

[2017] NZSSAA 003

Reference No. SSA 070/16

**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**

G Howell for the appellant  
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 an application for Emergency Benefit made on 26 January 2016.

[2] Her application was declined because of her entitlement to accident compensation payments at the time of her application.

[3] The issue in this case is whether the discretion to grant an Emergency Benefit overrides the provisions of s 71A of the Social Security Act 1964, that entitlement to weekly compensation must be deducted from entitlement to any benefit payable.

## Background

[4] Following the appellant's partner's accidental death in March 2011, the appellant became entitled to receive a spousal weekly compensation payment under the Accident Compensation Act 2001.

[5] In or about September 2014, the appellant suffered a stroke which left her with significant disabilities, at least in the short-term.

[6] In November 2014, the appellant received information from ACC about converting the weekly compensation she was receiving into a lump sum payment. A further letter advised her that if she accepted the Corporation's offer she would receive an amount of \$36,196 gross, being the compensation that would otherwise have been payable to her for the period 9 May 2015 to 3 March 2016. The appellant was provided with information about the impact of accepting this offer on any entitlement to benefit. The information included a sheet from Work and Income New Zealand which advised her that even though she would no longer be receiving an ongoing weekly compensation payment, if she took up the offer of a lump sum payment, any benefit entitlement would be calculated and paid as if she was receiving the payments weekly. The appellant elected to take up the offer.

[7] Ministry records indicate that the appellant first met with a case manager on 5 June 2015 to advise that she had received a lump sum payment from ACC and enquiring about her eligibility for income support. The appellant was advised that she would not be eligible for a weekly benefit. She could make an application after 3 March 2016.

[8] At the time the appellant received the information about the lump sum payment and elected to receive it, she was living with her former partner and their two youngest sons. After receiving the lump sum payment, over the ensuing months the appellant paid for food for the family, gave money to her sons for bedding, furniture and cars, and gave money to her two elder sons for bonds to move into their own homes. She bought clothing and requirements for a newborn grandchild. She repaid an amount owing on her vehicle. We understand the amount involved was less than \$1,000. She also repaid a student loan of \$2,500. The appellant gave evidence to the effect that she had intended to take out a prepaid funeral account, however her former partner had taken the money intended for this purpose and the prepaid funeral account had not been arranged. She believed approximately \$15,000 had been taken by her partner for this purpose. The appellant said that from her point of view she thought she was going to die and she wanted to put things in place with the lump sum

payment, such as repaying her debts and making provision for a prepaid funeral in case she did die.

[9] The money eventually ran out. Her former partner fell behind with the household bills and took it out on the appellant. As a result, she was referred to the Maori Women's Refuge. She lived at the refuge for a period of four months but was asked to leave because she could not afford to pay the board. She then returned to her ex-partner's home. We understand that for a period she had a State house but, again, because she had no income she could not pay the rent and was forced to return to her ex-partner's home.

[10] On 22 January 2016, the appellant made an application for an Emergency Benefit. Her application was declined because of her entitlement to the weekly ACC payments which covered the period to 3 March 2016.

[11] On behalf of the appellant, it is submitted that s 61 provides a wide discretion to provide assistance to those in need. The appellant's entitlement to Emergency Benefit needs to be looked at on the basis of her actual situation rather than a deemed situation. At the time of her application, the appellant had no income. In similar cases such persons have not usually been left with no income. For example, where weekly benefit payments have been replaced by weekly compensation payments.

[12] The second argument advanced on behalf of the appellant is that at the time of her application, on 22 January 2016, the appellant met the work capacity requirements for Supported Living Payment. A due paid assessment of the period 22 January to 3 March 2016 would result in an assessment of income of \$5,096.76 which would not result in any abatement based on the relevant income test. This argument depends on the ACC entitlement being treated as income rather than weekly compensation. The basis for this contention was not explained.

[13] It was submitted that the appellant found herself in extreme difficulty and was placed in a physically vulnerable position. She was not able to make rational decisions about how to use the lump sum ACC compensation. In the circumstances, the use of s 71A is erroneous and unfair.

[14] On behalf of the Chief Executive it is submitted that:

- (i) the appellant was entitled to receive ACC payments of \$848.95 per week gross for each week in respect of the period 9 May 2015 to 3 March 2016. This amount needed to be charged against any entitlement to benefit the appellant might have been entitled to in the same period. Section 71A of

the Act provides that any entitlement to benefit must be reduced by the amount of any weekly compensation payable in respect of the same period.

