

Decision No. [2017] NZSAAA 06

Reference No. SAA 4/17

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 pay the appellant an allowance at the "*living at home*" rate for the 2017 academic year.

The issue on appeal

[2] The issue on appeal is whether, by living with her mother and contributing significantly towards the rent and other household expenses, the appellant is "*living with a parent*" in terms of the Student Allowances Regulations 1998.

Factual background

[3] At the relevant time Schedule 2 of the Student Allowance Regulations 1998 provided that single students, aged under 24 and with no dependent children who are "*living in a parental home*" were entitled to a weekly allowance of \$156.51 before tax. In contrast, an identical student not living in a parental home would have been entitled to a payment of \$195.64 gross pw plus an accommodation benefit.

[4] The appellant is a 20 year old single person with no dependents. She lives with her mother in rented accommodation, as she has done since primary school. In 2014 and 2015 she applied for and received a Student Allowance at the "*living at home*" rate. In 2016, as a result of an error by StudyLink she received an allowance at the higher

“living away from home” rate together with an accommodation benefit. The overpayment resulting from this error was subsequently written off. When the appellant applied for an allowance for the 2017 academic year she was advised that she was only eligible for the *“living at home”* rate. She queried this decrease in the rate at which she was being paid from the previous year. In January 2017 she applied to review the decision to pay her allowance at the lower rate. In her application she essentially argued that as she was paying over *“the whole of [her] allowance”* to her mother *“to pay for the accommodation and to contribute towards buying food”* she should not be seen as *“living with a parent”* in terms of the Regulations and should receive an allowance at the *“living away from home”* rate in exactly the same way as a student living independently would.

[5] In March she opted to have the matter reviewed by way of a Student Allowance Review Panel hearing. In April this meeting was duly held and she made further submissions. In June the Secretary upheld the original decision and at the end of June the appellant appealed to this Authority.

Relevant legislation

[6] Schedule 2 Part 1(3) of the Student Allowances Regulations 1998 sets out the basic grant payable per week to single students who are *“under 24, childless, and living in a parental home”*. Regulation 2 defines *“parental home”* as *“a home where the student is living with a parent”* and *“living with a parent”* is defined by reference to s 3(1) of the Social Security Act 1964 as *“living in the same home as one or both parents”* except where:

- “(i) the parent is financially dependent on the person; or*
- (ii) the person, at his or her own expense, provides accommodation for the parent in the home; or*
- (iii) the person provides a substantial degree of care to the parent; or*
- (iv) the home is a hostel, boarding house or similar lodging, and the person and the parent pay for accommodation in it.”*

[7] Accordingly, the only issue is whether the appellant’s case falls within one of these exceptions so that she cannot be said to be *“living with”* her mother and accordingly is not *“living in a parental home”*.

The Secretary’s decision

[8] The appellant’s argument at the review stage centred on the *“financial dependence”* and *“provides accommodation”* exceptions to the Social Security Act 1964 definition of *“living with a parent”*, and the review decision focusses mainly on these.

[9] Firstly, in response to her argument that her mother is financially dependent on her because her reduced financial circumstances mean that she is no longer able to support the household out of her own resources and has to rely on the appellant’s allowance and other income to survive, the Secretary says:

“The term ‘financially dependent’ is not defined within the Regulations. Within a welfare context a person is considered to be ‘financially independent’ where the person”

- *is in full-time employment*
- *receives a Student Allowance or*
- *receives a benefit in their own right”*

[10] In the circumstances the Secretary concludes that the appellant’s mother cannot be described as being “*financially dependent*” on her in the sense required by the Regulations:

“The contribution made by the applicant is not her mother’s sole or even main source of financial support. In her oral submission the applicant advised that she began paying rent when she turned 18 and her mother’s benefit was reduced as she no longer has a dependent child included in her benefit calculation. Undoubtedly her mother is in a better financial position as a result of the contribution and her efforts to help out are admirable but this does not somehow invert the previously held roles and [make] the applicant ... financially responsible for her mother.

