Decision No. [2015] NZSAAA 04

Reference No. SAA 002/15

IN THE MATTER of the Education Act 1989 and the Student Allowances Regulations 1998

AND

IN THE MATTER of an appeal by XXXX of 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 appeal is dismissed

REASONS

Overview

[1] This is an appeal against the decision of the Secretary on review to uphold StudyLink's decision to decline the appellant's application for an extension to the 120 week entitlement limit for study in 2014.

The issue on appeal

[2] The issue on appeal is whether the appellant's personal situation in 2012 and 2013, which led to her not studying in those years, amount to "*special circumstances*" under the Regulations so as to justify an extension to her entitlement beyond the 120 week limit applicable to her.

Factual background

[3] At the relevant time the appellant was 57 years old. She commenced tertiary study in 1993 and between then and 2014 has received a Student Allowance as follows:

Year of study	**Weeks of Allowance**
1993	36
2010	19
2011	41
2014	24
Total	**120 hours**

Prior to the 1st January 2014 the lifetime entitlement to Student Allowance was fixed at 200 weeks for all students irrespective of age. In 2013 the Government announced that this was to be reduced to 120 weeks for students over the age of 40. This change was contained in the 2013 Budget and implemented as from the 1st January 2014. Transitional provisions ensured that students over the age of 40 in receipt of an allowance in 2013 would continue to be eligible for an allowance up until the end of 2014 or until they had exhausted their pre-2014 200 week entitlement, whichever came sooner.

[4] In January 2012, while working in the United Kingdom over the Christmas vacation period, the appellant sustained a serious injury and for a while was unable to either work or travel. It took her six months to fully recover, and she was forced to put her plans to return to New Zealand for the 2012 academic year on hold. As a result of the accident she not only lost her source of income but, because her insurance did not fully cover her expenses, was forced to borrow against her future earnings. In August 2012 she recommenced work with the intention of returning to New Zealand to complete her course in 2013. In February and April 2013 she contacted StudyLink to enquire about her Student Loan status and about a Student Allowance for the 2013 academic year. At this stage it appears that she may have been contemplating only enrolling for one semester – which would not have enabled her to complete her

qualification. In the course of these conversations the issue of the impact of her age on her eligibility for a allowance was raised. Although the Studylink record of the conversation is somewhat garbled, she appears to have been advised that if she studied in 2013 she would be "*grandparented for the 2013 study*"". Quite what the advisor she spoke to meant by this and what she would have understood it to mean is unclear. In the event, however, she chose not to study in 2013, remaining in the UK to continue working and, as she has put it, "*rebuilding her finances*" so that she could return to study in 2014 with some semblance of financial security.

[5] In February 2014 she returned to New Zealand and duly applied for an allowance to cover the remaining 39 weeks of study required to complete her qualification. Her application was approved but was limited to the 24 weeks remaining of her now 120 week entitlement. In August she applied for an extension to this limit. This application was declined on the ground that her case was not within the transitional provisions and that there were no special circumstances in her case that could justify an extension. In October she applied to review this decision and in December the matter came before the Student Allowance Review Panel at which she appeared and made further submissions. The original decision was nevertheless upheld by the Secretary at the end of December.

Relevant legislation and policy

[6] As noted above, in 2013 the Student Allowances Regulations 1998 were amended to reduce the lifetime entitlement to a Student Allowance for students over the age of 40 from 200 weeks to 120 weeks. This change was implemented from the 1st January 2014 and was subject to a transitional provisions permitting students who were in receipt of a Student Allowance in 2013 to continue receiving that allowance until the end of 2014 or until they reached the old 200 week limit, whichever came first. (See reg 20(1)(b) (restriction of entitlement to 120 weeks for those aged 40 or over); and reg 47D (the transitional provisions).) As the appellant was not in receipt of an allowance in 2013 the transitional provisions do not apply to her situation. Accordingly as of the 1st January 2014 she was only entitled to 120 weeks of Student Allowance support, of which she had already used 96 weeks.

