

[2018] NZSSAA 002

Reference No. SSA 065/17

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

S Pezaro - Deputy Chair

K Williams - Member

C Joe - Member

Hearing at Wellington on 29 November 2017

Appearances

The appellant in person and her agent, G. Howell

E. Kirkman, agent for the Chief Executive of the Ministry of Social Development

DECISION

Background

[1] The appellant appeals the decision on 2 February 2017 not to pay Accommodation Supplement and Temporary Additional Support during the Jobseeker Support Student Hardship (JSSH) stand-down week of 30 January 2017 to 5 February 2017. This decision was upheld by a Benefits Review Committee on 4 May 2017.

[2] At the commencement of the hearing Ms Kirkman produced records showing that in addition to JSSH the appellant had been paid a Special Needs Grant (SNG) of \$125 and Temporary Additional Support (TAS) of \$68.70.

- [3] The parties resolved the issue of the TAS payment, as recorded in the consent order dated 30 November 2017. The issue remaining for the Authority to determine is the decision not to pay an accommodation supplement during the stand-down week.
- [4] On 27 September 2016 the appellant was granted student allowance, an accommodation benefit, and non-beneficiary temporary additional support as she had commenced full-time study. An accommodation benefit is paid under the Student Allowances Regulations 1998. Previously she had been receiving sole parent support and an accommodation supplement under s 61EA of the Social Security Act 1964 (the Act). The transfer to a student allowance from sole parent support meant that the appellant did not have work-test obligations while she was studying.
- [5] On 16 January 2017 the appellant applied for JSSH as she would stop studying on 29 January 2017.
- [6] On 2 February 2017 the Ministry told the appellant that she was granted JSSH, accommodation supplement and temporary additional support from 6 February 2017 and that a one-week stand-down was imposed from 30 January 2017 to 5 February 2017. The Ministry also discussed her eligibility for a student allowance transfer grant (SATG). The appellant applied for SATG by phone and the Ministry paid \$325.98 to her bank account that night.

Relevant law

- [7] JSSH was granted during the stand-down week under s 88C(2) of the Act which provides that during the period between the end of one academic year and the start of the next, jobseeker support can be granted to a full-time student.
- [8] However JSSH falls within the definition of a work-tested benefit under s 3 of the Act. Section 80(2) of the Act provides that work-tested benefits are subject to a stand-down period, unless they fall within one of the exceptions contained in s 80(5) to (13) of the Act. The period of benefit stand-down is set out in Schedule 28 of the Act. The stand-down period applicable to the appellant's circumstances is one week.
- [9] Section 80C(1) provides that a person is not entitled to an accommodation supplement under s 61EA while subject to a non-entitlement or stand-down period.

[10] The Student Allowance Transfer Grant Programme (SATG) provides for transfer grants to be made to students with dependents who suffer hardship during the transfer from student allowance to benefit.

[11] Section 61EA(4)(a) provides that no person shall be granted an accommodation supplement if that person is receiving a basic grant under the Student Allowances Regulations 1998.

The case for the appellant

Timing of payments

[12] Mr Howell again raised the issue of payments of benefits being made at the end of the week due rather than the beginning although the appellant confirmed at the hearing that there was no week during the relevant period when she did not receive payment.

[13] This issue is not the subject of either the appellant's application to the Benefit Review Committee or the decision by the BRC. It is a distinct matter that sits apart from the subject of the appeal. Accordingly, the Authority has no jurisdiction to consider it. As recorded in the directions issued on 22 August 2017, the timing of payments is a matter of policy and practice.

Accommodation supplement

[14] Mr Howell's submissions are wide-ranging and not always coherent; they contain incomplete sentences and spelling errors. However it appears that he is submitting that the appellant could have been paid the accommodation supplement during the initial stand-down if she had not been 'in effect forced to apply for the Student Allowance and discontinue her Sole Parent Support'. He argues that this decision should be reversed so that the one week stand-down becomes redundant.

