

[2017] NZSSAA 038

Reference No. SSA 021/17

IN THE MATTER of the Social Security Act 1964

AND

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

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

K Williams - Member

Hearing at Auckland on 13 July 2017

Appearances

XXXX and XXXX

Iris Ji for the Ministry of Social Development

DECISION

- [1] XXXX appeals the decision of the Chief Executive to increase her income-related rent from \$239 per week to \$401 per week. This decision was made on 22 November 2016 and the new rate of rent took effect from 27 January 2017. This decision was upheld by a Benefits Review Committee on 20 February 2017.

Background

- [2] Mr XXXX is in full-time employment as a registered electrician working 40 hours per week with the occasional chance of overtime. The couple have five children and Mrs XXXX was approximately 34 weeks pregnant at the date of hearing. She has no income. The family have been in their three bedroom Housing New Zealand home for eight years.

- [3] As at 3 July 2017 the appellant had rental arrears of \$3,066 because she had continued to pay rent at the weekly rate of \$239 and not at the increased rate.
- [4] As a result of the rent arrears Housing New Zealand applied to terminate the tenancy. The Tenancy Tribunal adjourned the hearing of the application for termination pending the outcome of the appeal to this Authority.

The case for the appellant

- [5] Prior to the hearing Ms XXXX filed a full report providing details of Mr XXXX's income and information verifying their earnings and some of their expenses. Mr and Mrs XXXX provided a weekly budget and bank statements from their cheque account and verification of Mr XXXX's earnings and expenses deducted from his weekly pay.
- [6] At the hearing Mr and Mrs XXXX stated that the balance available to them after fixed expenses have been paid is \$98.45. They say this is simply not sufficient to feed and clothe their family and pay the children's school expenses.
- [7] Mr and Mrs XXXX have a weekly household income, including a Working for Families benefit of \$276 a week, of \$1,167.15, after tax. Mr XXXX pays approximately \$38 per week into his Kiwisaver and approximately \$100 towards his student loan, depending on his weekly income. Mr XXXX said that because these amounts are deducted before he receives his weekly pay and are compulsory they should be deducted by the Ministry before it calculates his income.

The case for the Ministry

- [8] Ms Ji explained that when a person is in social housing their income-related rent is reviewed annually. The rent review resulted in the rent increase to \$401 per week on the basis of Mr XXXX's annual income for the previous year.
- [9] Ms Ji stated that she had calculated whether the appellant would be in a better position if the same rent was paid in the private sector and the Ministry provided an accommodation supplement however Ms Ji concluded that this would put the appellant in a worse position. Mr XXXX stated that he had done the same calculations and agreed with this conclusion.

- [10] It is the Ministry's position that the calculation of the income-related rent carried out under s 107 of the Housing Restructuring and Tenancy Matters Act 1992 is correct. The Ministry considers the student loan repayment to be a personal liability and Kiwisaver to also be a personal option.
- [11] At the conclusion of her report Ms Ji encouraged the appellant to contact WINZ to test her entitlement for any other financial assistance based on these circumstances. This possibility was also raised at the hearing however Mr XXXX stated that he had looked at other possible assistance and did not believe there was any for which they were eligible.

Discussion

- [12] It is clear that the substantial increase in income-related rent from \$239 to \$401 per week has put pressure on Ms XXXX and her husband. They do not dispute the figures on which this assessment is based although they say that payments to the student loan and Kiwisaver should be taken into account.
- [13] We have considered whether the Ministry has any discretion to include these in the assessments as justifiable reductions to the appellant's weekly income. Section 113 of the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act 2013 provides that for the purposes of determining assessable income under s 108 of that Act the agency may deduct or add an amount which the agency is satisfied is likely to reduce or increase the income.

Kiwisaver

- [14] Although Mr XXXX says that Kiwisaver is compulsory and he can no longer opt out, he stated that he has taken payment holidays. Whether or not this option can be continued is not a matter we have addressed as we are satisfied that payments to Kiwisaver constitute payments towards savings which amount to personal assets. Therefore we do not consider that payments to Kiwisaver are matters which should be deducted from Mr XXXX's income for the purpose of establishing the level of income-related rent.

Student loan

- [15] Mr XXXX took out a student loan to enable him to qualify as an electrician. The student loan is a cost incurred for Mr XXXX's personal development and

as such we do not consider that it is a justifiable deduction from his income for the purpose of assessing income-related rent. However at the hearing Mr XXXX said this loan will be repaid in approximately two months which will add \$100 per week to the available household income.

[16] As a result of our conclusion in relation to Kiwisaver and the student loan, we conclude that the calculation of income-related rent based on the formula which the Ministry is bound to apply is correct.

[17] We note that even if we had the discretion to set income-related rent at a reduced level, we are not satisfied that this is a situation where that discretion should be exercised. The appellant and her husband have incurred significant costs by purchasing two vehicles for a total cost of \$60,000. Including the cost of finance, they are paying \$360 per week for these two vehicles. This sum is in addition to insurance of \$48.70 per week and the running costs of both vehicles. The weekly cost of owning these vehicles exceeds their rental costs.

Decision

[18] For the reasons given this appeal is dismissed.

[19] The income-related rent payable from 24 January 2017 is \$401 per week.

Dated at Wellington this 17th day of July 2017

S Pezaro
Deputy Chair

K Williams
Member