Decision No. [2020] NZSAAA 2

Reference No. SAA 6/19

IN THE MATTER of the Education Act 1989 and the Student Allowances Regulations 1998

AND

IN THE MATTER of an appeal 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 an Independent Circumstances Grant (ICG) for the 2019 academic year.

The issues on appeal

[2] This appeal raises two issues:

- Whether his whaea whāngai, L, was a "*person acting in place of a parent*" when he applied for a Student Allowance in 2019 so as to bring her within the extended definition of "*parent*" in reg 2 of the Student Allowances Regulations 1998.

- Second, if L is held to be the appellant's "*parent*" for the purposes of the Regulations, whether, as required by reg 8(1)(b), he is *"neither living in a parental home nor receiving financial assistance from any parent"* and there are "*exceptional circumstances*" under reg 8(1)(c) rendering it "*unreasonable for* [him] *to live with* [her] *and receive financial assistance from* [her]" that would justify the grant to him of an ICG.

Factual background

[3] In January 2019 the appellant applied for a Student Allowance to support his first year of tertiary study in 2019. As he was under 24 years of age, single and without

dependents, his application was required to be parentally income-tested. He was accordingly asked to provide details of his parents' income and to submit a completed parents form. As he had had no real relationship with either of his birth parents, he applied for an ICG, stating that he had been whāngai to his mother's cousin (L) at birth and had been raised by her with the assistance of an Unsupported Child Benefit (UCB) and a Child Disability Allowance (CDA) – both of which have now ceased. As L is currently only temporarily employed under a grant and, due to serious ill-health, may be unable to continue to work in the future, he needs an ICG as she "*does not have the financial means to support me through university*". After a detailed interview with the appellant and his nominated support person, StudyLink determined that L had been and still was "*acting in place of a parent*" and accordingly that her income needed to be assessed to determine whether the appellant was eligible for a Student Allowance before his ICG application could be considered. The application was accordingly declined and he was advised that L should submit a completed parents form providing the relevant income information to allow his initial allowance application to proceed. At the end of March he applied to review this decision and after the usual reports and further submissions, including the provision by L of a detailed account of her relationship with the appellant and her role in his upbringing, the matter was heard by a Student Allowance Review Panel (SARP) in early July. At the hearing the appellant made further submissions and was supported in doing so by a support person and by L. On the 8th August the Secretary upheld the original decision and at the end of September the appellant lodged a notice of appeal to this Authority.

[4] The basic facts of the relationship between the appellant and L and her role in both his early life and subsequent to his leaving home in early 2019 in order to attend university, are not in dispute. It is the interpretation of the relationship that is at issue. Initially, when, immediately after his birth, the appellant was removed from the care of his biological mother and placed in the care of L, it appears to have been envisaged that the birth parents would, over time, take on at least some of the responsibilities of parenting. His father, in particular, expressed some interest in doing so and made sporadic efforts to keep in touch with him during his childhood. When the appellant was around seven months old L applied for and was granted formal custody of him and was appointed as his legal guardian jointly with his birth mother. Her reason for applying for the guardianship order was that, as she puts it, she needed guardianship status to enable her to properly protect him and supervise "*a high complex needs mother with significant mental health and drug use issues, and any of her colleagues, during … access visits*". It was not because she wanted to be seen as "*acting in the role of a parent*" – indeed at that stage, as noted above, there was still some hope that one or other or both of his birth parents might take on at least some aspects of that role. Nevertheless, it is accepted by all parties that the appellant has been supported by L, both financially and emotionally since birth and continues to be so. Indeed, apart from the government support she received for him and a loan he obtained from his grandmother to cover the downpayment for his university hostel, she appears to have been the sole source of support both for many of the routine expenses of childhood and for the specialist services and assistance he required growing up.