[7] In cases where students, like the appellant, reach the end of their allowance entitlement without completing the course of study they have embarked on, reg 20(7) gives the chief executive (ie StudyLink) a general discretion to extend that student's eligibility beyond the applicable limits where "*special circumstances exist*" justifying such an extension. While the Regulations do not give any general guidance on the assessment of such "*special circumstances*", reg 20(7A) does specifically provide that "*special circumstances do not exist merely because a person has been affected by an amendment to these Regulations*".

[8] StudyLink policy in relation to the "*special circumstances*" discretion is clear:

> *"Special circumstances are very limited in scope and normally only apply to situations where personal circumstances do not allow a student to complete their study within the 92/120/200 week limit. These personal circumstances would generally not be able to be anticipated by the student and would be beyond their control. For example there has been an illness, injury, accident, bereavement, or personal difficulty that has prevented the student completing their study programme within the 92/120/200 week limit."*

The decision appealed from

[9] In upholding the decision to decline the appellant's application for an extension the Secretary found that StudyLink correctly applied reg 20 to the appellant's situation concluding firstly that:

> "[the] *grandparenting or transition provision* [which] *allows students impacted by Regulation 20 and who studied and received a Student Allowance in 2013 to receive a Student Allowance until 31 December 2014, or until they reach their 200 week limit … whichever comes first … cannot apply to the applicant …* [since she] *last received a Student Allowance in 2011"*

And secondly that no "*special circumstances*" justifying an extension exist because:

> *"Although the accident directly impacted her ability to study in 2012 the decision not to complete this study in 2013 was because of what the applicant considered to be financial constraints. Opting to work to save for her study costs is to be*

commended but this is not a special circumstance outside the control of the student that warrants an extension to the 120 week rule."

The basis of this appeal

[10] Throughout the review and appeal process the appellant's basic argument has been that her injury in 2012 and its subsequent effect on her financial position which prevented her from returning to study in 2012 and 2013 amounts to a special circumstance justifying the extension of her entitlement.

[11] First, her injury was such that the option of continuing with and completing her studies in 2012 was simply ruled out. She was effectively left stranded in the UK, without the funds to either return or support herself during her studies even if she had managed to do so. Her only option was to remain in the UK and try to recoup her financial position with a view to returning to study in 2013.

[12] Secondly, insofar as the option of study in 2013 is concerned, she says that continuing financial consequences of her injury meant that if she were to try and return to study she would continue to struggle financially, even with allowance assistance. As a result she decided to remain in the UK in order to build up the necessary financial resources to complete her qualification in 2014.

"If I had returned to the course in 2013 with limited funds I would have been financially disabled so decided to return in 2014 … the Student Allowance is not enough alone to live on for an adult student. There are expenses such as rent, food, power, travel to my educational institution, materials for my course and general living expenses." …

"… as a direct result of the accident I became financially stressed so much as not being able to return to the course in 2013 for fear of not being able to complete it due to not being able to keep up with living costs."

[13] Overall she says:

"I feel like there has been an overlooking of the hardship that I suffered as a result of my accident and the subsequent direct and indirect results of this accident of not being able to immediately return to study and the fact that the Regulation was not in existence at the time of the accident and that I had five years in which to complete the course.

I will not accept that 'there was no evidence of a special circumstances'. This accident had a huge impact on my life and had the accident not happened, then I would have completed [the qualification] before the 120 week Regulation came into effect."

The Ministry's Submissions

[14] The Ministry appears to accept, as did the Secretary on review, that if the question of the impact of "*special circumstances*" had arisen in relation to the 2012 academic year alone, the appellant's injury and its subsequent consequences in that year would have been such as to justify consideration of an extension of her entitlement.

[15] The situation in relation to 2013 is, however, different. As the Ministry points out, if the appellant had enrolled to study in 2013 she would still have been able to complete her course within her existing lifetime entitlement. And even if for some reason she had been unable to complete, the fact of her enrolment/receipt of an allowance in 2013 would have entitled her to an extension beyond the new 120 week limit under the transitional provisions. In the Ministry's view her failure to enrol in 2013 was not the result of any special circumstance that would have entitled StudyLink to take her inability to complete her study within the new limit into account in considering her situation.

