

[2016] NZSSAA 099

Reference No. SSA 075/16

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

Ms M Wallace - Chairperson

Mr K Williams - Member

HEARING at WELLINGTON on 18 October 2016

APPEARANCES

Mr G Howell for the appellant

Mr R Signal for 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 an advance payment of benefit to meet the cost of an accountant to complete financial accounts for his business.

Background

[2] The appellant is aged 45 years. He is separated. His children are not dependent on him.

[3] At the time relevant to the appeal the appellant was in receipt of Jobseeker Support. He operated a small business from which he earned additional income. Income from his business was charged against his benefit entitlement. The business is operated through the auspices of a company, XXXX Limited. The activities of the business include XXXX.

[4] As a person in receipt of Jobseeker Support, the appellant is obliged to reapply for his benefit every year. The appellant needed to complete his reapplication in 2015 before 11 June 2015. He was advised on 29 May 2015 that he would be given an extended period of three months until 11 September 2015 to provide his completed business accounts for the year ending 31 March 2015. He was advised that the accounts to be provided would need to include an income and expenditure report, balance sheet and depreciation schedule.

[5] On 11 September 2015 the appellant contacted his case manager and advised that his accountant was no longer prepared to do accounting work for him. He therefore needed to find a new accountant to prepare his business accounts. He said he would not be able to meet the deadline for providing the accounts.

[6] The appellant was given two weeks to find a new accountant and advise how long the new accountant expected to take to complete the accounts.

[7] On 7 October 2015 the appellant advised his case manager that he expected the accounts to be completed and available from his accountant soon.

[8] On 13 November 2015 the appellant gave the Ministry the name of the accountant he expected would complete the accounts, although it appears that the name given by the appellant was that of the accountant who had already said he was not prepared to do the accounts. When this information was received, a case manager contacted the accountant who advised that he would not be completing the appellant's 2015 accounts. On the same day, the case manager contacted the appellant and advised him that he was being given a final extension until 7 December 2015 to provide the business accounts. He was advised that if the accounts were not received by that date his benefit would be suspended.

[9] It was in these circumstances that on 25 November 2015 the appellant made an application for an advance payment of benefit to assist him in paying for an accountant to prepare the business accounts. His application was declined on 27 November 2015. A note made at the time records the reason given for the decision to decline was "need can be met in another way".

[10] On 8 December 2015, the appellant's benefit was suspended from 7 December 2015 on the basis that his business accounts had not been received.

[11] On 24 December 2015, his payments were resumed from 7 December 2015 on the basis that the appellant was making further representations regarding his business accounts.

[12] The appellant sought a review of the decision to decline his application for an advance to pay for an accountant to prepare the accounts. 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.

[13] On behalf of the appellant, it is submitted:

- (i) that the requests by the Chief Executive made the provision of his business accounts essential, in order to maintain his Jobseeker Support.
- (ii) that by imposing a time limit on the receipt of the information, the need was immediate.
- (iii) the appellant had made regular payments to his former accountant to produce the 2015 accounts but the only refund received from the accountant was \$56.50.
- (iv) the withdrawal of the appellant's former accountant from doing his accounts created a difficult situation for the appellant.
- (v) the amount sought was \$1,000.

[14] On behalf of the Chief Executive, it is submitted that keeping records and producing financial accounts is a requirement of running a business. According to the IRD website the minimum financial reporting requirements for a business with income and expenditure in excess of \$30,000 is to provide:

- a balance sheet setting out the assets, liabilities and net assets of the company at the end of the income year.
- a profit and loss statement showing income derived and expenditure incurred by the company during the income year; and
- a statement of accounting policies.

Decision

[15] Section 82(6) of the Social Security Act 1964 gives the Chief Executive a discretion to make an advance payment of benefit if he is satisfied that such a payment would best meet the particular immediate needs of the beneficiary. In exercising this discretion, the Chief Executive is required to have regard to the Ministerial Direction relating to the advance payment of benefit.

Clause 1.1 of the Direction defines immediate need as follows:

Immediate Needs, in relation to a Beneficiary, means all of the beneficiary's essential needs including:

- (a) the Beneficiary's Particular Immediate Need; and
- (b) his or her ability to meet the regular and ongoing essential living expenses of the Beneficiary

[16] "Particular immediate need", in relation to a beneficiary, is defined as meaning a particular and immediate need for an essential item or service.

[17] The first issue to be considered is whether or not the appellant had a particular immediate need for an essential item or service. The Ministry had advised the appellant that if his accounts were not provided by 7 December his benefit would be suspended.

[18] The payment of accountancy fees for a business would not, in the normal course of events, be regarded as an essential item or service,¹ but in the particular context the Ministry had made production of the accounts extremely important if the appellant's benefit was to continue.

[19] Clause 2.2 of the Ministerial Direction requires the Chief Executive to have regard to certain matters in determining whether or not a beneficiary has a particular immediate need. The Direction requires the Chief Executive, first, to have regard to

¹ See *Te Aonui v Chief Executive of the Department of Work and Income* HC Wellington CIV 2004 485 1982, 11 August 2005.

three particular matters; namely the effect on the beneficiary if the need is not met, when that effect is likely to impact on the beneficiary, and the beneficiary's ability to meet the need from his own resources. In this case, the answer to these three questions is interrelated.

[20] The effect on the appellant if his need was not met was that his benefit was to be suspended or terminated on 7 December 2015. The consequences for him depended largely on the extent of his income and assets from his business and the ability of the business to support him in the absence of a benefit.

