

[2018] NZSSAA 58

Reference No. SSA 58/18

**IN THE MATTER** of the Social Security Act 1964

**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 7 November 2018

### **Appearances**

The appellant in person

I Ji, agent for the Ministry of Social Development

## **DECISION**

### **Background**

[1] Karyn Mills (“the appellant”) appeals the decision on 18 November 2017 by the Ministry of Social Development to stop her Jobseeker Support payments (JS) from 18 October 2017 because she was absent from New Zealand.

[2] The appellant is 44 years old. She has no dependents and at the date of hearing was not receiving any financial assistance from the Ministry. She was granted JS from 12 February 2016 and an accommodation supplement from 3 February 2016. As part of her application for JS, the appellant provided a medical certificate completed by Dr Seton who stated that he was her usual doctor. Dr Seton confirmed that the appellant has Attention Deficit Hyperactive Disorder (ADHD) and can work 30 hours or more, with limitations.

The doctor described the type of work situations that would be appropriate as “something that doesn’t involve high levels of concentration, or memory as [the appellant] hasn’t been able to sustain these in the past”.

- [3] On 9 December 2016, the Ministry wrote to the appellant advising her that she needed to reapply for JS if she still required this benefit. Her entitlement to JS was renewed and she was given a letter setting out her weekly payments and the obligations associated with JS. These obligations included planning to find a suitable job, attending any job training courses or work assessments, attending job interviews, searching for jobs of at least 30 hours per week and accepting any suitable job offers and demonstrating what she was doing to find work. The letter stated that her benefit may be reduced or stopped if she did not meet her obligations without giving sufficient reason.
- [4] On 10 October 2017, the appellant notified the Ministry via MY MSD that she would be absent from New Zealand between 7 October 2017 and 17 December 2017. She indicated that the purpose of her travel was to attend a job interview or definite job prospect.
- [5] On 18 October 2017, the Ministry wrote to the appellant advising that her benefit payment had stopped because she left New Zealand. On 22 November 2017, the Ministry cancelled the appellant’s benefit because it assumed she was working and did not need financial assistance.
- [6] On 15 December 2017, the appellant sought a review of this decision. A Benefits Review Committee upheld the decision and on 7 May 2018 the appellant lodged this appeal.
- [7] In determining this appeal, we have considered all written evidence provided by the appellant including her written statement and that of her witness, Stephen Perry, as well as the Ministry’s report.

#### **Relevant law**

- [8] Section 77 of the Social Security Act 1964 (“the Act”) provides for the effect of absence of a beneficiary from New Zealand. Section 77(2) provides that:

#### **77 Effect of absence of beneficiary from New Zealand: provisions**

...

- (2) A benefit is payable to a beneficiary in respect of any 1 or more absences of the beneficiary from New Zealand equal to or shorter than 4 weeks in total in any 52-week period if—

- (a) the benefit is not a benefit of a kind specified in subsection (2A); and
- (b) the benefit would, but for those 1 or more absences, be payable to the beneficiary; and
- (c) the chief executive is satisfied that the 1 or more absences do not affect the beneficiary's eligibility for the benefit.

- [9] Section 77(2A)(b) provides that JS is included in the type of benefit referred to in s 77(2)(a).
- [10] The Social Security (Effect of Absence of Beneficiary from New Zealand) Regulations 2013 (the Regulations) are given effect by s 132 of the Act. Clause 5 of the Regulations sets out permitted reasons for absence from New Zealand. Clause 7 of the Regulations provides qualifying circumstances for discretionary payment of certain benefits during an absence of longer than four weeks per year.
- [11] The only permitted reason in cl 5 of the Regulations which could be relevant to the appellant is travel overseas to attend a job interview or follow up on a job prospect.

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

- [12] In her Notice of Appeal and written submissions, the appellant stated that she has a mental disability that greatly restricts her employment options. She stated that in order to work she requires medication or a special employer who will make allowances for her condition, or work in a suitable artistic field. She said she cannot afford the medication she requires in New Zealand as it is only prescribed by psychiatrists. As she cannot find an empathetic employer in New Zealand, she has made a career as a video freelancer.
- [13] In her written submissions and at the hearing the appellant referred to s 77(4) of the Act which she believed allowed her to have her benefit paid while she undertook training outside of New Zealand. However, as we explained at the hearing, this section does not apply to her. Section 77(4) applies in two situations only. Section 77(4)(a) applies when a person leaves New Zealand for the purpose of medical treatment; s 77(4)(b) sets out the circumstances in which a person receiving a supported living payment can receive their entitlement while overseas. As the appellant was not entitled to supported living payment, this provision does not assist her.
- [14] The appellant said that in August 2017 she was offered vocational training learning how to use professional cameras, drones, and underwater equipment

while collecting film stock in South East Asia. She contacted WINZ to discuss her situation and was told that she was eligible for benefit payments for up to two years while on vocational training, and she was told what information she needed to provide prior to her departure.