"In February 2013 the appellant was informed of the changes to the Regulations and the grand parenting provision. The appellant decided to work and rebuild her finances rather than study full-time. Students must make these choices (around whether they can afford to study). Frequently there is nothing inherently 'special' about these circumstances. The appellant made an informed choice and not a special circumstance which prevented the appellant from enrolling in 2013. If the

appellant had enrolled in 2013 she would have been able to complete the course within her lifetime entitlement of Student Allowance."

In other words, the Ministry is saying that by 2013 the "*special circumstance*" of the injury and its financial consequences was effectively spent. The appellant's failure to re-enrol in 2013 – which is what necessitated her application for an extension to her entitlement in order to complete her course in 2014 – was not the result of the events that took place in 2012. It was simply the result of her decision to continue to rebuild her finances for another year rather than return to study.

[16] Once the events of 2012 and their consequences are excluded as "*special circumstances*" the Ministry says that the only other basis on which the argument for an extension can be made is simply that she has "*been caught out by the change in Regulations*" – which is specifically ruled out by reg 20(7A):

"If she had enrolled for full time study in 2013 she would not have been caught out by the change in Regulations and would have been able to complete her course while receiving Student Allowance for the entire duration of her studies. The legislative change specifically provides for 'being caught by the change' not to be considered as a special circumstance (in itself). …

The Ministry submits it was only as a result of the amendment to the Regulations, while the appellant was overseas, which resulted in the appellant not receiving Student Allowance for the entire duration of her studies. This cannot be considered a special circumstance as stated in Regulation 7A."

Discussion

[17] First, the transitional provisions contained in reg 47D clearly cannot assist the appellant as she did not receive an allowance in 2013. She has been caught by the amendment and unless there are "*special circumstances*" independent of that amendment that would justify an extension of her new reduced entitlement, she cannot receive an allowance for the remainder of her course in 2014.

[18] It is clear that if she had returned to full time study in 2012 – as she initially intended – or in 2013, she would have been able to complete her qualification before the amendment came into force. Furthermore if she had received an allowance in 2013

but had then needed extra time to complete in 2014 the transitional provisions in reg 47D would have applied. Insofar as "*special circumstances*" are concerned, it appears to be accepted by the Ministry that if her failure to return to study in 2012 due to the effects of her injury had rendered her unable to complete her studies within whatever entitlement limit was then applicable, the injury and its immediate consequences would constitute "*special circumstances*" justifying consideration of an extension to her entitlement. The problem, from her point of view, is accordingly what happened in 2013. The only real question, therefore, is whether the injury in early 2012 and its consequences can be seen as a continuing "*special circumstance*" applicable to her failure to study in 2013. If it can, then it would mean that her inability to complete her study within the new 120 week limit cannot be seen as merely the result of the amendment so as to disqualify her for consideration.

[19] At the start of the 2013 academic year the appellant required 39 weeks of study to complete her course. In her discussions with StudyLink in early 2013 she appears to have been considering either enrolling to study for the whole year or doing it on a semester by semester basis. If she had enrolled full time for the whole year (ie for both semesters) she would have received an allowance for the whole 39 week period and would have finished her course well within her then 200 week lifetime entitlement. If she had enrolled full time for only one of the two semesters she would not have completed her qualification but would have certainly received an allowance for at least part of the year which would have brought her within reg 47D. This would have enabled her to complete her qualification in 2014 without falling foul of the new mature student limit.

[20] The appellant's argument is that she was unable to return to study in 2013 because, following the events of 2012, she still needed to "*rebuild*" her finances to ensure that she could "*keep up with living costs*" while engaged in full time study. It took her "*until January 2014 to save enough money to support myself while studying*". If she were to return to study without a proper financial safety net, the risk was that she might be forced to withdraw before she had completed her qualification. Accordingly she decided to continue working overseas and the return to study the following year. In the appellant's view her financial problems in 2013 were directly attributable to her earlier injury. That injury had stranded her in the UK, using up what resources she had already accumulated, forcing her to borrow to cover her living expenses and rendering

her unable to resume her employment for at least six months – ie until August 2012. It is that "*special circumstance*" that she says was still operating when she made the decision not to return to study in 2013 and that in her view now justifies an extension to her entitlement.

