

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 17 November 2016

APPEARANCES

Mr N Ellis for the appellant
Mr R Signal for Chief Executive of the Ministry of Social Development

DECISION

[1] This is an appeal against a decision of a Benefits Review Committee on 10 August 2016 which upheld a Ministry decision made on 25 May 2016 to decline a recoverable assistance payment for rent arrears of \$7,840.

Background

[2] Ms XXXX made application on 25 May 2016 for payment of the rent arrears, providing the Ministry with a copy of a notice from her landlord which was dated 9 March 2016 and gave notice of termination of the tenancy agreement at an apartment in XXXX, Wellington.

[3] The letter of termination did not mention arrears of rent but simply gave Ms XXXX 90 days' notice of termination of her agreement. We were informed that the rent arrears had built up from a date in November 2015 as Ms XXXX had not paid rent because of illness.

[4] At the date of the Authority's hearing Ms XXXX remained in the premises having commenced rent payments in June 2016.

[5] The Benefits Review Committee upheld the Ministry's original decision to decline the application for rent arrears under the Recoverable Assistance Programme on the grounds that Ms XXXX was unable to make any repayments and the Ministry would be putting her into further hardship if assistance was granted and approved.

Case for the appellant

[6] Mr Ellis, the advocate for the appellant asked that payment should be ordered under the Recoverable Assistance Programme to the extent that this was permitted and that the balance of the outstanding rent be made available as an advance payment of benefit.

[7] Ms XXXX, who appeared partway through the hearing, gave helpful evidence outlining her position. She has a five year old child and is pregnant with another child and hoped to continue in residence in the two-bedroom apartment which has been her home for five years. She said that she had been unable to pay rent after November 2015 because of ill health which had included periods of hospitalisation.

Case for the Ministry

[8] Mr R Signal had completed a report under s 12K(4)(e) of the Social Security Act 1964 ("the Act"). He said that at the time of the application the appellant was a non-beneficiary and her only avenue for payment of the rent arrears was under the Recoverable Assistance Programme. He submitted that the payment of the rent arrears under that programme to Ms XXXX would have been totally inappropriate for reasons outlined in the Section 12K Report. He also made submissions on the other two possible avenues for advancement under the Act which we will deal with later in this decision.

The Authority's findings

[9] The current Recoverable Assistance Programme was established pursuant to s 124(1)(d) of the Act.

[10] The objectives of the programme are set out at Clause 2 which reads:

2 Objectives of Programme

The objectives of this programme are to-

- (a) provide interest free, recoverable financial assistance to non-Beneficiaries on equivalent low incomes for the stated essential and immediate needs set out in Part 3 of this programme;
- (b) provide such financial assistance, complementary to the advance payments of Benefit available to Beneficiaries under the Act,-
- (c) ensure that the financial assistance set out in paragraphs (a) and (b) is provided within the limits and for the reasons prescribed; and
- (d) facilitate the recovery of such financial assistance.

[11] Also relevant are the Principles of the programme at Clause 5 which reads:

5 Principles

In considering any application for a Payment under Part 3-

- (a) the Chief Executive must consider-
 - (i) whether a Payment would best meet the Particular Immediate Need of the Applicant;
 - (ii) the Applicant's ability to meet that need from his or her own resources;
 - (iii) the assistance that is or might be available to the Applicant from other sources to meet that need;
 - (iv) the existing debt level of the Applicant from all sources;
 - (v) the effect on the Applicant or his or her Immediate Family (if any) if that need is not met; and
 - (vi) when that effect might be expected to impact on that or those persons;

and

- (b) the Chief Executive may consider the extent to which the Applicant has caused or contributed to the Particular Immediate Need or to the situation that has given rise to the Particular Immediate Need.

