

[2016] NZSSAA 074

Reference No. SSA 038/16

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of
Eketahuna 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 WELLINGTON on 9 September 2015 and 15 June 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, allegedly confirmed by a Benefits Review Committee, to pay Special Benefit at 30% of allowable costs rather than at the deficiency rate produced by the formula assessment. The date of the original decision was 12 March 2015.

Background

[2] The appellant is in receipt of Supported Living Payment paid at the single rate. He also receives Accommodation Supplement, Disability Allowance and Special Benefit.

[3] A report from a registered psychologist completed in September 2013 indicates that he suffers from Post Traumatic Stress Disorder which has left him with extreme hypervigilance issues.

[4] In February 2015 he moved to the Eketahuna area. He entered into a tenancy agreement for a property at 503 XXXX Road with a rental of \$250 per week. The property is a two-bedroom house apparently located some 500 metres from the road. The appellant says it meets his need for a stand-alone home in a quiet rural area. The house has no neighbours and is the last house on the road. The appellant was adamant that he had kept a lookout for a suitable rental property for a significant period of time and this was the only one available. He says there have been some positive spinoffs in terms of free wood and meat from the landlords.

[5] The appellant's entitlement to Special Benefit was reviewed on 12 March 2015 to take into account his new accommodation costs. As a result of this review, the appellant's entitlement to Special Benefit was reduced from \$94 per week to \$79 per week. The appellant sought a review of decision.

[6] Following the appellant's request, a further review took place. From this, it was noted that a previous decision directed the inclusion of a basic telephone rental in the assessment of the appellant's Special Benefit. An amount equivalent to the basic standard telephone monthly rental of \$50 per month was then included as an allowable cost in the assessment of the appellant's Special Benefit. The rate of Special Benefit paid to the appellant was increased to \$82.50 a week from 1 March 2015.

[7] The matter was then allegedly reviewed by a Benefits Review Committee. The written Benefits Review Committee decision upheld the decision of the Chief Executive. The appellant then appealed to this Authority.

[8] The appellant says that while his accommodation meets his needs, there are some issues with its location which affect his finances and should be taken into account in assessing his Special Benefit entitlement. The appellant says that he needs an internet connection. In addition because his house is so far from the road, the rural delivery contractor will not leave CourierPost parcels in his letterbox and this necessitates the appellant travelling 10 kilometres (return) to the local Post Shop to collect any mail from Work and Income which is delivered by CourierPost. The appellant points out that this is uneconomic for him.

[9] As a result, he says that having the internet in his home is essential and not reasonably avoidable. He spends \$75.35 per month on a combined telecommunications internet package. He also has a cellphone.

[10] The appellant apparently has significant skill with computers and in the past had his own business designing wireless networks. He is not specifically looking for work at the present time but hopes to be able to do so in the future.

[11] The appellant submits that the United Nations regards access to the internet as a basic human right. Following the hearing, he provided a variety of information from the internet which he says supports his claim.

[12] A further matter affecting his finances is the cost of travel to Masterton. The appellant says that petrol and groceries are cheaper in Masterton than in the town closest to his home in Eketahuna. At the time of the September 2015 hearing, he said he travelled to Masterton once a fortnight. At the June 2016 hearing, he said this had reduced to once every three weeks. It is a return journey of approximately 100 kilometres.

[13] The appellant says that as a result of his poor financial position his diet is very limited. He has had difficulty paying his power bills and maintaining his car.

[14] It was submitted on behalf of the appellant that Special Benefit should be paid to him at a higher rate.

[15] On behalf of the Chief Executive, it was submitted that the cause of the appellant's financial difficulty appears to be his high accommodation costs. Information from the Ministry of Business, Innovation and Employment website for the period 1 October 2014 to 31 March 2015 in respect of the Tararua District suggests that the cost of the appellant's accommodation is at the top end for rentals in the area. It was submitted that the appellant's rental costs are not essential or reasonably avoidable. It was also noted that the appellant has now been in receipt of Special Benefit since 2001. It appears that he has come to regard Special Benefit as an entitlement.

Decision

[16] The Authority issued a decision on 18 December 2015 expressing its concern about whether it had jurisdiction to hear this matter in view of the irregular nature of the alleged Benefit Review Committee hearing.¹

¹ [2015] NZSAA 102.

[17] As the Ministry had offered to hold a further Benefits Review Committee hearing the appeal was adjourned for that purpose. Unfortunately, when a further hearing took place members of the Committee, who were also Ministry staff, continued to maintain their anonymity in apparent total disregard for the Authority's decision of 6 December.

