

[2016] NZSSAA 081

Reference No. SSA 049/16

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX** of Auckland  
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 AUCKLAND on 28 July 2016

**APPEARANCES**

The appellant in person  
Ms N Jaura 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, declining to grant the appellant a benefit on the grounds of hardship.

[2] The issue in this case is whether or not the appellant was in hardship at the time he requested assistance. This includes consideration of:

- (a) whether the appellant has an asset which precludes his entitlement to hardship assistance;

- (b) whether the appellant has other sources of financial support which suggests he was not in hardship.

## **Background**

[3] The appellant is from Egypt. He was granted residence in New Zealand on XX July 2014. He is an engineer by training and had 12 years' experience in the telecommunications industry in Egypt prior to arriving in New Zealand. He was granted residence in New Zealand under the Skilled Migrant category.

[4] He and his wife and young son arrived in New Zealand in February 2015. His wife and young son stayed in New Zealand for two months and then returned to Egypt. The appellant's wife has a well paid job in Egypt. She did not leave her employment when she came to New Zealand. We understand she returned to Egypt to resume her employment until such time as her husband obtained employment in New Zealand. She earns approximately \$1,000 per week. She works for an internet service provider training staff in "soft" skills (non-technical training).

[5] The appellant explained that he had been searching for work in New Zealand prior to arriving in New Zealand but had been advised that he may be more successful if he was on the ground in New Zealand. Since arriving in New Zealand, the appellant says he has filed approximately 200 job applications in different sectors but his lack of Kiwi experience has been a stumbling block to him obtaining employment.

[6] The appellant says that when he moved to New Zealand he planned on it taking him three or four months to find employment. He had planned his finances accordingly. He brought approximately \$15,000 with him to New Zealand. He did not expect that he would still be seeking employment many months later.

[7] The appellant said that his wife's income in Egypt was used primarily to support herself and their child. In November, they had a big fight and ceased communicating for a period. The appellant said the disagreement was over the appellant's inability to obtain employment and being unable to bring his wife and child back to New Zealand. Since April of this year, there has been an improvement in their relationship. They have continued contact for the sake of their child. The appellant has contact with his child approximately twice a week.

[8] The appellant had his own home in Egypt. It was originally purchased in 2007 or 2008. In 2012, he made a decision to sell this property and buy a bigger home for his family. The original family home was sold and the funds received from the proceeds of sale were used to pay a deposit on a unit in a housing complex which had not yet been built, the Mountain View, October Park development. The agreement was concluded on 24

October 2012. The agreement provides for the appellant to pay regular instalments which we understand to be approximately 10,000 Egyptian pounds per month. The total cost of the unit is 800,000 Egyptian pounds. The unit will not be habitable when it is finished. When the developer hands it over the purchaser must complete the interior.

[9] The property was due to be completed in October 2016 but is now not due to be completed until the first quarter of 2017. The appellant says that the delay in such building projects is not uncommon.

[10] Prior to immigrating to New Zealand, the appellant says that he took out a loan of 300,000 Egyptian pounds to cover his instalments on the unit while he looked for work in New Zealand. The appellant has also made an arrangement with the development company to extend the payment period from 2016 to 2018. The appellant is currently negotiating to defer the payments. The appellant estimates that at the time of the hearing before the Authority he had paid about 75% of the purchase price.

[11] In New Zealand in mid 2015, the appellant obtained some temporary employment as a casual labourer but medical issues forced him to discontinue this employment. The appellant first applied for a benefit in August 2015, when he made an application for Jobseeker Support. His application was declined on the basis of his wife's income.

[12] A further application for assistance was made on 21 November 2015, and a further Jobseeker Support application was submitted in December 2015. A decision was made on 24 December 2015 that discretion would be exercised to grant the appellant a benefit if he provided evidence that he had exercised his right to cancel the contract to purchase the housing unit in Egypt. The appellant was requested to provide confirmation from the developer that the developer had received his request to cancel the contract.

[13] Following email contact with the developer the appellant advised the Ministry that he would not be able to start receiving a refund of his monies until the unit he had purchased had been resold. The amount would be refunded to him over a three year period. In addition he would lose 10% of the original value as provided in the agreement. The appellant also noted that it was expected that the value of the property would double from the original purchase price on completion and the appellant would lose that increase in value if the contract was cancelled.

[14] On the basis that the appellant was unwilling to cancel the contract, his application for a benefit on grounds of hardship was declined on 28 January 2016.

[15] The appellant sought a review of decision. 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.

## Decision

[16] The Social Security Act 1964 provides that a person seeking Jobseeker Support must in the first instance meet certain residential requirements. These include the requirement that the person must have resided continuously in New Zealand for a period of at least two years at any one time.<sup>1</sup>

[17] The appellant did not meet the criteria of two years' residence in New Zealand to be eligible for Jobseeker Support.

