

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

Mr G Pearson - Chairperson

Mr C Joe - Member

Hearing at Wellington on 5 April 2017

Appearances

For Chief Executive of the Ministry of Social Development: Ms E Kirkman

For the Appellant: Mr G Howell

DECISION

Background

[1] The background to this appeal involves a very specific set of circumstances. The appellant is a mother of two children. One of those children has remained as a dependent child. The issue relates to the other child. In August 2016, when that child was 16 years of age, he was granted a Youth Payment as from that point in time. This involved a determination that he was no longer dependent on his mother. Consequentially, when his mother's benefit entitlements were determined the child was excluded from the assessment of her benefit, as he was no longer a dependent child for that purpose.

- [2] The appellant's Sole Parent Support Benefit rate did not change as a result of that change in circumstances. However, her Accommodation Supplement reduced from the sole parent with two children rate to the one child rate, which was significantly lower. In addition, her entitlement to Family Tax Credit and Temporary Additional Support payments also changed.
- [3] The result of these circumstances was that the appellant and the child living with her had to move into different accommodation as the appellant could no longer afford the accommodation where they had been living.
- [4] The appellant considers that the reason her son began to receive the Youth Payment is that the school authorities at the boarding school where he was living influenced him, for the purpose of gaining additional funding.
- [5] The appellant wishes to challenge the decision to grant her son the Youth Payment. She considers she should have the right to challenge that decision.

The Ministry's position

- [6] The Ministry's position is that regardless of the merits of the decision to grant the appellant a Youth Payment, the law does not permit the appellant to challenge it.
- [7] The first point in the Ministry's argument is that while it is clear that the decision to grant a Youth Payment to her son did have an effect on the appellant, it is not an effect that gives her the right to require a review, or pursue an appeal against that decision. The Ministry says her 16 year old son's entitlement to a benefit is a matter for him, not the appellant.
- [8] The Ministry says that an amendment to the Social Security Act 1964 that took effect from 8 July 2016 is expressly designed to exclude a person in the appellant's situation having the right to involve herself in her child's affairs. The Ministry says review and appeal rights do not flow from a decision to grant or deny a benefit to someone else; even if that decision does affect a person's own entitlements.

- [9] The first step in the Ministry's contention is that as from 8 July 2016, s 7 of the Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Act 2016 replaced s 10A(1) row 1 of the principal Act. Formerly, that provision allowed an applicant or beneficiary *affected* by a decision to require a review of the decision. The effect of the amendment was to move away from providing a right of review for a person *affected*, to instead requiring that the applicant or beneficiary is a person the decision is "made in relation to".
- [10] Section 10A of the principal Act relates to decisions made under delegation, there is no dispute that the decision in issue is one made under delegation.
- [11] The next step in the argument is that s 9 of the same amending Act replaced s 12J(5). Section 12J of the principal Act determines which decisions or determinations can be appealed to this Authority. Section 12J(1) and s 12J(5) were both changed by the amending Act. In the case of s 12J(1), the word "affected" was replaced by the words "made in relation to" (there were other minor changes in the wording). In addition s 12J(5) was replaced and it refers to subsection (1), and provides that a decision or determination "is not made in relation to an applicant or a beneficiary by reason only that the decision or determination has an economic or other effect on the applicant or beneficiary".
- [12] The restriction contained in s 12J(5) does not apply to s 10A, the extent of the connection between s 10A and s 12J is a reference to the commonality of the enactments referred to in s 12J(1) for both provisions.
- [13] The Ministry's position is that the appellant must accept her son has a Youth Payment entitlement as a fact. The scope of her appeal must come within the area of how that youth payment impacts on her own entitlement to benefits, as she cannot challenge the decision to grant the youth payment.

Scope of the disputed issues

- [14] The parties agree that ss 10A and 12J of the principal Act govern the respective entitlements to require a review, and bring an appeal to this Authority.

[15] The parties also agree that if the appellant is unable to challenge her son's entitlement to a Youth Payment, the consequential effects on her own benefits and entitlements are not able to be disputed with one exception.

[16] At the hearing, the Ministry conceded that s 80BD(6) applied, and had been overlooked. The provision relates to the ending of benefits, it provides that in certain cases there is a deferral of 28 days before a benefit stops "because of a sudden change in circumstances beyond the beneficiary's control". The Ministry accepts that the provision applies in this case.

Discussion

[17] The only contentious point in this appeal relates to whether or not the appellant can challenge her son's entitlement to a Youth Payment. In our view, the change in the legislation is unambiguous. Parliament has made a policy decision that it is not sufficient for an applicant or beneficiary to be "affected". It is now necessary that the applicant or beneficiary requires a review, or lodges an appeal against a decision where it is "made in relation" to them. The purpose and effect of the amendment is clear; it is intended to, and does, exclude appeals and reviews where the person is only consequentially affected by the rights and entitlements of another person, rather than subject to a decision *in relation* to them.

[18] The only apparent uncertainty appears to be that s 10A does not contain the additional restriction in s 12J(5). Potentially, that means that the scope for a review is wider than the scope for an appeal. Whether or not that is the case, it is not necessary for us to decide the question. The scope of the appeal cannot be wider than permitted by s 12J. We are satisfied that the legislative amendments, including the express statement in section 12J(5) that "a decision or determination is not made in relation to an applicant or a beneficiary by reason only that the decision or determination has an economic or other effect on the applicant or beneficiary" leaves no room for doubt that the applicant is not able to bring this appeal to the extent that it challenges the decision to grant her son a youth payment.

[19] The grant of the youth payment was not “in relation” to the appellant; it certainly affected her not only financially but in other ways. However, that does not meet the test of the decision to grant the youth payment being “in relation” to her.

Decision

[20] The appeal is allowed, to the extent that the benefits and entitlements the appellant remain in place for 28 days after her son was granted the Youth Payment pursuant to s 80BD(6).

[21] In other respects the appeal is dismissed.

[22] We reserve leave to determine any issues relating to the amount of the entitlements the appellant should have pursuant to s 80BD(6).

Dated at Wellington this 28th day of April 2017

G Pearson
Chairperson

C Joe JP
Member