

[2017] NZSSAA 024

Reference No. SSA 156/16

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by **XXXX** of
Dunedin 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 by audio visual link from Dunedin.

G Moore and J Greaves for the Ministry of Social Development by audio visual link from Wellington.

DECISION

Background

[1] This is an appeal against the decisions by the Ministry to decline an application by XXXX to transfer his housing entitlement from Palmerston North to Dunedin and to decline his application for social housing in Dunedin on the basis of a new application. These decisions were upheld by a Benefits Review Committee on 1 November 2016.

[2] Mr XXXX was granted Social Housing Assistance on 13 March 2015 and allocated a Housing New Zealand house in Palmerston North. He applied to enrol at Massey University for doctoral study but his application was declined. Subsequently he was accepted as a doctoral student at the University of Otago and applied to HNZ for a transfer of his housing entitlement to Dunedin. There was no question at that time as to his ongoing entitlement to the Palmerston North house.

- [3] In August 2016 Mr XXXX became engaged and when he filed his appeal stated he was married and was awaiting the arrival of his wife in New Zealand. He now has a \$25,000 scholarship from the University of Otago although at the time of his application for transfer Mr XXXX did not know that his scholarship application was successful.
- [4] By the date of hearing Mr XXXX had relinquished his HNZ house in Palmerston North and moved to Dunedin.

The appeal

- [5] Mr XXXX states that he should be entitled either to transfer to a Housing New Zealand property in Dunedin or be entitled to housing there on the basis of a new application.
- [6] Mr XXXX made extensive submissions in writing and at the hearing. To a large extent his submissions on appeal relate to the manner in which his application was processed. They address issues such as the time taken, the information provided to him, and the manner in which he was interviewed. Mr XXXX sought compensation for delay in accepting his application.
- [7] To the extent that he addressed the relevant criteria, Mr XXXX contended that he should have been granted a transfer because:
- (a) His current degree means that he is under-qualified for research jobs and over-qualified for technician jobs. His only chance of furthering his career is to study for a doctorate.
 - (b) He has a supervisor in Dunedin.
 - (c) His chances of obtaining a scholarship at Otago are slim and therefore he needed support to move to Dunedin.
 - (d) He has a two-bedroom HNZ house in Palmerston North which is under-utilised as he is the only occupant.
 - (e) He suffers from clinical depression and social anxiety and needs to move to Dunedin and study for his mental health.

- (f) His research is into XXXX and besides Massey in Palmerston North, Dunedin has the only other XXXX laboratory.
- (g) He has a \$40,000 Student Loan which will be wasted if he does not complete further study.

- [8] At the hearing Mr XXXX initially argued that if any criteria are met an application for transfer or social housing should succeed. He subsequently accepted that there must be a threshold level for determining such applications.
- [9] He also accepted that the assessment by HNZ of his application for social housing in Dunedin was accurate but asserted that he met the criteria for a Business Initiated Transfer (BIT) which is a transfer initiated by the agency providing social housing.

The submissions for the Ministry

- [1] Mr Moore said that an application for a transfer of social housing property must first be considered by the housing agency as a BIT. The need to transfer must arise from housing concerns such as overcrowding, under-utilisation, or cold and damp and/or mouldy property.
- [2] The Ministry submits that Mr XXXX did not have a housing need because he had adequate housing at the time of his application. The move to Dunedin to continue his studies, which formed the basis of his request, did not constitute the severe or urgent need for which social housing is provided.
- [3] If a tenant does not qualify for a transfer under the BIT criteria, the application is treated as a new application. Therefore when Mr XXXX's application failed under BIT it was considered as a new application.
- [4] In response to a question from the Authority Mr Moore explained that when an application is considered under BIT all criteria are looked at. He said that the BIT system is based on the parties agreeing that there needs to be a move. There is also provision in the Housing Restructuring and Tenancy Matters Act 1992 (HRTMA) for the provider to require a tenant to transfer.
- [5] Mr Moore said that in terms of the operational policy, under-utilisation is one of many factors taken into account. Under-utilisation is evaluated in a

practical sense. If a person is in a house which has more rooms than they need, they will be moved to a smaller property only if one is available. Mr Moore said that there is a shortage of one bedroom properties and, as there was no one bedroom property in Palmerston North when Mr XXXX was there, the agency did not consider that his property was under-utilised.

- [6] Mr Moore said that:
- (a) Mr XXXX's desire to improve his career opportunities was laudable but not a reason to qualify for social housing.
 - (b) Mr XXXX's position was no different from that of any other student needing housing.
 - (c) Mr XXXX has a scholarship of \$25,000 and, including this sum, has a joint income with his wife of \$700 per week.

