

[2017] NZSSAA 009

Reference No. SSA 171/15

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

S Pezaro - Deputy Chair

K Williams - Member

C Joe - Member

Hearing at Auckland on 15 February 2017

Appearances

The appellant in person.

Noel Ellis, lay advocate, appeared by AVL for the appellant.

Elaine Kirkman for the Ministry of Social Development

DECISION

Background

- [1] On 12 November 2015 Mr Ellis filed a Notice of Appeal by email on behalf of Ms XXXX. Ms XXXX appeals a decision of the Benefits Review Committee issued on 20 July 2015 to confirm the decision to provide assistance of \$180 rent arrears to Ms XXXX as a recoverable Advance Payment of Benefit rather than a non-recoverable Special Needs Grant.
- [2] When Mr Ellis filed the Notice of Appeal he acknowledged that it was out of time. The Authority granted leave on 1 July 2016.
- [3] At the start of the hearing Ms XXXX expressed concern that she had not had time to consider the Ministry's 12K Report. Mr Ellis accepted that he received

a copy of this report and that he sent a copy to Ms XXXX. Therefore we are satisfied that Ms XXXX was properly served through her advocate.

The appeal

- [4] Ms XXXX is a 52 year old single woman with no dependents who came to New Zealand from Yugoslavia in XXXX. She received an Invalid's Benefit from 16 September 2009 which was transferred to a Supported Living Payment from 2013.
- [5] Ms XXXX said that she was looking for a correct and proper forum, such as the Human Rights Commission, to address her concerns. However she accepted that many of the issues she raised did not relate to the question of the \$180 in issue. She and Mr Ellis accepted that the only issue for this Authority to determine was whether the \$180 should be a recoverable grant.
- [6] At the hearing Mr Ellis filed a document which he referred to as a report. In this report Mr Ellis referred to a delay in commencing the Disability Allowance and Temporary Additional Support and an application for review of these decisions. Mr Ellis said that there is no evidence that this review has ever been heard. As the Authority has jurisdiction only to consider matters reviewed by a Benefit Review Committee we have not addressed these issues.
- [7] In May 2015 Ms XXXX was staying at the XXXX Lodge. Her rent was \$180 per week. Mr Ellis states that due to previous difficulties she had experienced in losing her accommodation due to non payment of rent, she had applied for a redirection of rent payments for this sum directly to the XXXX.
- [8] Mr Ellis states that the rent arrears arose because Ms XXXX was being significantly underpaid for her disability-related costs. Mr Ellis argues that it is unfair to require recovery of the assistance for rent arrears because the arrears would not have arisen if the Ministry had processed Ms XXXX's application on the correct date.

The Ministry's position

- [9] The Ministry accepts that when Ms XXXX attended an interview on 11 May 2015 to apply for assistance with her rent arrears she explained that she could not pay her rent due to high medical costs. She was unable to provide any

receipts or evidence in support of the medical costs but provided a letter from her landlord verifying that her rent was in arrears by \$180 and that she would be evicted from her room if it was not paid.

- [10] The Ministry granted the application for \$180 advance as a recoverable advance payment of benefit to be repaid at \$2 per week.
- [11] When Ms XXXX applied for the advance to cover rent arrears, her next benefit payment was due on 21 May. The Ministry paid \$180 directly to Ms XXXX's landlord on this date. At this time the amount that Ms XXXX owed to the Ministry exceeded the six week limit. At this time her advance/debt balance was \$3,542.91 and she was receiving an Accommodation Supplement of \$80 per week.
- [12] Ms Kirkman explained that an advance payment of benefit may be made under exception 82(6) of the Social Security Act 1964 to meet immediate needs of a beneficiary.
- [13] The Ministry first considered whether the rate of repayment of an advance of \$180 would be sustainable for Ms XXXX. Section 82(6) is subject to a Ministerial Direction which requires that an advance is recoverable within 24 months.¹ However the direction includes a provision that where exceptional circumstances exist, there is discretion to recover an advance at a rate beyond 24 months.²
- [14] The Ministry submits that exceptional circumstances are those which distinguish the client from others in a similar situation. It is the Ministry's position that Ms XXXX was aware that she was required to pay her rent on a weekly basis and should have provided for this payment. The Ministry does not accept that Ms XXXX's circumstances at the time were exceptional.
- [15] In addition the Ministry argues that Ms XXXX was aware that she needed to reapply for the Temporary Additional Support. She had been receiving this since September 2006 and the Ministry states that it is not clear why she did not reapply for this allowance when it expired on 23 April 2015.

¹ Clause 5, Ministerial Direction on Advanced Payment of Benefits.

² Clause 6.2, Ministerial Direction on Advanced Payment of Benefits.

[16] At the hearing Ms Kirkman confirmed that Ms XXXX's payment of Temporary Additional Support stopped on 23 April 2015 and, because she did not reapply, there was a period when she did not receive this assistance. Ms XXXX then reapplied on 13 May but the Ministry accepted the date of application as 11 May 2015 and the Temporary Additional Support was reinstated from this date.

Discussion

[17] There is no dispute about the relevant facts. The only issue we must decide is whether Ms XXXX's circumstances were exceptional at the time she applied for the grant, such that the benefit should have been granted as a non-recoverable Special Needs Grant.

[18] We accept that Ms XXXX was unable to pay her rent due to high medical costs and that she was unable to pay her rent at the time that she applied for this grant. However we are not satisfied that her circumstances were exceptional. The rent payment due was predictable. There is no evidence that the medical costs Ms XXXX paid instead of her rent were required due to an emergency or exceptional circumstance. For these reasons we consider that the decision to provide a recoverable grant for rent arrears was reasonable.

[19] The appeal is dismissed.

Dated at Wellington this 31st day of March 2017

S Pezaro
Deputy Chair

K Williams
Member

C Joe JP
Member