

[2016] NZSSAA 080

Reference No. SSA 071/16

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 27 July 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, to decline his application for Temporary Additional Support made on 16 November 2015.

[2] The appellant's application was declined on the basis that the assessment carried out under the formula in the Social Security (Temporary Additional Support) Regulations 2005 indicated that he did not have a deficiency of income over expenditure.

Background

[3] The appellant is aged XX years. He suffers from Schizophrenia. He receives a single rate of Supported Living Payment.

[4] For a period from June to November 2015 the appellant had no fixed housing. On 16 November 2015 he advised the Ministry that he had found accommodation in a boarding house at a cost of \$165 per week from 18 November 2015. He was granted Accommodation Supplement of \$70 per week from that date.

[5] At the same time he applied for Temporary Additional Support. The assessment of his entitlement to Temporary Additional Support was carried out pursuant to the Social Security (Temporary Additional Support) Regulations 2005. His chargeable income was calculated. His allowable costs were deducted from his chargeable income to ascertain his disposable income. The standard costs provided for under the regulations were then deducted from his disposable costs. The assessment was as follows:

ASSESSMENT DETAILS

Chargeable income

Benefit/Pension	\$262.64
Accommodation Supplement	\$70.00
Disability Allowance	\$16.65
Total weekly chargeable income	\$349.29

Allowable costs

Accommodation	\$165.00
less deduction	– \$25.42
Disability Allowance costs	<u>\$16.63</u>
Total weekly allowable costs	\$156.21

Deficiency/Surplus

Disposable income	\$193.08
less standard costs	<u>\$183.85</u>
Surplus	\$9.23

Upper limit \$78.79

Disability exception amount \$0.00

[6] As the appellant had no deficiency pursuant to the assessment his application was declined.

[7] The appellant sought a review of this decision. The matter was reviewed internally and by a Benefits Review Committee. The Benefits Review Committee upheld the decision of the Chief Executive in relation to Temporary Additional Support. To ameliorate the appellant's financial situation the Benefits Review Committee recommended that the Chief Executive reduce every debt repayment to \$1 per week so that the applicant be required to repay no more than \$10 per week in respect of his various advances and debt to the Ministry.

[8] The appellant says that he wants to ensure that he is receiving the maximum benefit he is entitled to receive. He suffers from Paranoid Schizophrenia. He points out it would cost the government a great deal more if he was in hospital, jail or in a supported living situation.

[9] He pays rent of \$165 per week for a room in a boarding house. His board payment includes power. He must buy his own food. He has access to cooking facilities but the appellant says he mainly survives on peanut butter and vegemite sandwiches as he has no money for food. The appellant said that at times he sells his medication for food and has been trespassed from a mall for shoplifting food. He no longer has an operational motor vehicle. He is being pursued by Baycorp in respect of a GE Finance debt of approximately \$22,000; the appellant's recollection was that this was for furniture but no evidence was provided. He also has a debt to Instant Finance. He has cut his cigarette costs down to \$140 per week by smoking butts.

[10] The appellant said that after payment of his rent and Child Support and court fines, the amount that he is left with is insufficient to meet his needs and that this is an inadequate amount for him to live on. The appellant says he is a XX year old man with XX year old man expenses. He believes that 'man needs woman' and he believes an allowance for what he referred to as spa and massage to meet his sexual needs should be included as an allowable cost in the Temporary Additional Support assessment.

[11] In addition, the appellant says that he feels he has been underpaid benefit for the past 27 years and he would like a full review of his benefit entitlement carried out. He is of the view that he is owed \$200,000 in arrears.

Decision

[12] Temporary Additional Support is calculated according to a formula contained in the Social Security (Temporary Additional Support) Regulations 2005. The Regulations are very specific about what can and cannot be included in the assessment.

[13] In the first instance, the formula requires a person's allowable costs to be ascertained. Schedule 2 of the Regulations defines "allowable costs". Clause 1 of Schedule 2 defines allowable costs in the following way:

Allowable costs

- (a) means the regular essential expenses (as defined in Clause 2) (if any) of the applicant and his or her family reckoned on a weekly basis; and therefore
- (b) does not include an expense that is not an essential expense (as so defined).

[14] Clause 2 of Schedule 2 of the Regulations defines "essential expenses" as meaning:

... an expense of a kind, and within the relevant limits (if any), specified in clause 3, and that ... in the chief executive's opinion,—

- (a) is essential for a person to pay or incur in order to meet the daily living needs of the person, of members of the person's family, or of both; and
- (b) could not, when the expense or the liability for the expense was incurred, readily be avoided or varied.

[15] "Allowable costs" includes agreed period payments or revolving credit payments for essential household items such as beds, refrigerators, freezer, a dining suite, a lounge suite, portable heaters, washing machines, stove, and a television set. In addition, the cost of laundry services, disability costs, payments under the telephone costs payment programme, car running costs (where the person needs their vehicle to get to employment), payments in respect of a vehicle in certain limited situations, the cost of public transport to and from work, the cost of essential child care and telephone rental costs in certain limited situations can be included as allowable costs in the assessment of Temporary Additional Support.

