

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
Lady Tureiti Moxon - Member

HEARING at Wellington on 17 November 2016

APPEARANCES

No appearance by or on behalf of the appellant
Mr R Signal 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 an application for benefit assistance made on 29 July 2014.

[2] A central issue in this case is whether or not the Chief Executive should have waived the requirement that the appellant provide a medical certificate to support his application for assistance.

Background

[3] The appellant is single. He is now aged 24 years.

[4] On 29 July 2014, the appellant made an online request for financial assistance to the Ministry. In his online application he indicated that he was caring full-time for his mother. He had been caring for her full-time since 10 May 2006. He indicated that there was no one else who could provide care for her.

[5] On 31 July 2014, the appellant attended an interview with his case manager. The appellant said that he had been caring for his mother on a full-time basis but he was also looking for full-time work. The appellant was given the option of providing medical information to support an application for Supported Living Payment – carer's benefit¹ or applying for Jobseeker Support. The Ministry says he was given a Jobseeker Support application to complete and return if he did not want to pursue the carer's benefit option.

[6] Appointments were made for the appellant to attend Planning and Assessment and WRK4U seminars as part of the required jobseeking process. We understand that the appellant did not attend either the WRK4U seminar or the Planning and Assessment seminar booked.

[7] On 14 August, the appellant enquired as to why he had not yet received any benefit payments. He was advised on the same day that he needed to have the medical certificate attached to the Supported Living Payment application completed by a doctor and returned to complete the information required. In the alternative, he was invited to complete and return the Jobseeker Support application that he had been given at the interview on 31 July 2014.

[8] The appellant responded on the same day by email stating that Work and Income already had the information required. He could not provide any further medical information regarding his mother's medical condition because of privacy constraints.

[9] On 18 August, a service centre manager responded to the appellant to the effect that either he would need to get a medical certificate from his mother's doctor supporting his application or he should complete a Jobseeker Support application.

¹ Section 40D. Supported Living Payment: on ground of caring for patient requiring care: eligibility.

[10] The appellant responded on 19 August that the Ministry were well aware of his mother's severe and serious accident injuries and the Ministry should not require any further information. He requested information about what he needed to do to access his legal entitlements.

[11] On 25 August 2014, in response to this communication the service centre manager again advised the appellant of the need for a medical certificate. The reason why a medical certificate completed in 2007 for his mother was not sufficient to support his application was explained.

[12] Later that same day, the appellant responded saying he could not provide someone else's medical information without her consent. He sought a review of decision in relation to the failure to provide him with a benefit following his on-line application on 29 July 2014 and the requirement to provide the medical certificate.

[13] The Ministry Section 12K Report states that on 26 August 2014 his application lapsed at the end of the business day and that on 27 August a case manager declined his application in the SWIFT system. The appellant was advised on 27 August 2014 that "because you have not replied to our request for information you don't qualify for this benefit".

[14] In subsequent correspondence the appellant was given the option of restarting the application process.

[15] The request for review of 25 August was treated as a request to review the decision to decline the appellant's application. The matter was reviewed internally and by a Benefits Review Committee. The Benefits Review Committee confirmed the Chief Executive's decision that the application had been correctly lapsed because the application requirements had not been completed within a 20 working day period. The Committee considered that in any event, it had no jurisdiction.

Decision

[16] The history of this matter before the Authority is that this appeal was first set down for hearing on 14 April 2015. The hearing was adjourned at the request of the appellant. A further hearing was arranged for 8 June 2015. Advice about the hearing was conveyed to the appellant on a number of occasions. The appellant did not seek any further adjournment but did not attend the hearing. The Authority dismissed the appeal on the basis that it had not been prosecuted. The appellant appealed this decision to the High Court. On 26 July 2016, the High Court found that the Authority

did not have jurisdiction to dismiss the appeal for failure to prosecute. It should have decided the substantive issue raised by the appellant. The matter was returned to the Authority for further consideration.

[17] The appellant was advised that this appeal would now be heard on 17 November 2016. He was also advised that he could attend by telephone conference call if he did not wish to appear in person. The appellant did not attend in person. He advised he did not wish to attend by telephone.

[18] There is no dispute in this case that the appellant lodged an application for financial assistance with the Ministry on 29 July 2014. That application disclosed information which might support an application for Supported Living Payment – carer's benefit on the basis that the appellant was caring for his mother (Mrs XXXX). It also indicated that the appellant was seeking employment as a personal trainer.

