

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
Mr K Williams - Member

HEARING at WELLINGTON on 16 November 2016

APPEARANCES

Mr G Howell for the appellant
Ms J Hume for Chief Executive of the Ministry of Social Development
No appearance by the appellant

DECISION

Introduction

[1] This is an appeal against a decision of a Benefits Review Committee on 18 May 2016 upholding a Ministry decision to decline to pay Ms XXXX a childcare subsidy.

Background

[2] Ms XXXX, who is a 22 year old single woman with one dependent child and is on a Sole Parent Support benefit applied for a childcare subsidy on 22 February 2016. The application recorded that her daughter was to commence at the XXXX Child Care Centre from 22 February 2016 for 31.5 hours per week of care. The centre confirmed

in the application that the appellant was to receive 18 hours of free early childhood care and on the same day the application was declined by the Ministry because of the free education the child was already receiving.

Decision of Benefits Review Committee

[3] In its decision the Committee decided that the applicable Regulation relating to Ms XXXX's application was Regulation 17 of the Childcare Assistance Regulations 2004 made under the Social Security Act 1964 ("the Act"). The Committee decided that as the maximum number of hours of childcare that could be paid to the appellant under Regulation 17 was nine hours per week the application was correctly declined by the Ministry.

Case for the appellant

[4] The Authority's hearing on 16 November 2016 had been adjourned from an earlier fixture date of 17 October 2016 because Ms XXXX had not appeared on that occasion although her advocate Mr G Howell was present. At the second hearing on 16 November Mr Howell was again present but explained that while Ms XXXX had been notified of the time and place of the hearing and had arranged to meet with him prior to the hearing she had not kept this arrangement and he considered it was best to present her appeal in her absence to the extent that he was able to do so without her evidence.

[5] Mr Howell in his submissions accepted that Regulation 17 applied but argued that the Benefits Review Committee had "failed to take into account the context" and could possibly have provided the appellant with the extra childcare by granting her Temporary Additional Support.

Case for the Ministry

[6] Ms Hume representing the Chief Executive contended that Regulation 17 applied and that there was no scope for consideration of assistance under the Temporary Additional Support provisions.

[7] She had earlier submitted an extensive report under s 12K(4)(e) of the Act to the Authority on which she relied at the hearing.

Decision

[8] Both parties agreed that Ms XXXX's application was to be determined under the provisions of Regulation 17 of the Social Security (Social Obligations – Attendance at

Recognised Early Childhood Care Education Programme) Regulation 2013. Regulation 17 reads:

“17. Payment of childcare subsidy if principal caregiver neither engaged in approved activity nor has serious disability or illness

A childcare subsidy for an eligible child’s participation in approved early-childhood education programmes is payable for up to 9 hours a week if–

- (a) the child is participating in (or will participate in) one or more approved early-childhood education programmes for a total of 3 or more hours a week; and
- (b) the child’s principal caregiver is not engaged in an approved activity; and
- (c) regulation 16 does not apply”

[9] Plainly the Regulation provides for a maximum of nine hours childcare and as Ms XXXX was already in receipt of 18 hours’ child care funded by the Education Department for her daughter she was not entitled to a further subsidy.

[10] Mr Howell as noted above tentatively suggested that provision could have been made for Temporary Additional Support. This support is provided for in s 61G of the Act and Regulations made under s 132AB. Temporary Additional Support is paid as a last resort to help beneficiaries with their regular essential living costs which they are not able to meet from their chargeable income and from other resources.

[11] There is provision for childcare costs to be considered as an allowable cost in certain circumstances but the Authority considers that the provision of Temporary Additional Support to Ms XXXX in the circumstances would be prohibited by reason of the provisions of Clause 12 of Schedule 2 “allowable costs” which reads:

- 12. In clause 3(k), **gross costs of essential childcare**, in relation to an applicant for temporary additional support, means the costs, up to a maximum of \$6 per child per hour of child-care–
 - (a) that enables the applicant, or his or her spouse or partner, or both, to take part in employment; or
 - (b) that is required because the applicant is, or his or her spouse or partner is, or both of them are, seriously disabled or seriously ill.

[12] There was no suggestion that childcare support for a greater period than 18 hours per week was required to enable the appellant to take part in employment, nor that she was seriously disabled or seriously ill.

[13] It follows that the payment for the extra childcare would not fall within the description of “gross costs of essential childcare” which would constitute allowable costs in respect of Temporary Additional Support.

[14] It is unfortunate that Ms XXXX chose not to appear before the Authority so that her position could be investigated further, but from the material available to us and the submissions made on her behalf by Mr Howell the Authority is left with the position that no grounds have been made out to interfere with the decision of the Benefits Review Committee.

Conclusion

[15] For these reasons the appeal is dismissed.

DATED at WELLINGTON this 22nd day of December 2016

Mr R D Burnard
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member