[18] However, there is specific provision for Jobseeker Support on the grounds of hardship provided for in s 88C of the Act. Section 88C of the Act provides for Jobseeker Support on the grounds of hardship in the following terms:

- (1) The chief executive may grant jobseeker support under section 88B to a person who meets the criteria in section 88B(1) and (2) but who does not meet the other criteria in section 88B if—
  - (a) the person is suffering hardship; and
  - (b) the person is not qualified to receive any other benefit; and
  - (c) the person is unable to earn sufficient income to support the person and his or her spouse or partner and any dependent children.

[19] In addition, the appellant's application could have been considered as an application for an Emergency benefit, also on the grounds of hardship.

[20] Section 61 of the Act gives the Chief Executive a discretion to grant an Emergency Benefit in cases of hardship on such conditions as the Chief Executive thinks fit, who satisfies the following conditions:

- (a) that by reason of age, or of physical or mental disability, or of domestic circumstances, or for any other reason, he is unable to earn a sufficient livelihood for himself and his dependants (if any); and
- (b) that he is not qualified to be granted a main benefit under this Act ...

[21] Section 61(1A) also require that the Chief Executive consider whether to grant Jobseeker Support under s 88C before considering an Emergency Benefit.

[22] An essential criteria of both benefits is that the applicant be in 'hardship'. However, we note that while an Emergency Benefit can be granted subject to conditions there is no provision to impose a condition of the type proposed by the Chief Executive in relation to Jobseeker Support.

[23] The Ministerial Direction in relation to Emergency Benefits and Benefits on Grounds of Hardship provides some general criteria for assessing whether or not an applicant is in

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<sup>1</sup> Section 74AA(1)(c).

hardship. The Chief Executive particularly relies on Clause 2 of the Direction which provides as follows:

Where an applicant who is not a full-time student—

- (a) Has cash assets of or less than—
  - (i) \$4,300, where the applicant is single; or
  - (ii) \$7,464, where the applicant is married or in a civil union or de facto relationship, or is single with at least one dependent child; and
- (b) Has no other means to support himself or herself or his or her dependent spouse or partner or dependent children,—

you may consider that applicant to be suffering hardship.

[24] The cash assets limits may be disregarded in exceptional circumstances. Clause 10 provides as follows:

In calculating a person's cash assets for the purpose of this Direction, you may disregard some or all of the cash assets of that person and his or her spouse or partner (if any) if, in your opinion, exceptional circumstances exist having regard to the following matters:

- (a) Whether a refusal to grant an emergency benefit or Jobseeker Support on hardship grounds to the applicant will—
  - (i) Increase the expenditure of the Crown directly or indirectly; or
  - (ii) Have a serious adverse effect on a person's health or welfare:
- (b) Whether the applicant is able to realise his or her cash assets for more than the appropriate cash asset limit:
- (c) Whether the need for the emergency benefit or Jobseeker Support is temporary:
- (d) The amount of the person's total assets, including assets that are not cash assets:
- (e) Any other matters you consider are relevant to determining whether hardship would exist.

[25] The term “cash assets” is defined in Clause 1, it includes:

**Cash assets**, in relation to any person, means the assets of that person and his or her spouse or partner (if any) that can be readily converted into cash and include—

- (d) The net equity held in any property or land not used as the person's home;

[26] We infer that the Chief Executive's initial approach to this matter was that although the appellant had a cash asset which exceeded the limit in the Ministerial Direction, there were exceptional circumstances in the appellant's case. The appellant was in hardship and Emergency Benefit should be granted subject to a condition. The position taken by the Chief Executive in the appeal to the Authority, however, was that the appellant could not be said to be in hardship because of his cash assets and apparent access to other resources.

[27] Hearings before this Authority are by way of rehearing. The Authority stands in the shoes of the Chief Executive and considers all of the evidence available at the time the

decision was made on 28 January 2016 in determining whether or not the appellant should have been granted a benefit.

*Is the interest in the Egyptian unit a cash asset?*

[28] The first question in this case is whether or not the appellant's interest in the Mountain View apartment constitutes a cash asset as defined in the Ministerial Direction. To be a cash asset in the first instance the asset must be one that can be readily converted into cash. A list of examples of cash assets is given in clauses (a)-(h) but this list is not exhaustive. Moreover, it is reasonable to infer that the asset must be capable of being readily converted into cash even if it is listed in (a)-(h).

[29] The appellant submitted that his interest under the contract should not be regarded as a cash asset because the unit has not been delivered and cannot be associated to any current value. It is not a current asset. Moreover, no funds can be realised from cancellation until the unit is delivered and sold by the real estate developer. It is not a current, realisable asset of any value.

