

Decision No. [2015] NZSAAA 02

Reference No. SAA 001/15

IN THE MATTER

of the Education Act 1989 and the
Student Allowances Regulations
1998

AND

IN THE MATTER

of an appeal by XXXX against a
decision of the Chief Executive,
Ministry of Social Development

BEFORE THE STUDENT ALLOWANCE APPEAL AUTHORITY

Neil Cameron

HEARING on the papers

DECISION

The application for leave to appeal is refused

REASONS

Overview

[1] This is an application for leave to appeal out of time from a decision of the Secretary on review delivered in February 2008. The appeal was lodged in November 2014.

Factual background

[2] In April 2006 the appellant applied for a Student Allowance for the 2006 academic year. Her application was incomplete as awaiting her mother's income details. Under the Regulations parental income is required to be notified prior to the end of the course to which the application applies (see reg 4(2)(b) of the Student Allowances Regulations 1998). In the course of a telephone conversation on the 1st May she was told that she could receive Student Loan Living Costs payments pending submission of the income details and the approval of her Allowance. At the end of May she submitted a signed Loan contract confirming that the Loan payments were to cover her fees and weekly living costs. This Loan application was duly approved. On the 24th May the first payment was made into her bank account and she was sent a Loan Entitlement Advice letter notifying her of this and of the payments she would be receiving for the remainder of the academic year. In August she was sent a Student Loan statement showing the outstanding Loan balance.

[3] Insofar as her Student Allowance application is concerned, StudyLink's records show that in May she was told on four occasions that she needed to supply verified evidence of her mother's income before her application could be progressed – twice during phone conversations and twice by mail. She was warned that this information needed to be received by the end of November (ie before the end of her course) "or we

won't be able to process your application, and your Student Allowance will be declined'. A further letter in identical terms was sent to her on the 10th November. No details were forthcoming and in early December her application was closed as incomplete. It is unclear when the appellant was notified of this decision but she was certainly told of it in the course of a phone call in mid January 2007. In this phone call she queried a Student Loan statement that she had been sent advising her of the amount she had been paid during the year and telling her that the loan balance would be transferred to the IRD. In the course of the phone call she stated that she did not realise that she was receiving a loan that had to be repaid. She was advised that if she had been receiving a Student Allowance that would have covered her living costs and would not have had to be repaid, but that as she had never supplied the required information her allowance application was incomplete and had now lapsed.

[4] In July the appellant's mother phoned StudyLink to query the non payment of the Student Allowance. She said that she had phoned early in 2006 and had been advised that the allowance had been approved. No record of any such contact or advice appears on the StudyLink file, and, because the appellant's mother was not her authorised agent at the time, it would have been most unlikely that any StudyLink staff member would have given her any such information. At the end of October 2007 she submitted an out of time application to review the decision on behalf of her daughter. StudyLink accepted that application and proceeded with a review. In mid December 2007 – over a year after the end of the appellant's course – her mother submitted verified evidence of her 2006 income.

[5] At the end of January 2008 the case was heard by a Student Allowance Review Panel. Both the appellant and her mother were present and made submissions. In mid February the Secretary upheld the original decision finding that, although there was clearly some confusion over the provision of the income evidence and some of the letters may not have been received by the appellant, there were no "*special circumstances*" sufficient to justify the out of time approval of her allowance. On the 11th she was sent the usual letter informing her of this decision, outlining her appeal rights and indicating the timeframe within which any appeal would have to be lodged. There is no question that this letter was received. At the end of February the appellant's mother rang StudyLink and indicated that she intended to appeal – apparently on the grounds that she had in fact provided her income details earlier in 2006. This appeal never eventuated.

[6] In May 2014 the appellant contacted StudyLink to enquire why her Student Allowance had not been approved in 2006 and indicated that she wished to complain about it. In November she lodged an appeal with the Student Allowance Appeal Authority.

Discussion

[7] Regulation 36(1) provides that appeals must be lodged with the Authority within 21 days of the decision appealed against "*or such longer period as the Authority in any case allows*".

[8] In assessing the merits of any application to lodge an appeal out of time, the Authority, like any other tribunal, must consider whether there are any special or compelling circumstances that would justify departing from the statutory timeframe. This requires the balancing of a number of considerations. In particular

- The length of the delay.
- The reasons for that delay and whether it could have been avoided.
- The merits of the appellant's substantive case.

The basic principle is that such applications will only be granted where the interests of justice require it. In considering this question the most significant consideration will usually be the apparent merit or otherwise of the applicant's substantive case. Where it appears that if the appeal were to proceed the appellant would have at least a reasonable prospect of success, even quite lengthy delays in bringing the appeal may be overlooked.

Length of the delay

[9] The delay in this case is well in excess of six years. While there is nothing in the Regulations or in principle to prevent the Authority accepting an out of time appeal in such a case, in order for it to do so both the reasons for the delay and the merits of the appeal itself must be compelling

The reasons for the delay

[10] The question here is essentially whether the delay that has occurred is the appellant's fault or whether it is due to errors by StudyLink or, more generally, to some outside circumstance beyond her effective control. In her application the appellant says

"The reason for my delayed appeal is that I was not aware of my options after the decision was given.