The assessment criteria for social housing

- [7] Section 129 of the Housing Restructuring and Tenancy Matters Act 1992 ("HRTMA") enables the Social Housing Agency (which is the Ministry of Social Development) to assess the eligibility of prospective tenants for social housing according to criteria which may include their marital status, disability, age or family status, residency status, income and property. This section allows different treatment on the basis of these criteria and specifically overrides the Human Rights Act 1993.
- [8] There are no express provisions in the HRTMA for managing the social housing register. The way in which housing eligibility is to be assessed is provided in the Ministerial Direction on Eligibility for Social Housing ("the Direction"), made pursuant to s 102(2) of the HRTMA, and in operational guidelines. Clause 4 of the direction provides that, among other criteria, for a person to be eligible for social housing they must have a housing need of a kind set out in clause 7 of the Direction. Clause 7 of the Direction provides that a person must have a persistent housing need that is serious or severe and must be addressed immediately.
- [9] Clause 7.2 of the directions requires the agency to have regard to five factors when determining housing need: affordability, adequacy, suitability, accessibility and sustainability. These factors are assessed by the Social Allocation System (SAS) which is computer based.

- [10] The assessment produces an outcome which is applied to ensure that social housing is provided to those with the highest need. The SAS converts information on an application into points for each of the five factors. Points are allocated on a scale of 1 to 4 in each category with a 4 rating being high risk.
- [11] A rating in a range of A-D is then given according to the number of points scored. If the highest rating is 4 and any other rating is greater than 1 the segment is A. If the highest rating is 3 and any other rating is greater than 1 the segment is B. If the highest rating is 3 or 4 and any other ratings are 1 the segment is C.
- [12] To qualify for social housing, an applicant must be assessed as having a housing need priority of 'at risk' (Priority A) or 'serious' (Priority B). People assessed as being in moderate need (C) or low or no need (D) are not put on the waiting list as they are not eligible for social housing.
- [13] The assessment is based on the circumstances of the person at the time the application is made and there are five criteria.
- a) *Affordability* - assesses the ability to afford alternative, suitable housing in the private market.
 - b) *Adequacy* - addresses the need for the applicant to move from their current accommodation and takes into account the physical condition of the current accommodation and health and safety issues.
 - c) *Suitability* - rates the extent to which the need to move is due to medical, personal or disability issues; violence or tension in the family, household or neighbourhood; and overcrowding.
 - d) *Accessibility* - considers whether the ability to access and afford suitable and adequate housing is affected by discrimination, financial constraints and the availability in the private market of suitable alternatives.
 - e) *Sustainability* - assesses the ability of the applicant to retain housing other than social housing taking into account the person's ability to manage money, their social skills and history of transience.

[14] Mr XXXX's need was assessed as follows:

Category	Points
Affordability	3
Adequacy	1
Suitability	1
Accessibility	1
Sustainability	2
Total	8

[15] Under SAS criteria this resulted in a 'C' rating which disqualified Mr XXXX from social housing.

Decision

Was Mr XXXX entitled to a transfer of social housing to Dunedin?

- [1] A transfer of social housing may occur as either a BIT or where the agency requires the tenant to transfer for other reasons. Providing housing for people who wish to reside in a particular place for the purposes of study would not be consistent with the purpose of social housing and is not one of the factors which the agency is required to take into account.
- [2] At the hearing Mr XXXX emphasised under-utilisation as an important factor in his application however this does not assist his application for a transfer to Dunedin. The BIT criteria do not include utilisation and, even if they did, the question of whether a house is underutilised is assessed in relation to the available and suitable social housing pool at the time.
- [3] For these reasons we are satisfied that at the time of application Mr XXXX did not meet the criteria for BIT and was not entitled to a transfer to Dunedin on this basis. The assessment we are required to make is at the time of the application. For this reason Mr XXXX's current income is irrelevant.

- [4] The application for social housing which Mr XXXX completed is Exhibit 9 to the Ministry's 12K Report. He confirmed that his house was structurally safe and sound. The reason he gave for requiring housing in Dunedin was his study.
- [5] Mr XXXX confirmed that he had no difficulty with financial management or social functioning and had been in his current property for one and a half years. In relation to accessibility, Mr XXXX indicated that he had experienced some discrimination but confirmed that suitable alternative housing was available where he needed to live.
- [6] In relation to affordability Mr XXXX stated that he would need financial assistance with a bond or rent in advance, that he only needed one bedroom and that his current weekly costs were \$150 for groceries, \$65 for power and \$17 for telephone. There is no evidence that any of these responses were not correct at the time of the application. We therefore conclude that, at the time Mr XXXX completed this application, his SAS score was C8 and he did not qualify for social housing in Dunedin.
- [7] We note that, even if Mr XXXX's appeal had succeeded, the Authority has no power to award damages such as the compensation he sought for loss he says resulted from not having his application accepted in May 2016.
- [8] For these reasons this appeal is dismissed.

Dated at Wellington this 6th day of June 2017

S Pezaro
Deputy Chair

K Williams
Member

C Joe JP
Member