[30] In fact, two provisions of the Agreement for Sale and Purchase provide options for the appellant to realise cash.

[31] Article 6 makes a provision for the cancellation of the contract by the purchaser. With the agreement of the developer the contract may be cancelled. The appellant's money will be refunded to him less 10%. Repayment is by instalments repayable over the same period to the period in respect of which instalments were paid. The repayments will commence only when the unit has been resold by the developer.

[32] Under Article 9, the buyer may assign the agreement to a third party provided that the developer agrees. In this circumstance, no payment is due to the developer if the assignment is to a close relative. If the assignment is to a third party, an amount of 5% is payable to the developer for administration fees.

[33] Subclause (d) of the definition of cash asset in the Ministerial Direction indicates that the equity in any property should be regarded as a cash asset. The appellant's asset is his interest or bundle of rights in the contract to purchase the unit. This asset is the appellant's property. The value of his equity in the property is the amount the appellant would receive if the agreement was cancelled or the contract to purchase the unit was on-sold by the appellant. Because the appellant has equity in 'property', it is not necessary to consider whether the contract constitutes equity in land.

[34] The issue then is whether the appellant's interest in property can be readily converted into cash. The Authority received no direct evidence on the point at the hearing. The appellant pointed out that there would be a delay in receiving the cash if the agreement was cancelled but he did not suggest that it would be difficult to sell an unbuilt unit. Following the hearing, in response to a specific question from the Authority, the appellant has advised that:

No one can ever predict the duration till the sale transaction can be actualised as the market in Egypt is very volatile and unpredictable. There can be no clue on how long it would take for such transaction to materialise.

[35] The New Zealand Oxford dictionary defines "readily" as:

2. Without difficulty.

[36] "Without difficulty" is a distinctly different concept from "immediately". It must be borne in mind of course that hardship assistance will usually be payable in circumstances where there is an immediate need for financial support. If there was to be a significant delay in a person realising their cash asset for their support, arguably there could be a question as to whether the asset could be readily realised. On the other hand, the inclusion of "equity in land" as an example of a 'cash asset' suggests that some sort of delay in realising the asset might be anticipated, provided there is no significant impediment to realisation, such as the land being landlocked. The person's immediate need could be met by granting an Emergency Benefit subject to a condition.

[37] An alternative view is that the equity in the land or property may be released by borrowing. If an option to borrow is available, the equity could be regarded as readily realisable. In the present case, we understand the appellant borrowed against his equity in the contract before coming to New Zealand.

[38] The inference to be drawn from the provisions in the contract about cancellation and on-selling is that the appellant's cash investment in this property can be realised. How readily it can be realised may depend on market conditions at the time. The appellant has not tested the conditions to ascertain how readily the property can be sold. That people will buy off the plans without the unit being built is evidenced by the appellant's purchase in the first instance. We conclude that the appellant's interest in property is a cash asset as defined in the Direction.

#### *Value of cash asset*

[39] We understand the contract price of the unit is 800,000 Egyptian pounds (approximately NZ\$100,000) and that the appellant has paid approximately 600,000 Egyptian pounds (NZ\$75,000) to date. In calculating the appellant's net equity in property, this amount would need to be reduced by the amount to be paid to the developer on any

resale, ie, 10% of the purchase price. A further amount would need to be deducted for any loan taken out with the bank as outlined by the appellant (subject to evidence of this loan being provided). The approximate calculation would be as follows:

<u>Purchase price of unit</u>	<u>800,000</u>	<u>Egyptian pounds</u>
Less payments made to date	600,000	Egyptian pounds
Less cancellation payment to developer at 10%	80,000	Egyptian pounds
Less loan from bank	300,000	Egyptian pounds
<b>Balance</b>	<b>220,000</b>	<b>Egyptian pounds</b>

or approx **NZ\$27,000**<sup>2</sup> <sup>3</sup>(all figures are approximations approximately based on the appellant's advice of exchange rates)

[40] Although this is an approximation only and the figures may need to be adjusted to show the position as at 28 January 2016, we are satisfied that the appellant's equity in property is a cash asset which exceeds the limit set out in Clause 2 of the Ministerial Direction.

[41] On the face of it, the appellant did not automatically meet the criteria of "suffering hardship" as at 28 January 2016.

#### *Exemption and Discretion*

[42] However, there are two further matters to be considered. The first is whether or not an exemption in relation to the appellant's cash assets should be granted as provided in the Ministerial Direction. The second is that while a person with cash assets does not automatically meet the criteria of suffering hardship, the Chief Executive has a wide discretion to grant Emergency Benefit which cannot be fettered by the Ministerial Direction. Despite the existence of excess cash assets, the Chief Executive must still consider whether the appellant should be considered to be in hardship. In many respects, the

<sup>2</sup> Based on appellant's advice of an exchange rate of 8 Egyptian pounds to \$1 NZ.

