

[2017] NZSSAA 023

Reference No. SSA 110/16

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by **XXXX** of **XXXX**
against a decision of a Benefits
Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

K Williams - Member

DECISION ON THE PAPERS

The appeal

[1] XXXX appeals the decision by the Chief Executive to calculate his disability related travel allowance on the basis of the running costs of his car only, without factoring the fixed costs into this assessment. Mr XXXX also contends that the mileage rate applied by the Ministry of Social Development (“the Ministry”) is arbitrary and less than his actual use.

[2] Mr XXXX agreed to this appeal being determined on the papers.

Background

[3] Mr XXXX is 80 years old and, according to the Ministry, receives a disability allowance because he has a musculo-skeletal disorder. Mr XXXX states that his legs are affected by polio but that until 20 years ago he was able to lead a fairly normal life. For the past 20 years he has worked as a volunteer at the XXXX and used his car to commute to there from his home in XXXX. Mr XXXX is no longer mobile enough to do this weekly duty but does some XXXX work at home.

[4] This matter has a long history. In 1995 Mr XXXX appealed the Ministry’s decision to refuse to include any costs associated with using his car in his disability allowance. Mr XXXX’s appeal was upheld because the Authority

concluded that he relied on his car for mobility. The Authority directed the Ministry to recalculate Mr XXXX's disability allowance to include the cost of using his car for weekly trips to the supermarket and to town. As a result from 9 June 1995 the Ministry paid Mr XXXX a weekly allowance of \$7, calculated on a mileage rate of \$0.35 per kilometre for 20 km.

- [5] On 19 October 2015 Mr XXXX supplied WINZ with the information required to renew his disability allowance and accommodation supplement. He confirmed that the mileage incurred for the two approved purposes was unchanged but asked that the mileage rate be revised to reflect present day running costs.
- [6] On 9 November 2015 the Ministry notified Mr XXXX that it had reviewed his disability allowance and accommodation supplement. This letter stated that his disability allowance included an annual payment for transport of \$84. There was no explanation in the letter of how these amounts were calculated but the s 12K report states that this sum was based on annual travel declared in 2001 of 240 km (240 km x 0.35 cents). The sum of \$7 paid weekly was categorised as 'other'.
- [7] On 20 November 2015 Mr XXXX sent an email asking how the reviewed amount had been calculated. He referred to his letter of 19 October and asked the Ministry to confirm which amounts had been allowed.
- [8] On 30 November 2015 Mr XXXX wrote again. He referred to a phone call from someone who explained that the sum of \$7 was the amount satisfying the 1995 order of the Authority. He asked that the mileage rate be increased to 67 cents per km to reflect the fixed cost of running his car, increasing the weekly allowance from \$7 to \$13.40. Mr XXXX offered to supply his records in support of these costs.
- [9] On 15 January 2016 Mr XXXX wrote to the Ministry stating that he had no reply to his email. He formally requested a review of the 9 November 2015 decision. This letter was acknowledged on 23 February 2016 and Mr XXXX was told that there would be an internal review.
- [10] On 18 April 2016 the Ministry wrote to Mr XXXX telling him that his payments had been reviewed because his circumstances had changed and the annual transport allowance was reduced from \$84 to \$21.14 per annum explained as follows:¹

¹ File note dated 18 April 2016 at p24, s 12K report.

Travel Disability of \$84.00 pa has been removed as this is covered under Appeal amount of \$7.00 pw. Travel Personal Health has been calculated Chemist 1.8km x 2 x 5 trips x .35 c = \$6.30 p.a. Travel to Dr 10.6km x 2 x .35 = \$14.84 pa.

[11] It is not clear what constituted changed circumstances however as Mr XXXX is not challenging the mileage basis of the annual allowance there is no need to address this issue. The payment of \$7 weekly for travel related disability costs remained unchanged.

[12] After an internal review Mr XXXX sought review by a Benefits Review Committee which upheld the decision on 27 July 2016.

