

[2018] NZSSAA 51

Reference No. SSA 020/18

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

C Joe - Member

Hearing at Auckland on 1 October 2018

Appearances

The appellant in person

R. Shaw, counsel, for the Ministry of Social Development

DECISION

Background

[1] XXXX (the appellant) appeals the decision made on 10 July 2017 by the Chief Executive, upheld by a Benefits Review Committee, to decline his application for an emergency benefit. This appeal does not raise any factual dispute. The sole issue is whether the appellant met the criteria for an emergency benefit at the time he applied.

[2] The appellant is 28 years old with no dependents. Between February 2009 and November 2016, he was a full-time student, studying first for a Bachelor of Commerce and then a Bachelor of Health Sciences.

- [3] Each year, when his classes² finished, he applied for and was granted Jobseeker Support Student Hardship (JSSH). Section 88C(2) of the Social Security Act 1964 (the Act) provides the Chief Executive with the discretion to grant jobseeker support (JSSH) to fulltime students between the end of one academic year and the start of the next on the grounds of hardship. Unlike the regular jobseeker support benefit, JSSH does not require a beneficiary to be available for work.
- [4] At the end of his 2016 academic year, the appellant again applied for and was granted JSSH from 28 November 2016 to 5 March 2017 when his proposed study began.
- [5] In 2017 and 2018, the appellant applied for a student allowance and a student loan for living costs. These applications were declined because in 2014 he reached the 200-week maximum limit for a student allowance and his Equivalent Full Time Student lifetime limit of seven years expired in 2016. He is not entitled to any further student loans for living costs.
- [6] Between 6 March and 25 May 2017, the appellant did not receive any assistance from the Ministry. During this period, he went to Melbourne for seven days for a conference which he said was fully funded by the University.
- [7] On 26 May 2017, the appellant applied again for JSSH. His application was declined because he was not expecting to return to full time study until February 2018.
- [8] In June 2017, the appellant was granted non-beneficiary assistance of an accommodation supplement of \$83 a week and temporary additional support at \$63 a week.
- [9] On 4 July 2017, the appellant called the contact centre to check on the status of his emergency benefit application. He said he was told that he would not qualify for JSSH but could qualify for an emergency benefit. There is no record of this conversation. His application for an emergency benefit was declined.

Relevant law

- [10] Section 61 of the Act provides the Chief Executive with discretion to grant an emergency benefit on account of hardship to a person who satisfies the following conditions:

61 Chief executive may grant emergency benefit in cases of hardship

(1) The chief executive may, in the chief executive's discretion and subject to such conditions as the chief executive thinks fit to impose, grant an emergency benefit under this Act on account of hardship to any person who satisfies the following conditions, namely:

(a) that by reason of age, or of physical or mental disability, or of domestic circumstances, or for any other reason, he is unable to earn a sufficient livelihood for himself and his dependants (if any); and

(b) that he is not qualified to be granted a main benefit under this Act, New Zealand superannuation, or a veteran's pension:

provided that the chief executive may at any time, in the chief executive's discretion, grant an emergency benefit instead of or in substitution for a supported living payment, sole parent support, or jobseeker support:

...

(1A) Where the chief executive is considering granting an emergency benefit on the grounds of hardship under subsection (1), the chief executive must first consider whether to grant jobseeker support under section 88C or a youth payment under section 161 or a young parent payment under section 167.

[11] The Minister's Direction in relation to emergency benefit (the Direction) sets cash asset levels for determining hardship. The Ministry accepts that at the time of application the appellant's cash assets were below the level for a single applicant which at that time was \$4,300.

[12] Section 61(1A) requires that consideration be given to granting jobseeker support before granting an emergency benefit on the grounds of hardship.

Case for the appellant

[13] The appellant fell ill at the end of 2016 and was granted an extension to complete his Honours dissertation. At the same time, he accepted a summer studentship for 12 weeks work with the university and was paid \$4,500 for this work. Another \$1,000 is due upon completion of the project.

[14] At hearing, the appellant accepted that he did not declare the payment of \$4,500 to the Ministry despite the fact that he was also receiving JSSH at that time. He also said in evidence that in November 2017 he was granted \$128,000 funding for a three-year period. He says he has not drawn on this fund yet but

is required to start the project within a year, by November 2018. Once he starts work, he will be paid fortnightly.

[15] He says that, due to his illness, he postponed the work for the studentship until mid-2017. By that time, he had spent the \$4,500.

[16] The appellant believes that he met the criteria for an emergency grant under s 61(1)(a) because he was unable to earn a sufficient livelihood for himself. He says this is because he had to work full time on the studentship project. He accepted at hearing that the studentship allowance was paid to him in advance for this work.

[17] The appellant said that he did not apply for financial assistance until his savings were low. He could no longer afford rent and other expenses. He borrowed from his mother and made an early withdrawal of \$948.76 from his Kiwisaver fund.

[18] In response to the Ministry's submission that he found himself in this situation as a result of personal choice, the appellant stated:

This would seem to be the inherent point of social security; to apply for assistance when you need it, and to not apply when you do not.

