2010 the Ministry added car payments of \$120 per week which continued until 28 December 2011, when the amount was adjusted to \$100 per week. An expiry date of "01/06/15" was added (presumably because this is the date the car hire purchase payments expired). Car payments of \$100 per week continued to be included until 21 August 2015.

[10] In May 2015, in the process of reviewing the appellant's Special Benefit, the Ministry advised the appellant that it had decided to cease including his vehicle repayments in the assessment of his entitlement to Special Benefit from 21 August 2015.

[11] Accordingly, on 21 August 2015 the car repayments, which had been included in the assessment of Special Benefit at \$100 per week, were excluded. Allowable costs which remained included in the assessment were accommodation costs of \$225 per week, disability-related expenses of \$9.99 a week, and other loan repayments of \$60 a week. A decision was made to pay Special Benefit at 30% of allowable costs which was \$88.50 per week, that being the lesser of the deficiency rate and 30% of allowable costs. This amount was later reviewed and increased to \$90 per week.

[12] A further reduction in the appellant's Special Benefit payments occurred in October 2015 when a decision was made to exclude the \$60 loan repayment amount from the assessment of his Special Benefit.

[13] The appellant sought a review of the decisions. The decision to exclude the appellant's car costs from the assessment of his Special Benefit was apparently considered by a Benefits Review Committee on 21 August 2015. The Benefits Review Committee agreed to uphold the decision to exclude car repayments from the appellant's benefit. It directed that an amount of \$20 per week be included in the assessment for telephone costs.

[14] A second Benefits Review Committee was convened in December 2015 to consider the appellant's request for costs relating to car insurance and the amount of \$60 for debt repayment to be included in his Special Benefit. The Benefits Review Committee concluded that neither of these costs should be included in the assessment of the appellant's entitlement to Special Benefit.

[15] At that point, the appellant appealed the decisions of the Benefits Review Committees to this Authority. In fact, the appeal in relation to the first Benefits Review Committee hearing was out of time. We extend time for filing an appeal in relation to that decision.

Decision

[16] The only issue pursued by the appellant at the appeal hearing was the inclusion of repayments relating to his car in the assessment of Special Benefit. Since the hearing he has also provided a copy of an insurance policy relating to his car. This sets out that the appellant must pay \$27.40 per fortnight for insurance for the vehicle. We infer that he wishes the Authority to include this item in its consideration of his allowable costs for Special Benefit purposes.

[17] The provisions relating to the grant of a Special Benefit are set out in the former s.61G of the Social Security Act 1964. The discretion conferred by Parliament is a wide one. It provides:

61G Special Benefit---

- (1) Subject to section 68A of this Act, the chief executive may, in the chief executive's discretion, fix a special entitlement to a special benefit in respect of any person, whether or not that person is receiving any other benefit under this Act ... if the chief executive is satisfied that, after taking into account all of that person's financial circumstances and commitments, ... such a special entitlement is justified.

...

[18] A Ministerial Direction gives direction to the Chief Executive about the way in which entitlement to Special Benefit is to be calculated.

[19] In the first instance the Chief Executive must carry out a formula assessment, taking into account the appellant's chargeable income and allowable costs. The definition of "allowable costs" includes:¹

any regular essential expenses reckoned on a weekly basis arising out of the special circumstances of the applicant ... which cannot readily be avoided or varied.

[20] The determination of allowable costs then sets out certain specific costs which can be included as allowable costs in the assessment of Special Benefit. Car repayments can usually only be included in the assessment if one of the following situations exists:

- (i) The vehicle is required to transport the applicant to and from employment and there is no public transport available.
- (ii) The applicant or a member of his family suffers from a chronic illness or has a disability and the vehicle is required for that person's transport and no suitable public transport is available.
- (iii) The agreement to acquire the vehicle on terms was entered into prior to the applicant applying for the benefit.

[21] The original decision to exclude car repayments from the appellant's Special Benefit was made on 21 May 2015 when the appellant was living in XXXX.

[22] The appellant was living in XXXX on 21 August 2015 when the car repayments were first excluded from his Special Benefit.