[5] Insofar as the financial support provided by L is concerned, even taking into account the support provided by the UCB and the appellant's CDA, the sums involved over the years are significant and, in themselves, are a tribute to L's dedication to the appellant's needs – often, I have no doubt, at real cost to her own interests. In particular, in an email sent to StudyLink in May 2019 she detailed the following costs that she had to meet out of her own resources – either on her own initiative or as a result of arrangements

negotiated and agreed to with the appellant's birth parents and approved by the Family Court:

- 0–2 years – $900 per week for a specialist nanny experienced in dealing with babies with special needs;
- 3–5 years – $500 per week ($250 for child care, plus $200 for nanny, plus $50 medical costs);
- 5–12 years – $550 per week ($250 for after-school care plus $200 for during school care, plus $50 medical costs);
- 13–18 years – $150 per week (treats with friends, hobbies, sports, pocket money, vehicle costs, driving lessons).

[6] In addition from January 2019 onwards she has provided $250 pw to assist with his accommodation and other study expenses – either as a direct payment or as an interest free loan which may or may not be intended to be repaid (the papers are ultimately unclear on this). L describes her ongoing financial contribution as conditional saying that she continues to support him "*while* [the] *MSD processes towards his receiving his Student Allowance continue*". This appears to suggest that if he is unsuccessful in his application she may well wish to continue with these payments – at least as long as her own circumstances enable her to do so. And in the absence of a Student Allowance/ICG the appellant will probably continue to be reliant on her for this support – although there is some suggestion in the papers that he has been putting at least some of the money he has received aside with a view to repaying it at some future time. He strongly wants to be independent, and does not want to be either saddled with a Student Loan or be forced to rely on ongoing disability assistance and, at least at the time of the Review hearing, had no other source of income.

[7] Not surprisingly, the appellant has always seen L as his "*mother*" and continues to do so. L sees herself in the same way and the appellant says that "*most* [of the family] *probably see me as* [L's] *son however most know the situation*". Although he is now living well away from home in a wholly new environment he still relies on L for guidance and support and she would be his first port of call if he found himself in trouble.

Relevant Legislation and Policy

Student Allowance applications

[8] Under reg 4 of the Student Allowances Regulations 1998 a student in the appellant's position who applies for an allowance must ordinarily provide StudyLink with the details of their parents' income so that their eligibility and/or the rate at which they must be paid can be assessed. Where a student has more than two parents, the parental income must be assessed on the income of the two parents who *"are the major contributors to the student's support"*; (reg 4(2)(a)). Where the student's parents are not living together and the student can establish *"independence"* from one of them, the parental income can be assessed on the income of the remaining parent alone; (reg 4(2)(c); and for what will constitute *"independence"* see cls (4), (5)).

"Parent"

[9] Regulation 2 defines *"parent"* for the purposes of the Regulations as *"including a step-parent and any person acting in place of a parent of that student"*. "*Step-parent"* includes anyone who is *"in a de facto relationship with … a person acting in place of the parent of the student"*. Accordingly if L were to be confirmed as a *"parent"* in terms of this definition, any income earned by her partner would also need to be included in any parental income assessment process unless the appellant could establish *"independence"* from them under the highly restrictive criteria provided in reg 4(4).

[10] The Ministry guidelines for "*acting in place of a parent*" provide that:

> *A person is considered to be "acting in place of a parent" if they are responsible for the student's wellbeing and financial support. This can include grandparents, other relatives (including whāngai) and former and current foster parents, if they are acting in place of the student's parent(s), …*
>
> *To determine whether a person is "acting in place of a parent" will include consideration of the following questions*
>
> - *Has the person made a deliberate decision to take on support of this student?*
> - *Does the person provide financial assistance and support to the student?*
> - *If the student were in financial or "other" trouble would the person intervene to provide support and assistance to the student?*
> - *Does the person provide accommodation to the student? If so is the student required to pay for the accommodation? Would the person continue to provide accommodation if the student could not pay for it?*
> - *Does the person electively regard the student as a member of their family?*
> - *Does the person provide personal guidance, advice or direction to the student, including on matters relating to their study?*

In her submission to the review hearing L noted these six "*policy*" questions and confirmed that she had "*indeed provided some or all assistance described in these bullet points to all of the several dozen children/students (including* [the appellant]*) – and a similar number of adults … – since 1987*".

