

[2020] NZSSAA 17

Reference No. SSA 101/19

IN THE MATTER of the Social Security Act 2018

AND

IN THE MATTER of an appeal by **XXXX** of Whangarei 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

DECISION ON THE PAPERS

Background

- [1] XXXX (“the appellant”) appeals the decision on 4 June 2019 to decline an application for a Recoverable Assistance Payment of \$3,804.39. This decision was upheld by a Benefits Review Committee on 25 September 2019.
- [2] The parties agreed that there is no disputed evidence in this appeal. The issue is how the law applied to the appellant’s circumstances at the time the application for Recoverable Assistance was made and whether that application should have been granted.
- [3] The parties agreed to this appeal being determined on the basis of written submissions. An indicative decision was issued on 4 September 2020 and the parties were given an opportunity to make further submissions before the decision was finalised. The appellant indicated dissatisfaction with the indicative decision but confirmed that no further submissions would be filed. Accordingly our indicative decision dismissing the appeal is now final.

Relevant law

- [4] The Recoverable Assistance Programme (“the programme”) was established under the 1964 Social Security Act and has been preserved under cl 21 of Schedule 1 of the 2018 Act. The objectives of the programme are identified in cl

2 and are to provide interest free, recoverable financial assistance to non-beneficiaries on equivalent low incomes for the stated essential and immediate needs set out in part 3 of the programme, and to ensure that the financial assistance is provided within the limits and for the reasons prescribed. Other provisions are not relevant to this appeal.

- [5] Part 3 of the programme contains the relevant payment categories. Clause 10 provides that payments may be granted only for a particular need which is immediate and essential. Essential needs categories are identified in cl 11 and include: dentures, spectacles, hearing aids, school uniforms, children's car seats, schooling, attendance at funerals and tangihanga, loss of property from fire or burglary, telephone installation, clothing, emergency household needs, car repairs, and travel for stranded persons.
- [6] Clause 12.1 of the programme provides that, where the Ministry considers special circumstances exist, it may grant a payment of up to \$200 towards the cost of any item or service if it considers that without that item or service the applicant would suffer hardship.

The case for the appellant

- [7] The appellant applied for a Recoverable Assistance Payment of \$3,804.39 to cover arrears due to Oxford Finance after failing to meet monthly loan payments of \$916.93. The appellant took out this loan when in full time employment but was made redundant. When the appellant applied for assistance, Oxford Finance had given notice that unless the arrears were paid it would seize the appellant's car which was security against the loan.
- [8] At the telephone conference on 6 May 2020, the appellant said that the letter dated 30 May 2019 to the Ministry set out the exceptional circumstances which justify a Recoverable Assistance Payment. However, the appellant conceded that although this letter claimed that the loan from Oxford Finance was required to pay parents' funeral costs, that was not accurate.
- [9] The funeral costs paid by the appellant were \$2,688.99 for the appellant's mother's funeral on 20 February 2017 and \$2,704.85 on 30 January 2018 for the father's funeral. The appellant paid these costs by credit card and then, some months later, incorporated the credit card balance, and other loans and debts, into the loan from Oxford Finance. A statement from Oxford Finance dated 22

May 2019 showed that a loan of \$29,000 was advanced on 27 October 2017 and the balance owing was \$27,036.25.

- [10] The appellant said that all alternative options for obtaining finance to pay the loan arrears had been exhausted, including attempting to renegotiate the terms of the Oxford Finance loan and early withdrawal from Kiwisaver. The appellant produced documents confirming that these options were declined and evidence that a community health organisation paid one instalment to Oxford Finance of \$916.93 on 27 May 2019.
- [11] The appellant stated that if Recoverable Assistance Payment was not made, the car which was security against the loan would be repossessed. The car was necessary for health, wellbeing, safety and security when living in a rural area, to avoid further domestic violence, and to access fortnightly counselling

The case for the Ministry

- [12] The Ministry's position is that it was correct to decline the appellant's application for a Recoverable Advance Payment. It submits that it must consider the principles in cl 5 when making a payment under the programme. These principles require the Ministry to consider whether a payment would best meet the particular immediate need of the applicant, the applicant's ability to meet that need from the applicant's own resources, the assistance that might be available from other sources, the existing debt level, the effect on the applicant if the need is not met and the effect on any other persons in the applicant's family. The Ministry may also consider whether the applicant has caused or contributed to the particular immediate need or the situation that gave rise to that need.
- [13] The Ministry states that the loan obtained in October 2017 was used by the appellant to consolidate accumulated historical debt, including the funeral costs and a pre-existing loan to purchase of the car in March 2016.
- [14] The appellant purchased insurance cover at the time the loan was advanced from Oxford Finance to cover repayments in the event of loss of employment. The insurer therefore covered the loan repayments after the appellant became unemployed. However, in February 2019 when the appellant decided to enrol as a full-time student, the appellant was no longer unemployed and cover ceased. The insurer stopped making loan repayments, and the appellant could not meet them. The Ministry submits that, as it was the appellant's decision to enrol as a

full-time student which meant the insurer did not cover the loan repayments, the appellant contributed to the situation.

- [15] The Ministry contends that the appellant's loan was not for an immediate and essential need, as defined by the legislation. It was for the purpose of debt consolidation. In the Ministry's view the maximum grant that can be made in these circumstances is an amount up to \$200, pursuant to cl 12.

Discussion

- [16] The evidence now before the Authority does not support the appellant's claim that the loan which is the subject of this claim was intended to meet an immediate and essential need. As the appellant accepts, the loan was not for the purpose of paying funeral costs. The loan appears to consolidate other loans the appellant had at the time, including the funeral costs. When the appellant took out the Oxford Finance loan it consolidated an existing personal loan from CFS Finance secured against the car, and other debts.
- [17] On 27 October 2017 the appellant borrowed \$29,000 from Oxford Finance and on 31 October 2017 repaid CFS Finance the full amount owing at that time, \$13,149.41. The appellant paid Oxford Finance \$2,532.27 for insurance, an establishment fee of \$200, and a brokerage fee of \$245. The appellant has not explained the purpose for borrowing an amount in excess of the amount needed to clear the loan from CSF Finance, and other debts. It appears that, had the appellant not increased the level of borrowing, it may have been possible to meet the repayments.
- [18] It appears that the reason the appellant was unable to meet the repayments due, and accrued loan arrears, was an inability to manage unrealistic financial commitments. There is nothing to indicate that the loan was required to meet immediate and essential needs or that there was any essential or immediate need justifying the grant of a Recoverable Assistance Payment at the date of application.
- [19] This is a case of default under a loan. Loan default can have a range of consequences such as the taking and sale of assets secured against the loan, impacts on credit rating, and potentially bankruptcy. We cannot regard the social security legislation and programmes under it as providing immunity from the consequences of loan default, a range of commercial and insolvency laws deal

with that. In a case such as the present case, we necessarily focus on the applicant's circumstances at the time of applying for recoverable assistance. The funeral costs were paid, as were the other expenses that contributed to the debt, they are not the particular need we must consider. The immediate consequence of default is likely to be that the appellant's vehicle is repossessed. Accordingly, the particular need we must consider is potential loss of the vehicle. We make two observations:

- (a) It is unlikely that meeting payments on a loan of more than \$27,000 is the best means of meeting that particular need in the absence of evidence the appellant could soon resume payments from income;
- (b) We lack evidence of how the transport issues could and have been addressed.

Order

[20] The appeal is dismissed.

Dated at Wellington this 7th day of October 2020

S Pezaro
Deputy Chair

C Joe
Member