[21] The accounts for the business for the year ending 31 March 2014 showed the business had a turnover of approximately \$25,000 per annum (see decision [2015] NZSSAA 60). The first set of accounts produced for 31 March 2015 (the appellant's handwritten accounts) indicated a turnover of \$38,000. This was reduced to \$32,225 in the accounts eventually prepared by Kiwi Tax. This all suggests a level of activity which might indicate the appellant would not be left without income if his benefit was suspended. It also suggests the company might be in a position to pay for its accounts itself.

[22] At the request of the Authority, the appellant has provided further financial information as follows:

- (i) ANZ credit card statements relating to the company's credit card for the period 21 September 2015 to 20 December 2015. These statements show the company to have a credit card debt of less than \$500 in each of the three months for which statements were provided. The card had a credit limit of \$6,000 and available credit of more than \$5,000 in each month.
- (ii) Statements for an ANZ business current account for XXXX Limited, showing the company had an overdraft of \$5,743.93 at the end of October 2015, \$4,956.40 at the end of November 2015 and \$4,413.14 at the end of December 2015. The statements show the company as having an overdraft limit of \$10,000 (– an increase in the limit available in 2014).
- (iii) Statements relating to a BNZ credit card in the appellant's personal name which he told the Authority had been "leased" to the company show this credit card has a limit of \$5,000. The amount owing on this card at the

end of each payment period was less than \$200 in each of the months of October, November and December 2015.

- (iv) Statements for the appellant's personal BNZ bank account showing a small credit balance at the end of October, November and December 2015. This was the account into which his benefit was paid. The account shows rent being paid from this account but there does not appear to be any payment of living expenses from the account.

[23] The appellant's advocate submits that the appellant should not have to borrow money for an essential cost. We agree that the appellant should not have to borrow for his personal basic costs. However, this particular cost was a business cost, not a basic living cost. It is not unusual for a small business to have credit facilities to even-out fluctuations in cash flow.² Both the company's credit card facility and overdraft facility had ample credit which the appellant could have used to pay for an accountant to prepare the necessary accounts. The appellant was apparently prepared to use these facilities for other business costs. It is difficult to see why he would not use such facilities to meet the accountant's cost of less than \$1,000.

[24] The appellant also told the Authority he uses his own credit card to meet both personal and company expenses. He had a facility available to meet the accountant's costs on this credit card also.

[25] A significant feature of the bank account statements provided is that there is no evidence of the appellant meeting his day-to-day living costs from these bank accounts. The appellant also provided statements for his personal bank account in 2014. This is also a feature of the 2014 statement. Moreover, payments made on the credit cards do not appear to have come from the bank statements provided.

[26] In 2014, the appellant was able to make substantial credit card repayments; for example, in the period October – November he made payments of \$5,184.05 on his personal credit card. The source of these payments was not from either his personal bank account or the business bank account.

[27] On the basis of this information, it appears that:

- (i) the appellant would continue to have an income if his benefit was cancelled.

² See *McIlroy v Director-General of Social Welfare* [1992] 9 FRNZ 366.

- (ii) the cost for which the appellant sought an advance payment of benefit was in fact a company cost and the company could have met the cost of the accountant from the credit facilities available to it.

[28] Clause 2.3 of the Ministerial Direction provides that a beneficiary can generally be expected to meet a particular immediate need if he or she has cash assets above the limit specified in Schedule 31 of the Act. At the time relevant to this appeal the limit for a person in the appellant's circumstances was \$1,050.

[29] The definition of "cash assets" in the Ministerial Direction is defined as meaning assets of that person and his or her spouse, (if any), that can readily be converted into cash. It includes (but is not limited to):

- (i) Shares, stocks, debentures, bonus bonds and other bonds.
- (ii) Bank accounts including fixed and term deposits within a bank, Friendly Society, Credit Union or Building Society.
- (iii) The net equity held in any property or land not used as the person's home.

[30] There are a number of ways of viewing the appellant's asset situation. The appellant has shares in his company. The company's accounts indicate the company owes the appellant a substantial amount. Arguably the company had some ability to repay part of this loan to the appellant. In decision [2015] NZSSAA 60 which related to the appellant, we concluded that the appellant's cash assets exceeded the limit of \$1,031.36 on the basis that he had deprived himself of cash assets (s 74(1)(d)). The accounts prepared for the year ending 31 March 2015 note that during the year a log splitter had been purchased for \$2,200. After depreciation, its book value as at 31 March 2015 was noted as being \$1,980. Other equipment owned included a furniture trailer and a furniture truck and two Toyota Camrys. The total book value of the assets shown is \$10,989. Even if the sale value is substantially less it seems likely that the value of these assets exceeded \$1,050. On balance, we are satisfied that the appellant had cash assets which exceeded the limit referred to in the Ministerial Direction.

[31] We are not satisfied that the appellant had a particular immediate need for an essential item or service because:

- (i) The need to pay for accounting fees could be met by the company from its own resources.

(ii) The appellant had a means of financial support which meant he would not be left without funds to meet his living expenses if his benefit was cancelled.

(iii) His cash assets were such that, pursuant to Clause 2.3 he would generally be expected to meet his particular immediate need.

[32] The Chief Executive was correct to decline the appellant's request for assistance.

[33] The appeal is dismissed.

DATED at WELLINGTON this 21st day of November 2016

Ms M Wallace
Chairperson

Mr K Williams
Member