- (ii) As the ACC payments the appellant was entitled to receive substantially exceeded the rate of any benefit payable, the rate of benefit payable would be reduced to zero.
- (iii) The direct reduction regime cannot be waived by the exercise of a discretion.
- (iv) The appellant was provided with information that made it clear that if she elected the lump sum payment, she would not be able to receive a benefit and ACC at the same time.

### **Legislation Relevant to this Appeal**

[15] Provision for emergency benefit is provided for in s 61 of the Social Security Act 1964 as follows:

#### **61 Chief executive may grant emergency benefit in cases of hardship**

- (1) The chief executive may, in the chief executive's discretion and subject to such conditions as the chief executive thinks fit to impose, grant an emergency benefit under this Act on account of hardship to any person who satisfies the following conditions, namely:
  - (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, New Zealand superannuation, or a veteran's pension:

provided that the chief executive may at any time, in the chief executive's discretion, grant an emergency benefit instead of or in substitution for a supported living payment, sole parent support, or jobseeker support:

provided also that, where the chief executive is of the opinion that a person applying for or in receipt of a supported living payment, sole parent support, or jobseeker support should undergo a course of training in any occupation, or should submit himself for examination at any medical or psychological clinic, or should receive any medical or other treatment, or should undergo any course of training for the improvement of his physical or mental capacities, or should do any work required of him, or should take more adequate steps to secure suitable employment, the chief executive may, in the chief executive's discretion, grant an emergency benefit instead of or in substitution for a supported living payment, sole parent support, or jobseeker support; and in any such case the grant or continuance of the emergency benefit may be made subject to the condition that he shall comply with the requirements of the chief executive in respect of any such matters.

- (1A) Where the chief executive is considering granting an emergency benefit on the grounds of hardship under subsection (1), the chief executive must first consider whether to grant jobseeker support under section 88C or a youth payment under section 161 or a young parent payment under section 167.

...

- (2) The rate of the emergency benefit shall, in each case, be in the discretion of the chief executive, but, except in any case where the beneficiary is receiving medical or other treatment, shall not exceed the rate to which the beneficiary would be entitled if he were qualified to receive such other benefit as in the opinion of the chief executive is analogous to the emergency benefit.
- (3) Every emergency benefit shall commence on such date and shall be continued for such period and subject to such conditions as the chief executive in each case determines.

[16] The way in which weekly compensation payments are to be treated is provided for in s 71A as follows:

### **71A Deduction of weekly compensation from income-tested benefits**

- (1) Subject to subsection (4), this section applies to a person who is qualified to receive an income-tested benefit (other than New Zealand superannuation or a veteran's pension unless the veteran's pension would be subject to abatement under section 171 of the Veterans' Support Act 2014) where—
- (a) the person is entitled to receive or receives weekly compensation in respect of the person or his or her spouse or partner or a dependent child; or
  - (b) the person's spouse or partner receives weekly compensation.
- (2) Where this section applies, the rate of the benefit payable to the person must be reduced by the amount of weekly compensation payable to the person.
- (3) In this section, **weekly compensation** means weekly compensation for loss of earnings or loss of potential earning capacity payable to the person under the Accident Compensation Act 2001 (whether payable by or on behalf of the Accident Compensation Corporation or by or on behalf of an accredited employer within the meaning of section 181 of that Act).
- (4) Subsection (2) does not apply where the person—
- (a) was receiving the income-tested benefit immediately before 1 July 1999 and continues to receive that benefit; and
  - (b) was receiving compensation for loss of earnings or loss of potential earning capacity under the Accident Rehabilitation Compensation and Insurance Act 1992 immediately before that date; and
  - (c) section 71A(2) (as it was before it was repealed and substituted by the Accident Insurance Act 1998) required the compensation payments to be brought to charge as income in the assessment of the person's benefit.

### **Decision**

[17] This is an unfortunate situation. A person whose decision-making capacity may have been impaired has elected to take a lump sum payment of compensation

payable to her over a 10-month period instead of continuing to receive the weekly compensation payments. Little thought has apparently been given to how the appellant would support herself if she spent the lump sum payment and was left without any means of support.

[18] We do not have an itemised account of how the lump sum payment was spent. The appellant has not provided copies of her bank statements which might have clarified the situation. It appears that while she has repaid some small debts, the major portion of the money has been given to family members, including her ex-partner. This has left the appellant in the position that her only income at the time relevant to this appeal was from a family tax credit of \$72 per week.