[21] Conversely both the Secretary and the Ministry reject this view, seeing the effects of the injury as limited to 2012, and attributing the decision not to return to study in 2013 simply to an "*informed choice*" that it would be best to continue working and saving to cover her future study costs. Such choices "*around whether they can afford to study*" must be made by all students and, in the Ministry's view, generally have "*nothing inherently special about*" them.

[22] With all due respect to the appellant's views and without in any way downplaying her injury and its effects, in my view the Ministry is correct. At the end of 2011 she travelled to the UK to work as a carer intending to earn enough to supplement her allowance and support her intended studies in 2012. If all had gone well she would have returned to New Zealand at the end of February having worked for approximately three months. Had she done so, her expectation presumably was that this would be sufficient – along with her allowance – to fund her study for its final year. Unfortunately at the end of January 2012 she was seriously injured and was forced to put both her return and study plans on hold. After a period "*living on her savings*", she returned to work in August 2012. When she contacted Studylink in February 2013 about studying in 2013 she had been back in work for at least six months – ie twice as long as she had originally intended to work for in order to finance her 2012 study. While I have no doubt that her injury and the consequent period of unemployment prevented her from returning to study in 2012, by the start of 2013 the situation would have changed. By then she had worked for three more months than she had originally intended to and should accordingly have been in a better financial position than she would have been in 2012 if her plans had gone according to expectation. Indeed if she had only enrolled for the second semester in 2013 – which she was perfectly entitled to do and for which she would have received an allowance – she could have worked for an further six months and still have been eligible for an extension to the new limit in 2014 under the transitional provisions. In other words by the time she came to make decisions about her study in 2013, the "*special circumstance*" of her injury and its consequences would have no longer been the overiding consideration that it was in 2012. Accordingly in my

view, her decision making in 2013 cannot be seen as being driven by her injury and its aftermath. Rather, like many other intending students, she deliberately chose not to study for another year because of her ongoing concerns about her financial situation. This is what left her vulnerable to the change in the Regulations.

[23] While I have no doubt that the appellant's concerns about her financial position at the start of 2013 and the risk that she might be forced to withdraw from her studies if she went ahead with her enrolment were genuine and may very well have been well-founded, financial incapacity alone cannot, as the Ministry notes, provide the basis for the "*special circumstances"* exception. Such situations are in no way exceptional. Every intending student must make decisions about whether they can in fact afford to study in any particular year. Different students will prioritise different things and will be prepared to tolerate different levels of financial insecurity and deprivation in order to study. Responsibilities that must be taken into account will also differ. While in a general sense the financial resources available to students will often certainly be beyond their control to some extent, where a student opts not to study at any particular time due to lack of resources, that lack of resources must be the result of some exceptional extraneous factor if the situation is to be seen as "*special*". In the appellant's case that is no doubt true of her failure to study in 2012. It is not true of her failure to do so in 2013, by which time she had moved on from the situation created by her injury. And it is ultimately her failure to study in 2013 that is the reason she has been unable to complete her course of study within the period allowed to her by the 2013 amendments.

[24] For completeness it should also be noted that, in spite of the inadequacies of the StudyLink record of the advice she received in early 2013, there is nothing in her submissions to suggest that in making her decision she was unaware of the new limit that would be applicable to her from January 2014 onwards. Nor does she suggest anywhere that she was unaware of the benefits of enrolling and obtaining an allowance in 2013 in terms of the transitional provisions. When she was considering re-enrolling in early 2013, StudyLink appears to have advised her of those provisions and of the fact that she would be able to be "*grandparented*" if she enrolled. Full details of the changes were also provided on the StudyLink website from mid-May onwards.

[25] Accordingly the decision of the Secretary is correct. The reason the appellant was caught by the change in her allowance entitlement was because of her decision

not to study in 2013. That decision was not one that was forced on her by circumstances beyond her control. Rather it was a deliberate choice based on an assessment of her financial circumstances of the sort that many other students have to make at one time or another.

The appeal is dismissed. The decision of the Secretary on review to confirm StudyLink's decision to decline the appellant's application for an extension to the 120 week Student Allowance limit for her study in 2014 is upheld.

DATED at WELLINGTON this 18th day of June 2015

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Neil Cameron

Student Allowance Appeal Authority