

Decision No. [2017] NZSAAA 02

Reference No. SAA 001/17

**IN THE MATTER**

of the Education Act 1989 and the  
Student Allowances Regulations  
1998

**AND**

**IN THE MATTER**

of an appeal by **XXXX** of Auckland  
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 Limited Full-Time (LFT) study for the 2017 academic year.

*The issues on appeal*

[2] The issue on appeal is whether the appellant's circumstances were such that it would be appropriate to approve the payment of an allowance to him while studying a course that is less than full-time because enrolment in such a course is appropriate as either being in his "*academic best interests*" or because of some "*sufficient cause that is outside [his] control*".

*Factual background*

[3] In 2014 the appellant enrolled for a Bachelor of Medical Laboratory Science (BMLSc), successfully completing seven stage one papers. In 2015 he enrolled for six second year papers. He failed five of them. The following year he re-enrolled on a part time basis for four of the papers he had failed in 2015 plus one "new" paper. He also moved "home" from his provider's Manawatu campus to study in Auckland. No doubt as a result of this and of the steps he took to improve his study techniques, he passed all his papers in 2016. In 2017 he again enrolled for a less than full-time workload – essentially because his failure in 2015, which he had not been able to fully remedy in 2016, left him with one more prerequisite paper to complete and with timetable clashes which prevented his enrolling in other papers that would have given him a full-time load. There is no question that, if he had been able to find enough papers he could

enrol in to make up a full-time course, his provider would have approved it and he would have been eligible to receive a Student Allowance.

[4] Ordinarily to receive an allowance a student must be enrolled for a full-time course (ie one carrying an EFTS value of 0.8 or more). The only exception to this is where a student is approved for LFT study under reg 12A of the Student Allowances Regulations 1998. The six papers the appellant was able to enrol for in 2017 only amounted to 0.75 EFTS. In February he applied to be approved for LFT study, arguing that it would be in his “*academic best interests*” to study less than full-time in 2017. In support of this application his provider stated that

*“Student is restricted to 0.75 EFTS during 27/2/17 – 15/11/17 due to inability to pass some prerequisite papers in 2015 which are required to move on to the next paper levels within this program. These 0.75 EFTS are the only papers available to him in 2017. Please make your own decision on student.”*

[5] His application for LFT approval was declined. In StudyLink’s view his situation did not fit the “*academic best interests*” criterion because his reason for wishing to do a less than a full-time course was not that he would be “*likely to fail, for academic reasons, if [he] undertook a full-time course*”. In late November he applied to review this decision. In the course of preparing the papers for the Review, his provider confirmed that due to his disastrous year in 2015, which ruled out enrolment in some papers due to his still not having passed a necessary prerequisite paper and produced timetable clashes ruling out others, he “*has no other option*” but to enrol in the six paper part time course he has enrolled in if he wants to progress his degree.

[6] In early January 2017 the Secretary upheld the original decision. In mid January the appellant appealed this decision to the Authority making further submissions based on the administrative changes that had taken place as a result of his provider’s decision to phase out the BMLSc degree. In the course of preparing the Regulation 32 report for this appeal the Ministry sought clarification from the education provider of the number of papers the appellant was enrolled in in 2017. After some discussion of other possible papers he might add, his provider reiterated its earlier advice that the only papers he was realistically able to take were the six papers he had originally enrolled for.

## **Relevant legislation**

[7] Students who are unable to enrol for a full-time course may nevertheless be granted an allowance if they are approved for Limited Full-Time study under reg 12A(1) of the Student Allowances Regulations 1998. This provides that:

*“(1) For the purpose of regulation 12(1)(c)(iii), the chief executive may approve a course of study for a student that is less than a full-time course if either of the following applies:*

*(a) the student is enrolled, or intending to enrol, in a recognised course of study that is less than a full-time course and, on the advice of a tertiary provider or the principal of the appropriate secondary school, the chief executive considers a course of study that is less than full-time is appropriate—*