[15] The question of whether the appellant was on the correct benefit while she was studying was not raised in her original request for a review, and subsequent application to the BRC which Mr Howell made on her behalf by email on 3 February 2017. It is therefore not a matter that is within our jurisdiction to determine, it is a distinct issue that should have been the subject of a request for a review. Perhaps anticipating that jurisdiction would be an issue, on 24 November 2017 Mr Howell filed an email stating that he was attaching his submissions. He did not seek leave to file them out of time. He also attached his submissions to the BRC stating:

These are provided to show the issues raised before it to show the scope of the solution the chief executive utilising his wisdom under section 12 in looking at all possible ways to assist. That the BRC did not specifically reference all matters raised before it is not a fault of the appellant. nor her advocate as we are not responsible for the preciseness of reports of Benefit Review Committees. It is believed that as long as it can be shown what submissions were raised to the BRC, and they relate to the original decision then the matters in dispute can be heard by the Authority.

[16] However, we can find no reference in those BRC submissions dated 1 May 2017 to the decision to transfer the appellant from sole parent support to a student allowance. There is nothing in the BRC determination to indicate that this matter was raised at the hearing.

[17] The Supreme Court in *Arbuthnot v Chief Executive of the Department of Work and Income*¹ commented on the flexibility of this Authority to deal with all matters that ought to have been raised in the disputed decision under appeal. The Court said:

[20] ...There is nothing in s 12M to prevent the chief executive from then asking the Authority to consider any matter which may support the decision which is under appeal. Indeed, the thrust of the section is quite the other way: that the Authority is to consider all relevant matters.

[18] However, the issue is what “may support the decision which is under appeal”; the Court did not say this Authority can engage in an unrestricted review of all issues an appellant may have with the support they receive. In our view whether the appellant was receiving the correct benefit prior to the issues giving rise to this appeal is a new and different matter, which is not the subject of a decision by the Chief Executive that the BRC reviewed. In *Arbuthnot* that issue arose and the Court said:

[25] It is fundamental that an appeal must be against the result to which a decision-maker has come, namely the order or declaration made or other relief given, not directly against the conclusions reached by the decision-maker which led to that result, although of course any flaws in those conclusions may provide the means of impeaching the result.

¹ *Arbuthnot v Chief Executive of the Department of Work and Income* [2007] NZSC 55.

[19] As best we can ascertain, the Chief Executive was not asked to review whether the appellant's former benefit was the correct benefit. This appeal cannot lie against that novel issue.

Stand-down period

[20] Mr Howell said the one-week gap when an accommodation supplement was not provided was unlawful and that s 105 should have been used to exempt the appellant from her work-test obligations, the implication being that if the appellant was exempt, s 80C(1) would not apply and she would be entitled to an accommodation supplement.

[21] He also referred to a guideline - *Assistance during an initial stand-down and/or benefit application process* – which provides that during a stand-down period a person who was receiving an accommodation supplement paid as a non-beneficiary can continue to receive the supplement during the stand-down period. This has no application to the appellant because she was not in receipt of an accommodation supplement prior to stand-down.

[22] The accommodation benefit paid prior to the stand-down period was \$125 per week; the same amount she would have received if she had been entitled to an accommodation supplement. The appellant agreed that during the week stand-down she received \$125 in the form of a SNG but said that difficulties arose because this amount was not paid to her bank account.

[23] It appears that SNG is paid by providing the beneficiary with a card with the a credit for the amount of the payment. This card can be used at specified retailers and supermarkets. The Ministry requires the amount on the card to be spent in three days. The appellant spent \$118.79 within this time. She therefore did not use her full entitlement of \$125.

[24] The appellant explained that the fact that the SNG is paid by way of card created significant difficulties for her, as did the three-day time limit on spending the grant. Because she relies on public transport, spending \$125 in three days on food was difficult. She normally budgets very carefully and buys food at markets and places other than those where the card is accepted. Because it is not possible to know what the balance is on the card at the time it is being used, she had not spent the full amount.

