[2016] NZSSAA 090

Reference No. SSA 044/15

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by **XXXX** of Wellington against a decision of a Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Mr R D Burnard − Chairperson
Mr K Williams − Member
Lady Tureiti Moxon − Member

HEARING at WELLINGTON on 8 September 2015

APPEARANCES

Mr N Ellis for the appellant
Mr G Moore for the Chief Executive of the Ministry of Social Development

FINAL DECISION

[1] The Authority issued an interim decision in this matter on 9 November 2015. In that decision the Authority held that the Ministry was entitled to review the appellant's Special Benefit by reason of the provisions of s 81(1) of the Social Security Act 1964 ("the Act").

[2] We also noted that for the rate of Special Benefit to be finally determined a decision had to first be made as to the allowable costs included in the Special Benefit assessment. It was noted that the Ministry had indicated that some adjustment was required to those costs and at the conclusion of the interim decision the Authority adjourned the appeal to enable the Ministry to advise the Authority and the appellant of the Ministry's final assessment. On receipt of this assessment the appellant was

asked to advise the Authority within a further two weeks as to whether the revised assessment was accepted or make any further written submissions on contested items.

[3] The Ministry's assessment, with altered figures, was received by the Authority on 23 November 2015, but in the meantime the appellant had indicated that she wished to appeal against the Authority's interim decision and correspondence took place between the parties regarding the content of a Case Stated.

[4] The Authority became concerned at delays which were occurring in the finalisation of this matter and, accordingly, on 5 July 2016 issued a minute recording that advice had not been received from the appellant as to whether the Ministry's revised assessment was acceptable, and we noted that Crown Counsel had suggested that it was appropriate for the appeal against the interim decision to be heard in conjunction with any subsequent appeal of the Authority's final decision. The Authority asked that the appellant advise whether the revised assessment was accepted and if not make any further written submissions. The appellant through her advocate duly lodged further submissions on 26 July 2016 after apologising for the delay.

[5] The Ministry's reassessment of the appellant's disability costs, following observations from the Authority in our interim decision, resulted in changes to three items which increased the total Disability Allowance allowable costs by $10.12 per week, and the Special Benefit was increased by this sum for the period 11 August 2014 to 11 November 2014 with arrears being paid. The appellant's Special Benefit was reviewed for the period 12 November 2014 to 8 November 2015 and the rate increased from $186.50 to $190 per week.

[6] It is convenient to deal with the three items of disability costs that were changed and the appellant's submissions in relation to those items as follows:

Laundry liquid, sensitive shampoos and conditioner

[7] The Ministry accepted that the appellant's use of cleaning costs would be higher than that incurred by most people and increased the total from $460.10 per annum to $699.86 following the inclusion of three cleaning items. No evidence was produced

on behalf of the appellant to challenge this assessment. We consider the Ministry has made an appropriate increase.

Car running costs

[8] In the Authority's interim decision we stated that we considered the allowance of $27.30 per annum to be insufficient. Whilst the Ministry has made a modest increase to this figure leading to a total allowance of $152.88 per annum, the Authority agrees with the appellant's advocate that this is an underestimate. Unfortunately the material accompanying Mr Ellis's submission from Ms XXXX does not give details of car usage as at August 2014 when the assessment was originally made which was the subject of review by the Benefits Review Committee and appeal to this Authority. In the absence of satisfactory evidence supporting a change in 2014 the Authority is not able to make an appropriate adjustment to this item but asks that the Ministry review the transport component when the next assessment is made, preferably with the assistance of actual log book entries provided by the appellant and her mother. We would expect an increase to be made together with backdating.

Power and heating

[9] The adjustment made by the Ministry of including the full excess amount over and above an average household's costs, namely $751.92 per annum, appears to be soundly based and we note that the appellant has produced no further evidence of power usage in 2014 to justify the Authority intervening on this item, other than to note that as with car running costs the position should be reviewed periodically.

