

[2016] NZSSAA 077

Reference No. SSA 077/13

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of a proposed appeal by way of  
Case Stated to the High Court by  
**XXXX** of Auckland

**BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

Ms M Wallace - Chairperson

**DECISION ON THE PAPERS**

- [1] The appellant originally appealed to the Authority in respect of a decision of the Chief Executive upheld by a Benefits Review Committee to cancel payment of Special Benefit to the appellant from 25 December 2012.
- [2] The Authority issued a decision on 20 December 2013 dismissing the appeal.
- [3] The appellant then appealed by way of case stated to the High Court.
- [4] The case stated posed two questions as follows:
- (i) Did the Authority err in law in finding that there were no grounds for concluding the Chief Executive's discretion had been wrongly exercised?
  - (ii) Do the provisions of the Social Security Act 1964 allow the Social Security Appeal Authority to sit with two members, namely the deputy chairperson and one other member?

[5] The matter was heard in the High Court in Auckland in April 2015 and on 28 April 2015, Whata J issued a decision<sup>1</sup>. The Court found:

[a] In relation to the first question, the matter was remitted to the Social Security Appeal Authority to reconsider whether the Chief Executive erred in finding that Mr XXXX's dietary requirements did not mandate continuance of his Special Benefit.

[b] The answer to the second question, regarding the constitution of the Appeal Authority, was answered in the negative.

[6] The Authority reconsidered this matter at a hearing by video conference on 8 September 2015. It issued a decision on 20 October 2015.

[7] The decision records that the Authority had again investigated the issue of Mr XXXX's dietary requirements and considered whether he was in a financial position, once the Special Benefit was eliminated, to meet his food costs. The Authority concluded that based on the University of Otago Food Costs Survey in 2012, the cost of a moderate diet of \$86 per week would be suitable for Mr XXXX's dietary requirements as outlined in his doctor's letter. It noted that the University of Otago material stated that the "moderate cost category allows for an increase in the variety of meats, fish, fruit and vegetables and the inclusion of some convenience food. This category is calculated from the basic cost by adding 30% to the basic cost figures".

[8] The Authority then considered the appellant's ability to meet the cost of a moderate diet. After considering the appellant's budget, the Authority concluded that the appellant was in a position, after Special Benefit was cancelled, to meet the cost of his dietary requirements. The Authority dismissed the appellant's appeal in respect of the decision to cancel his Special Benefit.

[9] The appellant has now lodged a further appeal by way of case stated in relation to that decision.

[10] His draft case stated raises two issues:

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<sup>1</sup> XXXX v *Chief Executive of the Ministry of Social Development* [2015] NZHC 850.

- (i) The issue of the Authority sitting with two members rather than three.
- (ii) The failure of the Authority to take into account his full financial circumstances and outgoings.

[11] On 7 June 2016 the Authority issued a minute to the appellant noting that appeals from the Authority's decisions are limited to questions of law and that there is no general right of appeal. The appellant was given 14 days to comment on or provide a question of law to be posed to the High Court. The appellant responded on 30 June 2016.

[12] The High Court has recently advised the Authority as follows:<sup>2</sup>

The Authority is not obliged to recognise all questions of law proposed as justifying the stating of a case for the decision of this Court. ... the Chair of the Authority must retain final control over a case stated and ensure that a case is confined to errors of law alone and that such issues are genuinely in contention between the parties. Not every legal issue is to be submitted to the High Court. Where some have obvious answers then there is no question to refer to the Court.

[13] The first question proposed by the appellant is a question regarding whether the Authority can sit with only a deputy chair and one member. This issue was considered by the High Court in the appellant's previous appeal to the High Court. The High Court determined that the Authority could sit with the deputy chair and one member. It would be inappropriate and an abuse of process to pose the same question again.

[14] The second question proposed by the appellant relates to the Authority's consideration of the evidence regarding the appellant's financial circumstances (to pay for his food requirements). The question raised by the appellant relates to the Authority's assessment of the facts. To have committed an error of law where the question relates to findings of fact, the Authority must have made a determination:

- [a] based on no evidence; or
- [b] based on evidence inconsistent with and contradictory to the Authority's determination; or

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<sup>2</sup> *Lawson v Chief Executive of the Ministry of Social Development* 2016 NZHC 910 at [124].

[c] contradicting the only true and reasonable conclusions available based on the evidence.

[15] In its decision, the Authority considered the evidence of food costs contained in the University of Otago Food Costs Survey, it considered the appellant's claim to spend at least \$100 per week on food, and it considered the appellant's weekly budget.

[16] It cannot be said that the Authority based its decision on no evidence or evidence inconsistent with, and contradictory to, its finding.

[17] The appellant has not raised a question which has a tenable basis for suggesting an error of law has occurred in the Authority's assessment of the appellant's food costs and his ability to meet these costs.

[18] I am not prepared to state a case to the High Court resulting from the Authority's decision of 20 October 2015.

**DATED** at WELLINGTON this 5<sup>th</sup> day of August 2016

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Ms M Wallace  
Chairperson  
Social Security Appeal Authority