[18] The Authority sought a personal explanation from the Chief Executive. An explanation was received from a lawyer from the Ministry, Mr Robert Stainthorpe. The Authority considers the explanation offered and the failure of the Chief Executive to make a personal explanation to be highly unsatisfactory.

[19] The appellant, however, needs a decision in relation to his request for an increase in his Special Benefit. For that reason, we do not propose to refer the matter back to the Chief Executive for a further Benefits Review Committee to be convened.

Special Benefit assessment

[20] The Ministerial Direction relating to Special Benefit provides that in the first instance, the Chief Executive is to carry out an assessment pursuant to a formula prescribed in the Direction. Clause 3.1 of the Direction provides that the Chief Executive should regard as justified the fixing of the Special Benefit at a rate that is the lesser of the deficiency rate or 30% of allowable costs, provided certain other criteria are met. However, this does not prevent the Chief Executive from exercising his discretion to pay Special Benefit at the higher of the two rates or at some other rate.

[21] In carrying out an assessment pursuant to the formula, the Chief Executive must first identify the appellant's chargeable income and allowable costs.

[22] "Allowable costs" are defined in the Ministerial Direction as being 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. Allowable costs include accommodation costs, hire purchase for certain household items, disability-related expenses, motor vehicle repayments and reasonable running costs in certain circumstances, essential childcare costs, and telephone.

[23] Certain items are expressly excluded from the definition, including payments in respect of debt, fines or other liabilities (other than the repayments referred to in paras 3(a)-(h) of the definition of "allowable costs"), and bank fees.

[24] The High Court and Court of Appeal have found that for costs to meet the criteria of "essential", they must relate to costs incurred in procuring the basic

necessities of life.² In addition, the tests of “essential” and “avoidable” should not be conflated but should be considered separately.

[25] The appellant submits that the full amount of his telecommunications contract with 2talk (\$75.35 per month or \$17.38 per week) should be included in the formula assessment as an allowable cost, rather than the \$50 per month presently included.

[26] The appellant says that he needs the internet to be able to communicate with the Ministry. Moreover, utility providers add a surcharge for paper-based bill payments. He should be able to take advantage of discounts for using payment by internet. Without the internet he faces a 100 kilometre return trip to Masterton to deliver documents. Most providers will not now provide a telephone connection without an internet connection. Telephone services are not being delivered over the copper network, but rather as an add-on service over an internet connection using voiceover internet protocol (VIP). The appellant submits that internet access is a basic human right. He has provided information from the internet to support his claim.³

[27] While one of the website items he referred to has the heading “UN declares internet access a human right”, a closer reading of the material indicates this heading is inaccurate. The internet reports provided apparently stem primarily from a report by the then UN Special Rapporteur on Freedom of Expression to The United Nations Human Rights Council in 2011.⁴ In summary this report examines first, access to internet content in the context of the right to freedom of opinion and expression. Secondly, the report looks at access to the facilities which enable individuals to access the internet. The Special Rapporteur notes that internet access facilitates economic development and the enjoyment of a range of human rights. The report concludes that access to the internet is “an enabler” of other human rights and concludes that the internet boosts economic, social and political development and contributes to the progress of humankind as a whole. The report does not, however, state that access to the internet is a basic human right.

[28] The Authority is not aware of the New Zealand Government declaring that individuals have a basic right to personally own the means to connect to the internet

² *Te Aonui v Chief Executive of the Department of Work and Income New Zealand*, HC Wellington CIV-2004-485-1982, 11 August 2005 at [12]; *Chief Executive of the Department of Work and Income New Zealand v Davidson Bruce* [2006] NZAR 473 (CA) at [34].

³ www.thewire.com.
www.theatlantic.com/technology.
www.cbs.ca.

⁴ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/17/27* (2011).

and have a personal subscription which allows access to the internet. Nor are we aware of the government subscribing to an international convention which endorses such a right.

[29] Mr Signal on behalf of the Chief Executive noted that the Ministry had at times, been unable to send documents to the appellant electronically in any event because they are rejected by the appellant's email server.

[30] The appellant may have difficulties with conventional mail, but we are not satisfied that these are insurmountable. At the very least, the appellant travels to town when he can post mail to the Ministry and receive courier packages. While the appellant referred to having to travel to Masterton, he could choose to do his posting and shopping in Ekatahuna, which is much closer to his home than Masterton. Any savings in obtaining cheaper petrol and food in Masterton are likely to be offset by the cost of travelling the greater distance to Masterton.