Special Benefit

[10] At the forefront of this appeal was the reduction of the appellant's Special Benefit in 2014 from $424.53 per week to $177 per week. The Authority has already held that the Ministry was entitled to review the Special Benefit under the provisions of s 81(1) of the Act. The Special Benefit assessment leading to the change is at page 184 of the attachments to the Ministry's report under Section 12K(4)(e) of the Act. The appellant's total weekly income amounted to $422.69 with weekly allowable costs of $589.88 leading to a deficiency of $336.11 so that at 30% of allowable costs the Special Benefit was fixed at $177 from 11 August 2014 (now increased to $190 per week). In the Ministerial Direction relating to Special Benefit certain general principles

are set out at Clause 1 and an assessment procedure outlined at Clauses 3.1 or 3.2. After completing the calculation (or formula rate) Clause 3.3 applies which reads:

> "3.3 Upon completion of the appropriate calculation set out in clauses 3.1 or 3.2, you must consider whether there is justification for increasing or decreasing the rate of special benefit paid to the applicant, or to fix or decline to fix an entitlement to special benefit, having regard to the principles set out in clause 1 and to the following matters:
>
> (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;
>
> (b) Whether the applicant has any special or unusual reasons for any expenditure item that has caused or contributed to his or her Deficiency;
>
> (c) The nature of the financial difficulty, and the likely duration of the Deficiency;
>
> (d) The age and health of the applicant and his or her dependants and any special needs arising from that age or health;
>
> (e) The ability of the applicant to improve his or her financial situation;
>
> (f) The causes of the applicant's financial difficulty;
>
> (g) The extent to which the basic necessities of life for the applicant or his or her dependants would be at risk if a grant of special benefit at the rate calculated, or another rate, was not made;
>
> (h) Any other matters that in the circumstances of the particular case, you consider to be relevant."

[11] The Authority accordingly has given consideration to whether there is justification for increasing or decreasing the rate of Special Benefit in accordance with that Clause. In considering the Special Benefit assessment and the issues which arise under Clause 3.3 consideration must inevitably be focused on the very high accommodation cost of $520, which is apparently paid by the appellant in rent to her mother each week. Mr Moore for the Chief Executive pointed out that if this sum was paid by the appellant to her mother as board, then under s 61E of the Act the amount would be reduced by 62% leading to little or no deficiency. Similarly if the rent was

fixed at the medium rent for a one-bedroomed house in the area, on figures produced by the Ministry from Tenancy Services (Exhibit 24, page 365) there would again be little or no deficiency.

[12] Mr Ellis's submission attached four letters from land agents assessing a rent for the property ranging from $650 per week to $1,000 per week. The Authority calculated that the average rent from the agent's figures including certain variations amounted to $775 per week. The appellant however, living with her mother in her mother's house, is paying approximately two thirds of that average rental. The house is described by one of the agents as having a formal spacious lounge with double doors through to a good sized dining room and heat pump and then through to a U-shaped kitchen with "great storage". There is a laundry and a back door off the kitchen giving access to the terraced rear garden with three levels of flat lawn, a washing line and mature trees. It is stated that there are three bedrooms, all with in-built wardrobes, and two bathrooms, together with a double garage at street level.

[13] No evidence was given by Ms XXXX as to whether the rent had been negotiated with her daughter or how it had been established. It was certainly not an arms-length transaction. Whether the payment is correctly described as "rent" defined by the Concise Oxford Dictionary in its first meaning as "a tenant's periodical payment to owner or landlord for use of land or house or room" is a matter which is not material to this Authority's decision but there was no identification in the evidence as to what Ms XXXX is precisely renting, nor any evidence as to how the figure of $520 was arrived at. Whilst the high rent cost is not determinative of this appeal it nevertheless is material in the Authority's consideration of the issues to be dealt with under Clause 3.3 of the Ministerial Direction. Emphasis is placed in the Direction at (a), (b), (c), (f) and (g) on financial issues and the appellant's financial position is overshadowed by the very substantial "rent" payment she makes to her mother.

[14] In addition the Authority notes that no evidence whatsoever was presented of financial difficulty – Mr Ellis said that paying the Special Benefit at the capped rate "is still putting her into financial hardship" but we heard no evidence of borrowing, unpaid debts or other factors indicating any particular financial difficulties which the appellant may be in. Her affairs of course are intertwined with those of her mother and Ms XXXX in giving evidence said that her income was "confidential".

[15] Turning to paragraphs (b) and (d) of Clause 3.3 the Authority readily accepts that the appellant has special health and living requirements markedly different from other people of her age. She requires virtually full-time care and continual medical treatment.

Conclusion

[16] In the absence of any evidence of financial difficulty or hardship however the Authority has concluded that there is no justification for increasing the rate of Special Benefit above the formula rate assessed by the Ministry and for the reasons given above this appeal is dismissed.

DATED at WELLINGTON this 30th day of September 2016

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Mr R Burnard
Deputy Chairperson

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Mr K Williams

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Lady Tureiti Moxon