

[2019] NZSSAA 14

Reference No. SSA 139/18

IN THE MATTER of the Social Security Act 2018

AND

IN THE MATTER of an appeal by **XXXX** of **XXXX**
against a decision of a Benefits
Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

K Williams - Member

C Joe - Member

Hearing at Auckland on 18 February 2019

Appearances

The appellant in person

A Katona, agent for the Ministry of Social Development

DECISION

Background

[1] XXXX (the appellant) appeals the decision of 16 July 2018, upheld by a Benefits Review Committee, to decline his application for Temporary Additional Support. The Ministry declined this application because based on the formula prescribed by the Social Security (Temporary Additional Support) Regulations 2005 it concluded that there was no deficiency and the appellant was able to meet his allowable costs from his income.

[2] In the course of this appeal the appellant raised the issue of his Special Benefit being 'taken away from him'. He said it was unjust that his Special Benefit had been changed to Temporary Additional Support. Special Benefit was replaced by Temporary Additional Support on 1 April 2006 but continued to apply until a person was no longer qualified to receive Special Benefit or it

was cancelled. The appellant's Special Benefit was cancelled from 25 December 2012 and he took this decision on appeal to the Authority. He then appealed the Authority's decision to the High Court which referred the matter back to the Authority for further consideration of the appellant's dietary requirements. The appellant then filed a further appeal however the Authority subsequently declined to state a further case to the High Court.

- [3] We are satisfied that the issue of the Special Benefit does not relate to the decision under appeal and has already been determined. The Authority has no jurisdiction to consider this issue further.

Relevant law

- [4] At the time of the decision the relevant legislation was s 61G of the Social Security Act 1964 (the Act) which set out the basis for Temporary Additional Support.
- [5] Temporary Additional Support is calculated on the basis of a formula assessment and there is no discretion to set a rate outside of that formula. The costs which can be included in the calculation are fixed and there is no discretion to add other costs.
- [6] According to the formula and criteria, an applicant is eligible for Temporary Additional Support if his or her chargeable income, net income from employment and benefits, is less than his or her essential costs.

The case for the appellant

- [7] The appellant has multiple health problems. He has had several heart attacks and has asthma, chronic obstructive pulmonary disease (COPD), and suspected lung cancer.
- [8] The appellant says that his full circumstances were not taken into account when he applied for Temporary Additional Support. He says he has particularly high food costs because he has to have a special diet, including fruit and vegetables, and high power costs because he has to keep his home heated to relieve his breathing problem. He also said that he has additional costs due to doctor's visits and running his car and finds it difficult to pay for household essentials.

- [9] At the hearing the appellant produced a new notice of appeal with further written submissions. This document has not been filed in the Authority and we treat this document only as further submissions on this appeal. To the extent that these submissions raises new issues, unrelated to this appeal, we cannot take those issues into account. The decision under appeal is that which was considered by the Benefits Review Committee on 27 August 2018. For the reasons we have given, the cancellation of Special Benefit which the appellant raised in his further submissions is not an issue that we can consider.
- [10] Attached to the submissions produced at hearing, were medical certificates which were included in the Ministry's report.
- [11] The appellant also produced receipts from the supermarket and butcher dated 6 July 2018.

The case for the Ministry

- [1] On 6 July 2018 when the appellant applied for Temporary Additional Support he listed 12 types of costs that he needed to pay on a regular basis. Ms Katona said that the allowable costs for Temporary Additional Support are accommodation, essential household items, health and disability, and employment related costs.
- [2] The Ministry accepts that the appellant is seriously unwell and he receives the maximum possible for disability costs. As he is in a Housing New Zealand house, he is not entitled to an Accommodation Supplement. Employment related costs are not relevant for the appellant. Therefore, Ms Katona said that the Ministry focussed on the costs that the appellant incurs for power and food.
- [3] From 1 July 2018 the appellant was granted a Winter Energy Payment of \$20.46 per week.
- [4] The Ministry calculated the appellant's power costs by using the average costs for power based on the Powerswitch website tool operated by Consumer NZ which estimate the average power use for a person in the appellant's living situation, in the area where the appellant lives. The difference between the appellant's annual power usage and the average based on Powerswitch was \$12.30 per week. As the appellant's Disability

Allowance included an extra power cost of \$11.19 per week the actual deficiency was \$1.10 per week.

[5] The Ministry assessed the appellant's reasonable food costs based on the 2018 estimated food cost survey from the University of Otago. The Ministry allowed \$111 per week which is the liberal, or highest, allowance for a single man. The Ministry said that the letter written by the appellant's doctor in 2012, which the appellant relies on for his additional food costs, states that he needs to follow a low fat, fresh fruit and vegetable diet. This is the type of diet allowed by the liberal category of the Otago University Food Survey.

[6] When the Ministry applied the Temporary Additional Support formula to the appellant's situation, he had a surplus of \$34.11 per week. Ms Katona said that, even if his additional power cost of \$1.10 per week was taken into account, he had a surplus.

Discussion

[7] While we accept that the appellant is a person who has high medical needs and living costs, we are satisfied that he is receiving the maximum possible entitlement under the Disability Allowance and that, at the date of his application, he was not entitled to Temporary Additional Support because he had no deficiency of income when the appropriate formula was applied to his chargeable income and allowable costs.

[8] For these reasons this appeal does not succeed.

Order

[9] The appeal is dismissed.

Dated at Wellington this 13th day of March 2019

S Pezaro
Deputy Chair

K Williams
Member

C Joe
Member