

[2021] NZSSAA 8

Reference No. SSA 120/19

IN THE MATTER of the Social Security Act 2018

AND

IN THE MATTER of an appeal by **XXXX** of **AUCKLAND** against a decision of the Chief Executive that has been confirmed or varied by a Benefits Review Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

J Ryall - Member

DECISION

Background

[1] XXXX (the appellant) appeals the Ministry's decision in August 2019 to assess his social housing need as one-bedroom accommodation; the appellant considers he needs two bedrooms because a Family Court Parenting Order issued on 17 December 2015 allowed him contact with his teenage daughter between one and four weeks during the long summer holidays and one week for each of the other three school holidays provided that the appellant had not consumed alcohol for 24 hours prior to contact and did not consume any during contact. When the parenting order was made, the appellant was living in Wellington and the child was living with her mother in Auckland. The contact in Wellington was to be monitored by the appellant's mother who was to pay the cost of the daughter's travel. Since that time, the appellant has moved to Auckland.

[2] A telephone conference, the second in these proceedings, was convened on 26 August 2020 attended by the appellant and his advocate, Graham Howell, and Mr Palmer, counsel for the Ministry of Social Development. At the conference the appellant said that his daughter's mother had 'gone' and his daughter was living with his mother. He said his daughter was 14; she is now 15 years old.

[3] The appellant and his advocate indicated they would get further information on the parenting order and arrangements. However, no further evidence has been filed although the appellant was given an opportunity to do so.

[4] On 2 February 2021 the Authority directed the appeal be determined on the papers unless one of the parties filed an objection by 19 February 2021. No objection was filed and therefore we have determined this appeal on the basis of the submissions and evidence that are on the file.

The issue

[5] The issue we must decide is whether the appellant is properly assessed as needing two-bedroom accommodation for the purposes of social housing. The Ministry's position is that, as he does not have a dependent child, he is eligible only for one-bedroom accommodation.

The relevant law

[6] Section 129 of the Public and Community Housing Management Act 1992 (the Act) sets out the matters that an agency providing housing under the Act may consider. The Ministerial Direction on Eligibility for Social Housing provides guidelines for the administration of the Ministry's responsibilities under the Act.

[7] The Direction defines a household as including dependent children as defined in s 3 of the Social Security Act 1964, now replaced by the Social Security 2018 Act. Schedule 2 of the Social Security Act 2018 defines a dependant child, relevant to the appellant's situation, as a child whose care is primarily the responsibility of the person.

Discussion

[8] The Parenting Order issued by the Family Court remains in force until either the appellant's daughter turns 18 or the Court varies the order. There is no evidence to suggest that this order has been varied. Therefore we are satisfied that the mother of the child has day to day care. Whether or not she exercises this right, the order remains in force. Although the appellant indicated that this arrangement has changed so that the child is now in the care of his mother, the change has not been formalised. There is nothing to suggest that the appellant is entitled to more time with his daughter than ordered by the Court in 2015.

[9] The appellant is entitled to have his daughter with him for a maximum of seven weeks per year. These circumstances do not meet the requirements in the Ministerial Direction, and the definition of a dependant child relied on in the Direction, for two-bedroom accommodation.

[10] Allocating social housing requires the needs of applicants to be prioritised in some way. Even without the guidance provided by the Ministerial Direction, we would not consider two-bedroom accommodation justified by use for seven weeks of the year.

[11] For these reasons we find that the appellant was properly assessed as needing one-bedroom accommodation at the time of his application.

Dated at Wellington this 16th day of March 2021

S Pezaro
Deputy Chair

J Ryall
Member