[31] Direct debit is a mode of bill payment which avoids extra costs charged by business or for paper-based bill payment.

[32] While businesses and government departments increasingly encourage interaction via the internet, at this stage, the position remains that internet access is not a basic requirement for day-to-day life, and others living in rural areas without the appellant's internet skills continue to rely on telephone and mail to communicate with government departments.

[33] We accept that access to the internet is highly desirable, particularly for persons living in rural areas or searching for work. We are not persuaded however, that it can be characterised as a basic living cost or as essential. Nor do we consider that it can be said that it is not reasonably avoidable.

[34] The appellant has a mobile phone, in addition to internet access with VIP. The Ministry have made an allowance of \$50 per month as an allowable cost in the assessment of Special Benefit for the appellant's telecommunications requirements. While they have assessed this amount on the basis of basic telephone rental, the alternative way of looking at it is that this amount meets the appellant's essential telecommunications costs, with part of his costs being non-essential.

[35] We are satisfied that the inclusion of \$50 per month as an allowable cost is an appropriate assessment of the appellant's essential telecommunication needs.

[36] The formula assessment carried out after the amount of \$50 is included for the appellant's communication costs results in the appellant having a deficiency pursuant to the formula of \$124.12 per week. 30% of allowable costs is \$82.29 per week.

Exercise of discretion

[37] As previously noted, the Ministerial Direction provides for the Chief Executive to fix Special Benefit at either the lesser of the deficiency pursuant to the formula assessment or 30% of allowable costs. However, he also has a discretion to fix Special Benefit at some other rate.

[38] On behalf of the appellant it is submitted that the Chief Executive should exercise discretion to pay Special Benefit at the deficiency rate in fixing the rate of Special Benefit payable.

[39] In exercising his discretion to fix a rate of Special Benefit, the Chief Executive must have regard to a number of matters including the principles in Clause 1 of the Ministerial Direction. These are as follows:

1 General principles

- 1.1 That the intention of a special benefit under the [Act](#) is to alleviate financial hardship and that a special benefit should not be granted unless without the grant, the applicant or a person dependent upon the applicant would suffer financial hardship.
- 1.2 That a special benefit should not normally be granted unless the applicant's Deficiency of Income over his or her expenditure and commitments is reasonably substantial, and that Deficiency is likely to continue for a period that justifies special benefit being granted.
- 1.3 That a special benefit should be considered only in respect of costs of the applicant that are essential and not reasonably avoidable.
- 1.4 That in considering any application for special benefit, consideration should be given to-
 - (a) The applicant's ability to meet the Deficiency from the applicant's own resources; and
 - (b) The assistance that is or might be available to the applicant from other sources to meet the applicant's Deficiency,

[40] Clause 3.3(a)-(h) of the Direction requires the Chief Executive to have regard to a number of matters in considering whether there is justification for increasing or decreasing the rate of Special Benefit.

Clause 3.3(a)

Whether the applicant has any special or unusual financial expenditure compared to others in a similar general position to the applicant and the extent of any such expenditure.

In relation to cl 3.3(a), the appellant says he needs to live in a rural location. This may result in the appellant having additional or higher expenses for some items than a person living in town might have.

Clause 3.3(b)

Whether the applicant has any special or unusual reasons for any expenditure item that has caused or contributed to his or her deficiency.

A major cause of the appellant's deficiency of income over expenditure appears to be his accommodation costs. The appellant says that he looked for some time before he was able to obtain a suitable house in a rural location.

The Chief Executive produced information from the Ministry of Business, Innovation and Employment relating to the Tararua District at the hearing in September 2015. This shows the Bond Centre as having received bonds in relation to 179 properties in the Tararua District for the six months from 1 October 2014 to 31 March 2015. The average rental ranges from \$107 for a one-bedroom flat to \$204 for a three-bedroom house. It is submitted that the appellant's rent of \$250 for a two-bedroom house seems unusually high for the district. At the hearing, Mr Signal produced a variety of information relating to houses available for rent in the Woodville area. The appellant said that these properties were not suitable for him.

The appellant disputes the applicability of the information for the Tararua District for his particular area. He has produced figures for the Masterton District for the period 1 March 2015 to 31 August 2015. This shows the Bond Centre received 303 bonds for the district in this period. The information he has provided shows 59 two-bedroom houses being let in this area. The lower quartile rent was \$220, the median rent was \$235 and the upper quartile is \$250. The median rent for a one bedroom house was \$192.