Independent Circumstances Grant

[11] Where a student is estranged from their parents or for some other reason does not wish to go through in the parental income testing process necessary to obtain a Student Allowance, they can apply instead for an ICG under reg 8. Under this regulation, a student who is *"neither living in a parental home nor receiving financial assistance from any parent"* is eligible for an IGC if "*it would, by reason of exceptional circumstances, be unreasonable for the student to live with a parent and receive financial assistance from any parent".* The policy guidelines on the reg 8 discretion emphasise that "*exceptional circumstances*" "*means circumstances that are highly unusual, or far beyond what is ordinary. Normally, the circumstances will need to be beyond the student's control*". The guidelines accordingly note the significance of such things as severe mental cruelty by a parent, or physical or sexual molestation or, more generally, estrangement of the students from their parent or parents "*to the extent that contact would have a detrimental psychological impact on them or their parent(s)*". While the focus here certainly appears

to be largely on the detrimental effects that a student might experience through being obliged to rely on their parents for ongoing support, there is some recognition of the need to take account of the likely impact of any expectation of accommodation and support on the parent but it is clear that any such impact will need to be reasonably severe and unusual to trigger the discretion. The test will not be satisfied simply by the parents' view that the situation would be unreasonable and unfair or, for example, in the case of a person acting in the place of a parent, contrary to their expectations and understanding when they undertook the relationship.

[12] It is undisputed that the appellant has never received any financial support from his birth parents and that there has never been any meaningful ongoing family relationship between them. It would be wholly unreasonable to expect him to live with one or other of them now and receive financial assistance from them. If they were the only potential *"parents"* in the picture, the appellant would undoubtedly qualify for an ICG under reg 8 if he was not eligible for a Student Allowance under reg 4. On the other hand, if L is held to be the appellant's *"parent"* by virtue of her having continued to act *"in place of* [his] *parent",* it will be necessary to show that she is not currently providing any financial assistance to him and that there are likely to be seriously detrimental consequences to one or both of the parties if he were to *"live with … and receive financial assistance"* from her. Given that the reasoning suggesting that she is acting *"in place of a parent"* largely turns on the accommodation and financial and other support that she has provided and continues to provide, any argument along these lines – let alone a credible one – will be difficult to make.

The Secretary's decision

[13] On the threshold question of whether L should be seen as "*acting in place of a parent*" the Secretary accepts the Ministry's argument that she is:

> *She has provided him emotional support throughout his life, ensuring that he is safe and cared for. In addition, [she] has been and is still providing significant financial support to the applicant. It is commended what [she] does for the applicant and her continued support she provides to him, especially with her own personal hardships she is enduring.*

[14] In arriving at this conclusion the Secretary emphasises

- The fact that she applied for and was granted guardianship of the appellant when he was six months old.
- That L clearly regards herself as the appellant's mother and clearly maintains a close relationship with him. She "*cares for the applicant and you can see she has provided all the support she can throughout his upbringing*". Although from time to time decisions had to be made about his upbringing that were out of her control, during the whole time "*she still provided him with the emotional support he needed as a child and it is clear that this support is still there*".
- She has provided him with substantial financial support throughout his life, both when he was in her care during childhood and on an ongoing basis. While she has certainly received financial assistance from the State to cover the basic costs of looking after him, she has also *"provided substantial additional financial support including; hiring a specialised nanny, child care*

> *costs, ongoing daily costs and currently $250 per week she is providing for the applicant while he is studying*".