[19] There is no dispute that the lump sum payment the appellant received was in respect of weekly compensation she was entitled to, and that included weekly compensation covering the period 22 January to 6 March 2016. The issue is whether or not the discretion to grant an Emergency Benefit is wide enough for the Chief Executive to disregard her entitlement to those ACC payments.

#### *Section 61*

[20] Section 61 of the Act gives the Chief Executive a discretion to grant a benefit where the person seeking assistance does not meet all of the eligibility criteria to receive a main benefit. The appellant would apparently have met the criteria for Supported Living Payment but for her ACC entitlement.

[21] While the Chief Executive has a discretion to grant an Emergency Benefit, there are limits. In particular, s 61(2) places a limit around the rate at which the Emergency Benefit is to be granted. It is this provision which is critical in this case.

[22] The discretion to fix the rate at which Emergency Benefit is paid is limited by the proviso that the rate must not exceed the rate to which the beneficiary would be entitled if she were qualified to receive such other benefit as is analogous to the Emergency Benefit.

[23] In this particular case, if the appellant were to be granted a benefit, because of her medical condition it seems likely that she would have been in receipt of Supported Living Payment. In determining the rate of the Supported Living Payment, the Chief Executive would have been obliged by the operation of s 71A of the Act to reduce the rate of benefit payable by the amount of ACC payable for the period, dollar for dollar. The rate of Supported Living Payment payable to the appellant would be nil. The Chief Executive would then be obliged to fix the rate of Emergency Benefit payable at "nil".

[24] The rationale for the direct deduction of weekly compensation from benefit payments is that a person should not receive two sources of state funding to meet their living expenses. See for example *Goh v Chief Executive of the Ministry of Social Development*<sup>1</sup>.

[25] There is nothing in the Social Security Act 1964 which suggests that the Chief Executive has a discretion to disregard s 71A or that the provisions of s 61 override the provisions of s 71A. Section 61(2) clearly states that the rate of benefit should not exceed the rate of the other benefit otherwise payable.

[26] There is an exception to this mechanism for assessing the rate of Emergency Benefit payable in circumstances where the applicant for benefit is receiving medical or other treatment. In that circumstance, the Chief Executive is left with a wide discretion to fix the rate of benefit payable.

[27] It would not be difficult to envisage a person who had taken a lump sum payment of ACC, experiencing a totally unexpected and catastrophic event, being left with no income and no means of paying for the necessities of life in circumstances where they were clearly unwell and unable to support themselves.

[28] The inference to be drawn in relation to this exception is that at least in the case of persons receiving medical treatment, Parliament did not intend such persons be left without any means of support if their circumstances dictated that support should be provided.

[29] In this case, while the appellant had been unwell prior to accepting the lump sum payment, we have no evidence that she continued to receive medical treatment as at 22 January 2016. The appellant was requested to provide information about her medical condition on 4 November 2016. As at 5 December 2016, the information has still not been provided. This means we cannot be satisfied that the exception in s 61(2) for persons receiving medical or other treatment applies to the appellant. We are mindful, however, of the appellant's disability. It is apparent that the Chief Executive has overlooked the exception in relation to persons receiving medical treatment when he originally declined the appellant's application on 26 January. In the circumstances, we direct that the appellant give authority to the Ministry to contact her general practitioner, and any other health practitioner providing treatment to her, to enable the Chief Executive to inquire as to whether the appellant was receiving medical or other treatment as at 22 January 2016. The Chief Executive is to then reconsider his decision in light of this information. Even if it is established that the

---

<sup>1</sup> [2010] NZCA 110.

appellant was receiving medical treatment, and therefore there is some discretion to fix the rate of Emergency Benefit payable, the appellant should not assume that the discretion will be exercised in her favour. The Chief Executive will be required to take into account a variety of considerations.

[30] Mr Howell's second point made on behalf of the appellant is based on assessing the ACC payments as income. He suggests that the appellant may have had entitlement to Supported Living Payment based on calculating her ACC payments as income. There is no legal basis for treating the weekly compensation payments as income in respect of which the income tests should be applied. The payments must be dealt with under s 71A and deducted dollar-for-dollar from the amount of any benefit payable.

[31] The appeal is referred back to the Chief Executive for reconsideration pursuant to s 12M(8) of the Act.

[32] We note our concern that a lump sum payment of compensation was paid to the appellant in her particular circumstances. We further direct that the Chief Executive bring this case to the attention of the Accident Compensation Corporation.

**DATED** at WELLINGTON this 31<sup>st</sup> day of January 2017

---

Ms M Wallace  
Chairperson

---

Mr K Williams  
Member