

[2020] NZSSAA 21

Reference no: NZSSAA016/2020

IN THE MATTER of the Social Security Act 2018.

AND

IN THE MATTER of an Appeal to the Social Security Appeal Authority by **XXXX** of Wellington, against a decision of the Chief Executive that has been confirmed or varied by a Benefits Review Committee.

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

G Pearson (Chairperson)

J Ryall (Member)

Hearing: 11 November 2020

Representation: XXXX presenting her own appeal.

Mr Pieter Engels, agent for the Chief Executive.

DECISION

The Indicative Decision and hearing

- [1] This decision was first the subject of an indicative decision. The appeal was then heard in an oral hearing before the members who have decided it. XXXX participated through a telephone connection, rather than attend in person, due to her health.
- [2] The case concerns whether XXXX could receive a higher accommodation supplement when her rent increased or get Temporary Additional Support to help with her rent increase.
- [3] The Ministry of Social Development supported her receiving the maximum support for her circumstances, but understood it had done that and could not legally do more.

The issues

- [4] The issues for the Authority to decide are:

[4.1] Did the Ministry pay an accommodation supplement at the maximum possible weekly rate?

[4.2] Are XXXX's savings of \$6,923.72 "cash assets" disqualifying her to Temporary Additional Support?

[5] The Ministry essentially says it had no power to provide more assistance to XXXX than it did, regardless of her circumstances; it had to apply legal limits on assistance.

Background facts

[6] On 8 July 2019, XXXX was single, aged 71, with no dependent children; and, entitled to New Zealand Superannuation, a disability allowance, accommodation supplement, and winter energy payment. From that date her rent increased from \$290 per week to \$300 per week.

[7] The Ministry says, XXXX was receiving the maximum rate of accommodation supplement available to her so there could be no assistance to cover the higher rent.

[8] The Ministry considered whether XXXX could get Temporary Additional Support (a programme that potentially provided assistance). However, it says that XXXX held cash assets of \$6,923.72, and as that was more than the \$1,095.16 limit set for the programme,¹ it prevented her getting any support under the Temporary Additional Support programme.

[9] We understand the issues are primarily legal:

[9.1] Was \$105 per week the maximum for accommodation supplement available to XXXX?

[9.2] Do cash assets of \$6,923.72 exclude support for Temporary Additional Support?

[9.3] However, it is necessary to be satisfied that XXXX did have "cash assets" as defined.

Legal provisions

Accommodation Supplement

[10] The Ministry's accommodation supplement is covered under Subpart 10 of Part 2 of the Social Security Act 2018 (the Act). Sections 65-69 are the relevant provisions. Section 65 states:

¹ On 1 April 2020 amendments to the Act increased the amount to \$1,113.36, but that made no material difference to XXXX.

65 Accommodation supplement: discretionary grant

- (1) MSD may grant a person (**P**), for the period that MSD determines, an accommodation supplement if —
- (2)
- (a) P has accommodation costs; and
 - (b) P meets the assets requirement (as set out in regulations made under section 423); and
 - (c) P is not excluded on either of the following grounds:
 - (i) the social housing exclusion:
 - (ii) the other funding exclusion.

...

[11] The Ministry has no dispute with XXXX's entitlement to accommodation supplement and paid it to her. The issue is the Act has maximum rates of payment.

[12] Schedule 4, Part 7 of the Act contains the rates of the accommodation supplement. Clause 3 is applicable to XXXX's circumstances:

- | | | |
|---|---|---|
| 3 | To any other person whose accommodation costs are rent or payments for board and lodgings | 70% of the amount by which an applicant's weekly accommodation costs exceeds 25% of the base rate, but not more than— |
| | | (a) \$165 a week, if the applicant resides in Area 1: |
| | | (b) \$105 a week, if the applicant resides in Area 2: |
| | | (c) \$80 a week, if the applicant resides in Area 3: |
| | | (d) \$70 a week, if the applicant resides in Area 4 |

[13] The Wellington urban zone where XXXX resides is Area 2 (it is set out in Schedule 4, Part 7 of the Act).

Temporary Additional Support

[14] Temporary additional support is provided for under Subpart 16 of Part 2 of the Act. The purposive provision relating to temporary additional support is as follows:²

² Section 95.

The purpose of temporary additional support is to provide temporary financial assistance as a last resort to alleviate the financial hardship of people whose essential costs cannot be met from their chargeable income and other resources, while ensuring that people seeking or granted that assistance take reasonable steps to reduce their costs or increase their chargeable incomes.

- [15] However, that is not an issue the Ministry has raised. The details of entitlement are governed by the Social Security Regulations 2018, regs 58-59.
- [16] Regulation 59(3)(e)(i) provides a single person who has cash assets exceeding the amount in clause 1 of Schedule 5 of the Act is not entitled to any Temporary Additional Support.
- [17] Regulation 60 defines cash assets for the purposes of s 96(1) as cash or assets that can be converted readily into cash.
- [18] Section 96(1) of the Act sets out the requirements of Temporary Additional Support:
- (1) A person (P) is entitled to temporary additional support if—
 - (a) P's chargeable income is less than P's essential costs; and
 - (b) P has cash assets of not more than the prescribed amount; and
 - (c) P meets any prescribed criteria and any other requirements set out in regulations made under section 428.
- [19] Clause 1 of Schedule 5 gives the asset limit for a single person without dependent children as \$1,113.36.³

The Ministry's Position

Accommodation supplement

- [20] The Ministry says XXXX received the maximum of \$105 per week, so it could not give her more money under the accommodation supplement when her rent increased.

Temporary Additional Support

- [21] The Ministry says XXXX has a BNZ savings account with a balance of \$6,923.72. This is more than the asset limit of \$1,113.36, and accordingly she is not entitled to any Temporary Additional Support.

³ As noted it has since increased to \$1,113.36.

XXXX's Position

[22] XXXX's rent has increased from \$290 per week to \$300. She is now finding it difficult to pay her rent as she has additional costs of \$30-\$45 per week due to her mental and physical conditions.

Discussion*Accommodation Supplement*

[23] Both the Ministry and this Authority are required to comply with the law. The law relating to accommodation supplement support, and Temporary Additional Support do not allow a decision based on reasonable need. It follows, that as we understand the position:

[23.1] XXXX lives in an area (Wellington), where the maximum amount of accommodation supplement was \$105 and she received that. We carefully reviewed that issue to ensure the categorisation was correct, and it is clear that the area and the level of support are correctly categorised.

[23.2] She had money in a bank account that was more than the maximum of \$1,113.36 so could not receive any Temporary Additional Support.

Conclusion

[24] The Ministry's decision was correct. The relevant legislation does not allow the Ministry to pay an accommodation supplement at a higher weekly rate than XXXX received, and her savings account excludes her from entitlement to any Temporary Additional Support.

[25] It follows we must dismiss the appeal.

DATED at Wellington 12 November 2020

Grant Pearson
Chairperson

John Ryall
Member