[15] As to whether there are any "*exceptional circumstances*" that could justify the grant of an ICG under reg 8, the Secretary's conclusion is both straightforward and difficult to dispute:

> *I have* [to decide] *if it is unreasonable for the applicant to receive financial support from his parent and if it would be detrimental to his wellbeing. As* [L] *is providing financial support to the applicant, I have deemed that there are no exceptional circumstances that show that it would be detrimental for the applicant's wellbeing to receive assistance from* [her].

However she also emphasises that there is some question over L's ability to continue to provide this assistance if her income is adversely affected by her current illness and notes her statement that providing the financial assistance that she does currently leaves her struggling with her own living expenses. Her response to this is twofold. First, if at some point in the future L's income is indeed adversely affected, then it is, of course, always open to the appellant to renew his allowance application and have the matter reassessed. Secondly, while any hardship she is suffering is obviously *"regrettable",* this cannot alter the fact that, currently at least, her overall income remains in excess of the allowance threshold.

[16] In the review process the Secretary was assisted by Ministry and NZUSA representatives who participated in the hearing in a purely advisory role. While the Ministry representative supported the conclusions reached by the Secretary for essentially the same reasons, the NZUSA representative was somewhat more ambivalent. Although he accepted that L "*could clearly be considered to be acting in the role of a parent for the applicant*", "*there is a strong case against this*". In particular he emphasised that she has undertaken a similar role for many other young people, sees it "*as part of her social responsibility*", lacked "*parental rights over the applicant*" and that the relationship has changed since he left home. Accordingly in his view she was not now acting as his parent "*but rather as a kind hearted individual who has provided significant support for the applicant and many others*". He was also clear that in this situation it was unreasonable to expect the appellant to live with and receive financial assistance from L "*given the hardship that this places her in and his desire to become more independent*".

The basis for this appeal

[17] The appellant has relied throughout on the simple fact that he is now no longer dependent on L and wishes to maintain that status:

> *I have been living independently … for this year and hope to continue in my studies for the next two years and would like to have my Student Allowance situation fixed. I do not have any people acting as my parent now. I am an independent adult.*

[18] In support of this he adopts the submissions made by L to the Ministry in April 2019 and in a letter she sent to the Review Coordinator in July. In the first of these she questions the policy that renders her *"responsible for supporting children for further study*

who consider me their go-to parent when things go wrong" saying that not only was she never told by anyone in the Ministry that this might happen – thus depriving her of the opportunity to take steps to prepare for it (by, for example, taking out the relevant income insurance) – but in addition that it is inconsistent with MSD's refusal to see her as a parent in other contexts:

> *… Why am I considered a mother/parent for StudyLink purposes because* [the appellant] *(and I hope ALL children who spend time in my home) considers me a mother/parent – but my legal definition by the Courts is "guardian", and my formal designation by MSD until* [the appellant] *was 18 was "carer", and I was refused financial support by MSD on the basis that I wasn't a mother/parent.*

(The reference here to MSD's previous refusal of financial support is to an application L made in 2014 for sole parent support that was declined by MSD under what is now s 30 of the Social Security Act 2018. Sole parent support was not available to L in the circumstances as she was neither the appellant's "*mother or father*" under s 30 – which is confined to birth parents – or able to be regarded as such under s 31).

[19] More specifically in the letter to the Review Coordinator in July she says that:

- She did not apply for legal guardianship because she wanted to act "*in the role of a parent*". The appellant already had "*two parents who were at that time planning to continue their parenting role*". Her application was simply to enable her to better protect the appellant and supervise "*a high complex needs mother with significant mental health and drug use issues, and any of her colleagues, during … access visits*".

- Far from her acting as his parent, she says his birth parents still "*had control of parental decisions regarding the child; not me. I have been required on numerous occasions over the period … to implement the decisions made between the birth parents,* [the appellant's] *extended family, and the Family Court* [acting on his behalf]".

- She criticises MSD's view that the payment of money from her own resources towards the appellant's care during his upbringing is *"evidence that I had personally taken parental responsibility for* [him]". In a number of cases at least this additional outlay of her own funds was required by decisions of the Family Court that had been made in conjunction with the birth parents.

