

**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

**C Joe** - Member

**Hearing** at AUCKLAND on 27 September 2017

### **Appearances**

The appellant in person; Z, support person

A Katona, agent for the Chief Executive

## **DECISION**

### **Background**

- [1] XXXX appeals the decision of the Chief Executive, upheld by the Benefits Review Committee, to cancel jobseeker support from 14 July 2014.
- [2] Mr XXXX received a sickness benefit from 2011 until 15 July 2013 when amendments to the Social Security Act 1964 (the Act) meant that the applicable benefit became jobseeker support.
- [3] On 13 May 2013 a letter was sent to Mr XXXX explaining the new benefit and stating that one of the changes was the requirement to complete a reapplication form every 52 weeks. While the sickness benefit was subject to an annual review, there was no requirement to reapply for the sickness benefit annually.

- [4] On 15 July 2013 Mr XXXX was transferred from the sickness benefit to jobseeker support with medical deferral. On 9 June 2014 a letter was sent to him stating that his jobseeker support would stop on 11 July 2014 unless he completed his 52 week reapplication and a comprehensive work assessment. A reminder letter was sent on 3 July 2014, and on 11 July 2014 a letter was sent stating that jobseeker support had stopped because Mr XXXX had not reapplied for it.
- [5] On 8 August 2014 a letter was sent confirming that jobseeker support had stopped on 14 July 2014 because Mr XXXX had not reapplied.
- [6] On 14 August 2014 Mr XXXX went to the New Lynn WINZ office to hand in a medical certificate. Later that day Mr XXXX called the contact centre to discuss his benefit and medical certificate.
- [7] On 15 August 2014 an email was sent to Mr XXXX explaining that he needed to attend a booked appointment to complete his 52 weeks application. He did not attend the appointment on 18 August 2014.
- [8] On 23 October 2015 Mr XXXX attended an interview to apply for jobseeker support. This benefit was granted with medical deferral but was subsequently suspended and cancelled on 28 October 2016 because Mr XXXX did not reapply.

#### **The case for the appellant**

- [9] Mr XXXX is adamant that he was told that he had to provide profit and loss statements with his reapplication for jobseeker support. Mr XXXX alleges that WINZ failed to properly record information and says that he was not given all the records that he requested of his telephone calls with WINZ. He insists that these records would show that he was told he needed to complete profit and loss statements.
- [10] Mr XXXX states that he did not receive the letter of 13 May 2013 which explained the change from sickness benefit to jobseeker support although he accepted that this letter was sent to the correct address. Mr XXXX also questioned whether the email of 15 August 2014 explaining that he needed to attend an appointment was sent to the correct address. However Mr XXXX confirmed that he knew that he had to complete a reapplication form several times at the hearing.

- [11] In Mr XXXX's view, the requirement for profit and loss statements was onerous and took him 78 weeks to complete. Mr XXXX said that he was under stress at the time and suffering from depression. He believes he should have been given some assistance to pay for an accountant to compile the statements and said that he had to borrow to pay for his medical certificate.
- [12] Mr XXXX says that when he tried to have his medical certificate put on his file the certificate was not accepted. At the hearing he presented photographs of the medical certificate lying on the counter and of the staff.
- [13] He says that WINZ broke the law by not accepting his medical certificate and referred to s 11D(b) of the Act. However it appears that the appropriate reference is s 11D(2)(b) which states that a benefit must not be granted until any supporting evidence reasonably required such as a medical certificate is provided. Mr XXXX also said that he should have been allowed to complete a declaration instead of the required form. He believes that WINZ is hiding evidence that he applied for jobseeker support.
- [14] Mr XXXX pointed out the contradiction between paragraph 2.11 of the s 12K report which records that the medical certificate was placed on the file on 14 August 2014 and the earlier report of the Benefit Review Committee which states that when he left the office he took his medical certificate with him.

#### **The case for the Chief Executive**

- [15] Ms Katona said that while Mr XXXX was on a sickness benefit between 2011 and 2013 he was required to provide medical certificates at the review date of his benefit. Once the benefit changed to jobseeker support, he needed to complete a reapplication form. Ms Katona stated that case officers made several attempts to book an appointment for Mr XXXX to complete the form and explained that the medical certificate alone was not sufficient.
- [16] Mr XXXX's jobseeker support was not cancelled because there was no profit and loss declaration and cancellation was not related to the medical certificate. The reason for cancellation was that Mr XXXX did not complete a reapplication form. Ms Katona stated that if Mr XXXX had completed the reapplication form he could have provided an estimate of his financial position for the relevant period and confirmed it later. At that stage he may have been required to provide a profit and loss statement however he was not required to do so at the time of completing the application.