<sup>3</sup> According to NZforex (<http://www.nzforex.co.nz/forex-tools/historical-rate-tools/historical-exchange-rates>), as at 28 January 2016, the exchange rate between New Zealand dollars (NZD) and Egyptian pounds (EGP) was 1NZD = 5.112369822231848EGP. Using this exchange rate, 220,000EGP would, at 28 January 2016, equal \$43,032.880572NZD; this figure would need to be subjected to appropriate bank conversion rates and charges. According to NZforex, as at 23 August 2016, the exchange rate between NZD and EGP is 1NZD = 6.457448357659369. Kiwibank, as at 23 August 2016, buy EGP cash at the rate of 1NZD = 6.9612 (<https://www.kiwibank.co.nz/personal-banking/rates-and-fees/fx-rates/#i-want-to-sell>). Using the Kiwibank EGP cash buy rate, a person would receive 92.76343673015243% of the base; calculated using the NZforex currency exchange rate. Extrapolating this percentage to the historical exchange rate, the appellant could have expected to receive approximately \$39,918.80NZD (using Swedish rounding). These figures are only approximations using available data.



matters which might be considered in determining whether the exemption should be granted are matters which could be considered in exercising the overall discretion.

[43] In relation to whether or not an exemption should be granted, there appear to be concerns about the appellant's precise financial circumstances. In particular, it is noted that the ASB bank statements in respect of the appellant's account show a number of small deposits to the account received via Paypal, for example, deposits made on 15 December, 17 December, 21 December and 29 December 2015. The appellant's explanation for these deposits was that friends in Egypt had made these small deposits into his account to assist him in his time of need.

[44] It is submitted on behalf of the Chief Executive that the appellant would have received an email communication from Paypal in respect of these payments. The appellant has been requested to provide copies of these emails, which should indicate the source of the payments. The appellant has not provided the emails concerned citing 'personal reasons'.

[45] In addition, the Ministry say that it has analysed the cash withdrawals from the appellant's account from 11 August 2015 onwards. The appellant says that he pays rent of \$135 a week in cash. He did not suggest that he was behind with his rent. The analysis of the cash withdrawals indicates that during the period concerned the appellant has not withdrawn enough from the particular account to pay \$135 per week in rent. One inference to be drawn from this is that the appellant has a source of funds other than those contained in his bank account.

[46] It was also submitted on behalf of the Ministry that at the time the appellant sought assistance in November 2015, he was paying premiums for private medical insurance to Southern Cross which is inconsistent with him being in hardship.

[47] Finally, we note the only evidence that the appellant and his wife were living 'apart' in the sense that the marriage was at an end in November/December 2015 was the oral evidence of the appellant that they had had a fight. If the appellant and his wife were not living apart, in the sense that their marriage was at an end, his wife's income would need to be taken into account.

[48] The appellant is asking the Chief Executive to provide hardship assistance in circumstances where he has an investment which could be readily realised, albeit at some loss to the appellant. At one level, it is understandable that the appellant does not want to make a loss on this transaction. When the funds are ultimately realised, their availability will make a significant difference to the resettlement of the appellant and his family in New Zealand. Nevertheless, the Social Security Act 1964 specifically provides that where appropriate a person should use the resources available to them before seeking financial

support under the Act.<sup>4</sup> Furthermore, it appears that the appellant has financial resources which have not been fully disclosed or adequately explained. That may explain why the appellant has not attempted either to onsell the contract for the unit in Egypt or cancel it.

[49] We have some sympathy for the appellant. We accept that his situation as a new immigrant seeking work in a new country while his wife and child remain in Egypt is difficult. In our view, the offer of the Chief Executive to grant an Emergency Benefit subject to evidence that the appellant was taking steps to realise his assets so he could support himself was a reasonable solution to his problem.

[50] Taking into account all of the appellant's circumstances, we are not satisfied that an exemption should be granted to the appellant in circumstances where he has cash assets in excess of the limit, has declined to take steps to realise those assets, and there are questions over the other financial resources available to him.

[51] For the same reasons, we are not satisfied the appellant could be considered to be in hardship at the time of the Chief Executive's decision to decline his application for assistance on 28 January 2016.

[52] The appeal is dismissed.

**DATED** at WELLINGTON this 29<sup>th</sup> day of August 2016

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Ms M Wallace  
Chairperson

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Mr K Williams  
Member

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Lady Tureiti Moxon  
Member

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<sup>4</sup> Section 1A.