- She rejects the Ministry's view that her continued financial support for the appellant now that he has left home shows that she has continued to act as a parent to him. While she accepts that she has continued to support him financially, albeit *"along with some MSD support"* derived from arrears payments from his UCB and CDA, this has only been to enable him to survive while the question of his Student Allowance eligibility is sorted out by MSD. In other words she has not been *"supporting"* him in any "*parental*" way, but has simply provided him with "*some bridging money*".

- On the question of the impact on the appellant the refusal of his ICG application she says that when he left school he *"made it very clear"* that he "*did not wish to remain dependent in any way on me"* and had *"chosen not to identify as disabled during his studies at university".* The decision to decline

his application is a denial of his *"basic right to independence"* and "*has been detrimental to the health and wellbeing of a person who the state has identified for the majority of his life as a disabled orphan – and who is quite clearly a vulnerable child/student"*.

- More generally she also says that if her financial contribution to the appellant "*makes me legally a parent*" this result is essentially absurd. She has over her lifetime assisted numerous children and students (and a not insignificant number of adults) in the same sort of way and for the same sorts of reasons without anybody regarding her as somehow financially responsible for any further education they might choose to undertake.

The Ministry's Regulation 37(2) Report

[20] On the question of whether L is a person "*acting in place of*" a parent, the Ministry basically simply adopts the Secretary's analysis:

> *The relationship between the appellant and his aunty, who was the appellant's guardian until he turned 18, has remained unchanged. He still relies on his aunty whom he calls "mum" to support him. … It appears that there is an ongoing commitment on the part of his aunty to provide both emotional and financial support to the appellant. In fact the appellant has not applied for a Student Loan during the entire study year in 2019 as his aunty was providing him with a weekly amount of $250 per week for meeting his living expenses. … He has been living with his aunty continuously since his birth until he commenced university. When the appellant commenced his tertiary studies in a different city he moved out of his aunty's home, not due to any discord but to pursue his chosen study programme. Neither the aunty nor the appellant have stated that there is a breakdown in their relationship. … As noted in the Secretary's report the appellant considers the aunty as his parent. She has contributed immensely to his upbringing and wellbeing, providing emotional and financial support for a long period and continues to voluntary act as a parent to the appellant.*

[21] As to whether the appellant is eligible for consideration for an ICG, the Ministry, like the Secretary, is clear that as he is still receiving financial assistance from L on an ongoing basis he is ineligible under reg 8(1)(b) whether "*exceptional circumstances*" exist or not. And even if he wasn't, there are no such circumstances here which would render it unreasonable for him to live with her and receive financial support from her. The relationship is ongoing and there is no evidence of any breakdown or discord, or of an unsafe home environment. *"Exceptional circumstances"* require circumstances *"far beyond what is ordinary"* and neither L nor the appellant have provided any evidence which suggests that any such circumstances exist.

Discussion

Is L "acting in place of a parent"?

[22] The appellant was removed from his birth mother at birth and placed in the care of L. As whaea whāngai, L essentially took on the responsibilities of parenthood. My understanding of whāngai is that it can be used as a term to cover a variety of situations ranging from arrangements like this one, which in pakeha terms can essentially be seen as a form of in-family adoption/fostering, to less inclusive situations in which family