I was not made aware that I could appeal the decision, or how to go about it, and even if I had known, I had no new information to appeal with."

[11] On the other hand it is clear that she was sent the usual letter notifying her of the Secretary's decision together with a copy of that decision in February 2008. There is nothing to suggest that she did not receive it or that she was unaware of the outcome of the Review. This letter informed her very clearly of her appeal rights, the timeframe within which any appeal had to be made and the address to which that appeal needed to be sent. It may be that she failed to focus on the information concerning her appeal rights at the time. That, however, is not due to any fault or neglect on anyone else's part. Furthermore shortly after the letter had been received the appellant's mother responded to it, contacting StudyLink and stating her intention to appeal. Accordingly her mother was clearly aware of the situation at the time – and had indeed contacted StudyLink about it well within the appeal deadline. As her mother had in fact been acting (informally) as the appellant's agent throughout the Review process, I have little doubt that she would also have at least consulted with her daughter prior to contacting StudyLink in the way she did.

[12] Accordingly I find the reasons for the delay advanced by the appellant unconvincing. There was certainly no failure on StudyLink's part in providing her with all the necessary information to enable her to appeal the decision in a timely fashion. The most that can really be said on her behalf is that she did not focus properly on the possibility at the time, or that because she "*had no new information to appeal with*" she dismissed or remained undecided about the possibility of doing so. These are certainly not the sort of compelling reasons required to justify accepting an appeal as badly out of time as this one.

The merits of the appeal

[13] This is the most significant principle in considering any out of time application. For such an application to succeed, what is required is that the appellant have at least “a realistic prospect of success”. While there are obvious difficulties in assessing the appellant’s case at this stage, I have had the opportunity to examine the full decision under appeal and some of the accompanying documentation. On the basis of this material and of the appellant’s application it would appear to me that the chances of the appeal succeeding, even after full argumentation, do not reach this standard.

[14] In her appeal application the appellant says that she is “entitled” to approximately \$10,000 that she would have received over the course of the year had she been granted a Student Allowance and suggests that she has been unfairly deprived of it by a “small technicality”. While it seems to be accepted that, on the basis of her mother’s income in 2006 she was indeed eligible to be granted a Student Allowance, the failure to comply with what must be considered very generous time limits for submitting parental income information, is far from a “small technicality”. Her application was placed on hold as incomplete pending the receipt of that information and she was notified of that on five occasions. Three of these notifications were in the form of letters setting out very clearly what was required of her and the time period within which she needed to comply if she wanted her allowance to be approved. From the file it is clear that the required information was not received by StudyLink until early December 2007 – over a year after the date by which the Regulations required it to be submitted.

[15] StudyLink certainly has a discretion under reg 4 to extend the time permitted for the submission of evidence of parental income beyond the end of the relevant academic period. No doubt some sort of argument could be advanced that in this case it should have done so. The appellant’s argument at the review hearing was that she did not receive the various letters from StudyLink advising her that her allowance application was incomplete, and that she mistakenly believed that the Student Loan payments she was receiving were in fact allowance payments. She also says that her mother did provide the relevant information to StudyLink early in 2006 and had been told that the allowance had been approved. While the Secretary appears to have accepted that there was “some confusion” over the provision of the income evidence and whether all the mail she was sent was received or read by her, it must be said that these arguments are not particularly compelling. First, she was personally advised of the problem and what she was required to do about it in the course of two telephone conversations with StudyLink in early May. Second, the three letters she was sent repeating this advice were sent to the correct address and also made the situation very clear. Thirdly, the Student Loan payments she was receiving were the result of a Loan contract signed by her and were clearly flagged as such by StudyLink in its advice to her and in the mid year Loan statement she was sent. And finally there is no record whatsoever of the appellant’s mother contacting StudyLink early in the 2006 academic year as she claimed, let alone being informed that the allowance had been granted or that all the information necessary for the application had been received. Indeed because the appellant’s mother was not her authorised agent at the time she says she was told this, it is most unlikely that even if a StudentLink staff member had mistakenly believed that the allowance had been approved, this information would have been given to her over the phone.

[16] On the basis of the information available to me, and in the absence of any evidence suggesting that StudyLink was in any way at fault in handling the appellant’s allowance application, it would in my view be difficult for any appeal body to accept that

the appellant's failure to provide the necessary information to complete her application in a timely fashion should be ignored. In other words in my view the appellant's appeal, if it were permitted to proceed, would not have "*a realistic prospect of success*".

Result

[17] The statutory time limit was exceeded by well over six years. This delay, which on any view is inordinate, is wholly attributable to the appellant's inaction. It was her responsibility to file the appeal within the required 21 day timeframe. This responsibility was clearly communicated to her, both verbally and in writing, by StudyLink. Furthermore the application is one in which the merits of the proposed appeal are far from clear. While it is obviously impossible at this stage to say with absolute certainty that it would fail, in my view it falls well short of having "*a realistic prospect of success*". Accordingly it would not be in the interests of justice to permit this matter to proceed further.

The application for leave to appeal is refused.

DATED at WELLINGTON this 30th day of January 2015

Neil Cameron
Student Allowance Appeal Authority