

**IN THE MATTER**

of the Education Act 1989 and the Student Allowances Regulations 1998

**AND**

**IN THE MATTER**

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

**BEFORE THE STUDENT ALLOWANCE APPEAL AUTHORITY**

Neil Cameron

**HEARING** on the papers

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**DECISION**

**The appeal is dismissed**

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**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 to have her parental income assessed on the basis of her mother's income alone for the purposes of assessing her eligibility for a Student Allowance in 2015.

*The issues on appeal*

[2] The only issue on appeal is whether the appellant's stepfather is her "parent" for the purposes of the Student Allowances Regulations 1989.

*Factual background*

[3] In May 2015 the appellant applied for a Student Allowance. As she was under the age of 24 at the time, reg 4(1) of the Regulations required that her parental income be assessed in order to determine her eligibility.

[4] The appellant is estranged from her biological father. Her parents divorced shortly after her birth and that at that time her mother took out a protection order against her father prohibiting him from contacting her or her daughter. As a result the appellant has had little or no contact with her father and the family has received minimal, if any, support from him over the years.

[5] In 2011 her mother remarried. Her new husband had extensive pre-existing family commitments of his own and has taken little part in the appellant's upbringing –

either financially or otherwise. Accordingly, the whole burden of the appellant's upbringing and financial support up until the time when she started her university study has fallen on her mother.

[6] In her initial Allowance application the appellant did not provide any details of her parent's income. However, in early June her mother submitted a One Parent Application (OPA) seeking to have the matter considered on the basis of her income alone. This was based on the appellant's obvious estrangement from her father, who had provided no financial or other support over the years and who continued to refuse to have any contact with or take any responsibility for her. Accordingly, in terms of the Regulations, she argued that her relationship with him should be seen as having "so broken down that [she] should be considered independent from [him]" (see reg 4(4)(c)).

[7] This application was declined by StudyLink. Although it was accepted that the relationship between the appellant and her father had indeed broken down to an extent that would justify disregarding his income, her stepfather was also considered to be her "parent" under the Regulations. Accordingly, even if her biological father's income were to be excluded, her stepfather's income would need to be brought into the calculation instead. In the circumstances, therefore, an OPA could only be successful if it could be shown that the appellant should also be seen as "independent" of her stepfather. This was clearly not the case since her stepfather was still living with her mother and she was not estranged in any way from him.

[8] In mid-June the appellant sought to review this decision, emphasising her estrangement from her father and her continuing inability to get him to declare his income or sign the Parent's Form and detailing her lack of any other financial resources to fund her study. In early July the Secretary upheld StudyLink's decision, finding that StudyLink was correct both in its conclusion that the appellant's father should be excluded from the parental income calculation, and that her stepfather's income must be brought into the calculation instead. After some confusion and delay she appealed this decision in September 2015, and, after further delays largely attributable to communications problems, the matter finally reached the Authority early in July 2016.

[9] For completeness, and although it is not relevant to this appeal, it should be noted that subsequent to the rejection of her OPA, the appellant endeavoured to complete her application, submitting a Parent's Form providing her mother's verified income together with what details were known of her father. However, as her father had repeatedly evaded the appellant's efforts to contact him, no income could be provided for him and his portion of the form was unsigned. This application was accordingly declined. Subsequently the appellant's mother completed a second Parent's Form, again giving her details, but this time including information on the appellant's stepfather as the second parent. Unfortunately, the only details that were attached to verify his income was a copy of an unnamed joint bank account showing six months' salary payments. Furthermore, the appellant's stepfather also declined to sign his section of the form stating that he would not sign as he "does not consider himself legally responsible or financially responsible for [the appellant]".

[10] Despite the lack of any signature and of properly verified income figures in her stepfather's portion of the Parent's Form – which would have been enough by themselves to prevent the application going any further – StudyLink calculated a

combined income figure and reconsidered the appellant's application. Unfortunately, the combined income for her mother and her stepfather exceeded the allowable limit under the Regulations – which in 2015 was \$91,264.01 – and her application was declined on this ground.