- [17] Ms Katona referred to s 80BF(4) of the Act which provides that, if a reapplication form is received within 20 days of expiry of the benefit and the benefit is granted, it can be backdated. However as Mr XXXX reapplied outside of the 20 day period, there was no provision for backdating.
- [18] In response to Mr XXXX's comment about the failure of the Ministry to provide its records of telephone conversations, Ms Katona said that telephone records are kept for six months only. After that time it is not possible to access them.

### **Discussion**

- [19] The issue that we need to determine is whether Mr XXXX is entitled to jobseeker support from 14 July 2014.

### *Relevant law*

- [20] Section 11D of the Act sets out the process of application for benefits. Section 11D(1) provides that a benefit must not be granted to an applicant unless the requirement in subsection (2) for an application form and supporting evidence has been met. Section 11D(2)(a) requires any application form to be completed by the applicant to the Chief Executive's satisfaction. Sections 11D(3) and (4) allow applications for a benefit of one kind to serve as a gateway to the grant of a benefit of a different kind.
- [21] Section 80BF sets out the requirements for regranting certain benefits. Section 80BF(1) provides that no specified benefit may be regranting unless the department has received a reapplication form and any supporting evidence.
- [22] Section 88B sets out the standard eligibility requirements for jobseeker support and s 88E sets out the requirements for jobseeker support on the grounds of sickness, injury or disability. The latter section requires the provision of a medical certificate, pursuant to subsections (1) to (3).
- [23] In *Crequer v Chief Executive of the Ministry of Social Development* the High Court found that the Chief Executive and staff have a duty to ensure that the correct benefits are paid and to be proactive in seeing to welfare.<sup>1</sup>

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<sup>1</sup> *Crequer v Chief Executive of the Ministry of Social Development* [2016] NZHC 943.

- [24] In *Scoble v Chief Executive of the Ministry of Social Development* the High Court acknowledged that although the Act does not place a specific duty on the Chief Executive to invite application where no request for assistance has been made, when a person does seek assistance the Chief Executive is to consider what forms of assistance the person is or may be eligible to receive.<sup>2</sup> We therefore considered whether there was any basis for considering Mr XXXX's entitlement to jobseeker support without a completed application form.
- [25] However there is no provision in the Act for jobseeker support to be renewed without a reapplication form being completed annually. In the hearing Mr XXXX confirmed that he knew that he was required to complete the form; unfortunately he appears to have concluded that he could not do so without providing a profit and loss statement at the same time.
- [26] There is no documentary evidence to support Mr XXXX's assertion that he was told he needed to produce these statements when he filled in the reapplication form. The records that have been produced of his meetings with case officers and telephone calls in August 2014 record only that Mr XXXX was told he needed to complete a reapplication form. The file notes record that despite this advice, Mr XXXX stated, on 14 August 2014, that "he did not have to reapply for his benefit as his doctor said he was allowed the benefit" and that the case manager "asked client to wait so he could have a further discussion regarding the reapplication process with the manager but client refused".
- [27] Another record of a telephone conversation later on the same day records that "Mr XXXX refused to enter any Work and Income office and complete the 52 week reapplication form – still maintaining that med certificate is sufficient to regrant his benefit".
- [28] We understand why Mr XXXX initially thought that his medical certificate was sufficient as it had been accepted as meeting the requirement for renewal of his sickness benefit. However we are satisfied that he was told that the jobseeker support had different requirements and that the Ministry staff who he dealt with fulfilled their obligation to be proactive in seeing to welfare. We also understand Mr XXXX's concern and frustration with the discrepancy in

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<sup>2</sup> *Chief Executive of the Ministry of Social Development v Scoble* [2001] NZAR 1011 at [9] to [11].

the Ministry's records with one record stating that he put his medical certificate on file and another stating that he took it away with him. However we are satisfied that any error in relation to these records has not affected the outcome of his appeal.

- [29] We are left with the inevitable conclusion that by refusing to fill in the reapplication form, Mr XXXX failed to take the first step in the process of reapplying for jobseeker support. While we accept that he may have had to provide profit and loss statements after completing his application, if he had completed the reapplication form his eligibility would have been assessed on the basis of the information provided on the form. If any discrepancy was subsequently demonstrated, his benefit might have been adjusted or a debt established. However because Mr XXXX failed to complete the form within 20 days of the expiry of the benefit, he lost his entitlement to have the benefit backdated. He was then in the position of having to make a new application.

#### **Decision**

- [30] As Mr XXXX did not complete the reapplication form for jobseeker support within 20 days of the benefit review date he is not entitled to jobseeker support as at 14 July 2014.

- [31] The appeal is dismissed.

**Dated at Wellington** this 9th 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