The applicant submits that as her mother would not be able to meet the costs of living in their current home without her contribution that this reliance amounts to dependence. Further that the absence of any modifier within the regulations construction means that the dependence does not need to be total ie: her mother could be partly dependent on her. I do not agree that the wording of the regulation can be properly viewed in [the] manner the applicant suggests. The fact that without her daughters financial support she may have to find cheaper accommodation does not in of itself make her dependent on her. The absence of any qualifier on the term dependence does not mean I should give less than its full and ordinary meaning within the purpose and scheme of the Regulations. As advised by the applicant her mother remains in receipt of a main benefit and as such I do not accept the student’s position that her mother is financially dependent on her.”

[11] Secondly the Secretary rejects the appellant’s contention that the financial contribution that she makes to her and her mother’s accommodation amounts to her providing that accommodation for her mother. Despite the fact that she gives her mother everything she earns to assist with their living expenses, this sum, which appears to amount to approximately \$190-\$200 pw, inevitably both falls short of the full rental figure (\$395.00 pw) and does not cover the other “*ordinary costs of living like power, phone, internet and food*”. Accordingly “*it is clear from the circumstances that accommodation is not provided by the applicant at [her] own expense*”.

[12] Accordingly, the Secretary concludes that none of the exceptions are applicable and that the appellant must be regarded as living in a parental home. The original decision to pay her allowance at the applicable rate is accordingly, in his view, correct.

The basis for this appeal

[13] In her appeal to the Authority the appellant essentially repeats the submissions that she made to the Secretary on review. In particular, she emphasises that in her mother's current financial situation *"it is a necessity for me to pay everything that I have to my mother"*. Her mother, she says *"relies on the whole of my allowance to pay for the accommodation and other expenses"*, she uses all her *"allowance, money from tutoring and after-school care, and gift money to pay, while my mum helps with the rest"*. And to facilitate this arrangement she has appointed her mother as her agent to receive all her allowance payments directly. Without her support, she says, her mother would be unable to live in her present accommodation, pay for her food or meet the ongoing household bills. Accordingly, she says, she *"is in exactly the same situation as students who are living away from home"* and should *"be entitled to the same amount as they are"*. She also emphasises that the accommodation that they are currently living in has a rental that is slightly lower than the current market rate and that moving to cheaper accommodation is not an option.

[14] In this context she also makes two further points in her response to the Ministry's Regulation 37(2) Report. First, she queries the emphasis that the Ministry appears to place on the fact that her name is not on the tenancy agreement and that accordingly she lacks full *"financial responsibility"* for the property or her mother. She says two things – that she could have had her name added to the tenancy agreement when she turned 18 but chose not to, and that having her name on the agreement is essentially irrelevant since she is in fact currently paying *"exactly the same amount as I would have, were my name on the tenancy"*. Secondly, she adds that since the Review hearing she has obtained a permanent part time job which has enabled her to increase her contribution so that she is now *"able to pay for at least half of our rent and expenses"*.

[15] In addition to making arguments on the exceptions she also makes a general fairness argument comparing her situation to other situations in which students are living away from home but are subject to essentially the same expenses as her. In the course of this comparison she says it is *"unfair that I am punished for living with my parent when my parent clearly cannot pay for all the expenses and she relies on all of my income."* She also notes that in all the literature she has received from StudyLink the Regulations are said to be premised *"on the assumption that students under 24 who live with their parents are expected to be provided for by their parents and that is why the State grants them a lower allowance rate"* and says that while she agrees *"that in situations where a student's parents are financially stable and are able to meet all of their expenses, a student should be granted a lower rate of allowance"*, *"everyone's circumstances are different and in cases like mine, a higher rate of allowance and an accommodation benefit is justified."*

