

**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**

**Mr G Pearson** - Chairperson

**Mr K Williams** - Member

**Mr C Joe** - Member

**Hearing** at WELLINGTON on 6 September 2017

**Appearances**

The Appellant in person

For Chief Executive of the Ministry of Social Development: E Kirkman

**DECISION**

**Background**

[1] The circumstances giving rise to this appeal are relatively uncomplicated. The appellant needed new glasses. If he had made contact with the Ministry and gone to an approved supplier, then he would have been given an advance on his benefit to assist him to purchase new glasses. He did not go to a preferred supplier, and the Ministry is not able to provide assistance under the preferred supplier system. The only potential resort is to provide a non-recoverable grant for the \$475 he has had to pay for his glasses.

- [2] After reviewing the issues, it became clear that there is no room for dispute that the only type of assistance that can be offered in this case, if any, is under the special needs grant programme, and, furthermore, that a recoverable grant is not an option.
- [3] The Authority's task is, accordingly, to evaluate whether or not the appellant's circumstances meet the requirements for a non-recoverable grant to pay for his glasses.

### **The Facts**

- [4] The facts were not controversial, but it is important to set them out reasonably fully as there are a number of material circumstances that go to providing an understanding of the circumstances the appellant was in when he purchased his glasses.
- [5] The appellant is affected by a bipolar disorder. He uses medication to control the condition; nonetheless, it has a significant impact on his life. There are circumstances where he is more impulsive than he might be without the condition, and its effect is sufficient to make it very difficult to engage in paid employment. The appellant is a highly intelligent and well educated man, but has been unable to work for a significant period of time. He believes that he cannot reasonably aspire to doing more than working on a part-time basis in circumstances which are supportive for him, taking into account his vulnerabilities.
- [6] The way the issue evolved relating to his glasses was as follows:
  - [6.1] First, the appellant went to a preferred supplier to obtain glasses. He was given glasses with progressive lenses; they did not work very well for him. One of the major difficulties was that the lenses gave him a "fishbowl" effect, which for obvious reasons caused him significant difficulties.
  - [6.2] After the appellant had endeavoured to use the glasses provided by the preferred supplier, he developed concerning visual disturbances. At that point, the appellant consulted the firm of optometrists who he had been consulting for some 17 years prior to going to the preferred supplier.

- [7] If he could afford it, the appellant would have glasses with a number of features. The optometrists the appellant consulted regarding his visual disturbances initially recommended new lenses that would cost \$875. When the appellant's circumstances were explained to them they agreed to provide new lenses (without frames) for a total of \$475. Furthermore, they were willing to accept payments over a period of time.
  
- [8] The appellant accepted the offer from the optometrists, obtained the new lenses, had them fitted in his old frames and sought assistance from the Ministry to pay for them. It was at this point that the issue relating to having to use a preferred supplier arose.
  
- [9] While the new glasses improved the appellant's situation, he could not read with the new glasses so took up the Ministry's offer to see the preferred supplier and get reading glasses.
  
- [10] Since this point, the appellant has had the difficulty that when he tried to renew his driving licence he failed the eyesight test because the correction was not working to bring him to the necessary standard.

### **Discussion**

- [11] It is common ground that the only potential assistance available is under the special needs grant programme. Clause 12.1 of the programme is a general provision that provides:
 

12.1 Grants under this Part may be made only if the chief executive is satisfied that an emergency situation exists, which has given rise to an immediate need.
  
- [12] Clause 12.2 requires the Chief Executive to have regard to whether the situation was unforeseen, the predictability of the event, and the extent to which not making the grant would worsen the applicant's position, increase or create risk to the life or welfare of the applicant (and some other persons), or cause serious hardship.
  
- [13] Clause 14 of the programme under the heading "other emergency needs" provides for assistance by way of recoverable and non-recoverable grants. Clause 14 states, relevantly:

14.1 If the chief executive considers that special circumstances exist, the chief executive may make a recoverable or non-recoverable Grant towards the cost of any item or any service if the chief executive considers that without that item or service other than Emergency Housing, the Applicant, or the Applicant's spouse or partner or a dependent child, would suffer serious hardship.

