

[2019] NZSSAA 35

Reference No. SSA 015/19

IN THE MATTER of the Social Security Act 2018

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 10 May 2019

Appearances

The appellant in person; XXXX, support person

A Katona, agent for the Ministry of Social Development

DECISION

Background

[1] XXXX (the appellant) appeals the decision on 16 August 2018 to reduce his rate of Jobseeker Support (JS) and cancel Temporary Additional Support (TAS) because of his income from part time employment. This decision was upheld by a Benefits Review Committee.

[2] Prior to obtaining part time work, the appellant received the following assistance per week:

Jobseeker Support	\$215.34
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Accommodation Supplement	\$165.00
Temporary Additional Support	\$ 39.35
Winter Energy Payment	\$ 20.46
Total	\$440.15

- [3] On 16 August 2018 the appellant advised the Ministry that he had started working part time. He provided a payslip showing that his gross fortnightly income was \$432.60. When holiday pay of \$34.61 was included, the appellant received \$467.21 gross per fortnight.
- [4] The Ministry reviewed his entitlement based on this income and reduced the rate of JS to \$108.24. TAS was cancelled because, when the relevant formula was applied, he no longer qualified for this assistance.
- [5] The appellant's Accommodation Supplement (AS) remained the same. On 6 September 2018 he told the Ministry that his rent had increased by \$5 per week. However, as he was receiving AS at the maximum rate, there could be no increase to this assistance.

The case for the appellant

- [6] The appellant is not contesting the law or the regulations that apply to his situation; he accepts that the Ministry calculated his entitlement correctly. However, he asserts that "the Government has lied to me" because he relied on a statement on the Ministry's website, that a beneficiary could earn \$80 a week gross before their benefit payments were affected. He says this statement is equivalent to a contractual term and he is entitled to have it enforced and to be at least \$80 per week better off. However, he has only \$43 per week more despite working 10 hours per week.
- [7] His transport costs are higher because of his work. He moved closer into the city to reduce these costs, but they account for half of his additional income each week. The appellant also said that his food costs are higher because he has less time to prepare his own food, such as baking bread. By moving to a smaller flat he reduced his rent, but it is currently \$300 per week.

[8] The appellant's part time job is with an organisation providing community development and support to vulnerable people in Auckland. The appellant said his hours are likely to increase to 15 per week and may become full time. He considers this worthwhile work and does not want to give it up as it provides him with an opportunity to contribute to society. He says he should not be penalised for choosing to work. Overall, he is financially worse off.

The case for the Ministry

[9] Ms Katona said that because JS is an income tested benefit and subject to Income Test 3 under the Social Security Act 1964 (the Act),¹ it must be reduced by 70 cents for every \$1 earned above \$80.

[10] TAS is a supplementary benefit which is assessed on the basis of whether there is a deficiency in income to cover certain allowable costs, according to the applicable formula. Due to the income from his employment, the appellant was no longer entitled to TAS.

[11] Ms Katona acknowledged that there is a band of income earned where the benefit reduces to the extent that a beneficiary is disadvantaged by working. However, she said that the regulations made under the Act must be applied. The Ministry accepted that the appellant had work-related transport costs, but according to the formula he was still left with a surplus of income for the purposes of TAS.

Discussion

[12] We accept that the appellant's living costs have increased as a result of his work and understand his frustration at finding himself no better off financially than when he was a full-time beneficiary.

[13] We do not accept the appellant's argument that he entered in to a contract with the Ministry on the basis that it promised that he would have an additional \$80 per week. Entitlement to social assistance under the Act depends on beneficiaries meeting certain criteria which establish the level of their entitlement. A beneficiary is not in a contractual relationship with the government although both parties have certain obligations and responsibilities.

¹ Replaced by the Social Security Act 2018.

[14] We understand why beneficiaries could interpret the information on the website as indicating that they would have at least \$80 more per week if they earned over this amount. Until the applicable rate of reduction is applied to the income earned, it will not be clear to those beneficiaries in the appellant's position, part time workers, that they may be either worse off financially or in no better position than before they took employment.

[15] The purpose of the Act includes helping people to find or retain paid employment. Clearly the way the Act now applies to people in the appellant's situation is no longer consistent with this purpose. This is because the amount that a beneficiary is permitted to earn before their benefit is affected has not been changed to maintain relativity with current rates of pay and the cost of living.

[16] However, we are bound to apply the Act as it stands with the inevitable result that we reach the same conclusion as the Ministry.

[17] For these reasons this appeal does not succeed.

Order

[18] The appeal is dismissed.

Dated at Wellington this 12th day of June 2019

S Pezaro
Deputy Chair

K Williams
Member

C Joe
Member