

[2017] NZSSAA 060

Reference No. SSA 107/16 &  
179/16

**IN THE MATTER** of the Social Security Act 1964

**AND**

**IN THE MATTER** of an appeal by **XXXX** of **XXXX**  
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 14 March 2017

### **Appearances**

The appellant in person

N Ellis, lay representative

R Signal and R Stainthorpe for Ministry of Social Development

## **DECISION**

### **Background**

[1] XXXX (further referred to as the appellant) has been diagnosed with cholinergic urticaria. A work-capacity medical certificate issued on 3 November 2016 confirms that as a result of this condition the appellant has debilitating waves of itchiness which prevent sleep. The certificate confirms that he is not able to work or expected to have the capacity to work for 15 or more hours per week within two years.

- [2] The appellant has filed two appeals against decisions relating to the cost of special food which he says he needs because of this skin condition. He states that he needs a wheat-free diet which means that his food is more expensive. The first appeal, SSA 107/16, is against the Chief Executive's decision, on 23 May 2016, not to include an amount for special foods in the appellant's disability allowance. This decision was upheld by a Benefits Review Committee on 22 July 2016. The BRC also considered the cost of a telephone however at the hearing Mr Ellis, the appellant's advocate, confirmed that this issue is resolved.
- [3] The appellant's second appeal, 179/16, is against the Chief Executive's decision, on 29 September 2016, to decline his application for a non-recoverable special needs grant (SNG) of \$200 for food. This decision was upheld by a BRC on 11 November 2016.
- [4] The events giving rise to the appellant's application for a SNG are relevant. The appellant's supported living payment expired on 24 August 2016. On 12 September 2016 Mr Ellis sent an email to the Remote Client Unit enquiring why the appellant had not received his benefit payment and asking for the outcome of a food grant application that the appellant said he had made. The Remote Client Unit had no record of any recent food grant application.
- [5] The Ministry subsequently agreed to release benefit arrears for the period 24 August to 11 September 2016 amounting to \$726.02 to enable the appellant to attend an appointment with his doctor to obtain the required medical certificate and cover his immediate food needs.
- [6] On 21 September 2016 the Remote Client Unit received an email from Mr Ellis stating that the appellant had not made a doctor's appointment because he was waiting to receive a blank form and in the meantime he had spent all of the arrears paid to him. He again asked for a food grant of \$200 and an advance payment to cover the cost of going to his doctor.
- [7] On 27 September 2016 the Remote Client Unit released benefit arrears for the period 12 to 18 September 2016 amounting to \$247.18. This was done on the understanding, according to the Ministry, that the appellant agreed to use at least part of this money to obtain the required medical certificate.

[8] On 29 September 2016 the Remote Client Unit received another email from Mr Ellis advising that the appellant had again failed to use the funds released to him to obtain a medical certificate. On the same day the Remote Client Unit confirmed that the application for a food grant of \$200 had been registered and declined.

### **Relevant law**

[9] The appellant is entitled to a disability allowance under s 69C of the Social Security Act 1964 (the Act). The issue in this appeal is whether the appellant incurs additional food expenses as a result of his skin condition. Clause 2 of the Ministerial Direction – Disability Allowance requires that the applicant provide a medical certificate, invoices or receipts, and any other material required to verify that they are incurring the expenses claimed, the expenses are ongoing, and that they arise from the persons disability.

[10] Clause 4 of the Ministerial Direction requires that when determining whether a person has an entitlement under this provision the Chief Executive must consider the following:

- (a) Whether the person is incurring ongoing expenses which result from the person's disability, having regard to-
  - (i) The relationship between the disability and the need to incur the expenses; and
  - (ii) The other matters referred to in clause 2(d); and
  - (iii) Whether the person would be incurring the expenses if he or she did not have the disability; and
  - (iv) Whether the expenses or an expense of that kind was being incurred before the disability arose and the reasons for incurring that expense at that time; and
- (aa) the extent (if any) to which the person's life or health would be put at risk, or the person's disability aggravated, if the person could not receive the goods or services because the expense was not wholly or partly met from a disability allowance; and
- (b) Whether a person in a similar position who does not have the particular disability would incur expenses of that type or amount; and
- (c) Whether there are less costly goods or services which might meet the need referred to in clause 2(d); and
- (d) Any other matters you consider to be relevant.