[19] The appellant attended an appointment on 31 July 2014 to follow up on his online application. At that appointment:

- (i) he was advised he needed to get the medical certificate attached to the Supported Living Payment application form completed by a medical practitioner.
- (ii) he was given an application for Jobseeker Support to complete and return if he wished to pursue this option.
- (iii) appointments were made for him to undertake the preliminary activities necessary to receive Jobseeker Support and he was given a Jobseeker Support application form.

[20] Section 11D(2) of the Social Security Act 1964 provides for the benefit application process. It requires that in addition to completing an application form the person must provide any supporting evidence, for example, a medical certificate reasonably required by the Chief Executive. Subsection (5) provides that the Chief Executive may waive all or part of the requirement to provide information if satisfied that (the department):

- (i) already holds the information concerned.
- (ii) holds enough other information to determine the matter for which the information concerned is needed.

Supported Living Payment – Care for the Sick and Infirm

[21] Pursuant to s 40D(1) of the Act, to be eligible for Supported Living Payment on the ground of caring for patient requiring care, the Chief Executive must be satisfied that the person seeking the benefit will be caring for a person in need of care who would otherwise have to receive the equivalent of–

- (a) hospital care, rest home care, or residential disability care, within the meaning of the Health and Disability Services (Safety) Act 2001;

[22] Section 40E requires that a doctor certify the need for one of these types of care.

[23] The appellant was requested to have a medical practitioner complete a medical certificate which included confirmation that his mother was in need of the equivalent of hospital care, or rest home care or residential disability care.

[24] It is apparent from the appellant's correspondence with the Ministry that the appellant understood what was required of him but that he objected to providing the necessary information. Indeed, his request for a review of decision on 25 August would have been best viewed as a request to review the decision to require him to provide the medical certificate sought and should have been dealt with on that basis.

[25] The appellant says that the Ministry held information about his mother's condition and had held that information since 2007. It was sufficient to explain his mother's situation to the Ministry. Moreover, it would be a breach of his mother's privacy to obtain further information. We understand the information held by the Ministry is a medical certificate associated with an Invalid's Benefit application in 2007. A copy of that document is included in the Section 12K Report. That certificate certainly confirms that in 2007 Mrs XXXX was suffering from severe physical, mental and psychological disability, but the particular certificate is focused on her ability to work. There is nothing in that certificate which indicates whether or not Mrs XXXX needed hospital care, rest home care, or residential disability care at the time the certificate was completed. These are the critical issues for a grant of Supported Living Payment. If the person being cared for would not require one of those types of care, the person seeking the benefit cannot be granted Supported Living Payment.

[26] A person may require assistance with the day-to-day tasks of living but that does not necessarily mean that they will need hospital care, rest home care or residential disability care. By 2014, the 2007 medical certificate was approximately seven years old. It was not unreasonable for the Chief Executive to ask for more

recent information and a certificate from a doctor about Mrs XXXX's need for hospital care, rest home care or residential disability care. This is particularly the case because the doctor who completed the certificate in 2007 recommended that Mrs XXXX's benefit entitlement be reviewed after two years. He could have recommended "never" but did not do so.

[27] A further significant matter was that the information available to the Chief Executive was that the appellant's father is included in Mrs XXXX's Supported Living Payment and has been exempted from a work test because he provides full-time care for her. Therefore it was relevant for the Chief Executive to explore why the appellant needed to care for his mother on a full-time basis when his father was apparently already fulfilling that role.

[28] The appellant expresses a concern that provision of the information requested would breach his mother's privacy. Section 40E of the Social Security Act 1964 specifically requires every applicant for a Supported Living Payment on the ground of care at home for a patient requiring care, must be supported by the certificate of a medical practitioner certifying:

- (a) that the patient requires the applicant's full-time care and attention; and
- (b) that, but for that care and attention the patient would have to receive care that is or that is equivalent to, care of a kind specified in s 40D(1)(a) or (b).

[29] If the appellant wanted a carer's benefit, he needed to co-operate with the Ministry and provide any information required to make an assessment about his entitlement to a benefit including up-to-date information from a doctor about his mother's condition. If his mother was not prepared to allow him to provide this information then the appellant needed to focus on his application for an alternative benefit such as Jobseeker Support.

[30] The Chief Executive's request for confirmation from a doctor that Mrs XXXX would need hospital care, rest home care, or residential disability care if she was not being cared for by the appellant was perfectly reasonable. It would not have been appropriate to waive the requirement that this information be provided.