*(i) because of the student’s illness; or*

- (ii) *for any cause that is, in the opinion of the chief executive, a sufficient cause that is outside the student's control; or*
- (iii) *because the chief executive considers such a course to be in the student's academic best interests."*

[8] "Academic best interests" is defined in subcl (2) as meaning:

*"That the student would be likely to fail, for academic reasons, if he or she undertook a full-time course but would be likely to pass more than half the course if he or she studied part-time."*

StudyLink policy explains "academic reasons" as those that "relate directly and only to the student's cognitive ability to successfully undertake the course of study". In other words the reason why the student is likely to fail if obliged to undertake a full-time course must be based on their academic ability to cope with that workload – which will generally imply something beyond their control affecting their ability to acquire knowledge – and not something that simply stems from poor study/time management skills, timetable clashes or other outside pressures on their time that mean that they can only study or attend classes sporadically.

### **The Secretary's decision**

[9] At the time the Secretary made his decision the main ground that had been put forward to justify LFT status was that it would be in the appellant's "best academic interests". In rejecting this the Secretary found that "the reason the applicant is studying part time is not due to cognitive reasons but due to failing prerequisite papers" and that he "did not fail prerequisite papers due to reasons beyond his control but due to poor performance and study ethics (sic) in 2015 which has had an ongoing effect on his studies". In reaching this conclusion the Secretary relied on the appellant's statement to StudyLink in 2016 accepting that he did poorly in 2015 "as he didn't have enough skills to revise study and answer questions".

[10] The Secretary also briefly considered further information submitted by the appellant to the review suggesting that the administrative changes made by his education provider as part of its decision to phase out the degree he was enrolled for provided a "sufficient cause that is outside [his] control" to justify approval of LFT status under that head. On this he simply concluded that he "does not believe that there has been significant changes by the education provider to change the decision to decline the application". Unfortunately, the Secretary made no effort to analyse the changes that had been made or their claimed impact on the appellant and gave no reasons for reaching this conclusion. The decision to decline was confirmed.

### **The basis of this appeal**

[11] The appellant initially applied for LFT status on the "academic best interests" ground, citing the restrictions placed on his 2017 enrolment by the continuing effects of his failure to complete prerequisite papers in 2015. StudyLink rejected this, emphasising that the academic best interests ground required that he show that he "would be likely to fail, for academic reasons, if [he] undertook a full-time course". Since this was patently not the case, in his subsequent submissions on this appeal the appellant has essentially abandoned this ground, shifting his arguments to the "sufficient cause that is outside the student's control" ground and focusing on the

reasons for his failure in 2015, and the impact that the phasing out of the qualification he is seeking has had on his current ability to enrol for a full-time course.

[12] First, in explaining his situation in 2015, while he does not resile from his earlier acceptance that he failed to exhibit the necessary study skills, he argues that his failure was also contributed to by the strains and distractions caused by his having to deal with the consequences of his grandfather's deteriorating medical condition throughout most of the year. Having been largely brought up by his grandparents in Hong Kong, his relationship with his grandfather was a close one. In early 2015 his grandfather suffered a fall which initially at least confined him to a wheelchair, and became increasingly isolated and depressed. Issues also arose about his future accommodation and the availability of carer assistance. As a result, he says he "*spent most of 2015*" on the phone to Hong Kong "*literally giving out counselling advice*". He also appears to have tried to arrange for his grandfather to be given more support to stay in his flat and at the end of the year returned to Hong Kong with his parents to visit and try and assist further. The clear implication is that these events had a significant effect on his ability to study properly. Indeed in another document he describes his state in 2015 as "*depressed; unprepared*". This is reinforced by his comparison of his involvement with his grandfather's problems in 2015 – when his study clearly suffered – with his successful performance in 2016 when he largely withdrew from that involvement, enabling him to re-focus on his study and improve his study skills:

*"Didn't have enough skills to revise and answer questions'. As I've said is a comparative sense comparing my pre 2015s Vanilla studying/ revising and answering question passing skills to the much improved 2016 one. ... The improvements in 2016 are a result of promise and working to save as much as possible from the disaster in 2015 but at the cost of being cold hearted, and turning a blind eye on many things."*

