

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an Appeal by **XXXX** of **Auckland** against a decision of the Chief Executive that has been confirmed or varied by a Benefits Review Committee

DATE OF MINUTE **Monday, 10 July 2017**

DECISION
REASONS FOR DECLINING TO EXTEND TIME

The issue

[1] The appellant has applied to lodge an appeal out of time pursuant to section 12K(1A)(b) of the Social Security Act 1964. The appeal was lodged on 7 November 2016. The key features of the appeal are:

[1.1] It is an appeal against a Benefits Review Committee decision of 29 June 2010.

[1.2] The final date for lodging the appeal was 3 months after the appellant was notified of the Benefits Review Committee decision.

[1.3] The grounds of appeal are:

[1.3.1] The Benefits Review Committee was unfair and discriminatory.

[1.3.2] The Benefits Review Committee refused an adjournment.

[1.3.3] The constitution of the Benefits Review Committee was invalid.

[1.3.4] The Benefits Review Committee did not correctly apply section 252 of the Injury Prevention Rehabilitation and Compensation Act 2001.

[1.4] The subject matter of the Benefits Review Committee concerns events in the years from 2005 to 2007.

The appellant's grounds for leave to bring the late appeal

- [2] The appellant's grounds in support of allowing the late appeal are:
 - [2.1] Alleged difficulties with the hearing in 2010.
 - [2.2] The appellant was overloaded with ACC appeals and reviews (though this seems to be in 2010).
 - [2.3] The appellant still has ACC appeals and reviews.
 - [2.4] He gave clear instructions to his advocate to appeal in 2010, and only realised it had not happened when he received collection notices from an agency.
 - [2.5] His situation is difficult, and he has searched for representatives without avail.

The Ministry's grounds for opposing leave to bring the late appeal

- [3] The Ministry opposes the application for late filing as:
 - [3.1] The appeal should have been filed no later than 1 October 2010.
 - [3.2] The appellant was subject to recovery action by deductions from his benefit as from 14 July 2010. Accordingly, he must have been aware the appeal was not filed.
 - [3.3] The delay of six and a half years in bringing the appeal was in the appellant's control, and the circumstances do not justify the failure to lodge the appeal.

Discussion

- [4] We are satisfied the application is without merit. The following factors are determinative:
 - [4.1] The delay is extreme and there is no reasonable justification for it.
 - [4.2] There is no sensible explanation for the appellant failing to understand no appeal had been filed for more than six years.
 - [4.3] The grounds of appeal mainly concern the conduct of the Committee; they are not valid grounds for appeal. An appeal before the Authority is a *de novo* hearing, not an inquiry into the conduct of the Benefits Review Committee.

- [4.4] The only ground advanced outside of conduct issues is a provision of the Injury Prevention Rehabilitation and Compensation Act 2001. The appellant, correctly, says it relates to the Social Security Act 1964. However, he has not identified any reason why the Benefits Review Committee's decision is, or may be wrong.
- [5] Accordingly we find no reasonable justification or excuse for the delay has been established, and the appellant has failed to demonstrate the appeal has merit.
- [6] It is necessary for dispute processes to reach a point of finality, the time has long past when the delay in this case could be justified or excused.

Decision

- [7] The appeal is out of time, and the Authority is not satisfied that there are grounds to allow additional time pursuant to section 12K(1A)(b) of the Social Security Act 1964.

Dated at Wellington this 10th day of July 2017

G Pearson
Chairperson

K Williams
Member

C Joe JP
Member