

**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 declining to pay her Jobseeker Support after 19 July 2015 and the failure to provide other assistance.

**Background**

[2] The appellant is aged XX years. Ministry records indicate she first applied for Domestic Purposes Benefit in 1995 and remained on that benefit until 2013, with the exception of a short period at the end of 2009/beginning of 2010. In addition to caring for her children for a period she was caring for her mother and was paid Domestic Purposes Benefit – Care for the Sick and Infirm.

[3] In 2012 she enrolled for a programme of study. She enrolled in a Bachelor of XXXX degree at Unitec. Her teenage daughter was still dependent on her at that time. The appellant was able to remain on Domestic Purposes Benefit while studying under the legislation in force at the time.

[4] At the time relevant to this appeal the appellant's daughter had recently turned 18 years of age and therefore ceased to be dependent on the appellant. She remained living with the appellant. They were living in a boarding house.

[5] A package of welfare reforms came into force on 15 June 2013. The reforms included changes to the criteria for sole parent support. As a result the appellant was transferred to Jobseeker Support paid at the sole parent rate as her daughter was over 14 years of age.

[6] As part of the transition arrangements relating to the changes however there was a package of temporary exemptions (also known as grandparenting provisions) for beneficiaries who had been receiving a main benefit and studying full-time who were then transferred to Jobseeker Support. The exemption applied for a period beginning on 15 July 2013 and ending on 14 July 2015, or when the person ceased to be a full-time student or their Jobseeker Support ended.

[7] The appellant had not completed her course when the exemption period provided for in legislation expired in July 2015. In fact she expected to complete her qualification by the end of November 2015. The particular part of her course that she was required to complete between 27 July and 16 October 2015 was a practicum.

[8] The Ministry say that the appellant had been reminded about the ending of the exemption provision both in 2013 and in October 2014.

[9] In June 2015, in anticipation of the end of the exemption period ending the appellant attended a meeting at the Ministry which resulted in her applying for a Student Allowance. In effect the appellant applied for Student Allowance because as a full-time student she was no longer entitled to Jobseeker Support.

[10] Initially a mistake was made by the Ministry about the grandparenting position. The appellant's Student Allowance was granted from 18 June 2015 and her Jobseeker Support cancelled from the same date. When it was realised that the appellant was eligible to continue receiving benefit up until 14 July 2015 the situation was corrected. In fact for practical reasons the appellant was paid Jobseeker Support until 19 July 2015 and her Student Allowance was granted from 20 July 2015.

[11] The move from Jobseeker Support to Student Allowance resulted in a significant reduction in the appellant's income.

[12] The reduction in her income has not been properly explained in the s 12K report, but it also seems that she was receiving Jobseeker Support paid at the sole parent rate, rather than the single rate, until the meeting in June. Her daughter had turned 18 years of age in XXXX and could no longer be regarded as a dependent child. Her daughter was in receipt of a Student Allowance by this time. The appellant was therefore no longer eligible for a sole parent rate of benefit. In addition she ceased to be entitled to Temporary Additional Support.

[13] The impact on the appellant's budget was significant. We understand that whereas she had been receiving \$403.80 per week in benefit payments, her entitlement to Student Allowance and Accommodation Benefit amounted to \$250.13 net per week (this figure excludes Ministry debt deductions).

[14] The appellant sought a review of the decision to cancel her Jobseeker Support. With her review of decision she provided a budget which showed that she had income of \$359.62, including a rent contribution from her daughter and total expenses of \$540.31, giving her a deficit of \$180.69 each week. While there appears to be an error in that budget in relation to telephone costs, and some of the costs could not be regarded as essential, even if these costs were taken out she would have been left with a significant deficit.

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

[16] It is submitted on behalf of the appellant that the Ministry failed to consider the discretionary assistance that may have been available to the appellant under the Employment and Work Readiness Assistance Programme (EWRAP).

[17] It is submitted that the appellant's educational goals were a clear attempt by the appellant to support herself and she should have been provided with appropriate assistance to achieve that goal. At the relevant time the appellant was on a work placement segment of her course which could be considered to be a work trial. The purposes and principles of the Social Security Act 1964 should have an overriding primacy to legislation elsewhere.

[18] On behalf of the Chief Executive it is submitted that the appellant is not entitled to assistance under the EWRAP scheme because she had ceased to be a beneficiary. She therefore did not meet the eligibility criteria for the EWRAP programme.

**Decision**

[19] It appears that at the relevant time the appellant suffered a reduction in her income for two significant reasons:

- (i) Her daughter had recently ceased to be dependent and instead of receiving a benefit at the sole parent support rate, when she was transferred to Student Allowance she was paid as a single person.
- (ii) She was no longer eligible to receive Temporary Additional Support and received Accommodation Benefit rather than Accommodation Supplement.