The case for the Ministry

The type of benefit paid to the appellant

- [25] Ms Kirkman said that s 105 of the Act provides an exemption only for people in receipt of one of the benefits in the specified category prior to the stand-down, such as Sole Parent Support. When the appellant was on SPS she had an obligation to seek part-time work of 15 hours per week. However while the appellant was in full-time study she did not have work-test obligations. Ms Kirkman stated that the appellant had not disputed the student allowance when she originally was put on this benefit.
- [26] It is the Ministry's view that there is no discretion not to apply the one week stand-down in the appellant's situation. None of the exceptions in s 80 of the Act are applicable to the appellant.
- [27] Ms Kirkman stated that in total, in the stand-down week, the appellant received \$519.68 which was the same amount per week that she had received previously while studying. Ms Kirkman accepted however that the full amount of the \$125 special needs grant was not utilised. She was unable to provide any legislative basis for the three-day limit on utilising the special needs grant paid to the card. She said it was done as a matter of policy and practice.
- [28] Ms Kirkman acknowledged that there had been delays in processing the appellant's application for JSSH, SNG and TAS but said that the delays only affected processing and the payments were made on the correct date.

Observations

The scope of this appeal

- [29] In our decision on the scope of another appeal by this appellant we commented on Mr Howell's attempts to extend the scope of that appeal through his submissions.² Those observations also apply to Mr Howell's submissions in these proceedings.

[18] Section 16 of the Social Security Act 1964 restricts appeals to the Authority to decisions which either have been confirmed or varied by a BRC or have been made by the chief executive, other than by delegation.

...

² SSAA 175/15, 26 July 2017.

[28] ... While Mr Howell may see merit in a 'broad brush' approach, the issues that the Authority can consider on appeal are restricted to the decision under review by the BRC. This is not to say that the BRC may narrow or redefine the questions put to them so as to exclude aspects of the decision concerned. But the scope of appeal cannot be extended beyond the decision that the chief executive was required to make at the relevant time.

[30] For the reasons we have stated, an appeal must be against the result to which a decision-maker has come. We may consider the issue before us, and reach a different result from the Chief Executive or a Benefits Review Committee's conclusions. However we cannot embark on reviewing distinct entitlements outside the scope of the original decision.

Payment of SNG

[31] The appellant accepted that during the stand-down week she received the same amount as she had during the previous weeks while she was on a student allowance and the same amount as she would have received if she had been entitled to an accommodation supplement during this week. Her main issue was the manner in which the SNG was paid and the fact that she was not able to use her full entitlement.

[32] The payment of SNG by card was not subject of this appeal and, as with the timing of payments, is a matter of policy. However, we make the following observations on the practice of requiring the SNG to be spent within three days of receipt. There is no apparent foundation in legislation or policy this requirement. In our view the appellant was entitled to the full amount of the special needs grant, without any restriction on the time over which it was spent.

[33] We can accept that when this grant is paid for food, payment by card gives the Ministry some assurance that this is what the money will be used for. However, when people are arguably at their most vulnerable and have demonstrated that they are in urgent need of assistance to buy food, requiring them to spend the grant within three days seems to contradict accepted budgeting principles and impose an unnecessary burden on the recipient. We encourage the Ministry to review this practice.

Discussion

[34] There is no discretion under the Act to grant a person in the appellant's circumstances an accommodation supplement during the stand-down period. Mr Howell's suggestion that s 105 provides such discretion is misguided; the purpose of s 105 is to exempt beneficiaries who fall into a category specified in

s 123D from their work-test obligations. The appellant was not in that category therefore her appeal against this decision therefore fails.

Orders

[35] The appeal against the decision not to pay an accommodation supplement is dismissed.

Dated at Wellington this 10th day of January 2018

S Pezaro
Deputy chair

K Williams
Member

C Joe JP
Member