The Ministry's submissions

[16] Somewhat confusingly the Ministry's submissions focus initially on the provisions of reg 9 dealing with eligibility for an accommodation benefit – which is not directly in issue in this case although it does depend on the same definitions of *"parental home"* and *"living with a parent"*. Unfortunately, as well, as is for some reason invariably the case in appeals to the Authority, the Ministry makes no mention in its Regulation 37(2) Report of the Secretary's decision or the basis on which he upheld the original decision. This is unfortunate. With all due respect to the official who dealt with the review application, his decision in this instance is exemplary, clearly identifying the

issue, covering all the arguments made by the applicant and producing a carefully reasoned and cogent result. Under s 305(3) of the Education Act 1989 appeals to this Authority are not by way of a *de novo* hearing of the original complaint - they are appeals against the decision of the Secretary on review and as such it would be appropriate for the Ministry to supply the Authority with its view of and, if necessary, comments on that decision. Furthermore, I note that reg 37(2) actually requires the Ministry to supply the Authority with both a copy of the Secretary's decision itself (cl (2)(b)) and a "*report setting out the matters to which the ... chief executive ... had regard in making the decision appealed against*" (cl (2)(c)). The Ministry's report in the current case does not do that. Rather it approaches what the Ministry identifies as the issue essentially as a matter of first impression, advancing arguments largely in isolation from the Review decision.

[17] Insofar as the "*financial dependence*" exception to the definition of "*living with a parent*" is concerned the Ministry says the appellant's mother cannot be seen as financially dependent on her because she

"... is in receipt of a benefit and is receiving her full and correct entitlement. The appellant has stated that she is paying her mother the full Student Allowance plus her income from part-time work and her gift money for providing her boarding and lodging. The extent of financial support the appellant offers her mother is an arrangement between both of them."

[18] On the "*provides accommodation*" exception the Ministry says simply that:

"The appellant is not providing accommodation at her expense to her mother. To the contrary she has been living in the same house with her mother with no change in the living arrangement for a long time. The mother has the tenancy agreement in her name and is responsible for the tenancy".

[19] Nor does she provide "*a substantial degree of care*" to her mother. "*Care*" in this context cannot consist of financial assistance alone – and

"the appellant in her submissions has not provided any evidence that her mother needs personal care of such a level that if she did not receive that care she would not be able to live in her home".

[20] In more general terms the Ministry also reasserts what it describes as "*the policy intent*" behind the Student Allowance regime which requires "*... parental responsibility for a student who is aged up to 24 years old*", and states that "*arrangements between parents and the student to pay towards their accommodation costs still come under the same policy.*" Whether or not the appellant is paying what she describes at one point as the "*market rent*" for her accommodation in the "*parental home*" is irrelevant. It is still a "*parental home*" and she is still living in that home "*with*" her parent.

Discussion

[21] It is clear that the appellant is living in the parental home with her mother. Indeed, she has been living in that home for most of her life and received an allowance at the reduced rate appropriate to that situation in 2014 and 2015. Similarly in 2016, absent the error made by StudyLink in assessing her situation, she would also have been granted an allowance at the "*living at home*" rate. At no stage has the appellant suggested that the allowance she received in these three years was inappropriate.

However, in 2015 or 2016 the appellant's and her mother's situation changed. When she turned 18 her mother became ineligible to receive the full benefit that she was receiving previously, and as a result she had to start to "*contribute towards the accommodation and food*". This meant that all her income from 2016 onwards – Student Allowance, income from part time jobs, and even income from gifts – went to her mother, essentially to keep the household above water.

[22] The only real basis on which this appeal can succeed is if her mother could be said to be "*financially dependent*" on her and on the contributions that she makes to the running of the household. As the Secretary implies none of the other "*exceptions*" can realistically be argued with any level of conviction – and to her credit the appellant does not really attempt to do so. It is clear that in no realistic sense can she be said to be "*providing accommodation*" for her mother or that she is in any way providing "*a substantial degree of care*" to her. The tenancy is in her mother's name and her mother is responsible for the rent and other outgoings, no doubt with considerable contribution from the appellant, but not in any way that would suggest that she can be said to be actually "*providing the accommodation*". Indeed, she accepts that even on the best view of it and with her recently obtaining of what is presumably a reasonably well paid permanent part time job, she is still only just able to contribute around half of the cost of the rent and basic expenses. As a person sharing a rental property with another, contributing 50% of the outgoings is actually simply paying their share of the expenses. It is not in any real sense "*providing accommodation*" for the other party. Indeed, at risk of being overly simplistic, even contributing, say, 75% of the living costs cannot amount to "*providing accommodation at his or her own expense*". "*Providing accommodation*" for another person at your own expense means paying for all of it – not just a part. Nor, in my view, would it make any difference if her name were to be simply added to the tenancy agreement. She would still not be fully responsible for providing the accommodation for her mother at her own expense. It might be different if she were to become solely responsible for the tenancy – but that is scarcely a realistic option in the circumstances.