[13] Secondly, he also blames his inability to enrol for a full-time course in 2017 on the administrative changes resulting from his education provider's decision to phase out the qualification he is seeking. While it is somewhat unclear what the precise arguments are that are being made here, his main point seems to be that he had originally planned to complete only four papers in 2016 leaving himself the remaining prerequisite course plus six others for 2017 - which would have been a full-time course. However due to the decision to phase out the degree and to limit students continuing in the programme to those who could show "*satisfactory progress and academic standing*", his past failures exposed him to a risk that even if he passed all four papers he might be prevented from continuing. Accordingly, he was advised by his programme director to add another paper in the second half of 2016 which meant that in 2017 he no longer had that paper available to him to push his course over the full-time threshold. Furthermore, while in theory he could presumably have added the remaining prerequisite paper to the second half of 2016 – thus perhaps opening up more options in 2017 as well – in practice he could not do so since at the start of 2016 he had returned home to his provider's Auckland campus and, as a result of the decision to phase the degree out, that paper was not being taught at that campus in 2016. His argument accordingly seems to be that it is the new exclusion criteria introduced as part of the move to phase out the degree that have produced the situation he is now in – basically by obliging him to change his initial study plan which would have ensured that he would be studying on a full-time basis in 2017 to one that cannot.

## The Ministry's submissions

[14] First, on the “*academic best interest*” ground the Ministry simply notes that, since the only reason why the appellant is obliged to undertake a less than full-time course is because he lacks the necessary prerequisites, there is nothing to suggest that going part time is in fact in his academic best interests. “*Academic best interests*” requires that the student would otherwise “*be likely to fail, for academic reasons, if he or she undertook a full-time course*”. There is no suggestion anywhere in the submissions that this would be likely to be the case in 2017 were the appellant to undertake the seven papers that he originally intended to. The basic reason he has had to enrol for a less than full-time course is because his failures in 2015 left him without the necessary prerequisites to do so.

[15] Secondly on the question of whether there is a “*sufficient cause outside the student's control*” rendering “*a course of study ... that is less than full-time ... appropriate*” the Ministry canvasses both the reasons behind his failure in 2015 and the impact, if any of the administrative changes introduced by his education provider as part of the process of phasing out the qualification he was seeking. On the first of these the Ministry says

*“The reasons provided by the appellant ... for his failure in 2015 do not indicate that the situation was beyond his control. Students not exhibiting good study skills resulting in failure are not reasons beyond control for the purpose of LFT. The other reason the appellant attributed for failure was his decision to counsel his grandfather. This was a choice the appellant made and not a situation outside his control which resulted in a not so favourable academic outcome. The appellant has not provided information of how counselling his grandfather had a direct impact on his failure.”*

[16] The Ministry also rejects the argument that his enrolment in 2017 was beyond his control in that it was dictated by the changes resulting from the phasing out of the degree. First it says that the arrangements made by the provider were in fact designed to enable students already enrolled in the programme to complete it, subject obviously to continued satisfactory progress. Indeed in this context, the Ministry notes that the suggestion that he undertake an extra paper in semester 2 of 2016 was precisely to increase his chances of continuing with the degree.

[17] In addition, the Ministry says:

*“The fact that the appellant is currently enrolled for his course in 2017 indicates that the administrative changes made by the education provider did not have a negative impact on the appellant's ability to gain a qualification. To the contrary it propelled the appellant to perform satisfactorily in 2016 to meet the entry requirements for the Professional Phase.*

*The Ministry does not consider the administrative change has in any way influenced the decision of the appellant to enrol in a part-time course. As confirmed by the programme director he is enrolled in the maximum papers he is able to.”*

Accordingly

*“It is submitted the reason the appellant could not enrol in a full-time course was because of the academic restriction imposed by the education provider as a result of his previous academic performance in 2015 and him not having passed some of the pre-requisite courses in the preceding years.*

...