[11] It should be emphasised that the assessment of the appellant's combined parental income and the ultimate decision to decline her application is not a matter over which this Authority has jurisdiction and is not relevant to this appeal. Under s 305 of the Education Act 1989 the Authority only has jurisdiction over decisions to decline an application where the decision maker is exercising a statutory discretion in doing so. In this case, faced with the incomplete Parent's Form and the refusal of both the appellant's father and stepfather to sign, together with the combined income exceeding the allowable parental income limit, StudyLink had no option but to decline the application. Nevertheless, at the appellant's request, an internal administrative review was conducted and the decision to decline based on the incomplete Parent's Form and the estimated income exceeding the allowable limit was upheld.

### ***Relevant legislation***

[12] Regulation 4 provides for the assessment of parental income where the applicant for an allowance is single, younger than 24, and without any supported children. "*Parental income*" effectively means the combined income of both the student's parents. "*Parent*" in this context is defined in reg 2 as including any "*step-parent*". For the purposes of this appeal, "*step-parent*" means any person who is not the student's biological parent but who is "*married to, or in a civil union or in a de facto relationship with, the mother or father of the student*".

[13] Nevertheless, where a student has "*established independence*" from one parent, reg 4(2)(c) permits StudyLink to make the income assessment on the basis of the income of the other parent alone. This is only possible, however, where the student's parents are not living together and the case falls within the criteria listed in reg 4(4). Under this provision "*independence*" can only be established where the relationship is such that contact between the parties would be detrimental to the student concerned, the situation is one in which there has been abuse, or the parent is unable to take proper responsibility for the student due to imprisonment etc, or some other special circumstance exists that has led to a serious breakdown in the relationship. Regulation 4(5) specifically provides that "*financial independence*" alone is not sufficient to establish "*independence*" from the parent concerned for the purposes of this provision.

[14] Where, as in this case, a student has more than two living "*parents*", reg 4(2)(a) applies and the student must ordinarily nominate the two "*who are the major contributors*" to their support for the purposes of calculating parental income. In this case, once StudyLink accepted in its response to the OPA that the appellant's estrangement from her father was such that she should be treated as independent of him for income assessment purposes, this step became unnecessary. With the exclusion of her father's income from the field, the calculation required by reg 4 automatically falls to be made on the income of her other two "*parents*" - ie her mother and her stepfather.

### ***The basis for this appeal***

[15] In her submissions on appeal the appellant addresses both her relationship with her biological father and the situation between her and her stepfather. She argues essentially that as neither have made any significant financial contribution to her upbringing and as neither of them regard themselves as either legally or financially responsible for her, her situation should be assessed on the basis of her mother's income alone. She also points out that her stepfather has a family of his own and is accordingly not in any position to support her financially even if he were willing to do so. As a result she says

*"I really do not want to have to put my mother into further debt due to supporting me, and the only way for me to continue in university is to get some student financial support.*

*All I am asking is that my personal circumstances be taken into account when reviewing my application, as the purpose of a Student Allowance is to support students in hardship and facing financial burden, which is exactly my situation."*

### **The Ministry's Submissions**

[16] In its submissions the Ministry simply says that in terms of reg 4

*"[w]here a student has more than one living parent the income of both parents is taken into consideration. The appellant and her biological father are not in contact and there is a Protection Order. Therefore the income of the appellant's mother and her husband would be taken into consideration for assessing eligibility [for] Student Allowance. ...*

*The appellant's mother in her submissions and later verbally, advised that the appellant's stepfather does not consider himself financially responsible for the appellant.*

*The Ministry submits that by using 'step-parent' in the definition of parent, the Regulation clearly aims to treat step-parents as having the same responsibility in relation to students as natural parents. ...*

*The Ministry considers that the appellant's mother's husband is deemed to be a step-parent for the purposes of income assessment and therefore the combined income of both parents would be considered to assess her entitlement to a Student Allowance."*

[17] Furthermore, the Ministry points out that a one parent assessment under reg 4(2)(c) is available only where the student's parents are not living together – which insofar as her stepfather is concerned is not the case here.

