

[2019] NZSSAA 16

Reference No. SSA 085/18

**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 19 February 2019

### **Appearances**

The appellant in person

N Jaura, agent for the Ministry of Social Development

## **DECISION**

### **Background**

[1] XXXX (the appellant) appeals the decision of 25 September 2017, upheld by a Benefits Review Committee, to grant an advance payment of benefit of \$820 and a non-recoverable Special Needs Grant (SNG) of \$300 for dental treatment, rather than granting the total of \$1,120 as a non-recoverable Special Needs Grant.

[2] On 22 September 2017 the appellant applied for assistance for the cost of dental treatment. She had an abscessed tooth which the Ministry accepts was an emergency, as well as other problems with her teeth. She initially provided two quotes from one dentist. One quote for \$2,710 was for consultation,

restoration, full mouth and gum clean and X-rays and a root canal. The second quote of \$1,630 was for removing the abscessed tooth rather than doing a root canal. The Ministry granted the appellant \$300 as a non-recoverable grant and \$1,330 as a recoverable advance based on the second quote.

- [3] The appellant did not use this grant and obtained another quote for \$1,120 from a different dentist. This quote was also for extracting her abscessed tooth and the other treatment required. She then sought assistance based on this quote and was granted \$300 as a non-recoverable grant and \$820 as a recoverable advance of benefit. The dental work was carried out on the same day.

### **Relevant law**

- [4] The Special Needs Grant Welfare Programme under which this decision was made was established under s 124(1)(d) of the Social Security Act 1964. The programme that applied at the time was introduced in 18 December 1998.
- [5] Clause 13.2 of the Special Needs Grant Welfare Programme provides that a grant of up to \$300 may be made for emergency dental treatment in any 52-week period.
- [6] Section 82(6) of the Act provides that an advance payment of benefit may be made to meet immediate needs.

### **The case for the appellant**

- [7] The appellant said that in 2011 she also had to have emergency dental treatment. The total cost then was \$380 so she only had to pay \$80 in addition to the non-recoverable SNG of \$300. She said it is unfair that in 2018 the SNG remains at \$300 when the cost of dental treatment has increased. She said she endeavoured to get the cheapest quote and the \$300 SNG is inadequate.
- [8] The appellant also argued that the Ministry should pay for all her dental treatment because they are 'taking' her Australian Disability Allowance. However, as stated in the direction issued 19 December 2018, this issue has previously been determined by the Authority and cannot be considered again.
- [9] The appellant said that when she asked for assistance with the cost of dental treatment, WINZ advised her to take the cheaper option of having her tooth removed. She said she was told that if she did not agree to the advance of

benefit offered and accept that she had to repay \$820, no funds would be approved for the treatment.

### **The case for the Ministry**

- [10] The Ministry says that it granted the appellant the maximum available as a non-recoverable SNG in a 52-week period under Clause 9.1 of the Special Needs Grant Welfare Programme. The Ministry then had to determine whether an advance of benefit would meet her needs at the time. When the appellant applied for this assistance, she had no debts to the Ministry and was in a Housing New Zealand property paying a weekly rent of \$67.
- [11] One of the considerations in granting an advance of benefit was whether the beneficiary is at risk of not being able to afford the basic necessities of life if an advance is granted rather than non-recoverable assistance. The Ministry concluded that this was not the case with the appellant because she did not have a deficiency in her budget. It concluded that she could afford to repay the benefit advance. Although the rate of recovery is generally required to ensure that the advance is repaid within 24 months, the Ministry exercised its discretion to reduce the repayment from \$8 to \$5 per week.

### **Discussion**

- [12] The fact that the assistance provided for dental work under the Special Needs Grant Welfare Programme has not changed since 1998 means that the \$300 available for emergency dental treatment is now significantly less than the actual cost of such treatment for most people entitled to this form of assistance. As a result, people in the appellant's situation will have to pay a much greater proportion of their emergency treatment costs themselves than was intended when this programme was introduced.
- [13] Although this situation is unsatisfactory, in the circumstances of this appeal we have no discretion to grant more than the \$300 already provided as a SNG. There is no evidence to suggest that the appellant is unable to afford repayment of the \$820 advance of benefit at the rate set of \$5 per week and we conclude that this rate of repayment is reasonable.
- [14] We accept that the appellant would have preferred to save the tooth concerned particularly as she now says she cannot eat on that side of her mouth. However, as she did not ask this dentist to quote for a root canal instead of

extraction, it appears that by the time she saw the second dentist the appellant had decided that she did not want to pay the extra cost of treatment that would save her tooth.

[15] Once the appellant was told that any amount over \$300 would be granted by an advance of benefit, it was her choice as to whether she paid to save the tooth or not. While she may have been advised by someone in the WINZ office to have the tooth removed, we do not consider that it was reasonable to rely on that person for her decision on dental treatment.

[16] For these reasons we find that the appellant was not entitled to any amount over \$300 as a SNG at the time of her application.

**Order**

[17] The appeal is dismissed.

**Dated at Wellington** this 18th day of March 2019

**S Pezaro**  
Deputy Chair

**K Williams**  
Member

**C Joe**  
Member