The relevant law

[13] Section 69C(2A)(a) of the Social Security Act 1964 provides that a disability allowance may be paid to a person where that person has additional expenses of an ongoing kind arising from their disability. Clause 4 of the Ministerial Direction – Disability Allowance requires that when determining whether a person has an entitlement under this provision, the Chief Executive must consider the following:

- (a) Whether the person is incurring ongoing expenses which result from the person's disability, having regard to-
 - (i) The relationship between the disability and the need to incur the expenses; and
 - (ii) The other matters referred to in clause 2(d); and
 - (iii) Whether the person would be incurring the expenses if he or she did not have the disability; and
 - (iv) Whether the expenses or an expense of that kind was being incurred before the disability arose and the reasons for incurring that expense at that time; and
- (aa) the extent (if any) to which the person's life or health would be put at risk, or the person's disability aggravated, if the person could not receive the goods or services because the expense was not wholly or partly met from a disability allowance; and
- (b) Whether a person in a similar position who does not have the particular disability would incur expenses of that type or amount; and
- (c) Whether there are less costly goods or services which might meet the need referred to in clause 2(d)²; and
- (d) Any other matters you consider to be relevant.

The case for Mr XXXX

² Requires verification by a registered health professional that the expenses relate to the disability, and the expected duration and value of the services to the person.

- [14] In his notice of appeal Mr XXXX submits that in 1995 when the Ministry set his mileage rate at 35 cents per km he was not told how this amount was calculated. At that time Mr XXXX accepted that the Ministry was complying with the order of the Authority. However now that he knows that this figure is based on NZAA figures which exclude the fixed costs of registration, warrant of fitness, insurance, and depreciation, he does not accept it.
- [15] Mr XXXX states that he owns a car only because he requires it for the particular appointments and supermarket visits covered by the allowance. He asks the Authority to compare his situation with that of an able bodied person who does not go to work or attend any entertainment or sporting events and has no travel requirements that cannot be met by public transport.
- [16] Mr XXXX says that at the last warrant of fitness check, his mileage for the previous year was 2606 kilometres. He contends that as most of this is necessary, the fixed cost component should be included in his allowance and payments on this basis are backdated.
- [17] Mr XXXX submits that the Authority has the power to take into account such relevant matters pursuant to Clause 4 of the Ministerial Direction – Disability Allowance.

The Ministry's submissions

- [18] The Ministry accepts that Mr XXXX has additional ongoing travel expenses because of his disability. It relies on a 2013 estimate of running costs from the NZ Automobile Association to support setting the allowance at 35 cents per km. The Ministry argues that this allowance is advantageous to Mr XXXX because the NZAA estimate of the total running and fixed costs for a 1501-2000cc vehicle, less than 5 years old, travelling over 14,000 km per annum is 32.5 cents per km.
- [19] The Ministry does not challenge Mr XXXX's assertion that his travel requirements cannot be met by public transport or that he owns a car solely because he requires it for the travel purposes approved by the Authority in 1995 for inclusion in his disability allowance.

Discussion

- [20] We accept Mr XXXX's unchallenged evidence that the primary purpose of his vehicle is to enable him to access services and facilities that are essential to

his daily life. Mr XXXX accepts that there is a small component of his vehicle use which is not disability related and we are satisfied that his low annual mileage indicates that this is minor. We are satisfied that Mr XXXX would not be incurring the cost of owning and maintaining a vehicle if he was able to use public transport.

- [21] For this reason we find that Mr XXXX is entitled to a disability travel allowance that includes the fixed costs of owning his vehicle. Neither party has provided evidence of these costs although Mr XXXX stated in his email of 30 November 2015 that based on all costs of running his car – insurance, registrations, warrant of fitness, routine maintenance, petrol and tyres – his mileage cost was 62 cents per kilometre. The Ministry has not provided up to date information on which to base a calculation of fixed or running costs. We have taken account of the Inland Revenue mileage rate for vehicle use of 72 cents per km when less than 5000 km is travelled per year and on this basis consider that the amount sought by Mr XXXX is reasonable.³
- [22] We do not accept Mr XXXX's suggestion that a further 5 cents per km should be allowed for depreciation and other repairs.

Decision

- [23] The appeal is allowed. The mileage rate on which Mr XXXX's weekly travel disability allowance of 20 km per week is to be calculated is 62 cents; \$12.40 per week.
- [24] Mr XXXX is entitled to backdated payment of the difference between this sum and the weekly allowance paid of \$7 (\$5.40) from the date of the decision under review; 9 November 2015.
- [25] If the parties cannot agree on the amount payable in respect of the backdated payments, they may seek further directions from the Authority.

Dated at Wellington this 24th day of May 2017

³ <http://www.ird.govt.nz/business-income-tax/expenses/mileage-rates/emp-deductions-allowances-mileage.html>

S Pezaro
Deputy Chair

K Williams
Member