14.1A The amount of the grant under 14.1 must not exceed \$500 unless clause 14.1B applies.

14.1B The chief executive may make a grant under clause 14.1 of more than the amount set out in clause 14.1A only if he or she considers exceptional circumstances exist.

14.3 In deciding whether a Grant made under clause 14.1 will be recoverable or non-recoverable, the chief executive must have regard to the following matters-

- (a) the purpose of the Grant;
- (b) the nature of the need;
- (c) whether it would be equitable with other Applicants to require or not to require repayment; and
- (d) the effect on the Applicant of requiring or not requiring repayment of the Grant.

[14] The cost of the lenses was \$475; accordingly, it is not necessary to consider the restrictions on grants over \$500.

[15] The Ministry's position is that the appellant did not meet the requirements for a recoverable or non-recoverable grant under those provisions. The Ministry's position is that an essential criteria in clause 12.1 was not met, namely that an emergency situation existed, which gave rise to an immediate need. The Ministry considers that the term "emergency" implies a serious, unexpected and potentially dangerous situation requiring immediate action. However, it would seem that the proper focus should be on clause 12.2 that provides a range of things the Chief Executive must have regard to when deciding whether an emergency exists, rather than a dictionary definition.

[16] In our view, the appellant's circumstances did meet the requirements.

[17] In the particular circumstances of this case, we are satisfied that all of the requirements for a non-recoverable grant are met. We take into account:

[17.1] the appellant's vulnerability due to his bipolar condition;

[17.2] the fact that his vision was seriously impaired due to the "fishbowl" effect, having gone to the preferred supplier;

[17.3] that the trigger point was the appellant was suffering serious visual disturbances at the point in time when he consulted the opticians that had previously provided him assistance. That was not the fishbowl effect; he had other disturbances that could have potentially led to a serious diagnosis relating to eye health;

[17.4] the cost for the lenses was greatly discounted; and

[17.5] the appellant's financial situation is very difficult; he owes substantial arrears already, and repayment is not realistic.

[18] We have considered equity in relation to other applicants. If other applicants face the difficulties that this appellant has, due to mental health, difficulty gaining employment, difficulties with the service provided by the preferred supplier, the history of dealing with the optometrist who had previously provided good assistance, the sudden event of serious visual disturbances, then they too would have a compelling case to be allowed a non-recoverable grant due to those special circumstances. There is nothing inequitable in this appellant receiving assistance; he is entitled to the support because anyone in the same circumstances would be entitled to it.

[19] On these facts, we are satisfied that there was "an emergency situation" for the purposes of clause 12.1, when evaluated in accordance with the principles in clause 12.2. We are also satisfied that pursuant to clause 14.1, special circumstances existed in relation to the glasses provided by the non-approved supplier, having regard to the range of factors we have identified; without the glasses, the appellant would have suffered serious hardship. The grant was under \$500.

[4] Under clause 14.3 it is necessary to determine whether the grant is recoverable or non-recoverable having regard to:

[4.1] the purpose of the grant;

[4.2] the nature of the need;

[4.3] whether it would be equitable with other applicant's to require or not to require repayment;

[4.4] and the effect on the applicant of requiring or not requiring repayment of the grant.

[5] We are satisfied that the grant should be non-recoverable; the purpose of the grant was to address a serious medical issue when the appellant was particularly vulnerable, and he needed urgent help so that he could see properly. The nature of the need went to an essential element of his functioning, given it concerned a primary sense, without which he suffered a significant disability. It was also equitable, as other persons in the same circumstances would also be entitled to a non-recoverable grant. The effect on him not receiving the assistance would be severe and he is not in a position to repay the money in any reasonable period of time.

#### **Decision**

[4] The appeal is allowed and a non-recoverable grant of \$475 is provided to the appellant, being the full cost of the lenses in question.

**Dated at Wellington** this 4<sup>th</sup> day of October 2017

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**G Pearson**  
Chairperson

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**K Williams**  
Member

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**C Joe JP**  
Member