The only personal choice I could have made to improve my financial circumstances would have been to undertake employment while I completed my honours dissertation. At the time, I did not think this was a wise decision, as I was working hard and needed to focus on completing my work.

[19] The appellant submitted that his personal choice not to work should not preclude him from an emergency benefit because:

... if this kind of logic were applied to main benefits, then virtually no one would ever be granted any kind of financial assistance ... this 'personal choices' argument put forth by the Ministry is directly analogous to the hypothetical scenario of people lining up for food at the city mission and then being declined because of their previous 'personal choices'... if I didn't have access to Kiwisaver or help from my mother at the time, I literally would've had nowhere else to turn.

[20] At hearing, he argued that "it is incorrect for financial assistance to be contingent on past financial decisions".

[21] He says completing the summer studentship was an obligation and not a choice. He kept the \$4,500 because it was his intention to complete the work when he could do so. Falling ill was out of his control and he was unable to earn a sufficient livelihood due to this illness.

[22] The appellant is adamant that the only personal choice he had which may have improved his situation was to undertake part-time employment while he completed his Honours dissertation. He believes his personal choices should not prevent him from obtaining social assistance:

Even if my personal choices (to a degree) are blamed for my financial circumstances which led me to apply for the emergency benefit, I don't see how this would preclude me from being eligible for the emergency benefit at the time. If this kind of logic were applied to main benefits, then virtually no one would ever be granted any kind of financial assistance (as anyone receiving any kind of financial assistance could be blamed for the previous choices leading to their circumstances).

[23] When asked how he expected to support himself while he carried out the work for the studentship, the appellant said that he "did anticipate relying on social security".

Case for the Ministry

[24] The Ministry contends that satisfying the conditions set out in s 61 of the Act does not guarantee that an emergency benefit will be granted. Satisfying these conditions is only the first step to the exercise of discretion. The factors relevant to the exercise of this discretion are:

- (a) What benefit would have been most suitable in the circumstances, taking into account the reason that the appellant was unable to earn a sufficient livelihood for themselves;
- (b) The conditions imposed by the obligations accompanying the analogous benefit;
- (c) Whether the appellant contributed to his hardship;
- (d) How the appellant intended to support himself while he completed the studentship work; and
- (e) What other assistance he could access.

[25] The Ministry says the appellant was not eligible for jobseeker support because he was working on the postponed studentship project and unable to carry out the obligations associated with that benefit — taking steps to find work, applying for full time work, and being available to accept job offers.

[26] The Ministry contends that once the appellant knew he was unable to perform the requirements of the studentship at the expected time, he could have

returned the \$4,500 payment to the university, saved it to cover the period when he did carry out the work, or declined the studentship. By accepting the payment, the appellant confirmed his intention to carry out the work when he could do so.

- [27] The Ministry submits that, when making this decision, the appellant must have anticipated the need to meet his basic living costs if he spent the \$4,500 payment before he carried out the work. The circumstances that the appellant found himself in when he applied for the emergency benefit resulted from his personal choices which did not meet the criteria in ss 61(1)(a) or (b) of the Act.

Discussion

- [28] The appellant was a student by choice at the time he applied for an emergency benefit. Having chosen to study, the appellant needed to manage his living costs. If he could not do so, he could not afford to study.
- [29] At the end of 2016, the appellant accepted and spent the payment for his studentship work while receiving JSSH, despite agreeing when he applied for this benefit to declare any change in his circumstances including any other income received. For the appellant to claim that he was in hardship when he carried out work for which he had been paid, and deny this situation was of his own making, is disingenuous.
- [30] We do not accept that the situation that the appellant was in when he applied for an emergency benefit met the criteria for this benefit. At that time, the appellant was performing work for which he had been paid in advance. The fact that he had spent the money before he carried out the work was a personal choice. This choice meant that when he did carry out the work he was not able to undertake paid employment or qualify for any assistance under the Act, which required him to comply with employment related obligations.
- [31] The appellant's admission that he anticipated having to rely on social security when he carried out the studentship work confirms that his situation was not an emergency. Accordingly, we find that the appellant did not meet the criteria for an emergency benefit.
- [32] The only concession the appellant made towards accepting his responsibility for this situation was to say that he could have worked part time while he completed his Honours dissertation. However, we consider that the appellant had other options. He does not appear to have considered the option of working full time and suspending his study until he could afford to continue, the choice usually made by people who cannot afford to study full time. The second choice

he had was to seek permanent⁷ employment based on the qualifications he had already attained.

[33] We have considered the appellant's submission that the Ministry should have waived the obligations associated with jobseeker support and granted him this benefit. We are satisfied that his circumstances did not justify the exercise of this discretion. We conclude that the decision not to grant jobseeker support was also correct.

Order

[34] The appeal is dismissed.

Dated at Wellington this 12th day of October 2018

S Pezaro
Deputy Chair

K Williams
Member

C Joe
Member