

[2019] NZSSAA 21

Reference No. SSAA 155/18

IN THE MATTER of the Social Security Act 2018

AND

IN THE MATTER of an appeal by **XXXX** of
Kawakawa 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 Whangarei on 20 March 2019

Appearances

The appellant in person and her representative, XXXX

S Talamaivao, P Leaupepe, counsel for the Ministry of Social Development

DECISION

Background

- [1] XXXX (the appellant) appeals the decision to exclude her son who was born on 4 August 2010 from her entitlement to Supported Living Payment from 1 March 2018. The reason that the Ministry excluded the child from the appellant's entitlement is that his birth is not recorded on the register of Births, Deaths and Marriages (BDM).
- [2] On 24 August 2010, the appellant applied for her son to be included in her entitlement. She provided a copy of his Well Child book and the entitlement was granted. The Ministry noted that it was waiting for a birth certificate.

- [3] On 15 July 2013, the appellant's benefit changed from the Domestic Purposes Benefit to Sole Parent Support due to welfare reforms. Her son continued to be included in her entitlement.
- [4] On 23 December 2014, the appellant applied for Supported Living Payment which was granted. Her son was included in this entitlement.
- [5] Three years later the Ministry made an appointment for the appellant to attend an interview to discuss her benefit entitlement and requested that she supply a birth certificate for her son. She provided a Māori Sovereign birth certificate and the Ministry requested further supporting evidence. She provided a letter from the medical practice she attends that confirmed her son's date of birth and enrolment with the practice. She also provided the student record sheet from his school confirming that she was his caregiver.
- [6] The Ministry again requested a government issued birth certificate. On 14 December 2017, the Ministry recorded that the father disputed who had full-time care of the child.
- [7] On 9 January 2018, the appellant was sent a Confirming Your Circumstances form to complete. When the Ministry subsequently cancelled her entitlement for her son, the appellant sought a review of this decision which was upheld by a Benefits Review Committee.
- [8] At the hearing, Mr Talamaivao confirmed that the Ministry accepts that the child is the appellant's child and that the Authority does not need to make a finding on this issue. He agreed that the only issue for determination is whether a birth certificate issued by BDM is required for the appellant to complete the benefit application process.

Relevant law

- [9] The process of applying for a benefit is governed by s 11D of the Social Security Act 1964 (the Act):¹

11D Application process for benefits

¹ Replaced on 28 November 2018 by the Social Security Act 2018. The equivalent provisions are contained in the Social Security Regulations 2018, regs 166 and 174.

(1) A benefit must not be granted to an applicant unless the requirement stated in subsection (2) has been complied with.

(2) The requirement referred to in subsection (1) is that the department has received—

- (a) an application form (provided by the chief executive for the purpose) completed by or on behalf of the applicant and his or her spouse or partner (if any) to the chief executive's satisfaction; and
- (b) any supporting evidence (for example, a medical certificate) reasonably required by the chief executive.

...

(5) The chief executive—

- (a) may waive all or part of a requirement to provide information under this section if satisfied that the department—
 - (i) already holds the information concerned; or
 - (ii) already holds enough other information to determine the matter for which the information concerned is needed;

...

The case for the Ministry

[10] In the circumstances of this case, it is appropriate to consider the Ministry's submissions before those of the appellant.

[11] Mr Talamaivao initially contended that it was a mandatory requirement to ask for a birth certificate. He subsequently accepted that there was no explicit requirement for a birth certificate in the Act but submitted that a birth certificate is required to establish the child's legal status and to identify "in law" the parents of the child. He argued that there were wider implications for child support and the integrity of the social welfare system if a birth certificate issued by BDM was not provided. He said the Ministry would accept a Māori Sovereignty birth certificate if it were recognised in domestic law.

[12] Mr Leaupepe explained that the reason the Ministry required a birth certificate issued by BDM several years after including the child in the appellant's benefit was because the father was disputing who had care of the child. However,

counsel accepted that a birth certificate does not assist to determine this issue and that the question of care is not relevant to this appeal.

The case for the appellant

[13] Prior to the hearing, the appellant provided the hospital record confirming the date on which she gave birth to her son. At the hearing, she provided the full records of her labour at the hospital.

[14] She and her representative submit that the Maori Sovereignty birth certificate issued for her son meets the Ministry's requirement for a birth certificate and should have been accepted as sufficient for the purpose of s 11D.

Discussion

[15] The sole issue which we must determine is whether the appellant properly completed the application to have her son included in her benefit entitlement and provided all information reasonably required. For the reasons that follow, we are not required to decide whether a Maori Sovereignty birth certificate has the same status as one issued by BDM.

[16] Section 11D(5)(a)(ii) of the Act provides that the Ministry may waive all or part of a requirement to provide information if it is satisfied that it already holds the information concerned or holds enough other information to determine the matter.

[17] The Ministry accepts that the appellant is the mother of the child concerned. We are satisfied that the medical records, Well Child book and school records submitted by the appellant confirm that she is the biological mother of her son. We do not require any further evidence and therefore find that she is entitled to have her son included in her benefit entitlement.

[18] For these reasons, this appeal is upheld.

Order

[19] The appellant is entitled to have her son included in her entitlement to Supported Living Payment from 1 March 2018.

[20] The appellant is entitled to an award of the reasonable and demonstrable costs incurred in bringing this appeal.

[21] The appellant is to file by 18 April 2019 submissions on costs and a schedule showing the costs incurred with all evidence relied on to support the costs claimed.

[22] Any response to the application for costs by the Ministry is to be filed by 10 May 2019.

Dated at Wellington this 1st day of April 2019

S Pezaro
Deputy Chair

K Williams
Member

C Joe
Member