members simply take some responsibility for and contribute what support they can to the upbringing of other members of their whānau. It is quite clear from all the evidence in this case – the interviews with the appellant, the early comments of his support person, and the submissions and comments made by L at various stages of the process – that the relationship between the appellant and L was regarded by everyone as a mother/son relationship. While it is certainly true that as only a joint guardian with the birth mother L lacked the full autonomy in making decisions about his upbringing that a birth parent or sole guardian would ordinarily have, she remained responsible for the vast bulk of the day-to-day decisions that needed to be made on his behalf. Indeed, it is clear that she went further and made it her business to protect him against potentially harmful interventions by his birth mother and made major decisions about the ways in which his special medical and developmental needs were to be met. In discharging what she saw as her responsibilities to him she made a very significant financial contribution over the years from her own funds in order to ensure that he received the ongoing services and support that she considered necessary. While many of the costs of the appellant's upbringing prior to his turning 19 were met by the State and, as L says, some of the expenditure she made was at the behest of the Family Court, the fact remains that her personal financial contribution was both major and largely based on her own determination of what she believed to be necessary in his best interests. In this she was clearly acting as far more than simply his *"carer"* – she was being everything a good "*parent*" should be. And she was doing it in an exemplary fashion.

[23] This relationship has continued since the appellant left home in January 2019. He continues to regard her as his mother and her home as his home. She continues to support him both emotionally and financially despite her own ill-health and her concerns about her continuing ability to afford to do so. In the circumstances, and given the history of the relationship, it is impossible to view such support as anything other than a continuation of "*parental*" support. That the $250 pw she is currently providing, initially at least with some contribution from funds derived from MSD, is said to be simply "*bridging*" money until he can tap alternative sources does not alter this situation. Nor is the suggestion that it is an interest free loan or some sort of advance on monies he would receive in the event of her death. Giving your child a grant, bridging money, or a loan or advance to support their studies is exactly what good parents should and hopefully would do if they can afford to. How such support is described and organised may vary but it is clearly *"financial assistance"* and the provision of such ongoing assistance is clearly not something you would ordinarily expect a student's erstwhile *"carer"* to feel obliged to do.

[24] Accordingly I have no doubt that the Secretary was correct to uphold StudyLink's decision that, for allowance purposes, L was and still is acting "*in place of a parent*" and that, failing any meaningful contact between the appellant and his natural parents since birth, her income falls to be assessed as part of his application. Whether her partner's income should be part of this mix is another matter which is not before me and on which I have no information. On the face of it there may be some sort of case that could be made for excluding it under reg 4(2)(c), but that is a matter that will have to be resolved when and if the appellant's allowance application is renewed and a parent's form is completed.

[25] As at mid 2019 it was accepted by L that her current income exceeded the living away from home Student Allowance cut-off point. She is concerned that due to the various health issues that she faced in early 2019 this may well change in the fairly short term, placing her under more pressure and affecting her ability to continue to support the

appellant financially. If this happens it is, as both the Secretary and the Ministry point out, open to the appellant to renew his allowance application and for L's – and, if necessary, her partner's – income to be assessed at that point. If it is within the relevant cut-off point he will be eligible for an allowance accordingly.

If the appellant is not eligible for a Student Allowance, is he able to access an Independent Circumstances Grant under reg 8 instead?
[26] On this question I am also quite clear that the Secretary was correct to reject any such argument. Although both the Secretary and the Ministry in its Regulation 37(2) Report focus mainly on the *"exceptional circumstances"* discretion under reg 8((1)(c), the appellant's application clearly must fail even before his case gets to that point. To be eligible for consideration under reg 8 at all a student must first be *"neither living in a parental home nor receiving financial assistance from any parent"* (see cl (1)(b)). It is agreed by everyone that, although the appellant is indeed no longer living at home, he is clearly still receiving financial assistance directly from L – although there is some uncertainty in the appeal papers as to whether this is a no-strings payment, a loan or an advance of some sort and it appears that at least some of the money he has received is derived from benefit arrears payments made to L by MSD. Nevertheless, as L herself describes the situation *"I continue to support* [him]*, along with some MSD support, while MSD processes towards his receiving his student allowance continue"*. Unfortunately that support, whatever its quantum once the MSD contribution has been disregarded, is sufficient on its own to disqualify the appellant from consideration for an ICG.

