

IN THE MATTER of the Social Security Act 2018 and
the Residential Care and Disability
Support Services Act 2018.

AND

IN THE MATTER of an Appeal by **XXXX** against a
decision of the Chief Executive
that has been confirmed or varied
by a Benefits Review Committee.

DATE OF DECISION **Wednesday, 15 July 2020**

Counsel: Ms A Douglass and Ms T Chan for the
Appellant.

Mr C Hunt for the Chief Executive.

DECISION

(ORDERS ISSUED BY CONSENT)

Background

[1] The matter was set down for hearing, the arrangements for the hearing have been affected by the Covid 19 Level 4 alert, and National State of Emergency. The parties have settled the facts, agreed on an outcome of the appeal, and requested that the Authority issue orders by consent.

[2] The Authority wishes to express its gratitude to the parties and their counsel for their cooperation, and responsible resolution of the issues.

Record

The issue

[3] The issue in this appeal is whether the decision of the respondent Ministry of Social Development dated 1 April 2019 (decision letter), as confirmed by the Benefits Review Committee, is correct.

Representatives: Teresa Chan Law for the appellant.

Ministry of Social Development for the Chief
Executive

- [4] In the decision letter, the respondent determined that the appellant was not financially eligible for the Residential Care Subsidy pursuant to s 45 of the Residential Care and Disability Support Services Act 2018 (the Act). The decision was made on the basis that the appellant's relationship status for the purpose of means assessment was as a married, not single, person and as such the appellant was not "living apart" from his wife at the time that the appellant entered into long term residential care on 15 December 2018.

Agreed facts

- [5] The appellant and the respondent have agreed upon a summary of facts based on the evidence filed with the Authority, including the signed briefs of evidence filed in this appeal by the appellant;
- [5.1] XXXX dated 19 February 2020;
- [5.2] The appellant's mother dated 21 February 2020.
- [5.3] The appellant's father dated 4 March 2020; and
- [5.4] Letter dated 28 February 2020 from Andrew More, the appellant's wife's solicitor instructed by her son.
- [6] The agreed summary of facts is set out in the Schedule to this decision.

FURTHER MATTERS

- [7] The parties acknowledge that the Authority has not issued a reasoned decision that determines the meaning of "living apart" under s 45 of the Act. The parties have reached agreement on the appellant's relationship status by consent on the facts recorded in this decision.
- [8] The Authority directs its decision is to be provided as soon as practicable to the Ministry of Health to assist with the expeditious implementation of the appellant's Residential Care Subsidy, including reimbursement of arrears payments (and interest, if payable) from 1 March 2019.
- [9] Either party may provide the Ministry of Health with a copy of this decision or provide particulars of the appropriate contact address to the Authority's Case Manager, who will provide it to the Ministry of Health.
- [10] The standard direction relating publication of an anonymised copy of this decision applies. The Authority directs, as the parties have requested, that the names and identity of all persons referred to in this

decision will be anonymised, as will the location of properties (including the cities) referred to in the agreed summary of facts.

ORDER OF THE AUTHORITY

[11] By consent, the appeal is allowed, and the Authority orders that:

The respondent's decision dated 1 April 2019 is quashed. The appellant is eligible for the Residential Care Subsidy from 1 March 2019, being the agreed date from which the appellant and his wife commenced "living apart" for the purpose of the appellant's means assessment pursuant to s 45 of the Act.

[12] Costs are reserved. If agreement is not reached by the parties, leave is granted for counsel to request that the Authority determine the appellant's costs.

[13] The Authority reserves leave to determine any issue that may arise as to quantum of the arrears payments that follow from the order.

DATED at Wellington 27 March 2020

Grant Pearson
Chairperson

Charles Joe JP
Member

SCHEDULE
AGREED SUMMARY OF FACTS

1. **6 December 2012** The appellant and his wife signed a contracting out agreement which confirmed they had begun living together in October 2012.
2. **18 January 2013** The appellant sold his property, for a sum understood to be \$240,000.00. Settlement of the sale took place on 8 March 2013.
3. **23 March 2013** The appellant married his wife. They lived together at the home of his wife.
4. **15 December 2018** The appellant was assessed needing resthome level care and he entered into long term residential care.
5. **December 2018** (Pre-Christmas 2018) His wife left town to spend Christmas with her daughter, and never returned to live with the appellant in that town after that.
6. **Early January 2019** His wife's family changed the locks at her house and requested that the appellant's possessions be moved out of his wife's house.
7. **14 February 2019** The Ministry received an application for Residential Care Subsidy (RCS) from the appellant. The application was signed by the appellant and his son (who assisted him with the application) on 16 and 18 January 2019 respectively.
8. **4 March 2019** The Ministry wrote to the appellant requesting details of his wife's assets in order to assess RCS.
9. **12 March 2019** The appellant's lawyer Teresa Chan wrote to the Ministry. Ms Chan submitted that the appellant should be considered as single for the RCS income and asset assessment. The basis for this being the appellant and his wife being financially independent of each other.
10. **1 April 2019** The Ministry determined that the appellant was not financially eligible for a Residential Care Subsidy (RCS) due to assets of \$264,973.02 exceeding the qualifying asset threshold of \$124,379.00.
11. **10 May 2019** An application for review of decision was received.
12. **19 July 2019** The matter was referred to and heard by a Benefits Review Committee. The Ministry presented a report to the Benefits Review Committee.
13. **19 July 2019** The Benefits Review Committee upheld the Ministry's decision as correct.

14. **20 October 2019**

Notice of Appeal filed with Social Security Appeal Authority.