¹ See definition of "allowable costs" in clause 2.1 of the Direction.

[23] By the time the decision was made to further reduce his Special Benefit in October 2015, he had returned to XXXX.

[24] On an appeal to the Authority, the Authority considers the circumstances which existed at the time the decision appealed was made. In this case we propose to consider the circumstances both as at 21 August 2015 when the appellant was living in XXXX and in October 2015 by which time he had returned to XXXX. It was open to the Chief Executive to re-include car payments when the decision to exclude debt repayments and car insurance was made in October 2015. We propose to consider the situation again at that time, as that more closely reflects the appellant's ongoing circumstances.

[25] While the appellant was living in XXXX he was not working and the agreement to purchase the Mazda was entered into while he was in receipt of benefit. The only basis on which the car payments could be considered to be allowable costs was if he could establish that he suffered from a disability or chronic illness and the vehicle was required for his transport.

[26] The appellant says that while he was living in XXXX there was little or no public transport and he needed his vehicle to get to WINZ, to get to the doctor and to get to XXXX to visit his children. He lived about 30-45 minutes' walk from the town centre.

[27] The appellant had a need to get to the doctor and the hospital while living in XXXX but there is no suggestion that he had a mobility problem or infirmity which might have made it difficult for him to walk 30 or 40 minutes at a stretch.

[28] The most significant factor relating to the appellant's car repayments, however, is that car repayments had been included in the assessment of the appellant's Special Benefit for at least eight years. By August 2015 his current car would have been paid for had the appellant regularly made repayments. The letters from XXXX confirm this to be the case. In reality, the outstanding payments on the car as at August 2015 represent an accumulation of unpaid car repayments. They represent historic debt. The Ministerial Directive provides that historic debt cannot be considered to be an allowable cost in the assessment of Special Benefit.

[29] The appellant points out that while the amount of the car repayments is included in the Special Benefit assessment, the amount of Special Benefit is not necessarily the amount required to meet the car payments. This of course is correct, but does not

excuse the appellant from failing to make his car repayments when he was given assistance to specifically meet this cost. As a general rule, the Ministry should not include car repayments in the assessment of Special Benefit beyond the term of the original loan. It appears that despite the payment of substantial amounts of Special Benefit to the appellant over a lengthy period, he has not been able to manage his finances carefully enough to pay for the purchase of the vehicle.

[30] We are satisfied that the decision to exclude car payments as allowable costs in the assessment of his entitlement to Special Benefit from 21 August 2015 was correct.

[31] The main basis on which the appellant claims vehicle repayments should be included as an allowable cost in the assessment of Special Benefit once he returned to XXXX is that he uses the vehicle to transport his children to daycare or preschool. This is not every day of the week. The transporting of children to daycare or preschool does not constitute one of the criteria for permitting car repayments to be included as an allowable cost in the assessment of Special Benefit. However, it is a matter which can be taken into account in exercising the general discretion to grant and fix the rate of Special Benefit payable.

[32] Secondly, the appellant says that he has casual employment as a security guard. At the time of hearing he suggested that this was possibly once a month. This employment is at a location at XXXX. The hours are such that it is essential that he has his own vehicle to get to and from that employment. We have some reservations about this claim. The appellant has apparently not reported his income from this employment and apparently has not held the requisite licence to work as a security guard since last year. We accept, however, that if the appellant pays the necessary fee and gains further work he may need his own transport.

[33] A third reason advanced by the appellant relating to his need for a car is that he apparently needs to have blood tests taken on a regular basis. His daughter, (who lives with her mother) also suffers from bronchiolitis and eczema which require regular medical supervision.

[34] The availability of public transport is something which must be taken into account in determining whether a motor vehicle should be included as an allowable cost in entitlement to Special Benefit. The appellant objects to using public transport. He says that buses are unreliable and the cost would be much more expensive than using his car, which he says is economical to run. A car can take him to places buses do not go. In

addition to providing transport for his children to childcare, the appellant has transport requirements in relation to various medical appointments including a monthly blood test.

