

[2018] NZSSAA 036

Reference No. SSAA 137/16

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by **XXXX** of XXXX against a decision of a Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

K Williams - Member

DECISION ON THE PAPERS

Background

- [1] XXXX (the appellant) appeals the decision on 23 June 2016 to suspend her Supported Living Payment (SLP) for one week from 24 June 2016 to 2 July 2016 due to her absence from New Zealand at this time. This decision was upheld by a Benefits Review Committee on 3 October 2016.
- [2] The appellant is a single woman with no dependents and has received SLP since 15 July 2013. She has received a main benefit since 1989. For 16 of these years she received either a Sickness Benefit or an Invalid's Benefit; the remainder of the time she received the Domestic Purposes Benefit or Widows Benefit. On 15 July 2013, the benefit structure changed and the Sickness Benefit she was receiving converted to the SLP. The appellant receives a Disability Allowance and Temporary Additional Support in addition to SLP. This additional support was not affected by her absence.
- [3] The issue for the Authority to decide is whether the appellant is entitled to the SLP of \$262.64 for the time she was absent from New Zealand on holiday. The parties agreed to the Authority making this decision based on their written submissions.

Relevant law

- [4] Section 77 of the Social Security Act 1964 (the Act) provides for the effect of the absence of a beneficiary from New Zealand.

- [5] Section 77(2)(a) provides that a benefit is payable during one or more absences of less than four weeks in total provided that the benefit is not one of the kind specified in subs (2A) and meets all criteria in subs (2). The appellant does not receive a benefit of a kind specified in subs (2A) and meets the criteria in subs (2).
- [6] However, s 77(2)(a) is subject to s 77(6) which requires a beneficiary to notify the Ministry before leaving New Zealand of their intended absence. No beneficiary is entitled to be paid a benefit under subss (2), (3), (3AA), (3A), or (4) while they are overseas unless they have performed this duty.
- [7] Section 77(8) provides that the Chief Executive may use his discretion in certain circumstances to authorise the beneficiary's entitlement under the sections provided in s 77(6). The Chief Executive may exercise his discretion if the beneficiary's failure to notify the Ministry of their intended absence is justified for humanitarian reasons, as defined in the Social Security (Effect of Absence of Beneficiary from New Zealand) Regulations 2013 (the Regulations), and the beneficiary has notified the Ministry of their absence as soon as was reasonably practicable. Humanitarian reasons are defined in reg 8 of the Regulations as:
- (i) a need to provide assistance to a family member immediately following a natural disaster;
 - (ii) a need to be with a family member who is facing sudden imminent death or has suddenly been taken seriously ill or injured; or
 - (iii) a need to attend the sudden funeral of a family member.

The case for the appellant

- [8] The appellant travelled with her brother, nephew, and sister to Sydney. The trip was arranged by her sister who took her New Zealand relatives to see family in Australia. The appellant states that her sister paid for the trip and the appellant has been gradually reimbursing her.
- [9] The appellant accepts that she has signed annual obligation forms requiring her to declare any intention to travel. However, she says that she believed she only had to notify the Ministry if she was going to be away for a month or more. She states that she would have told WINZ about this holiday if she had known she needed to do so.
- [10] At the telephone conference convened on 21 May 2018 the appellant said that her brother's benefit was also cancelled because of the holiday but he has been reimbursed in full. Her nephew also had his benefit cancelled and some of his benefit was reinstated. The appellant said that, like her brother, she has mental health issues and has a community support person who assists her and attended the Benefits Review Committee hearing with her.

The case for the Chief Executive

- [11] The Ministry submits that the benefit which the appellant receives is payable during an absence provided all three criteria in s 77(2) are met and the beneficiary notifies the Ministry of her absence, as required by s 77(6).
- [12] The Ministry submits that unless it is notified of the absence before the beneficiary leaves New Zealand, the benefit cannot be paid during an absence. The Ministry says that the exceptions in s 77(8) are not met because a family holiday does not constitute humanitarian reasons for an absence.
- [13] The Ministry was given an opportunity to provide its reasons for reinstating the appellant's brother's benefit. The Ministry stated that the appellant's brother appointed his sister to be his agent. When the agent/sister asked why her brother's benefit was cancelled, the agent said that she was not aware of the obligation to notify the Ministry before her brother left the country. The Ministry accepted that the error was made by an agent of the beneficiary and decided to back pay the brother's benefit.
- [14] The Ministry states that it now considers that this decision to back pay the brother's benefit was an error because it did not meet the limited discretion provided in the Act.
- [15] At the telephone conference, the Ministry's representative confirmed that the appellant complied with all the obligations attached to her SLP while she was out of New Zealand.

Discussion

- [16] The purpose of s 77 is clearly to prevent a beneficiary from receiving a benefit when an absence from New Zealand prevents them from meeting any obligations that are a requirement of their benefit. This appellant met all the obligations of her benefit during her short holiday. However, there is no discretion in the Act for the Ministry to pay a benefit to a beneficiary who has met all the obligations of their benefit when they have failed to notify the Ministry of their absence before they leave the country.
- [17] We therefore conclude that the appellant was not entitled to her benefit while she was out of New Zealand. Therefore, her appeal cannot succeed.

Order

[18] The appeal is dismissed.

Observation

[19] Although the Ministry was correct in its interpretation and application of s 77 of the Act, we do not consider that the result for this appellant is what was intended by the Act. However, any change to the legislation is a matter for Parliament.

Dated at Wellington this 25th day of July 2018

S Pezaro
Deputy Chair

K Williams
Member