[20] The appellant was transferred to Jobseeker Support from 15 June 2013 as a result of a package of welfare reforms which came into force at that time. As the recipient of Jobseeker Support the appellant was required to meet the standard eligibility requirements for Jobseeker Support which require that if she was not in full-time employment that she be:

- (i) seeking it; and
- (ii) available for it; and
- (iii) willing and able to undertake it; and
- (iv) has taken reasonable steps to find it.<sup>1</sup>

[21] As a full-time student the appellant was not available for employment – she could not therefore meet the criteria for Jobseeker Support.

[22] As part of the transition arrangements for the changes to the Act which came into force on 15 June 2013, Clause 2 of Schedule 32 of the Act made provision for temporary exemptions for certain transferees to Jobseeker Support under the new regime. In particular, provision was made for a person who was a full-time student and receiving a main benefit under the Act at the close of 14 July 2013 and was transferred to Jobseeker Support on 15 July 2013. A main benefit includes a Domestic Purposes benefit. The exemption given relates to the need to be available for employment and the work test requirements associated with Jobseeker Support. A person who was studying could therefore continue to receive Jobseeker Support during the exemption period which began on 15 July 2013 and closed on 14 July 2015, or when the person ceases to be a full-time student or their Jobseeker Support ends. There is a further exception in relation to the time

---

<sup>1</sup> Section 88D of the Social Security Act 1964.

limits but this does not apply to a person who is in the appellant's situation. In effect 14 July 2015 was the latest date the appellant could receive Jobseeker Support.

[23] Whilst the appellant was entitled to Jobseeker Support she was also entitled to Temporary Additional Support. The Social Security (Temporary Additional Support) Regulations 2005 provide that Temporary Additional Support cannot be paid to a person who is a full-time student unless—

- (i) The person is a beneficiary; or
- (ii) The person or his or her spouse or partner is the principal caregiver of one or more dependent children; or
- (iii) The person or a member of his or her family has disability costs (as defined in Regulation 4). As the appellant did not qualify for any of these exceptions she was no longer entitled to Temporary Additional Support.

[24] The appellant did not meet any of these criteria for being paid Temporary Additional Support once she was transferred to Student Allowance.

[25] Section 61EA(4)(a) & (b) of the Act prevents the payment of Accommodation Supplement to a person eligible to receive an independent circumstances grant under the Student Allowances Regulations 1998.

[26] We are satisfied that the appellant ceased to be eligible for Jobseeker Support as at 14 July 2015. She also ceased to be entitled to Temporary Additional Support and Accommodation Supplement. The Chief Executive was therefore correct to cancel her entitlement to these particular benefits. That however is not the end of the matter.

[27] The appellant noted in a communication to the Ministry on 30 June 2015 that she and her daughter had a combined income of \$450 per week and that after their expenses were paid they were left with \$66 per week which was not sufficient to cover food and travel expenses. The appellant notes:

We are living in the cheapest accommodation possible and do not have any other options to live anywhere else. I have worked extremely hard to get to this point in my studies and having my income reduced so severely is unfair, having it reduced at such a crucial time at the end of the semester I do not feel supported, especially when I am so close to finishing my degree ... we are being told to get work, there is no work and if there is it's poorly paid and more than likely mundane if you do not have any qualifications. I am trying my best to get ahead and be a valued contributing member of society.

I am working towards a career and under a lot of pressure to complete my assignments and co-ordinate my placement options. I do not have the time or energy to be worrying about my living costs and lack of finances, I have minimal family support and would appreciate if my case could be reviewed considering my individual circumstances.

[28] The loss of the supplementary benefits, combined with her ceasing to be entitled to a sole parent rate of assistance resulted in a dramatic drop in the appellant's income, placing her in an invidious situation when she was close to completing her qualification.

*Employment and Work Readiness Assistance Programme*

[29] We have considered whether the appellant may have been eligible for other assistance. On behalf of the appellant it is submitted that the Chief Executive could have looked at the Employment and Work Readiness Assistance Programme.

[30] The purpose of this programme<sup>2</sup> is said to be:

to assist to operate the benefit system and associated interventions in such a way as to move towards a better way to improve client outcomes (employment and social) to move them closer to independence, with a focus on those at risk of long-term benefit receipt, by making provision for the granting of special assistance to people who are or may be at risk of long-term benefit receipt—

- (a) To help them become ready for work by reducing barriers to the employment;
- (b) .....

[31] The information provided by the Ministry is to the effect that the appellant had been on a benefit from July 1995 through until July 2015, with the exception of a short period between 9 November 2009 and 13 January 2010. In effect she had been a beneficiary for approximately 20 years at the time of the interview in June 2015. By any measure the appellant was a long-term beneficiary and the dramatic drop in her income placed her at risk of failing to complete her course and remaining on benefit.

[32] The Ministry submissions place great emphasis on assistance not being provided under the EWRAP scheme because the appellant ceased to be a beneficiary when she began receiving Student Allowance. The reality is that the appellant applied for Student Allowance because she was told that she could no longer receive Jobseeker Support while she was studying and not therefore available for full-time employment.

---

<sup>2</sup> Clause 3 of the Programme.