- [15] She said she followed these instructions and provided all relevant details but heard nothing from WINZ. She claims that all her correspondence was ignored until the Benefits Review Committee hearing. The appellant said that, had she been forewarned, she would not have embarked on the project.
- [16] She stated that she has been fighting to get her benefit resumed since August 2017, had borrowed money from her tutor and was trapped in Malaysia deeply in debt with no way of getting home.
- [17] The only documentary evidence which the appellant produced, in addition to the documents in the Ministry's report, was the statement of Stephen Perry and a medical certificate issued on 4 October 2018. This certificate is not relevant to this appeal as the decision we need to make is whether the appellant was entitled to JS when she left the country on 18 October 2017. However, we note that as in 2017, the 2018 medical certificate stated that the appellant was able to work 30 hours or more with limitations on the type of work.
- [18] Mr Perry was not available for examination. He describes himself as the appellant's guardian, and life manager. In evidence, the appellant said Mr Perry is also her cousin and the person who provided the training she undertook overseas.
- [19] In his statement, Mr Perry gave a detailed description of what he said is the appellant's severe ADHD disability. He described her behaviour, functioning ability, response to medication, ability to work and his role in managing her life. He concluded by stating that the appellant is clinically disabled and was out of the country "training for the vocation I sincerely believe she will be successful in".
- [20] Mr Perry did not qualify himself to give this evidence. He stated that he has previously been employed as a wholesale travel agent.
- [21] Ms Ji referred the appellant to the copy of her one-way ticket from New Zealand on 17 October 2017 to Bangkok. She asked the appellant about the date she booked her travel. The appellant confirmed that, as shown on the

ticket, she paid for this ticket on 31 July 2017. In answer to Ms Ji, the appellant confirmed that she left New Zealand for training.

### **The case for the Chief Executive**

- [22] The Ministry submits that as the appellant was a JS beneficiary she was required to comply with the work test obligations from the time that her payment commenced. When the appellant indicated that the reason for her trip was a job interview or definite job prospect, the Ministry asked for further information to confirm that her absence from New Zealand was solely to attend a job interview or follow up on a job prospect.
- [23] The Ministry says that despite requesting relevant evidence to support the appellant's application, it did not receive any response in writing. Ms Ji said that the appellant confirmed in writing and at the hearing that the purpose of her travel was training which is not within one of the exceptions allowing payment of JS overseas.
- [24] Ms Ji also said that the Ministry has no record of having given the appellant advice that she was entitled to JS for two years while travelling. Ms Ji submitted that the fact that the appellant booked and paid for her one-way flight before she contacted the Ministry, demonstrates that she did not seek any information on her entitlement before she decided to travel.

### **Discussion**

- [25] The appellant left New Zealand in October 2017 for training. At that time, the benefit she received was JS. As there is no provision for JS to be paid to a person who leaves New Zealand to undertake training, we find that the appellant was not entitled to this benefit from 18 October 2017.
- [26] We do not accept the appellant's submission that she was given incorrect advice, or no advice, by the Ministry before she decided to leave New Zealand. The date on which she purchased her ticket is prior to any record of her contacting the Ministry in relation to her departure and before the time when she says she sought advice, in August 2017.
- [27] The appellant has focused her evidence on her medical condition, however this is not relevant to the issue on appeal which is whether she was entitled to JS when she left New Zealand. The reason for her departure is only relevant to the extent that it falls within one of the exceptions allowing payment of JS to a person outside of New Zealand — attending a job interview or accepting a

job offer. Once the appellant established that she left New Zealand to undertake job training, she did not meet the criteria for entitlement to JS. Her reasons for pursuing overseas training therefore are irrelevant.

[28] For these reasons, the appellant's entitlement to payment of JS ceased on 18 October 2017 due to her absence from New Zealand.

**Order**

[29] The appeal is dismissed.

**Dated at Wellington** this 19<sup>th</sup> day of November 2018

**S Pezaro**  
Deputy Chair

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**K Williams**  
Member

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**C Joe**  
Member