

[2020] NZSSAA 1

Reference No. SSAA 48/19

IN THE MATTER of the Social Security Act
2018 and the Social Security
Act 1964.

AND

IN THE MATTER of a proposed appeal by
XXXX of Christchurch against
a decision of the Chief
Executive that has been
confirmed or varied by a
Benefits Review Committee.

DECISION
(DECLINING EXTENSION OF TIME)

The issue

- [1] XXXX received an adverse decision from a Benefits Review Committee dated 29 January 2019. It concerned the commencement of his Job Seeker Support benefit. XXXX wanted the benefit to commence on 7 September 2018, whereas the Benefits Review Committee said 12 November 2018 was the earliest date possible, because that was the date XXXX first applied for a benefit.
- [2] The Authority received an application for a review of decision, not a notice of appeal as should be lodged with this Authority. The form was an internal Ministry of Social Development (Ministry) form that initiates a review of an original decision. However, it contained much of the information required in a notice of appeal. It was late, but the Ministry of Social Development did not object.
- [3] The Authority's Support Officer provided a notice of appeal form for XXXX and asked him to complete Parts 3 and 4. Part 3 is the grounds for appealing the decision, and Part 4 is the outcome sought through the appeal.
- [4] The matter has not progressed, as despite communications XXXX has not provided that information. Given the lack of

response from XXXX the Authority must make a decision as to the status of the appeal based on the material before it.

How matters stand

- [5] If this matter is to progress an extension of time to cover the late filing of an appeal is required; the extension of time will only be allowed if there is some merit in the grounds for the appeal.
- [6] The difficulty with XXXX's appeal is s 80 of the Social Security Act 1964 (that version of the Act applied at the relevant time). The section provides a benefit can only commence on the later of two points in time:
- [6.1] When a person is first entitled to the benefit; and
- [6.2] The date the person applied for it.
- [7] XXXX has identified reasons for applying at a point after he was first entitled, they appear to relate to what he sees as errors or faults on the part of the ACC. However, neither the Ministry of Social Development nor this Authority has any power to override the rule in s 80. The only remedy is s 80AA that allows the Minister to allow earlier commencement, but only if there have been errors on the part of the Ministry.
- [8] This Authority frequently deals with appellants who may not have very precisely identified their grounds of appeal, and the outcome they seek. In this particular case, the legal limits on both the Authority's powers, and the Minister's powers make identification of the grounds important. The essential point is unless XXXX has some basis for saying there was an error on the part of the Ministry of Social Development, there is no apparent basis to allow an earlier commencement date for his benefit.
- [9] As matters stand:
- [9.1] XXXX has not identified grounds for his appeal, or what he wants the outcome of the appeal to be, notwithstanding requests to do so.
- [9.2] We can potentially infer he thinks it is ACC's fault that he did not apply earlier, and he wants his benefit backdated.
- [9.3] If that is correct the appeal could not succeed, nor would the Minister have power to backdate his benefit commencement.

- [10] We are accordingly satisfied:
- [10.1] XXXX has not identified grounds for his appeal, and what he wants the Authority to do.
- [10.2] For that reason, in our view XXXX has not filed a valid notice of appeal (s 12K(2) of the Social Security Act 1964).
- [10.3] Alternatively, to the extent I can infer grounds and the outcome from the material we have seen, the appeal was filed late. There is no prospect of success in law, as the relevant Act gives no power to any decision-maker to backdate XXXX's entitlement.
- [10.4] There is accordingly no live appeal before the Authority, and no foundation to infer that there are potential grounds that could allow an earlier commencement date than the date allowed.

Determination

- [11] We consider there is no live appeal. If that is not correct, the appeal was commenced late, and we cannot identify any basis on which the appeal could potentially succeed. We will not grant an extension of time based on the documents filed.
- [12] The Authority's file will be closed.
- [13] We reserve leave for XXXX to make a new application if he considers he has good grounds for an appeal. He can file a notice of appeal including the grounds for the appeal and the outcome he wants. He will also need to request an extension of time to file the appeal late, and he should provide two things to support that:
- [13.1] An explanation as to the reasons for the delay; and
- [13.2] Any arguments to show why the appeal may be successful on the grounds he advances.
- [14] We appreciate XXXX may find the process difficult and need some assistance. He may be able to obtain advice from a beneficiary advisory service, Citizens Advice Bureau, or a Community Law Centre.

Grant Pearson
Chairperson

Charles Joe JP
Member