[33] Clause 6 of the EWRAP sets out who is eligible to make application for assistance under the programme. Amongst others, a beneficiary receiving a main benefit is eligible for assistance under the programme. At the time of the interview in June 2015 the appellant was in receipt of a main benefit and eligible for assistance under the programme.

[34] One of the aims the EWRAP is that if the assistance referred to in the schedule of the programme is provided then that person will move off benefit. While the application must be made while the person is a beneficiary there is no suggestion that the person must remain a beneficiary until the assistance provided is spent. In fact the reverse is the case. The object is to make it possible for beneficiaries to move away from the benefit system. The types of assistance available under the programme make it clear that it is anticipated a beneficiary applicant will move away from the benefit system once assistance is granted. For example clause 2 of the schedule to the programme provides for wage subsidies. Clearly a person receiving a wage subsidy who is being paid wages in full-time employment is unlikely to continue to receive a main benefit under the Act once they have started the subsidised employment.

[35] Clause 3(b) of the schedule provides assistance for longer educational training courses of up to \$5,000. Again a person taking up such an offer may well cease to be in receipt of a main benefit once the offer of assistance is taken up.

[36] Clause 5 provides financial assistance to assist an eligible person with the additional costs (including but not limited to transport costs and course costs other than tuition fees) associated with the participation for a period specified by the Chief Executive in—

- (a) employment; or
- (b) study in an education course; or
- (c) employment-related training;

Again the clear inference to be drawn is that the person will cease to be eligible for a main benefit when the assistance is provided.

[37] When the appellant attended the appointment in June 2015 to discuss moving from Jobseeker Support to Student Allowance the case manager concerned ought to have considered what the appellant, as a long-term beneficiary, might need to ensure she was able to complete the final semester of her course and thereby significantly enhance her

prospects of obtaining employment and becoming independent of the benefit system. This was particularly the case given the significant drop in her income that was about to take place. It may well have derailed the appellant's study programme. We consider the situation posed a risk that the appellant would not complete her study and would remain on benefit.

[38] It was clearly open to the appellant to apply for assistance under the EWRAP at that point but she needed the case manager to alert her to the availability of this assistance. An obvious example of the assistance that might have been provided would have been assistance with transport costs in relation to her practicum which could have been paid under either Clauses 3(b) or 5.

[39] To fail to consider what assistance might be needed and what might be available was a mistake. To omit to advise the appellant of the possibility of assistance under the EWRAP programme and fail to invite an application for assistance was a serious omission on the part of the Ministry staff.

[40] In our view the appellant was clearly eligible for assistance under the EWRAP programme as at June and until 19 July 2015. Every effort should have been made by the Ministry staff to ensure that the appellant as a long-term beneficiary was able to complete her course and gain independence from the benefit system.

#### *Emergency Benefit*

[41] It may have been open to the Chief Executive to consider the appellant's eligibility for Emergency Benefit under s 61 of the Act. Section 61 gives the Chief Executive a wide discretion to grant a benefit to someone who might otherwise not qualify. While the Ministerial Direction in relation to Emergency Benefit and Benefits on the Ground of Hardship limits the Chief Executive as to the situations where hardship should be found in the case of full-time students, this was an unusual case the appellant had not been in receipt of a Student Allowance previously and the appellant's particular situation could have been considered.

[42] Considerations relevant to granting a benefit under this section would include:

- (i) The appellant had been a long-term beneficiary and in the event that she was unable to complete her course may remain a long-term beneficiary.
- (ii) The appellant was very close to completing her course.



- (iii) Evidence from the appellant's education provider noted that she was required to complete a practicum and it was not practical for her to undertake employment at that time.
- (iv) Although there were some items in the appellant's budget which could not be regarded as essential, even if those costs are disregarded the appellant was left with a significant deficit in her budget. Precisely how she was to eat and travel to her clinical placement is difficult to know. The appellant was clearly going to be in hardship once she was placed on a Student Allowance.
- (v) Her teenage daughter although now theoretically no longer dependent on her still lived with her.

[43] Had the appellant been granted an Emergency Benefit at the single rate payable to a person in receipt of Jobseeker Support she would have remained eligible for the supplementary benefits which would have enabled her to make ends meet.

[44] A third avenue to assist the appellant would have been to suspend debt recovery until she had completed study. We are unaware of whether this occurred.

[45] This matter has been dealt with on the papers at the request of the appellant. The Authority has not had the opportunity to fully explore with her the expenses which she may have been able to obtain assistance with under the EWRAP scheme. Moreover, because the appellant was not invited to apply for assistance no express application was made. Arguably the Review of Decision form could have been considered as a request for assistance. In the particular circumstances we refer this matter back to the Chief Executive for consideration of the matters raised in this decision.

[46] In any event the appellant seems to have been left in a very difficult situation in circumstances where assistance could have been provided. We strongly recommend that an ex gratia payment is made to the appellant.

[47] Costs are reserved.

[48] Leave is reserved for either party to return to the Authority for further directions if required.

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

---

Ms M Wallace  
Chairperson

---

Mr K Williams  
Member

---

Lady Tureiti Moxon  
Member