

[2017] NZSSAA 013

Reference No. SSA 79/16

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

S Pezaro - Deputy Chair

K Williams - Member

C Joe - Member

Hearing at Auckland on 15 February 2017

Appearances

XXXX - Appellant

P Siueva - for Chief Executive of the Ministry of Social Development

Telephone conference on 6 April 2017 attended by:

S Pezaro - Deputy Chair

C Joe - Member

XXXX - Appellant

N.Jauna - for Chief Executive of the Ministry of Social Development

DECISION

Background

- [1] Mr XXXX appeals a decision of the Chief Executive to cancel his Jobseeker Support and transfer him to a non-beneficiary Accommodation Supplement. The Benefits Review Committee upheld this decision on 14 June 2016.
- [2] In October 2015 Mr XXXX contacted Work and Income to apply for Jobseeker Support. He attended a seminar and told a case manager that he was working as a real estate agent. He was granted Jobseeker Support from 19 October 2015 and an accommodation supplement.
- [3] On 3 March 2016 Mr XXXX attended a Work and Income seminar intended to assist beneficiaries with job search. He spoke to a case manager who recorded that Mr XXXX said that he was not available for full time work because he was busy with his real estate work. He was verbally told that his benefit would stop because he could not fulfil his Jobseeker Support obligations
- [4] The next day a letter was sent to Mr XXXX telling him that he was transferred to supplementary assistance due to the recent change in his circumstances. On the same day Mr XXXX applied for a review of this decision which was upheld by the Benefit Review Committee. Mr XXXX filed his appeal on 14 June 2016.
- [5] On 27 October 2016 the Ministry arranged a meeting with Mr XXXX. Ms Siueva was at this meeting. She says that Mr XXXX was told that Work and Income could review the decision and grant him Jobseeker Support. A further meeting was arranged for the next day and Mr XXXX was asked to complete another Jobseeker Support application and provide a copy of his contract, bank statements for the past six months, evidence of how he had supported himself for the past six

months and a letter from his parents clarifying the arrangement for rent payments.

- [6] Mr XXXX did not attend this meeting or another one organised on 3 November 2016. At the hearing he explained that he had difficulty attending such meetings and job seeker seminars because of the nature of his work.
- [7] The Ministry wrote to Mr XXXX on 25 November 2016 with a further request for the information it said was needed to consider reinstating his benefit.
- [8] At the hearing Mr XXXX said that he is still working as a part time real estate agent with XXXX, on a commission basis. He has not sold any property or had any income since he started. He produced his agreement with XXXX for engagement as a salesperson and a bank statement from 1 August 2016 to 15 February 2017.

Issues

- [9] The issues we have addressed are the error that the Ministry accepts it made in assessing compliance with the work test and the manner in which it cancelled Mr XXXX's benefit.

Application of the work test

- [10] At the hearing Ms Siueva accepted that on 7 March 2016 the Ministry incorrectly cancelled Mr XXXX's Jobseeker Support benefit because at that time he met the work test in s 102(2) of the Social Security Act 1964 (the Act). She said that the Ministry now accepts that Mr XXXX is entitled to Jobseeker Support from 7 March 2016 (the date of cancellation) to 27 October 2016.
- [11] Ms Siueva said that the Ministry did not realise its error until Mr XXXX filed his appeal. We asked Ms Siueva what steps the Ministry should

have taken when it realised its error. Ms Siueva said that the Ministry should have arranged a meeting with Mr XXXX to discuss the situation. However, Ms Siueva met with Mr XXXX on 27 October 2016 and she confirms that at this time she was aware that the Jobseeker Support should not have been cancelled.

[12] In the hearing Ms Siueva said that the Ministry's error in cancelling the benefit was acknowledged verbally at this meeting. However in the 12K report she states that Mr XXXX was told at this meeting that the decision to review his Jobseeker Support *could* be reviewed and granted from the date of cancellation.

[13] As the Ministry did not reinstate the Jobseeker Support and continued to impose conditions on any review of its decision, we are not satisfied that anyone from the Ministry told Mr XXXX before this hearing that the Ministry accepted that it had wrongly cancelled his benefit.

[14] We asked Ms Siueva to provide a calculation of the amount that the Ministry accepts is owed to Mr XXXX as a result of its error. After a brief adjournment, Ms Siueva produced Exhibit B which records:

7 March 2016 to 27 October 2016:

33 weeks, 4 days @ \$210.13 = \$7,102.39

[15] Accordingly we are satisfied that the sum of \$7,102.39 is payable by the Chief Executive to Mr XXXX for the period of 7 March 2016 to 27 October 2016.

Requirement for notice under s 113

[16] In addition to cancelling Mr XXXX's benefit in error, the Ministry failed to give him proper notice that it intended to impose a sanction. The Ministry did not acknowledge the lack of notice in the 12K report or at the hearing.

[17] The purpose of the telephone conference convened on 6 April was to provide the Ministry with an opportunity to address the question of notice. At this conference Ms Jaura referred to the meetings and

discussions with Mr XXXX and said that verbal notice was given. However she confirmed that no written notice was given by the Ministry as required by s 113 of the Act. She confirmed that the Ministry is not asserting that any verbal notice given was adequate.

- [18] Section 113 of the Act prohibits the Ministry reducing, suspending, or cancelling a benefit until notice has been given in the proper form.
- [19] Section 113(2) requires the Ministry to issue a written notice stating that the beneficiary has failed to comply with a specified obligation under the Act, the nature of the non-compliance, the consequence that will be imposed, and the date on which the sanction will take effect.
- [20] Section 113(2)(e) requires the Ministry to advise the beneficiary that they have 5 working days to dispute the sanction. Section 113(3) prohibits any reduction, suspension, or cancellation of the benefit before the 5 working days have expired.
- [21] As the Ministry did not comply with the notice requirements, it was not entitled to cancel Mr XXXX's Jobseeker Support. For this reason, and because the Ministry accepts that Mr XXXX met the requirements of the work test, it was not appropriate to make reinstatement of his benefit contingent upon him providing certain information.

Discussion

- [22] The Ministry cancelled Mr XXXX's benefit, when he qualified for it, and without completing the process required to do so. The Ministry having made those errors cannot justify requiring Mr XXXX re-qualify for the benefit he was entitled to have.
- [23] Having incorrectly cancelled the benefit and failed to give proper notice of cancellation, the Ministry was obliged to reinstate the benefit from the date of cancellation.

- [24] If the Ministry then wanted to test obligations under s 102A and review Mr XXXX's ongoing eligibility for Jobseeker Support, it was entitled to do so. It was not entitled to address its errors by requiring a requalification process.
- [25] Accordingly we are satisfied that Mr XXXX is entitled to reinstatement of Jobseeker Support from 28 October 2016.
- [26] In making this order we note that the first request to the Ministry for a s 12K report was made on 22 June 2016 and the report was dated 8 February 2017. This is an inappropriate delay.

Conclusion

- [27] By consent, the appeal in relation to the cancellation of the Jobseeker Support from 7 March 2016 to 27 October 2016 is allowed and the sum of \$7,102.39 is payable immediately by the Chief Executive to Mr XXXX.
- [28] For the reasons given, the appeal by Mr XXXX in relation to the cancellation of Jobseeker Support from 28 October 2016 is granted.
- [29] We reserve leave for the parties to seek a determination on the amount payable to Mr XXXX for Jobseeker Support from 28 October 2016 if they are unable to reach agreement.

Dated at Wellington this 7th day of April 2017

S Pezaro
Deputy Chair

K Williams
Member

C Joe JP
Member