

[2020] NZSSAA 10

Reference No. SSA 95/19

**IN THE MATTER**

of the Social Security Act  
2018

AND

**IN THE MATTER**

of an appeal by **XXXX** of  
Hamilton against a decision of  
the Chief Executive that has  
been confirmed or varied by a  
Benefits Review Committee

## **BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

**S Pezaro** - Deputy Chair

**C Joe** - Member

**Hearing** at AUCKLAND on 17 March 2020

Appearances

The appellant in person with support person, XXXX

C. Fa'otusia and A. Katona for the Ministry of Social Development

## **DECISION**

### **Background**

[1] XXXX (the appellant) appeals the decision by the Ministry of Social Development on 2 May 2019 to decline his application for a Special Needs Grant (SNG) of \$20 for food assistance. This decision was upheld by a Benefits Review Committee.

[2] The undisputed chronology and background to the appeal in the Ministry's reg 249 report is relevant. In November 2018, the appellant applied for a Disability Allowance because he had an additional expense of \$16.44 per week for gym membership. At that time, he received Supported Living Payment,

Accommodation Supplement, and Temporary Additional Support. In support of his application, the appellant provided a Disability Certificate from Dr Gerard Pauley, a registered clinical psychologist, who certified that the appellant had depression and other psychological or psychiatric disorders and that gym membership was required for his physical health which will promote good mental health. The Ministry granted a Disability Allowance from 6 November 2018 to cover the weekly gym membership. On 10 December 2018, the appellant reapplied for Temporary Additional Support which was renewed. On 31 December 2018 he applied for a \$85 SNG for food and an advance for a cell phone, stating that he lost the contents of his freezer and his cell phone fell in the sink while cleaning up.

- [3] On 16 January 2019, the appellant applied for a \$100 SNG food grant because his appetite and dietary needs increased since joining the gym. The Ministry initially approved \$60 and subsequently a further \$40.
- [4] On 24 January 2019, the appellant made another application for \$100 SNG for food and the Ministry approved \$50.
- [5] On 30 January 2019, the appellant applied for another \$100 SNG for food. The Ministry approved \$60 and suggested meeting to discuss his budget. On 1 February 2019, the Ministry approved the additional \$40 for food assistance. It could not reach an agreement with the appellant on a convenient time to discuss his budget. The appellant told the Ministry that he considered it had all the information needed and would not provide anything further. He also said he would require \$80 SNG for food assistance which was approved.
- [6] On 11 February 2019, the appellant requested an \$80 food grant and a \$100 SNG food grant for the following week. The Ministry approved eighty dollars.
- [7] The appellant then provided another disability certificate dated 14 February 2019 from Dr Pauley stating that the appellant needed "sufficient healthy food to sustain an active exercise regime, to include protein, fresh fruit and veges, carbs and the occasional treat, all to enhance medically proven mental health and general wellbeing". The certificate stated that a minimum of \$100 per week was required. The Ministry approved \$100 for food costs to be factored into his Disability Allowance but told the appellant that it needed to contact Dr Pauley to clarify his recommendation. The appellant responded that he did not consider there was any need for discussion with his psychologist.

- [8] On 20 February 2019, the Ministry provided the appellant with its assessment of his budget which indicated that he had approximately \$35 per week available for additional food costs. As Dr Pauley indicated that the appellant required a minimum of \$100 per week for food, the Ministry included \$65 in the Disability Allowance for special food provisions.
- [9] On 4 March 2019, the Ministry contacted Dr Pauley who advised that he signed a pre-completed form on the understanding that the appellant had an additional \$100 costs for food. The Ministry then reassessed the appellant's Temporary Additional Support and increased it to \$96.27 per week.
- [10] On 20 April 2019, the appellant's rent increased by \$20 per week. As the appellant was receiving Accommodation Supplement at the maximum rate, it could not be increased. On 1 May 2019, he asked the Ministry to find a way to increase his benefit by \$20 per week to cover the rent increase and also asked for \$20 per week food assistance which he said he would require indefinitely. The Ministry treated this request as an application for a \$20 SNG for food assistance which it declined because it did not meet the SNG criteria of emergency assistance. It is this decision that is the subject of this appeal.

#### **Relevant law**

- [11] Section 101 of the Social Security Act 2018 ("the Act") empowers the Minister of Social Development to establish approved special assistance programmes. The Special Needs Grants programme is established under this provision. Clause 2 of the programme sets out the objectives which include providing non-recoverable financial assistance for stated essential and immediate needs. Clause 10 provides that a SNG may be made under Part 3 of the programme only for a need that is immediate and essential.
- [12] Clause 5 sets out the applicable principles: the applicant's ability to meet the need from their own resources and the assistance that might be available to the applicant from other sources to meet the particular need. The principles also permit the Ministry to consider the extent to which the applicant has caused or contributed to the immediate need, or the situation that has given rise to the immediate need.
- [13] Clause 11.2 sets out eligibility criteria for a food grant. The Ministry may make a grant to purchase food if there is an immediate need, the applicant has no resources to meet that need and would otherwise have to rely on a food bank,

and that need, or the lack of resources to meet it, was caused by an essential expense that had to be met which left insufficient money to buy food. For a single person with no dependent children, clause 11.2.2(a) provides that the Ministry must not make grants in excess of \$200 during a 26 week period unless exceptional circumstances apply.

