

[2016] NZSSAA 096

Reference No. SSA 048/16

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
Lady Tureiti Moxon - Member

HEARING at WELLINGTON on 20 October 2016

APPEARANCES

Mr G Howell for the appellant
Ms Holm for Chief Executive of the Ministry of Social Development

DECISION

[1] This is an appeal against a decision to decline to pay the appellant financial assistance under the Employment and Work Readiness Assistance Programme to help with trading-related costs in connection with participation in a Foundation Education (Health Science) course. The decision had been made on 17 February 2016 and on 23 March 2016 a Benefits Review Committee confirmed the decision and Ms XXXX's advocate subsequently gave notice of appeal to this Authority.

[2] Ms XXXX gave evidence that the course she was interested in pursuing could lead to employment in forensics or nursing. She had attended previous courses and had obtained funds from StudyLink.

[3] We were advised that the request for assistance was for the sum of \$2,200 to cover costs of a text book, stationery, a work station, flash cards, a printer, a memory stick, laptop cover, calculator and transport.

[4] At the hearing before the Authority on 20 October Mr Howell called Ms XXXX to give evidence and presented submissions in support of the appeal. The main thrust of Mr Howell's argument centred on whether or not guidelines relied on by the Ministry whereby in order to receive a Training Incentive Allowance the applicant was not to be enrolled in a Level 4 New Zealand Qualifications framework course of study, with Mr Howell contending that these guidelines were not lawfully issued under the Employment and Work Readiness Assistance Programme as they were inconsistent with the programme in terms of Clause 6(2A) which is set out later in this decision.

[5] Ms Holm for the Chief Executive relied on a report presented under s 12K(4)(e) of the Social Security Act 1964 ("the Act"), which had been presented to the Authority prior to the hearing, and explained that the guidelines did not allow for the payment of allowances on Level 4 courses. She said that the guidelines were intended to target the assistance under the programme to people who met the criteria in the Section 12K Report. The appeals officer stated that the intent of the restriction was to help fund low-level qualifications and funding for higher level qualification was to be sought through StudyLink.

Authority's findings

[6] The issue in dispute between the parties as the appeal proceeded was confined to whether the guidelines relied on by the Ministry (which appear at page 198 of the attachments to the Section 12K Report) were not authorised under the Employment and Work Readiness Assistance Programme because they were inconsistent with the programme. Mr Howell placed strong emphasis on the words "not inconsistent" which appear in Clause 6(2A)(a) of the programme. The relevant part of Clause 6 reads as follows:

6. Employment or work readiness assistance: eligibility

(2A) In the exercise of the discretion under subclause 91), the chief executive may from time to time—

- (a) promulgate guidelines not inconsistent with this programme for staff of the department exercising delegated authority for the purpose of targeting assistance or assistance of a specified kind towards eligible people or specified cohorts of eligible people the chief executive considers most at risk of long-term benefit receipt, including the specification of eligibility criteria for that purpose; and

...

[7] The Authority is not satisfied that the guideline to restrict funding to courses below Level 4 is inconsistent with the programme. We note that the purpose of the programme is stated at Clause 3 which reads:

3. Purpose

The purpose of this programme is to assist to operate the benefit system and associated interventions in such a way as 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 or in respect of 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 their employment:
- (b) if they are ready for work, to help facilitate their transition into, and retention of, sustainable employment.

[8] This provision is widely drawn and with limited funding available it is not surprising that the Chief Executive has introduced a restriction directing assistance primarily to low level qualifications. It seems to us that a level needs to be set in that the intention of the programme would not be to assist people with for instance post-graduate doctoral studies but to enable the greatest number of beneficiaries seeking to better themselves to enrol in appropriate courses.

[9] The Authority considers that the guidelines concerned were not inconsistent with the programme.

[10] Although it is not decisive to this appeal the Authority records that there may well be doubts as to whether this Authority can in effect issue a declaration that the guidelines are *ultra vires*. This would appear to be the prerogative of the High Court.

[11] Before leaving this appeal the Authority notes that as in so many cases heard before the Authority we are impressed with the diligence with which Mr Howell has pursued his clients' interests. Ms XXXX has reason to be grateful to Mr Howell for the efforts he has made on her behalf.

Conclusion

[12] For the reasons given above the appeal is dismissed.

DATED at WELLINGTON this 18th day of November 2016

Mr R D Burnard
Chairperson

Lady Tureiti Moxon
Member