### **Discussion**

[18] The appellant is in an unenviable situation. She is undoubtedly estranged from her father - with whom she has had little or no contact since shortly after her birth and who has consistently ignored his responsibilities towards her. Both her mother and her stepfather are clearly financially stretched and are in no position to support her – either in terms of helping with study costs or of assisting with the expenses involved in her living away from home. Furthermore, her stepfather refuses to complete and sign his

part of the necessary Parent's Form. On the other hand his income, albeit unverified, is such that if it is taken into account along with her mother's (as it must be under the Regulations) her parental income will exceed the allowable limit thereby rendering her ineligible for an allowance anyway.

[19] Unfortunately for the appellant the original decision made by StudyLink to reject her OPA is undoubtedly correct. It is clear from her mother's application and from the subsequent submissions on this appeal that the appellant has established independence from her biological father in terms of the Regulations and I have little doubt that if that had been the only issue StudyLink would have so found and would have granted the application. Unfortunately that does not settle the matter because her stepfather is also clearly a "*parent*" under the Regulations and is accordingly liable to have his income assessed in the absence of her biological father. Under reg 4(2)(c), if she wishes to have her parental income assessed on the basis of her mother's income alone she must establish independence not only from her biological father but also from her stepfather. Even if she wished to do this – and she clearly does not – in the circumstances of this case she would be unable to do so. First, her mother and her stepfather are currently living together so that reg 4(2)(c) simply cannot apply. And secondly, even if it could, the requisite "*independence*" can only be established where the parties are seriously estranged in terms of the criteria set out in reg 4(4). That is certainly not the case here insofar as the appellant and her stepfather are concerned. Nowhere in the submissions made by either the appellant or her mother is it suggested that the relationship between the appellant and her stepfather – with whom she was living up until the start of 2015 – is other than cordial. The most that can be said is that he appears to have never contributed significantly to her material support – not least because he has a relatively modest income and extensive financial responsibilities to his own biological family – and continues to decline to do so.

[20] The fact that a student has never and is not now receiving financial assistance from a parent and that there is no prospect of this changing even if the student is not granted an allowance, cannot affect the application of reg 4. Even if it were possible to argue that in theory complete financial independence of this sort can or should amount to "*independence*" so as to engage the one parent provisions, reg 4(5) specifically provides that it cannot. What matters in the assessment of parental income under reg 4 is whether her stepfather is within the definition of "*parent*" in the Regulations – and that turns on the relationship between him and her mother. Regulation 2 provides specifically that as he is married to her mother, he is the appellant's "*parent*" for allowance purposes. Accordingly his income must be taken into account whether or not he accepts any financial or other responsibility for her. The OPA must fail.

[21] The appellant's allowance application was ultimately declined as a result of the non-completion of her stepfather's portion of her Parent's Form. In such a case, where a party refuses to provide or verify the required information, the process provisions of reg 40 mean that StudyLink has no power to even consider an application let alone approve it and, as noted above, its refusal to do so is not a matter that is within the jurisdiction of this Authority. Nevertheless, in this instance StudyLink did in fact informally assess the income information it received for the appellant's stepfather – no doubt with a view to pursuing the matter further with the appellant if it appeared that she might nevertheless be eligible for an allowance if the forms were completed correctly. In the event the estimated combined income exceeded the allowable limit of

\$91,264.01 anyway, placing the appellant's ineligibility for allowance support beyond doubt.

[22] Finally, for future reference it should perhaps be emphasised that providing proper evidence of his income and completing his part of the Parent's Form as StudyLink requires, in no way makes the appellant's stepfather any more responsible for her support than he already is. It imposes no obligations on him whatsoever. Rather it is simply an acknowledgement of his relationship with the appellant's mother and a verified statement of his income.

**The appeal is dismissed.** The decision of the Secretary to uphold StudyLink's decision to decline the appellant's One Parent Application for 2015 is upheld.

**DATED** at WELLINGTON this 28<sup>th</sup> day of July 2016

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Neil Cameron  
**Student Allowance Appeal Authority**