### **The case for the appellant**

- [14] The appellant stated that he challenged the decision on two grounds. First, he contends that he met all the requirements for a SNG under the programme, taking into account that the guidelines are not law. He says there is always an immediate need to purchase food because when food runs out the need to purchase becomes more immediate. He states that he had absolutely no resources available to meet a shortfall of \$20 per week and has to dip into his Disability Allowance which is approved for food to pay the rent increase. He argues that his lack of resources for food was caused by the rent increase which is an essential expense therefore he meets the criteria for a SNG.
- [15] In evidence, the appellant confirmed that his request was for \$20 per week every week on an ongoing basis. He argued that, as he received nine food grants in the past seven weeks, the Ministry has flexibility and discretion which it should apply; he says his situation is unique and falls within the exceptional circumstances criteria.
- [16] He said that when he was forced to take money from his Disability Allowance to pay rent he was no longer gaining muscle and his body fat percentage remained the same. He produced body scan results from the gym to support his claim that he needed protein and the particular foods required to build muscle. These results cover the period from 16 November 2018 to 2 July 2019, before and after the date of his application on 2 May 2019.
- [17] The appellant said that in late December 2018 and early January 2019 he had been on the Supported Living Payment for 18 months and was struggling. He did not have “any smidgeon of social life” which was vital to him. He considers he has the right to decide to put money aside to spend at a café with friends, and to spend \$700 on car headlights, and buy food for his three parrots. He argues that the Ministry has no right to interfere in these decisions.
- [18] In the budget he filed on 20 February 2020, the appellant set out his full weekly expenses and income for the period 19 December 2018 to 15 May 2019. From

30 January 2019, he spent \$20 per week on bird food and between 16 March 2019 and 24 April 2019, \$25 per week. The appellant recorded spending at cafes of over \$90 in January and thereafter between \$5 and \$40 a week. The week prior to seeking a food grant he spent \$15 at a café and \$25 on bird food; the week he sought the food grant he spent \$30 at a café and \$20 on bird food, and the following week spent \$25 on bird food and \$20 at a café.

- [19] The appellant said that he refused the Ministry's offer of a recoverable grant for car expenses because this would put him in debt.

### **The case for the Ministry**

- [20] The Ministry submits that the appellant had the resources to meet his food needs but chose to spend the money on other items which are not essential expenses. The Ministry submits that the appellant's budget of \$20 per week for clothes and the cost of eating out indicates that he has a surplus of resources for his food needs.

- [21] The appellant accepted that in January 2019 he supplied the budget sheet included in the Ministry's report without verification of his expenses. The Ministry accepted this budget as reasonable and applied the appellant's figures to its calculation of his entitlement.<sup>1</sup> When the appellant's rent increased, the Ministry added \$20 to the total expenses bringing them to \$396.14, without food costs. On 1 May 2019, when he applied for the SNG subject of this appeal, the appellant received \$527.43 leaving \$131.29 for food. In his budget, the appellant indicated that he needed a minimum of \$100 per week for food which allowed a further \$31.29 for additional food costs.

- [22] The Ministry says that once the appellant was granted \$100 per week as part of Temporary Additional Support for special food costs, there were no exceptional circumstances to justify food grants under the SNG programme.

### **Discussion**

- [23] We do not accept the appellant's argument that as previous food grants exceeded the \$200 limit on SNG in a 26 week period, the Ministry set a precedent which it was bound to follow. This argument is not consistent with the purpose of the Special Needs Grant which is to meet an immediate need.

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<sup>1</sup> Paragraph 6.8 of the Ministry's Regulation 249 report.

The SNG programme is not intended to establish an entitlement to assistance on a weekly basis. Ongoing needs are intended to be met by the supplementary assistance, Accommodation Supplement, Disability Allowance and Temporary Additional Support, and the appellant was receiving his maximum entitlement. Each application for an SNG requires a new assessment of whether the applicant's circumstances at the time of application meet the criteria for such a grant. The issue that we must decide is whether the appellant met the criteria for a \$20 Special Needs Grant for food as at 2 May 2019.

- [24] The appellant argued that food is always an essential and immediate need. He cited the Webster's dictionary of 'essential' as something basic, necessary, indispensable, and unavoidable and said that food is always an immediate and essential need. However, the fact that food is an essential item is not in question. The issue we must decide is whether the appellant lacked funds to meet his proven food need when he applied for the SNG. The assistance available for food under the Special Needs Programme is intended to provide for the cost of food when an applicant has insufficient money for food as a result of another essential expense. While we accept that socialising with friends at cafés and keeping birds enhance the appellant's mental health and wellbeing, such activities are not essential expenses. The appellant's budget makes it clear that had he not chosen to incur these costs, he would have had the amount of money he required for food in the week in question.
- [25] We considered whether the appellant's rent increase of \$20 per week created an immediate lack of resources to purchase food. However, in the week he applied for the grant he spent \$20 on bird food and \$30 at a café. Accordingly, we do not accept that the rent increase meant he had insufficient funds for food.

[26] For these reasons, this appeal is dismissed.

**Dated at Wellington** this 11 day of June 2020

**S Pezaro**  
Deputy Chair

**C Joe**  
Member