*The ‘cause’ of the academic restriction was his failure in 2015. From the evidence provided by the appellant it does not indicate that his failure in 2015 was beyond his control. He attributed the failure to his ineffective study skills or his decision to counsel his grandfather.*

*It is further submitted that academic failure for reasons that are not outside the applicant’s control are specifically not part of the LFT provision. Any academic restriction resulting from academic failure if considered a ‘sufficient cause’ would in effect allow a student to avoid the clear intent/requirement that academic failure that is not outside the students control does not allow a student to qualify for LFT status under this provision.”*

## **Discussion**

[18] Regulation 12A(1) permits StudyLink to approve payment of an allowance to students who are not enrolled in a full-time course in three situations. First where a student suffers from an illness which renders part time study (appropriate – ie the only feasible or sensible option that will provide a good chance of academic success in the circumstances). Secondly where part time study is desirable in the “*best interests*” of the student’s academic career, in the sense that if the student were obliged to undertake a full-time course they would be likely to lack the cognitive ability to be able to cope with it successfully. And thirdly where some other factor outside the student’s control either prevents the student from studying full-time altogether or renders it inadvisable to do so if they are to succeed academically.

[19] In the appellant’s case, it is quite clear, as the Ministry says, that his situation cannot be brought within the “*academic best interests*” requirement. In the circumstances of this case the reason the appellant has to enrol for a less than full-time course is not because if he undertook a full-time course he would be “*likely to fail, for cognitive reasons*”. The reason he cannot enrol for a full-time programme in 2017 – which after his successful year in 2016 he would ordinarily be allowed to do – is, as his education provider has made clear, simply because he is limited in the number of papers that he can take in 2017 by his lack of the necessary prerequisite papers for some of them and, in relation to other papers, by timetable clashes. Both these limitations are the direct result of his failure of the five second year “*foundation*” papers in 2015 which would otherwise have provided the necessary prerequisites for further study and would have enabled him to avoid timetable clashes with other subjects that he might have wanted to take.

[20] Unfortunately, the arguments under the “*sufficient cause outside the student’s control*” ground face similar problems. First, insofar as the appellant accepts that his failures in 2015 were due to his not exhibiting good study skills he clearly appears to accept that at least some of the blame for his failure rests with him. Indeed, that the situation was not completely “*outside his control*” is demonstrated by his successful efforts to improve those skills in 2016. Secondly while there may be cases in which academic failure is largely attributable to external factors outside a student’s control –

such as long running family crises, external emergencies and the like – the family difficulties evidenced by the appellant in his submissions do not, in my view, reach this threshold. While the Ministry’s description of the appellant’s involvement with his grandfather’s problems as “*a choice the appellant made and not a situation outside his control*” understates the significance of his relationship with his grandfather and the sense of obligation that he appears to have felt, I agree with the Ministry’s view that his submissions provide insufficient information on the impact of the situation on his studies to sustain the argument. Apart from saying that he became depressed at the situation in Hong Kong the appellant makes no other real connection between it and either his ability to study generally or with the specific failures in study technique that he attributes his failure to. There is certainly nothing in his submissions to suggest that as a result he needed to take time off, miss classes, submit assignments late or take any other actions which directly affected his study.

[21] That leaves the question of his education provider’s decision to phase out the degree for which he was studying by 2019 and the impact, if any, of the transitional arrangements. Again, there is nothing in his submissions or in the information available on the file as to the administrative changes that the degree was undergoing to suggest that any of these changes in themselves were the reason why he could not undertake a full-time course in 2017. Once again the reason he was unable to enrol in enough papers to amount to a full-time course in 2017 was a direct result of his record in 2015, which restricted his options in 2016, which in turn left only a limited range of papers available to him in 2017. He is in fact currently enrolled in all the papers available to him given his past record and the restrictions his provider has placed on his study as a consequence.