[35] There is public transport in the appellant's area and despite the appellant's protestations, we are not satisfied that this is not suitable for the needs of the appellant and his family to attend medical appointments. While the appellant considers that taking his car is cheaper than catching a bus, it seems likely that he has not factored into consideration the cost of warrant of fitness, registration, insurance, depreciation and the cost of car repayments in the cost of running his car. These are the real costs of running a car. The cost of petrol is only a small part of the overall cost. It is unlikely that he would spend even the amount of car repayments in bus fares, were he to start using public transport.

[36] In summary, there are three reasons why the car repayments should not be re-included in the calculation of the appellant's Special Benefit from October 2015 onwards:

- (i) The appellant does not meet the criteria for the car repayments to be included as an allowable cost in the assessment of Special Benefit.
- (ii) The appellant has had car repayments included in the assessment of his Special Benefit for a lot longer than the term of the original advance in relation to his current car.
- (iii) The appellant is currently living in an area where there is regular public transport.

[37] It follows that if the car repayments are not included in the assessment of Special Benefit, payments relating to the insurance premium for the car should not be included either.

Discretion to fix rate of Special Benefit

[38] Although we do not consider the car repayments and car insurance payments should be included as allowable costs in the assessment of Special Benefit, the existence of payments in relation to the car and other debt are matters to be taken into account in exercising the discretion as to whether or not Special Benefit should be paid at the higher rate or lower rate produced by the formula assessment, or some other rate.

[39] The information from the Ministry is as at 21 August 2015 the appellant was receiving \$436.14 per week in benefit. As at 19 October 2015 he was receiving total benefits of \$444.74 per week and \$411.58 was paid into his account after deductions. At the time of the hearing his rent was being deducted from his payments. After deductions, \$146.08 is paid into his bank account. The appellant says that because of his rent and various other commitments he is left with \$31 per week to purchase food.

[40] The Ministerial Direction provides for the Chief Executive to take into account the general principles set out in clause 1 and the matters set out in clause 3.3. We note the following:

- (i) It is apparent that the appellant has become dependent on Special Benefit over a lengthy period and has become used to it being paid at a relatively high level. This is unfortunate. Special Benefit was originally intended to be temporary assistance designed to alleviate hardship.
- (ii) In the course of the hearing it became apparent that despite his disability, the appellant has never been paid disability transport costs in relation to his attendance at doctors etc. It seems obvious that the appellant will have had transport costs in relation to his disability. It is hard to understand why these costs have not been included in his Disability Allowance.
- (iii) The appellant has a disability and it is apparent that this disability has impacted on his ability to budget and to make sensible decisions regarding his finances. We were impressed that the appellant showed some insight into his financial difficulty (e.g. changing address frequently) and that in recent times he has undertaken budgeting activities. It would, however, be wise for the appellant to authorise the Ministry to make direct deductions in respect of his essential costs until he gets his finances properly under control.
- (iv) The appellant has some ability to improve his circumstances by working. The appellant apparently obtains employment as a security guard from time-to-time. He may need his own vehicle to enable him to undertake this work in the future.

[41] Taking into account these circumstances, we direct that the Chief Executive pay the appellant Special Benefit at the deficiency rate produced by the formula assessment from 21 August 2015 for a period of 12 months. The assessment as at 21 August will need to take into account the appellant's correct accommodation costs. A further

assessment will need to take place from the time he moved to XXXX. Any arrears payable are to be paid in reduction of any debt owed in respect of the car.

[42] The Ministry are directed to carry out a backdated review of the appellant's entitlement to disability-related transport costs in respect of his entitlement to Disability Allowance and, if appropriate, the calculation of his entitlement to Special Benefit.

[43] Finally, we note that the appellant was aggrieved at being dealt with by the Remote Client Unit. That is not a matter for the Authority. It would appear that the appellant may request to be dealt with by an ordinary service centre and that a decision on that will be made taking into account the appellant's recent behaviour and staff safety.

[44] The appeal is allowed to the extent indicated.

DATED at WELLINGTON this 16 day of June 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member