[27] Nevertheless as both the Secretary and the Ministry discuss the *"exceptional circumstances"* discretion it is necessary to deal with it briefly here. The only ground explicitly advanced by both the appellant and L that is directly relevant to this issue is the possible detriment to his *"health and wellbeing"* that could result from the denial of his strongly held desire to be independent – both from L and from the need to rely on a Student Loan – and to avoid any continuing reliance on and identification with disability support networks. In addition to this, it is certainly arguable – as the NZUSA adviser suggested at the review hearing (see [16] above) – that given L's current health issues and their possible effect on both her future income and her ability to continue to provide emotional and other support, and the personal sacrifices she has made and is still making in order to provide him with the support she believes he needs, it would be unreasonable to expect him to continue to *"live with … and receive financial assistance"* from her. Any attempt to meet an expectation of continued support of this sort – which, while in no way legally binding would almost undoubtedly be regarded by L as a continuation of her moral commitment to and investment in the appellant – would cause her serious hardship and would accordingly be unreasonable. Indeed it may even adversely affect her ongoing relationship with the appellant. In my view neither argument is persuasive.

[28] The question of independence. The argument that the appellant's perfectly natural desire to assert his new found independence and to avoid identifying as disabled by having to rely on ongoing disability support amounts to *"exceptional circumstances"* rendering it *"unreasonable"* to expect him to receive financial assistance from L is not compelling. First, it is difficult to see the desire of a 19 year old student to be independent of his parent and his choice not to take out a Student Loan or access disability assistance as either *"exceptional"* or as something that is effectively beyond his control. Second, he is, in any case, currently living independently, away from home, and on his own terms. He is dependent in part on financial support from L but this appears to impose no constraints on him and, even if it is in fact a loan, there appears to be no interest payable and no hard and fast requirement that he repay it. In these circumstances his situation

is not all that easy to distinguish from the situation he aspires to – which is that of a student, living away from home, free from parental restraints, and dependent in part on ICG payments provided by the State. Furthermore, to paraphrase the point made by the Secretary (see above at [15]), he is currently receiving financial assistance from L anyway and neither appears to see himself as any less *"independent"* as a result or to have suffered any significant detrimental effects.

[29] The creation of hardship. As a matter almost of definition, parental hardship caused by the need to support a child cannot amount to an exceptional circumstance in itself. The Regulations work on the basis that the income levels that they set are based on an assessment of when a parent can, in theory at least, afford to provide assistance to their child. This would be rendered unworkable if they could be challenged in individual cases on the ground that this particular parent in these particular circumstances cannot in fact afford to support the child despite being over the relevant income cut-off point. It may be that parental or general family hardship could be relevant where, despite parental income levels remaining the same, some sudden family crisis consumes all available family funds rendering it impossible for a parent to continue to support a child's university studies, but that is not this case. In this context it is important to note the obvious point that, despite what many parents appear to assume when confronted with the allowance income-testing regime, the Regulations cannot and do not impose any legal responsibility on any parent to support their child's study where an allowance is declined or reduced under reg 4. At the most any obligation such a parent has is simply the usual moral obligation to care for and assist your children as best you can in times of need. At least where adult children are concerned the spending of the family budget is a matter for discussion and negotiation and any hardship caused to the parents in terms of the sacrifices made to support a child need to be taken into account by both the parents and the child in deciding on the level of support that can be offered. Furthermore the suggested hardship in this case appears to relate primarily to the situation that it is feared could arise if L's ill health impacts her income and future job prospects. And as noted above at [25], the answer to that is that if L's income does indeed fall significantly at some point, the whole question of the appellant's eligibility for a Student Allowance can be revisited. Accordingly, I am satisfied that even if it were necessary for me to consider the availability of the reg 8(1)(c) discretion in this case, any hardship that the refusal of an ICG might create for L would not be able to be taken into account.

The appeal is dismissed. The decision of the Secretary on review to uphold StudyLink's decision to decline the appellant's application for an Independent Circumstances Grant for the 2019 academic year is upheld.

DATED at WELLINGTON this day of 2020

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Neil Cameron
Student Allowance Appeal Authority

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