

**Reference no: SSAA 57/22**

**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**

**G Pearson** (Chairperson)

**R Palu** (Deputy Chairperson)

**M Dodd** (Member)

**P Singh** (Member)

**Date of Hearing:** Auckland, 15 March 2023.

**Decision:** Monday, 20 March 2023

**Representation:** XXXX in person.

Ms Holmes and Ms Veal for the Chief Executive.

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**DECISION**

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**Background**

- [1] XXXX is the principal carer for her children, she has been studying at university. She maintains an "A" grade average and is now in an honours programme. She intends to go on to complete a doctorate. Her high grades provide the opportunity for honours and post-graduate study.
- [2] This case concerns her entitlement to a childcare subsidy and the Out of School Care and Recreation (OSCAR) subsidy from 8 November 2021 to 27 February 2022.

- [3] These subsidies are available to people in a wide range of circumstances. They may be employed, in approved rehabilitation programmes, doing employment related training and other situations. In XXXX's case she relies on being in a course of study at university.
- [4] The Ministry refuses to pay the subsidies because the period of time was after the end of the second semester in 2021 and before the commencement of semester one of 2022. XXXX says she was working on her course of study at that time and should have received the support.
- [5] We have to decide whether the subsidies enabled XXXX to undertake a course of study at a tertiary educational institution.
- [6] In our view there can only be one answer to that question in XXXX's circumstances. She was not having a holiday in that period, she was working very hard to transition to her study for the following year, mindful that she needed to maintain her "A" average level of achievement. Her efforts in this period were successful, and she achieved her highest grade averages in the 2022 year, and gained access to the honours programme.

#### **The issue before the Authority**

- [7] The Authority must apply the relevant provisions of the Social Security Regulations 2018 (the Regulations). In the case of the childcare subsidy, it is regulation 33(f), and for the OSCAR subsidy it is regulation 40(d). The wording of each provision is materially identical as they relate to this case.
- [8] The specific wording is whether the subsidies would at the time "enable (XXXX) to undertake ... a course of study ... at a tertiary educational institution".<sup>1</sup>

#### **Discussion**

##### *The facts*

- [9] The facts were not particularly contentious. First, we note that the relevant period, from 8 November 2021 to 27 February 2022 followed the Auckland COVID-19 lockdown.<sup>2</sup>

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Both regulations reference a definition in Section 10(1) of the Education and Training Act 2020, however that definition relates to "secondary school", and is irrelevant to this case.

<sup>2</sup> Lockdown occurred from 17 August 2021 to 10 November 2021.

- [10] The year had been difficult for XXXX, as her children had been out of school for extended periods during the 2021 year. She had to support them so they could progress with their schoolwork. Her children have done well in tests since returning to school. In terms of her own study, the year was disruptive for XXXX too. There was a lot of distance learning, and courses changed due to the COVID status of the university faculty members. Such as mandatory isolation after infections. However, the biggest disruption for XXXX was a change from the Bachelor of Education degree (BEd) she was pursuing to a Bachelor of Arts degree majoring in education (BA). That was necessary because XXXX could not complete a BEd degree without teaching experience. Vaccination was not an option for her, and her vaccination status excluded her from gaining any teaching experience for at least two years. As a mature student with children, she could not interrupt her studies in that way. Accordingly, she found it necessary to transition from the BEd to a BA. During the period in issue, she had to manage that transition, while maintaining her high level of academic performance.
- [11] We find, without reservation, that it was essential for XXXX to have support with childcare and the OSCAR subsidy if she was to successfully manage the transition. That is because she needed first to complete assignments for the second semester of the 2021 year. She had extensions to 18 November 2021 for two assignments and completed them in that time. Then she needed to prepare for the new course work in the 2022 year. The transition did not have the continuity that would have applied if XXXX could have completed her BEd degree. XXXX did use the time available due to the childcare to complete her assignments for the previous semester and prepare for Semester one of 2022.
- [12] This case is important for XXXX. She faces the Ministry of Social Development threatening to use credit agencies to recover the support she received. That would of course have adverse effects on her and her children, likely long-lasting effects.

*The Ministry of Social Development's position*

- [13] We first consider the Ministry of Social Development's position. The Ministry has only one factor it relies on to deny XXXX the subsidies. As noted, it turns on the materially identical wording in regulations 33 and 40 of the Regulations.
- [14] The Ministry says that from the end of semester two to the start of semester one in the following year, XXXX could not have been pursuing a course of study.

- [15] The Ministry did not challenge the fact that XXXX's study was at a "tertiary educational institution".<sup>3</sup> Accordingly, the only issue can be whether XXXX was undertaking "a course of study" at the institution during the relevant period.
- [16] It appears the Ministry's position was heavily influenced by the fact that XXXX was not receiving a student allowance in the period between the end of semester two in 2021 and the beginning of semester one in 2022.
- [17] The Ministry did refer to the High Court's decision in *Chief Executive of the Ministry of Social Development v B*.<sup>4</sup> However, it relates to entitlement to an accommodation supplement and different legislative provisions. It was not evident what bearing it could have on our reasoning in the present decision.

#### *XXXX's position*

- [18] XXXX's position is straightforward. She has worked hard and successfully to improve her and her family's circumstances through education. She is undertaking a course of study at a university. The course of study is a degree, and she expects she will then go on to post-graduate study to the highest level. During the time from the end of semester two in 2021 to semester one of the following year, she was pursuing a bachelor's degree and had no qualification until she completed that. That was her course of study, and as it happened, she needed to work very intensively on her study in that period. Accordingly, she was engaged in a course of study at the time and accordingly needed childcare support.

#### *Our view*

- [19] We consider XXXX is correct, she has been and is now pursuing a course of study at university. Typically, students stop their study at the end of semester two and resume the following year. However, they are still in a course of study. However, they are not "engaged" in study during that break unless they are actively studying. There are many instances where students at tertiary institutions are studying during semester breaks. They may be completing a dissertation, undertaking summer school, or as in XXXX's case undertaking essential preparation for a change she had to make and manage seamlessly. Otherwise, she could not continue to excel in the way she had in her studies to that point. In our view, there can be no question that during the material time the subsidies

<sup>3</sup> Defined in Regulation 20 of the Social Security Regulations 2018.

<sup>4</sup> (2022] NZHC 1984.

did allow XXXX as a principal caregiver to undertake a course of study at a tertiary educational institution. The course of study was a degree level course at a university.

- [20] That conclusion does not in any way entitle students in ordinary circumstances to subsidies if they take a holiday break or are not otherwise engaged in employment or other qualifying roles. XXXX was studying, and she was entitled to the subsidies.
- [21] We have considered the Ministry's submission that XXXX should not have received the subsidies unless she received a student allowance at the time. There is no support in the Regulations for that view. On the contrary, the Regulations are intended to cover a wider range of circumstances, including people who are in fulltime employment. They do not make the subsidy contingent on a student allowance payment or entitlement, which has its own rules.

#### **Decision**

- [22] The appeal is allowed, XXXX is entitled to the subsidies. We reserve leave for either party to apply for directions regarding any issues of quantification or other matters necessary to fully resolve the appeal.

**DATED** at Auckland 20 March 2023

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**R Palu**  
Deputy Chairperson

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**P Singh**  
Member

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**M Dodd**  
Member