

[2017] NZSSAA 029

Reference No. SSA 114/16

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

S Pezaro - Deputy Chair

K Williams - Member

C Joe - Member

Hearing at Wellington on 13 March 2017

Appearances

No appearance by the appellant; G Howell, lay representative.

P Siueva, for Ministry of Social Development

DECISION

Background

[1] XXXX appeals the decision of 28 March 2014 to stop her accommodation supplement from 24 March 2014 on the basis that her assets were over the allowable limit. This decision was upheld by a Benefits Review Committee and Ms XXXX filed her appeal on 26 September 2016.

[2] In January 2012 Ms XXXX asked the Ministry what assistance might be available to assist with relocation to Wellington for approximately two years for the purpose of resuming hormone treatment in preparation for gender reassignment surgery.

- [3] On 12 March 2012 she sought help with paying the bond for a rental property in Wellington. At the same time the Ministry recorded that Ms XXXX owned a property in XXXX and her tenant was paying \$200 per week rent. It was also noted that the mortgage and other costs were recently updated and that Ms XXXX was just meeting them. Her accommodation supplement was reassessed based on her weekly rent of \$200.
- [4] On 25 June 2013 Ms XXXX attended an appointment at WINZ to discuss her financial difficulties. At this interview the Ministry identified that it had not considered the net equity in her property in XXXX when it reviewed her accommodation supplement.
- [5] When Ms XXXX purchased the XXXX house in 1992 she had a mortgage of approximately \$28,900. She remortgaged several times resulting in a mortgage balance at the time of this interview of approximately \$70,000. On this basis the Ministry assumed that she had a net equity of between \$30,000 and \$150,000. As this amount of equity exceeded the cash asset limit of \$8,100 for an accommodation supplement and the asset limit for hardship assistance, Ms XXXX's accommodation support was suspended from 24 June 2013.
- [6] Subsequently the Ministry received confirmation that Ms XXXX had heart attacks in late 2012 and early 2013 which meant that her hormone replacement therapy had to be delayed. The Ministry then reviewed the decision to suspend her accommodation supplement and agreed to pay it another year from 12 May 2014 or the end of the current tenancy whichever occurred earlier. The accommodation supplement was then cancelled from 4 May 2015.
- [7] The capital value of the XXXX property shown on the rates demand in 2014 was \$128,000. After the mortgage at that time was deducted Ms XXXX had a net equity in the property of \$67,679.73.

The case for the appellant

- [8] Ms XXXX did not attend the hearing to give evidence. Mr Howell submits that the Ministry has the discretion to grant and continue the accommodation supplement while Ms XXXX awaits gender reassignment surgery in Wellington. He argues that she is required to be resident in the Capital Coast DHB catchment area because the treatment is not available in XXXX. If she does not remain in the area she will not be able to maintain her eligibility.

The case for the Ministry

- [9] Section 61EA provides that the Chief Executive may grant an accommodation supplement to assist in meeting the applicant's accommodation costs. Section 61EC(4) provides that the Chief Executive may refuse to grant an accommodation supplement where the applicant has not realised assets available for the applicant's personal use. Ms Siueva said that the Ministry did pay an accommodation supplement for two years until 3 May 2015, but said that at the date of hearing Ms XXXX had been living in Wellington for five years and there was still no certainty about her receiving treatment.

Discussion

- [10] The purpose of the Act is to provide support for people in hardship, taking into account that where appropriate they should use the resources available to them before seeking financial support under the Act. Ms XXXX accepts that she has assets which exceed the limit of \$8,100 set in s 61EC(3)(b). Mr Howell's argument is that she is entitled to an accommodation supplement on compassionate grounds.
- [11] It appears that the first year that the Ministry granted the accommodation supplement may have been due to an error it made in not taking account of Ms XXXX's equity in the XXXX property. However subsequently the Ministry granted the accommodation supplement on compassionate grounds for the year ending May 2015.
- [12] The question of the entitlement of a person to an accommodation supplement when he owned a rental property was considered by the High Court in *Mullett-Merrick v Chief Executive of the Department of Work and Income New Zealand*.¹ In that case Gendall J expressed the view that it is beyond argument that the equity available in the rental property was an asset available for the appellant's personal use which he could have realised, reorganised or borrowed against. As a result the appellant was not entitled to an accommodation supplement.
- [13] For the same reasons we conclude that it would be contrary to the purpose of the Act and the specific requirements for entitlement to an accommodation supplement to grant Ms XXXX the accommodation supplement which she seeks. While we accept that she will incur additional costs by living in

¹ *Mullett-Merrick v Chief Executive of the Department of Work and Income New Zealand* HC Wellington CIV 2002-485-174, 19 September 2003.

Wellington and that she must do so in order to be eligible for treatment, she has an asset which she has the option of realising to fund her choice.

[14] For these reasons this appeal is dismissed.

Dated at Wellington this 23rd day of June 2017

S Pezaro
Deputy Chair

K Williams
Member

C Joe JP
Member