[12] At Clause 9 it is provided that the total amount of any payment is not to exceed any maximum amount stated in the programme except in exceptional circumstances with Subclause 9.4 reading:

9.4 In determining whether exceptional circumstances exist, the Chief Executive must have regard to—

- (a) the Applicant's ability to repay;
- (b) whether the Applicant could reasonably have been expected to make provision for the Particular Immediate Need;
- (c) the extent to which not granting a Payment would—
 - (i) worsen the Applicant's position; or
 - (ii) increase or create any risk to the life or welfare of the Applicant, the Applicant's Spouse or partner, or any Dependent Child; or
 - (iii) cause serious hardship to the Applicant, the Applicant's Spouse or partner, or any Dependent Child; and
- (d) any other matters relevant to the circumstances of the particular case.

[13] Finally in dealing with the programme we note that at Clause 11.9.2 a maximum of \$600 is set for grants of rent arrears.

[14] The Authority considers that the Ministry was justified in declining Ms XXXX's application for the following reasons:

- (i) The programme is for recoverable assistance contemplating that recovery of any grants would be made from the applicant. We consider on the material before the Authority that no realistic prospect could be advanced of recovery being available from Ms XXXX of the \$7,840. She gave evidence that she currently owes the Ministry approximately \$3,800 which is being paid off by deductions from her present benefit at the rate of \$2.20 per week. As Mr Signal pointed out, even if recovery of the rent arrears was sought at \$10 per week (which would appear to substantially exceed Ms XXXX's ability to pay) the repayment would take 15 years. Ms XXXX said that she felt she would be able to make higher payments once her new baby was born next June when her benefit would be increased, but in all probability her expenses are likely to increase to match or even exceed the higher benefit payments.
- (ii) The amount of the grant is a large sum and the Authority considers that it is out of proportion to the scope of the programme which appears to be designed to provide temporary assistance to beneficiaries who are in a position to make repayments in due course, such assistance being of modest amounts reflected in the allowances for school uniforms (\$300), child restraints (\$200), attendance at funerals (up to \$200), essential

clothing (\$150), outstanding utility bills (\$200), car repairs (\$400), and rent arrears (\$600).

- (iii) It is noted earlier in the decision the Authority understands that Ms XXXX remains in the apartment and there is no evidence of immediate need. She indicated that she had a good relationship with the landlord and we are not left with the impression that any immediate disruption to her living arrangements is imminent.
- (iv) Ms XXXX has the choices of obtaining other rental accommodation or of negotiating repayment arrangements for the rent arrears with her landlord.
- (v) Ms XXXX already has a substantial debt owing to the Ministry and any grant to her now would adversely affect her financial situation.

[15] In summary the Authority considers the Ministry was fully justified in declining the application under the Recoverable Assistance Programme.

[16] Reference was made by both parties to the advance payment of benefit provisions which are contained in s 82(6) of the Act. We agree with the Ministry that as a non-beneficiary at the time the application was first made to the Ministry Ms XXXX could not have been granted an advance payment of benefit.

[17] We also note that the requirements which apply in connection with the advance payments of benefit are not dissimilar to those in the Recoverable Assistance Programme, with consideration required to be given to the payment of the advances and a limit set on the amount of the advance, which in Ms XXXX's case would amount of \$1,260.78. It is true that there is a discretion to exceed this amount but there would have to be exceptional circumstances and we consider that these do not exist in Ms XXXX's case.

[18] As to the Special Needs Grant Programme which provides for recoverable and non-recoverable grants, exceptional circumstances are required to exist if the grants are to exceed \$500. Grants under this programme may only be made according to Clause 12 "if the Chief Executive is satisfied that an emergency situation exists". The Authority for the reasons already outlined in this decision considers that Ms XXXX's request for the substantial rent arrears grant has not arisen through an emergency situation.

Conclusion

[19] For the reasons given above the Authority concurs with the Ministry's decision to decline the grant under the Recoverable Assistance Programme, and considers that the other two avenues for advancement of the money to Ms XXXX cannot provide her with a remedy. In these circumstances 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