[16] The costs included in the assessment of the appellant's entitlement were:

- (a) His accommodation costs of \$165 less \$25.42. This amount of \$25.42 is required to be deducted pursuant to Clause 3(a) of Schedule 2 of the Regulations.

- (b) Disability costs of \$16.63. The appellant's disability costs include allowances for medical fees, prescription charges, transport and cell phone. The appellant did not attempt to dispute any of these amounts or provide information to show that they were incorrect.

[17] There is no specific provision in the definition of allowable costs for hiring a woman for sex. One option would be to explore whether paid sex might be a disability cost for a person in the appellant's particular circumstances. For a cost to be a disability cost, it must be an expense of a kind for which Disability Allowance is payable under s 69C of the Act. Under 69C, Disability Allowance can only be paid if the person has additional expenses of an ongoing kind arising from that person's disability and the assistance towards those expenses available under the Social Security Act 1964 or any other enactment is insufficient to meet them. Moreover, under the Ministerial Direction relating to Disability Allowance the Chief Executive must confirm that:

- (a) The person is incurring the expenses claimed.
- (b) The expenses are of an ongoing kind.
- (c) arise from the person's disability.

[18] The Chief Executive must also have regard to the matters in Clause 4 of the Direction in assessing whether a person has additional expenses of an ongoing kind. This includes:

4. When determining whether a person has additional expenses of a kind required by section 69C(2A)(a) of the Act, you must consider-
 - (a) Whether the person is incurring ongoing expenses which result from the person's disability, having regard to-
 - (i) The relationship between the disability and the need to incur the expenses; and
 - (ii) The other matters referred to in clause 2(d); and
 - (iii) Whether the person would be incurring the expenses if he or she did not have the disability; and
 - (iv) Whether the expenses or an expense of that kind was being incurred before the disability arose and the reasons for incurring that expense at that time; and
 - (aa) the extent (if any) to which the person's life or health would be put at risk, or the person's disability aggravated, if the person could not receive the goods or services because the expense was not wholly or partly met from a disability allowance; and
 - (b) Whether a person in a similar position who does not have the particular disability would incur expenses of that type or amount; and
 - (c) Whether there are less costly goods or services which might meet the need referred to in clause 2(d); and
 - (d) Any other matters you consider to be relevant.

[19] The appellant has previously been married and has a child. He did not explain why his disability resulted in a need to pay for sex.

[20] To be included in Temporary Additional Support the cost must be essential. We accept that it may be desirable for the appellant to have sexual relations but we are not satisfied that it could be said to meet the high threshold of “essential”.

[21] A further matter is whether or not payments in relation to the appellant’s “GE loan”, which has now been handed to Baycorp, should be included in the assessment. In a decision relating to Special Benefit paid to the appellant, the Authority concluded “we do not have a complete explanation of why all these loans were obtained but the appellant advised that he now owes \$15,220 to GM Money and that this has been used to purchase various consumer items over the years”. We are not clear as to whether this is the same loan as the GE loan the appellant refers to.

[22] The emphasis in the Temporary Additional Support Programme is on assistance to pay essential current costs. The appellant has provided no concrete information about the make-up of the debt to the finance company. It is apparent that this is historic debt. We do not think repayments of this debt can be considered to be either agreed period payments or revolving credit payments as defined in the regulations. An amount for the repayments to Baycorp cannot be included as allowable costs in the assessment of Temporary Additional Support.

[23] We accept that the appellant’s income is extremely modest and that it must be difficult for him to budget. After payment of rent, disability costs and child support he is left with \$150.86 to pay for food, transport, clothing and other basic needs. Payment of debt to finance companies and court fines will particularly exacerbate his situation, as does his high cigarette consumption.

[24] However, unlike Special Benefit, the rules around the calculation of Temporary Additional Support are very prescriptive. There is little or no room for discretion to be exercised. The result of the assessment in the appellant’s case is that he does not have a deficiency in his income. The Chief Executive had no option but to decline his application for Temporary Additional Support.

Retrospective review of the appellant’s entitlements

[25] The appellant says that he would like a review of his entitlements from the time he has been in receipt of benefit.

[26] Every time a decision has been made about the appellant's benefit entitlements he has had the right to review that decision. Since at least 2000, he would have been specifically advised of the right of review within three months of the date of the decision. That would have been the appropriate time to seek a review of any particular grant of benefit.

[27] To carry out a review of his entitlements over a 25 year period now would be extremely difficult. Moreover, the appellant would need to seek an out of time review of decision and explain the reason for his delay. In fact, the appellant did not point to any particular matter which suggested that he had been underpaid at any point, or that he had evidence of a serious underpayment.

[28] In the absence of clear evidence from the appellant that he has been underpaid, we are not prepared to direct the Chief Executive to carry out a backdated review of the appellant's benefit entitlements.

[29] The appeal is dismissed.

DATED at WELLINGTON this 22nd day of August 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member