

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

DECISION ON THE PAPERS

Introduction

[1] The appellant appeals against a decision of the Chief Executive, upheld by a Benefits Review Committee, to grant Child Disability Allowance from 16 February 2015 and not from an earlier date.

[2] Since this appeal was filed, Child Disability Allowance has been backdated to 25 May 2011. The appellant requests that Child Disability Allowance be backdated to 6 January 2009.

Background

[3] The appellant's daughter, XXXX, was born on 6 May 2008. XXXX suffers from food allergies and is allergic to dust mites, has allergic conjunctivitis, asthma, and eczema.

[4] The appellant first made contact with the Ministry on 16 February 2015 to make an application for Child Disability Allowance. Her application was granted from 16 February 2015. The appellant sought a review of decision and requested that

consideration be given to backdating Child Disability Allowance to the date her daughter was diagnosed with her serious allergy conditions.

[5] The Benefits Review Committee upheld the decision of the Chief Executive. The appellant then appealed to this Authority. The matter was then referred to the Chief Executive to consider pursuant to the provisions of s 80AA of the Act. As a result, the Chief Executive conceded that the appellant had made contact with the Ministry on 25 May 2011, and at that time XXXX's allergies were discussed. It is accepted that further questions should have been asked at this time which should have resulted in the appellant being invited to make a written application for Child Disability Allowance.

[6] However, the Chief Executive was not satisfied that there was any error on the part of the Ministry which would justify backdating the allowance to 6 January 2009 when Isabella was first diagnosed with her conditions.

Decision

[7] There is no dispute in this case that XXXX suffers from a condition which entitles her to Child Disability Allowance. The only issue is whether or not the appellant's failure to apply for Child Disability Allowance at an earlier date was a result of Ministry error.

[8] A benefit can only be backdated in the limited circumstances outlined in s 80AA of the Social Security Act 1964. The circumstances must be either that:

- (a) the applicant could not have been reasonably expected to apply earlier due to some erroneous action or inaction on the part of the Ministry; or
- (b) the applicant tried to apply or applied incompletely and did not proceed due to some erroneous action or inaction on the part of the Ministry.

Erroneous action or inaction includes "erroneously failing or refusing to provide information".

[9] The appellant says that she was not aware of Child Disability Allowance and that the Ministry did not sufficiently draw the existence of this allowance to her attention. She says the Ministry did not take steps to ensure that she or the medical practitioners who were looking after her daughter were aware that Child Disability Allowance could be paid for severe allergy.

[10] The Ministry says that it has taken action to publicise the availability of Child Disability Allowance since at least 2004. By 2009 it was publicising information about Child Disability Allowance using the following methods:

- (i) Targeted mailouts undertaken by the Ministry to provide specific sectors of the population with information about Child Disability Allowance. In particular, medical practitioners are targeted as a means of promoting awareness. This approach is based on the assumption that most children with a qualifying illness or disability will be under the care of their general practitioner, albeit that they might also require specialist care.
- (ii) Specialist Work and Income case managers at service centres liaise with doctors in their local community providing brochures, forms and policy information. In addition, liaison and information services are provided by expert case managers to hospitals, associated services and providers. This includes services to Auckland, Starship, Middlemore and North Shore hospitals.
- (iii) Electronic information, in the form of the Ministry's policy manuals, has been available on the Ministry's website since July 2001. Copies of legislation and policy manuals, including manuals relating to Child Disability Allowance are provided to individuals, organisations and community groups; such as IHC groups, special education, grandparents raising grandchildren, and Barnados.
- (iv) Printed brochures with specific reference to Child Disability Allowance are displayed in all Work and Income service centres. At a local level, they are supplied to community and advocacy services groups. All brochures contain a list of freephone numbers for people requiring further information.

[11] The Ministry is of the view that its efforts to inform the public about the existence of Child Disability Allowance are more than adequate.

[12] The appellant found out about the existence of Child Disability Allowance as a result of talking to another mother of a child with similar issues. The appellant has advised that the medical facilities she visited were a clinical immunologist; Associate Professor XXXX, and her GP at One Health General Practice and Urgent Care, Dr XXXX. Her GP says "I myself was not aware that it was available for children with significant allergies". A communication from Associate Professor XXXX states "it is possible our previous manager may not have directed [the appellant] to our website containing details of eligibility for the CDA".

[13] The inference to be drawn from both of these communications is that both Dr XXXX and Dr XXXX knew about the availability of Child Disability Allowance but did not inform the appellant about it. That is most unfortunate. XXXX has apparently had 27

visits to Associate Professor XXXX. A holistic approach to XXXX's care should have ensured that the medical practitioners involved alerted the appellant to the existence of Child Disability Allowance.

[14] The Ministry has in place a programme for publicising the existence of Child Disability Allowance. The medical professionals dealing with XXXX were apparently aware of the allowance but failed to tell the appellant about it. The appellant has been specifically asked to identify how the Ministry could have taken other steps to ensure she was made aware of the allowance. She has not identified any other steps that could have been taken to ensure that she was aware of the availability of this benefit.

[15] We are not satisfied that the appellant's failure to apply for assistance was a result of an erroneous action on the part of the Ministry.

[16] To the extent that Child Disability Allowance has been backdated to 25 May 2011, the appeal is allowed. In all other respects the appeal is dismissed.

DATED at WELLINGTON this 11th day of July 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member