

IN THE MATTER of the Social Security Act 1964

AND

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

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

K Williams - Member

Hearing at Tauranga on 12 July 2017

Appearances

The appellant in person

Iris Ji as agent of the Chief Executive

DECISION

Background

- [1] XXXX (further referred to as the appellant) appeals the decision made by the Chief Executive on 30 October 2015, upheld by a Benefits Review Committee on 8 June 2016, to remove vehicle running costs of \$30 per week from his temporary additional support (TAS).
- [2] The appellant also appeals against a decision of the Chief Executive, upheld by a Benefits Review Committee, to not include landline and wiring telephone rental costs in his disability allowance or temporary additional support assessment from 22 March 2016.
- [3] The appellant is 58 years old and married with no dependents. He receives supported living payment (SLP) because of his medical condition described as rheumatoid arthritis. He has received income support payments on and off

since 1998. From 13 January 2010 he was on the invalid's benefit which became SLP in 2013.

[4] We heard these appeals consecutively and have determined them as follows.

SSA 109/16 – Vehicle running costs

The case for the appellant

[5] In his notice of appeal the appellant states that he wants the vehicle costs component of TAS reinstated and backdated, and actual mileage and fixed vehicle costs paid. He also seeks compensation for the time he has taken on his appeal. We explained to the appellant at the hearing that we have no jurisdiction to award such compensation and, given the outcome, the issue does not arise.

[6] The appellant's view of why he was provided with vehicle costs as part of his TAS differs from that of the Ministry. The appellant did not accept the Ministry's submission that the travel allowance was employment related. He was adamant that this allowance related to health-related transport.

[7] He states that in January 2014 he was offered TAS because his partner was not working and they qualified. He says that a vehicle running costs component of \$30 was included for the personal cost of transport over and above his disability allowance. He states that this vehicle allowance component suddenly stopped after the October 2015 reapplication process.

[8] The appellant submits that under s 69C of the Social Security Act 1964 (the Act) an allowance can be granted because he requires the assistance of transport to undertake the normal functions of life. He states that the \$30 vehicle allowance does not meet the true full cost of transport expenses.

[9] At the hearing we asked the appellant what evidence he had to show that in October 2015 he had a need for assistance with his travel costs beyond the amount included in his disability allowance. He confirmed that neither he nor his wife were working at that time and said that he does not have any medical information other than that which he provided in 2015.

The case for the Chief Executive

[10] The appellant was granted TAS on 21 February 2014 at the rate of \$149.94 per week backdated to 9 September 2013. The Ministry contends that at the relevant time the assessment included accommodation costs and disability

costs in addition to motor vehicle running costs of \$30, which was provided to assist with the appellant's wife's employment related transport costs; the cost of her travelling to work. These costs were included in TAS until 30 October 2015 although the Ministry notes of 11 September 2013 show that the appellant's partner had ceased work at that time.

- [11] The Ministry states that the vehicle running costs were first added to the appellant's TAS in 2010 to assist with his wife's costs getting to and from work. In error this amount was automatically included in the TAS payment granted to the appellant from February 2014, although his wife had ceased employment in late 2013.
- [12] On 30 October 2015 the Ministry's notes record that the case manager was aware that neither the appellant nor his wife had worked since 2013, and therefore the appellant did not qualify to have employment related car running costs included in TAS. The \$30 payment was therefore removed from 30 October 2015. No overpayment was established.
- [13] The Ministry submits that the appellant continues to receive transport/personal health assistance through his disability allowance in the sum of \$51.13 monthly. This amount is paid for mileage costs related to travel to and from medical appointments that are necessary due to the appellant's disabilities.
- [14] In relation to the appellant's dispute with the rate at which he is reimbursed for travel costs, the Ministry contends that the legislative provisions for the disability allowance are consistent with the policy of compensating for vehicle running costs rather than fixed costs. Disability allowance travel costs are intended to cover the cost of travelling to medical appointments which are necessary as a result of the person's disability and are in addition to those costs incurred by a person without the appellant's disability. It is the Ministry's position that fixed costs, such as registration and insurance, are not related to usage and are costs incurred by all car owners.

Discussion

- [15] We accept that the \$30 per week in issue was paid to the appellant under a TAS assessment based on Clause 3(g) of Schedule 2 of the TAS Regulations.¹ This clause provides assistance to meet the costs of a beneficiary and/or a

¹ Social Welfare (Temporary Additional Support) Regulations 2005 made pursuant to s 132AB of the Social Security Act 1964.

spouse in getting from their home to their place of employment when no suitable public transport is available.