[31] If the necessary information was not supplied within 20 working days, then in the absence of a decision to waive the request or extend time for providing the information, the appellant's application for financial assistance would lapse.

Jobseeker Support

[32] Section 11D(4) provides that the receipt by the department of a completed application form for a benefit of one kind is sufficient compliance to enable the granting of a benefit of another kind. The Chief Executive identified that while the appellant's application for assistance appeared primarily to be an application for a carer's benefit it was also possible that Jobseeker Support might be an appropriate benefit for the appellant.

[33] Section 11E of the Social Security Act 1964 provides that if a person contacts the Ministry for financial assistance and the appropriate benefit is considered to be Jobseeker Support then he or she may be required to undertake pre-benefit activities. Pre-benefit activities include participating in employment-related seminars and completing any self-assessment or planning required by the Chief Executive.

[34] The appellant was booked to attend a WRK4U seminar on 1 August 2014 and a Planning and Assessment seminar on 7 August 2014. The appellant failed to attend either of these appointments. Nor did he take steps to arrange further appointments within the 20 day timeframe allowed.

[35] However we understand that the appellant was primarily seeking Supported Living Payment and that Jobseeker Support was simply suggested as an alternative option.

Lapsing of benefit requirements

[36] Section 11D(8) provides that an application for a benefit lapses at the close of the period of 20 working days after the date of first contact unless within the period the requirement stated in subsection (2)² has been complied with.

[37] The term "working day" is defined in s 3 of the Act. The definition states that it means a day of the week other than certain specified days. There is no reference to time of day in the definition. The dictionary definition of a day is "a period of 24 hours as a unit of time especially from midnight to midnight."³

[38] The wording of s 11D(8) is quite specific. "The period of 20 working days after the date of first contact" means that time for calculating 20 working days starts the day after the date of first contact. In this case, the first working day was 30 July 2014. The end of the period is "at the close of the period of 20 working days". There is no

² The provision of supporting information.

³ New Zealand Oxford Dictionary.

reference to 'the end of usual business' as suggested by the Ministry, in the definition of working day. In this case, the close of the period of 20 working days was midnight on 26 August 2014. In effect the application lapsed on 27 August.

[39] The Chief Executive is not required by the statutory provision to determine that an application has lapsed. The application lapses by virtue of the operation of s 11D(8) and in the case of Jobseeker Support s 11G(4). In this regard, whether or not the lapse is entered in the SWIFT system is not the same as the actual lapsing. However, s 11D gives the Chief Executive power to consider whether the 20 day period might be extended after the 20 days has expired and the application has lapsed if the Chief Executive considers there is good and sufficient reason for the failure to provide supporting evidence required such as a medical certificate.

[40] We infer that that was what the case manager considered on 27 August. A decision was made declining to extend the time for providing a medical certificate. As the appellant clearly felt very strongly that he should not have to provide a certificate and had lodged a review of decision in relation to this issue on 25 August, there was clearly no point in extending time to provide this information.

[41] We infer that it was this decision that was entered into the SWIFT system as a decline on 27 August. It would not be possible to decline an application which had in fact lapsed.

[42] In addition, in relation to Jobseeker Support applications, s 11G of the Act provides that the Chief Executive is not required to investigate a claim for benefit unless the applicant has undertaken any required pre-benefit activities. Section 11G(4) provides that if an applicant has failed to carry out pre-benefit activities any application for the specified benefit lapses within 20 working days.

[43] In this case, the Chief Executive determined that if the appellant wished to pursue Jobseeker Support, he should undertake two pre-benefit activities, namely attend a WRK4U seminar and a Planning and Assessment Seminar. He did not attend either of those activities on the day arranged or make arrangements to attend on another date before the 20 working days allowed for were concluded.

[44] As a result, the appellant's application lapsed on 27 August. The appellant had not completed the requirements to be granted Supported Living Payment or Jobseeker Support within 20 working days of his initial approach to the Ministry.

[45] In summary, for the reasons outlined we are satisfied that the Chief Executive was correct to require the appellant to provide medical evidence that his mother would require hospital, rest home or residential disability care if he did not provide care for her. We are also satisfied that there was no basis for extending time for providing this information. Nor did the appellant complete the requirements for Jobseeker Support. Accordingly the application for financial assistance of 27 July 2014 lapsed.

[46] The appeal is dismissed.

DATED at WELLINGTON this 8th day of December 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member