[11] In relation to the SNG subject of appeal 179/16, s 124(1)(d) of the Act provides for the SNG programme. The objectives of the programme are set out in Clause 2. In summary the objectives are to provide non-recoverable

financial assistance for essential and immediate needs as defined in Part 3 of the programme. Clause 5 requires the Chief Executive to consider the applicant's ability to meet the need from his or her own resources, any assistance available from other sources to meet the need, and the extent to which the applicant has caused or contributed to either the immediate need or the situation which has given rise to that need.

- [12] Under Clause 11.2 of the SNG programme a food grant may be made if the applicant has an immediate need to purchase food which cannot be met by the resources of the applicant, and the need or lack of resources was caused by an essential expense that had to be met and left insufficient money to buy food. Only in exceptional circumstances may a single person with no dependent children, like the appellant, receive grants exceeding \$200 in a 26 week period.

### **The issues**

- [13] The central issue that we need to address in order to determine these appeals is whether the appellant incurs additional food costs as a result of having cholinergic urticaria. In relation to his disability allowance, we must consider whether this skin condition will be aggravated if he cannot afford the additional food costs because they were not covered by his disability allowance.
- [14] In relation to the SNG we need to consider whether at the time of application the appellant had an immediate need to purchase food and, if so, whether he could have met this need from his own, or other, resources.

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

- [15] The appellant says that he has repeatedly applied for the costs of the special diet he requires as a result of his skin condition. He believes that he met the requirement for verification of his costs by providing invoices to show what he has spent on food.
- [16] The appellant relies on a medical certificate issued on 5 November 2014 by Dr XXXX of XXXX to prove that he requires a special diet. Dr XXXX states under item 6 of the certificate: 'Coeliac diet regime no wheat in diet'. Dr XXXX

gave a further certificate on 19 May 2015 stating again 'Coeliac diet regime – additional expenses required'.

- [17] The appellant is adamant that he is not a coeliac but asserts that his diet incurs extra costs. The evidence he relies on for the extra cost of his food are two receipts dated December 2014. One is from Commonsense Organics in XXXX and includes strawberries, smoked salmon, cashew butter, pear juice, blueberries, almonds, cherries, three avocados and pistachio nuts. The total of this receipt is \$109.84.
- [18] The New World receipt includes \$16 for bacon, grapes, passionfruit, pomegranates, frozen berries and juice.
- [19] Mr Ellis states that these invoices represent \$216.99 per week food costs and that the appellant is entitled to the difference between these costs and the Otago University Food Survey assessment of weekly food costs.
- [20] Mr Ellis provided a table showing the difference between gluten-free products and regular products. This table compares common items such as bread, crackers, breakfast cereals and pasta. However Mr Ellis said that whereas the Ministry approach has been to require evidence of the difference between a special food item and the "normal" or regular food costs, the appellant is not prepared to "enter into this". Mr Ellis asks the Authority to take a broad brush approach to comparing weekly dietary requirements with the weekly food costs of someone who does not have the health needs of the appellant.

### **The case for the Ministry**

- [21] Mr Signal said that the Ministry accepts that it is reasonable to include in the disability allowance any additional costs required by the appellant's dietary needs. However Mr Signal says that the appellant has not provided verification of the actual cost of his diet. For example, Mr Signal said that the appellant had not provided receipts for everyday items such as gluten-free bread or cereal.
- [22] The Ministry does not accept that many of the items on the receipts produced by the appellant, such as salmon and strawberries, were required because of the appellant's skin condition. The Ministry considers that the two receipts

relied on by the appellant contain luxury items as well as items that are not normally associated with a healthy diet such as corn chips and sausages.

[23] In relation to the SNG appeal the Ministry says that the appellant's supported living payment and temporary additional support were cancelled because he did not provide the updated information required, including a medical certificate. The Ministry also says that the appellant contributed to the situation which gave rise to his immediate need to purchase food at this time.

[24] The Ministry says that the first request by the appellant for a SNG was met by the payment of three weeks of benefit arrears and that as regards the subsequent application, made on 21 September 2016, the Ministry considered that there was no immediate need at that time because, from the appellant's own advice, he had already spent between \$250 to \$275 on food in the previous week.