Following the hearing, Mr Signal also provided information for homes to rent in the Horowhenua/Manawatu area with a range of \$145 to \$200 per week. This information was provided on the basis that the appellant indicated at the hearing that he was wanting to move closer to Wellington.

The appellant says he requires a two-bedroom house so that his adult daughter can stay with him once a fortnight. We agree with the Chief Executive that the appellant seems to be paying a particularly high rent for a two-bedroom home in a rural area,

irrespective of whether Eketahuna is considered to be in the Wairarapa or the Tararua areas. Whilst we understand the appellant wishes to live away from built-up areas, we are not satisfied that he could not have found suitable accommodation for less than \$250 per week in the early part of 2015 or that his particular accommodation costs are unavoidable.

Clause 3.3(c)

The nature of the financial difficulty and the likely duration of the difficulty.

There is some dispute as to whether the appellant has a financial difficulty. Mr Signal notes that the appellant had not applied for hardship assistance since his move to Eketahuna. The appellant said he could not afford to pay his last power bill or maintain his vehicle. At the time of the September 2015 hearing, he said he had sought a food grant recently, but had not received a response to his request.

We accept that on the basis of his budget disclosed to the Authority, the appellant would experience some financial difficulty. The appellant's financial difficulty relates primarily to his rental costs. That difficulty will continue until the appellant finds cheaper accommodation or conceivably obtains some part-time employment.

Clause 3.3(d)

The age and health of the applicant and his or her dependents and any special needs arising from that age or health.

The appellant suffers from Post Traumatic Stress Disorder. A psychologist confirms his need to live away from a built-up area. We note however, that the appellant has apparently had this condition for a number of years. Immediately prior to moving to his current location he lived in a built-up area.

Clause 3.3(e)

The ability of the applicant to improve his or her financial situation.

The appellant could improve his financial situation by seeking cheaper accommodation, whether that be in the private sector or the State sector. There is a dispute between the appellant and the Ministry as to whether or not he has made an application for social housing. The Ministry's view is that he has not done so. It would be wise for the appellant to make a further application. We understand the appellant hopes to use his IT skills to work in the future. It is possible that the appellant is able to produce some of his food requirements in his present situation. He said the landlord had provided meat and wood.

Clause 3.3(f)

The causes of the applicant's financial difficulty.

The main cause of the appellant's financial difficulty is his accommodation costs and the distance he lives from town.

Clause 3.3(g)

The extent to which the basic necessities of life for the applicant or his or her dependents would be put at risk if a grant of special benefit at the rate calculated or another was not made.

[41] The appellant has provided a budget in September 2015 as follows:

Rent	\$250.00
Power	\$34.61
Medical	\$18.46
Internet with VIP	\$17.38
Travel	\$18.46
Cellphone	\$4.15
Insurance	\$9.23
Food	\$34.61
Court fine	\$23.07
Vehicle registration	\$4.49
Warrant of Fitness	<u>\$0.96</u>
Total Expenditure	\$415.42
Total income =	\$402.94 per week

At the June hearings, the appellant generally confirmed this budget but noted his power costs remain high. He estimates \$50 per week. He advised that the insurance premium he pays relates to a funeral account. He no longer has a Court fine. He needs a cellphone so he can stay in touch with his daughter at all times.

There is a modest shortfall in the appellant's budget, although on the face of it, his spending on food is inadequate. His spending on food appears to be compromised by spending on insurance, court fines and communications.

Clause 3.3(h)

Any other matters that in the circumstances of the particular case you consider to be relevant.

We find it difficult to understand why the appellant would rent a 2-bedroom house at \$250 per week when his basic benefit is only \$262.64 per week. It is also a concern

that the appellant has now been in receipt of Special Benefit since 2001. At the time of the hearing in 2015 he appears to be giving priority to meeting the cost of funeral insurance, a cell phone and payment of a Court fine over food.

[42] Taking into account all the appellant's financial circumstances and commitments we are not satisfied that the Chief Executive would have been justified in increasing the appellant's Special Benefit to the deficiency rate produced by the formula assessment or some other rate as at 12 March 2015. We are satisfied that the Chief Executive was correct to fix Special Benefit at the amount of \$82.50 per week.

[43] The appeal as it relates to the rate of Special Benefit payable is dismissed.

[44] Costs are reserved.

DATED at WELLINGTON this 18th day of July 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member