[22] The only substantive argument that he makes in terms of the effects the “new rules” governing the phasing out process have had on him is his suggestion that they led him to change his 2016 enrolment in order to give himself a better chance of gaining entry to the final stages of his degree. Initially he had intended to take four papers in 2016. However, a couple of days into the second semester he added an extra paper – which he could otherwise have taken in the following year – on the advice of his programme director. It appears that he was advised to add the extra paper for essentially strategic reasons. In her email the programme director said that she was “*not sure whether you will be allowed to proceed with the BMLSc given your academic record to date*” and suggested that “*to improve your chance of continuing ..., I would encourage you to take 162.214 this semester if you possibly can. ... [While] the decision is no longer up to me ... I do think that an extra paper this semester would improve your chances of being able to complete a BMLSc.*” This decision, plus the fact that he still had one prerequisite paper that he had failed in 2015 left to pass, meant that in 2017 he only had six papers left that he could enrol in – amounting to less than a full-time course. In this context, it is also worth noting that the reason he was unable to complete the final prerequisite paper that he had failed in 2015 in 2016 appears to have been that it was only being taught internally at his provider’s Manawatu campus whereas he had moved to the Auckland campus at the start of 2016 and thus simply couldn’t take it even if he had wanted to.

[23] While it is true that the decision by his provider to phase out the BMLSc and the arrangements it put in place to facilitate the process were outside his control and had an undoubted impact on his position, they did not in fact alter the basic situation he was in as a result of his performance in 2015. His decision to add an extra paper in 2016 was a strategic one that he made on the advice of his programme director, intended to improve his prospects of being accepted into the later stages of the degree. It was a

deliberate choice on his part and its likely consequences for his 2017 study were at least foreseeable even if he didn't, in fact, focus on them at the time. Similarly, to the extent that his inability to put together a full-time workload in 2017 is the result of his failure to complete the final prerequisite course he failed in 2015, that too appears to be the result of a deliberate decision on his part to relocate to a campus on which it was simply not available. No doubt there were good reasons why he decided to move back to Auckland in 2016 – and the move has certainly paid off in terms of his 2016 academic success – but that too was a deliberate decision on his part in circumstances where its potential impact on his future study was at least foreseeable. Accordingly, even if the decision to phase out the BMLSc and any new requirements it created can be seen as a factor outside his control which affected his 2017 enrolment, the fact remains that his inability to put together a full-time workload in 2017 is still the direct consequence of his initial failure to complete the prerequisite papers in 2015 and the way in which he has had to manage his study since then to get it back on track. The decisions he made in 2016 were informed by the degree changes but they were not driven by them. He decided to move back to Auckland to improve his chances of completing his 2016 papers successfully. He took his programme director's advice to take an extra paper in the second semester because he believed it would help improve his prospects. He did not have to do either. In other words, the decision to phase out the BMLSc simply provides the background against which the ongoing consequences of his disastrous year in 2015 have played out. It is not a *"cause that is outside the student's control"* rendering *"a course of study that is less than full-time appropriate"*. As such it cannot justify the granting of LFT status.

[24] Accordingly, the appeal must fail. His case neither fits within the academic best interests exception to the requirement of full-time study, nor is his situation in having to study part time in 2017 due to some cause outside his control – it is a direct consequence of his own actions.

[25] I note that while the papers for this appeal were being prepared the Ministry again contacted the appellant's education provider and was informed that he is now enrolled in one extra paper on a Certificate of Proficiency (COP) basis. This brings his EFTS total to 0.875 which counts as full-time study for Student Loan purposes. Unfortunately, because the COP enrolment is not as part of a recognised conjoint programme, it cannot count towards the full-time course calculation for Student Allowance purposes. Accordingly, although the appellant is now eligible for a Student Loan, he is still not eligible for an allowance for the 2017 academic year.

**The appeal is dismissed.** The decision of the Secretary on review to confirm StudyLink's decision to decline the appellant's application for Limited Full-Time study for the 2017 academic year is confirmed.

**DATED** at WELLINGTON this 26<sup>th</sup> day of June 2017

---

Neil Cameron  
**Student Allowance Appeal Authority**