[25] The Ministry therefore concluded on 29 September 2016 to decline the food grant.

[26] In response to the appellant's assertion that he did not receive letters from the Ministry dated 20 July and 22 August 2016 telling him that unless he provided current information on his health conditions his benefit would end, the Ministry says these letters have not been returned. The Ministry also contends that even if the appellant did not receive these letters, by mid September, when he sought a SNG, he was aware that he needed to provide medical evidence.

## **Conclusion**

[27] On the basis of the medical certificate provided by the appellant we accept that he has a skin condition which is alleviated if he maintains a wheat free diet. We also accept that the cost of wheat free foods is usually higher than those containing wheat.

[28] However we are not satisfied that the appellant has provided adequate verification of the reasonable costs of the diet he requires. There is no evidence that the diet required by his skin condition includes the luxury items listed on his two receipts. The only dietary requirement noted on his medical

certificate is that he avoids wheat. On this basis we consider that the additional food costs arising from his disability are the cost of wheat free staples such as bread, pasta, and cereal. At the relevant time the appellant did not provide any verification of the cost of such items and he did not produce any evidence of these costs at hearing.

- [29] As the appellant has not provided any verification of the cost of the wheat free items which he requires on a weekly basis compared with the cost of regular products we conclude that he was not entitled to a disability allowance on 23 May 2016. Therefore the appeal against the decision not to include an amount for special foods in the appellant's disability allowance (SSA 107/16) is dismissed.

#### *Special Needs Grant*

- [30] The amount released to the appellant when he applied for the SNG was in excess of \$970 for the period from 24 August to 18 September 2016.
- [31] In 2016 the University of Otago food cost survey estimated the cost of a basic balanced diet for a single man to range from \$63 to \$65 a week. The estimate for a liberal diet was between \$98 and \$102 a week. As the amount released to the appellant was significantly higher than the amount estimated by the University of Otago food cost survey for a liberal diet, we consider that the appellant could reasonably be expected to have met any essential or immediate needs he had at the time, including the additional food costs, from the sum available to him.
- [32] For these reasons, the appeal against the decision to decline the application for a non-recoverable SNG is dismissed.

#### **The anonymous Benefit Review Committee**

- [33] In addition to the substance of his appeals the appellant raised concerns about the anonymity of the Remote Client Unit that handles his cases and the Benefit Review Committee which reviewed the decisions which he now appeals. As the Authority was considering this question in another matter which is now under appeal, we gave the appellant an opportunity to consider

whether he wanted to delay the determination of his appeals until the High Court had determined the anonymity issues under appeal.

[34] We therefore issued the **attached** minute. As the appellant made no response within the time provided, we determined his appeals.

**Dated at Wellington** this 18<sup>th</sup> day of October 2017

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**S Pezaro**  
Deputy Chair

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**K Williams**  
Member

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**C Joe JP**  
Member



Reference No. SSA 107/16 &  
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**IN THE MATTER** of the Social Security Act 1964

**AND**

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

**DIRECTION**

- [1] XXXX filed two appeals against decisions of the Chief Executive: SSA 107/16 and SSA 179/16. In addition to the substance of his appeals, the appellant raised concerns about the anonymity of the Remote Client Unit that handles his cases and the Benefit Review Committee which reviewed the decisions which he now appeals.
- [2] The Authority considered the question of anonymity recently in [2017] NZSSAA 052. In that case the Authority directed the Chief Executive to disclose the names of all members of the Benefit Review Committee which have dealt with appeals by that appellant. That decision is **attached**. The Chief Executive has appealed this decision.
- [3] The Authority will be bound by the decision of the High Court on this appeal. Therefore it is appropriate that, if the appellant wishes to pursue the issue of the anonymity of the Remote Client Unit and the Benefit Review Committee, we reserve our decision until the High Court has determined this appeal. It is not possible to give the appellant any indication of when the High Court decision will be issued.
- [4] However, the appellant may choose to have these appeals determined without the Authority considering the issue of anonymity our decision. If he does so, the Authority will issue its decision within two to three weeks.
- [5] I therefore direct the appellant to confirm the scope of his appeals to the Authority by 6 October 2017.

**Dated at Wellington** this 25<sup>th</sup> day of September 2017

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**S Pezaro**  
Deputy Chair