[23] On the central issue of "*financial dependence*", this term is, as the Secretary points out, not defined in the Regulations. Both the Secretary and the Ministry argue that the major obstacle to considering her mother as "*financially dependent*" on the appellant is the simple fact that she is in receipt of a full benefit appropriate to her situation in her own right. Certainly her payments will have reduced now that her daughter is no longer dependent on her, but it nevertheless provides an income that is intended to recognise her lack of other income and to provide her with at least a minimal level of financial independence and choice. It means, as the Secretary notes, that in practical terms "*the contribution made by the applicant is not her mother's sole or even main source of financial support*". In this context, I accept the Secretary's view that the requirement of financial dependence in the definition is unqualified – in other words that partial dependence of the sort for which the appellant is essentially arguing, does not satisfy the dependence criterion. As he concludes, the appellant's efforts to help out "*are admirable*" and her contribution has obviously improved her mother's financial position, but this does not mean that she can be described in any realistic way as "*financially responsible for her mother*". If, as the appellant contends, and I have no reason to doubt what she says, she contributes all her income to the household and this contribution amounts to around 50% of the household expenses, it is certainly true that her mother is "*dependent*" in a general sense on her contribution to maintain her current situation. This does not however mean that she is "*financially dependent*" on her. If her contributions were to cease – as they may well do once she completes her studies and moves out of the family home – her mother still has at least one major

source of income available, albeit one that would undoubtedly result in her current living situation being adversely affected. The fact that without her daughter's ongoing support she would have to find cheaper accommodation or sublet part of her home in order to make ends meet does not in itself amount to a "*dependence*" on her. "*Dependency*" in this context essentially requires that the other party is unable to survive financially without the assistance they are receiving. That is not the case here.

[24] Finally, insofar as the appellant's general "*fairness*" argument is concerned, two points are perhaps relevant. First, in terms of the policy informing the allowance eligibility regime she is simply not, as she suggests, in the same position as other students, saddled with the same accommodation "*expenses*", who are not living at home with their parent or parents. The fact that she is living at home is precisely the distinguishing characteristic that the legislature has chosen to identify as the basis for discriminating between different categories of student in targeting the limited resources available to support those undertaking tertiary study. Whatever views the Ministry or this Authority might have about this policy or the way it works out in practice in individual cases like the present one, it is the policy that is enshrined in the legislation and it is that legislation that must be applied. In other words, even if I accepted the comparisons the appellant makes, I, like the Ministry, cannot simply ignore the limitations placed on allowance eligibility by the legislation and award allowances based on my own individual notion of what is fair and/or appropriate. Secondly, in the context of fairness it is also worth noting that, as the Ministry emphasises in its submissions, the appellant's application was, as is required by the Regulations, parentally income tested and, as her mother's income was below the relevant threshold, she was approved the full basic grant available for students living at home. Accordingly it would be fair to say that, although the difference in financial terms is not all that great, at least some account has been taken of her situation and of her mother's financial difficulties in assessing her entitlement

The appeal is dismissed. The decision of the Secretary on review to uphold StudyLink's decision to grant the appellant an allowance at the "*living at home*" rate for 2017 on the basis that she was living in her parental home is upheld.

DATED at WELLINGTON this 20th day of October 2017

Neil Cameron
Student Allowance Appeal Authority