- [16] We are satisfied that the sum of \$30 was paid specifically for employment-related costs because the appellant receives a separate allowance for transport related to his medical needs as part of his disability allowance.
- [17] We note that at page 37 of the Section 12K report the Ministry's records of 25 November 2015 state that, in relation to the transport costs paid under the disability allowance, the appellant should provide proof of doctor and prescription costs and proof of hospital and appointment travel. It appears that the appellant has not provided any verified documentation since that time to indicate that there has been any change to his medical related travel costs.
- [18] The Authority considered the question of whether the fixed costs of running a vehicle should be included in a disability-related travel allowance in [2017] NZSSAA 23 (SSA110/16, 24 May 2017). In that case the Authority accepted the appellant's evidence that the *primary* purpose of his vehicle was to enable him to access essential services and facilities. There was a small component only of his vehicle use which was not disability-related. On that basis the Authority concluded that the appellant was entitled to a disability travel allowance which took into account the fixed costs of owning his vehicle. However in this case the appellant does not contend that the majority use of his vehicle is for his health-related use nor has he provided verified information on which supports such a finding.
- [19] We conclude that as at 30 October 2015 the appellant was not entitled to employment-related travel costs of \$30 per week under TAS.
- [20] We are satisfied that the disability allowance travel-related costs are paid at the correct rate based on actual travel costs.
- [21] For these reasons appeal SSA 109/16 is dismissed.

SSA177/16 – telephone costs

The case for the appellant

- [22] The appellant states that he has qualified for TAS since 2014 and has consistently applied to include his landline telephone costs because he understood he qualified for this inclusion. His application has been consistently declined. He says that the Ministry did not advise him of his right to assistance

with telephone costs at any stage prior to or after he moved to his current residence. He submits that his doctor's certificate confirms that the landline telephone is necessary.

[23] The appellant accepts that he had a landline for about 17 years at the same place where he now lives. However he argues that the landline is not a normal household cost because he is unable to access the alternative/cheaper option of a mobile phone as the area has no adequate coverage.

[24] At the hearing the appellant said that his security and safety was at risk if he did not have a landline. He said that he could provide further information in support of the poor mobile phone coverage around his home. We therefore set a timetable for him to file this evidence after the hearing. The timetable allowed the Ministry an opportunity to respond to the evidence. The appellant then filed further comments in response to the Ministry's submissions. In the circumstances of this appeal we have taken all submissions and evidence filed after the hearing into account.

[25] The evidence that the appellant submitted after the hearing was from Vodafone and provided diagrams showing the mobile coverage in his area. The appellant also sent a screen shot of two texts. One was dated 2 September 2015 from his network provider stating that:

There are no issues with mobile coverage there is no fault with the network, you are located in a blackspot. For information on how to improve your services a website was provided but not shown in the screen shot.

[26] The second screen shot was a request from the appellant dated 1 August 2016 saying "can you confirm my mobile coverage blackspot issues" with his address and his email.

[27] The appellant also filed an email dated 17 July 2017 from Vodafone NZ explaining that he is in a blackspot area on 3G and on 2G has very limited coverage. Notation on one of the diagrams from Vodafone states that he can have more effective coverage with a 4G device.

The case for the Chief Executive

[28] The Ministry submits that the essential issue is whether the appellant's basic landline and wiring telephone rental costs should be included in his disability allowance. Telephone rental and line rental costs are not usually accepted as

qualifying for a disability allowance because they are ordinary living costs for most people and not additional costs necessitated by a disability.

- [29] The Ministry accepts that the appellant's doctor wrote a supporting letter for him on 22 March 2016 to apply for landline phone assistance but says there was no doctor's certificate in relation to a telephone prior to this date. The Ministry does not accept therefore that there was any change in the appellant's situation whereby the telephone costs became directly related to his disability.

Discussion

- [30] The medical certificate dated 22 March 2016 states: "I write to support assistance with a landline phone. [The appellant] has a medical condition that means he requires this for frequent day-to-day contact and also emergencies".
- [31] An earlier medical certificate dated 4 August 2015 states that the appellant is reliant upon the full-time care of his wife.
- [32] On 7 August 2015 the appellant completed a reapplication form for TAS. On this he stated that his landline/mobile was needed for contact with his partner, health providers and for contact with family and other support people.
- [33] On his 9 February 2016 reapplication form the appellant stated that his situation was unchanged. He also stated again that his landline/mobile was needed to contact his partner, health providers and elderly family members.
- [34] The recent information provided by the appellant indicates that if he is concerned about the quality of his mobile reception a different type of phone may assist. However the issue we need to address is whether the landline is necessary as a result of the appellant's disability and is a cost that is not incurred by most people in their ordinary living expenses.
- [35] Given that the appellant's doctor has certified that he needs the full-time care of his wife, we do not accept that he needs the landline for the primary purpose of contacting her or for making emergency calls. While we accept that he needs to make calls to his health providers and elderly family members, we are not satisfied that these are a significantly higher proportion of his telephone use than most people.
- [36] We conclude that when the appellant applied for landline and telephone rental costs he was not entitled to them under TAS and the Chief Executive was correct in declining those costs.

[37] For these reasons appeal SSA 177/16 is dismissed.

Dated at Wellington this 20th day of October 2017

S Pezaro
Deputy Chair

K Williams
Member