

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

Mr G Pearson - Chairperson

Mr K Williams - Member

Mr C Joe - Member

Hearing at Auckland on 15 February 2017

Appearances

For Chief Executive of the Ministry of Social Development: Graham Moore

For the Appellant: In person.

DECISION

Overview

- [1] This appeal concerns a Special Needs Grant application made on 17 June 2015.
- [2] The central issue arose from the appellant losing his wallet and driver's licence. He had to pay a fee of \$40 for the replacement of his licence.
- [3] He sought assistance from the Ministry as he understood that he needed to have his licence renewed urgently, because without a licence he could not defer the registration of a vehicle. He had disposed of the vehicle some years before but was concerned that if he did not continue to defer registration he would face financial penalties.

- [4] The Ministry did approve a Special Needs Grant of \$100 on that same day. However, rather than providing cash the Ministry of Social Development provided the appellant with a payment card with a balance of \$100. This payment card could only be used to purchase food items. The appellant did not realise that at the time so he attempted to pay for the replacement licence using the card, which did not work due to the restrictions on the card.
- [5] The appellant was dealing with the Ministry's Remote Client Unit, as he had been subject to Trespass Notices preventing him dealing with the Ministry's usual offices. The appellant did not understand the restrictions when the card was issued; it seems likely that the absence of face-to-face communications did not help the situation.
- [6] The appellant's financial situation was precarious. He received benefit payments of \$395.13 per week, and offset against that was \$270 in rent. He was required to provide for the other essentials of living from the remaining \$125.13 per week. Aside from food, key expenses were electricity and telephone/internet. The appellant regarded his telephone and internet services as critical, one of the reasons being that he could only communicate with the Ministry and its Remote Client Unit using electronic communications.
- [7] At this point in time, while precarious, the appellant managed to keep his financial affairs in order. He did not have any advances from the Ministry and he did not have any debt to be offset from his benefit payments. Since the situation was fragile, the appellant was acutely aware of exactly when he had to pay for his telephone to maintain services; though he was not able to pay on time, he knew when it would be cut off and paid before that point.
- [8] This fragile state of affairs began to fall apart when the appellant could not pay for his driver's licence with the card he had been given. It appears the Ministry's officer believed that the appellant would use the money on the card to purchase food, and would use money from his bank account to pay for the driver's licence, because he did not now need to use that money to pay for food. However, what happened was that the appellant used the small amount of money in his bank account after having already purchased food to pay for the driver's licence; because he believed that was the most urgent need to avoid further costs. As a result, the appellant did not have enough in his bank account to pay his phone bill by the disconnection date, and his phone was disconnected.

- [9] From the appellant's point of view, if he had received the \$40 in a form that he could have paid for the replacement driver's licence, his financial circumstances would have continued without interruption. However, the appellant believed he faced a dilemma, as he regarded his telephone as essential, for various reasons, including keeping in touch with the Ministry.
- [10] The appellant believed at the time that terminating his existing phone and electricity service and taking up a different electricity and communication package for a fixed monthly fee would solve his problem. This package came from a different service provider and the appellant's understanding regarding the fixed monthly cost proved not to be correct; the actual cost of the services was much higher than anticipated, and there were, in addition, various charges imposed when payments were not made on time.
- [11] This situation deteriorated and eventually a debt collection agency sought to recover \$819.39 from the appellant, which included various fees relating to the debt collection and other matters.
- [12] After the situation deteriorated with the new provider of electricity and communication services, the appellant managed to re-establish his former electricity and telephone services with the original providers.
- [13] The Ministry reviewed its original decision on 12 May 2016 and granted the \$40 for replacement of the appellant's driver's licence. The appellant did not find the payment of the \$40 to be very helpful, because his problem was now the consequential issue following from his telephone being cut off, his problems with the new provider of electricity and communication services and the attempt to recover the debt of over \$800.

- [14] The appellant's position is that not receiving the \$40 at the correct time led to all of these problems. Accordingly, he is seeking to have the Authority:
- (a) make an order that the Ministry pay the debt claimed by the substitute provider of electricity and community services, namely \$819.39 including the collection fees; and
 - (b) make an order for the payment of exemplary damages of \$2,500 for the damage caused to his credit rating.

The position of the appellant and the Ministry

- [15] Both the appellant and the Ministry say that the Authority has no right to hear this appeal and issue the orders the appellant seeks. They have different reasons for taking that position.
- [16] The appellant's primary submission is that for various constitutional reasons, the Authority is not properly constituted and has no authority over this appeal, or indeed any other matters.
- [17] The Ministry has proceeded on the basis that the Authority does have the right to deal with the appeal in relation to the original \$40, but says that there is no jurisdiction to award damages or compensation to cover the \$819.39 claimed or any consequential losses, and no power to make an order for exemplary damages.

Discussion

- [18] We agree that the Authority has no power to hear this appeal. Our reasons are different from those of the appellant and the Ministry.
- [19] We have considered the appellant's submissions regarding the constitutional matters. The appellant said he has filed papers with the Supreme Court of New Zealand relating to this issue. This Authority does not have any power to determine constitutional issues. Section 12I of the Social Security Act 1964 provides that the functions of this Authority:

...shall be to sit as a judicial authority for the determination of appeals in accordance with section 12J of this Act.

- [20] Section 12J provides for appeals against various decisions and determinations made by the Chief Executive under the Act and related legislation. It gives the Authority no jurisdiction or power to make findings about constitutional matters. Accordingly, unless and until the appellant

obtains the orders he said he is seeking from the Supreme Court, we are obliged to carry out our functions under the Act. However, we do need to decide whether the appeal does involve a relevant decision or determination.

- [21] The papers filed with the Authority, and the evidence heard by the Authority identify only one decision potentially within the Authority's jurisdiction under ss 12I and 12J. That is the decision not to provide a Special Needs Grant of \$40 on 17 June 2015. However, on 12 May 2016 the Ministry reviewed its decision and reversed that decision, and did issue a Special Needs Grant of \$40. The Authority is not entitled to deal with theoretical matters. There is no contention that the appellant should not have the \$40 Special Needs Grant and it has been paid. Accordingly, if the Authority is to have any jurisdiction over this matter at all, it must relate to the consequential effects on the appellant because he did not receive the Special Needs Grant at the point in time he applied for it. Section 12M provides the powers that the Authority has after hearing an appeal. Section 12M(7) states:

Subject to subsection (2) of section 12I, in the determination of any appeal the Authority may confirm, modify, or reverse the decision or determination appealed against.

- [22] A statutory judicial authority is limited to the jurisdiction provided by the Act constituting it, and any other relevant legislation. There is no legislation giving this Authority any jurisdiction or power to award damages or exemplary damages against the Ministry.
- [23] Accordingly, the Authority has before it a challenge against a decision that the Chief Executive has reversed. That is as much as the Authority could have done, if it had heard the appeal before the Chief Executive reversed the decision. Now the Chief Executive has taken that step, the issue is theoretical. The harm that the appellant claims he has suffered as a consequence of the Chief Executive's original decision, and the time taken to reverse it are simply not matters over which this Authority has any jurisdiction or power. We have no right to determine the merits of the appellant's claim, or issue any orders relating to it.

Decision

- [24] Having considered all of the material before us, and having heard from the parties we are satisfied that there is no matter disclosed that lies within the jurisdiction of this Authority. Accordingly, we determine that there is

no validly constituted appeal before us. The Authority is unable to take any further action in this matter.

Dated at Wellington this 8th day of March 2017

G Pearson
Chairperson

K Williams
Member

C Joe JP
Member