

[2019] NZSSAA 02

Reference No. SSA 028/18

**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 Wellington on 11 January 2019

### **Appearances**

The appellant in person

R Shaw for the Ministry of Social Development

## **DECISION**

### **Background**

- [1] XXXX (the appellant) appeals the decision of 2 June 2017, upheld by a Benefits Review Committee, to decline his application for financial assistance to attend a four-week course, Cambridge Certificate in English Language Teaching to Adults (CELTA), offered at Languages International in Auckland.
- [2] The associated costs are \$3,300 in course fees, \$1,200 in accommodation and \$250 in transport costs.
- [3] The appellant is 53 years old and receives a supported living payment (SLP) and disability allowance (DA). The medical condition that qualifies him for SLP according to a medical certificate dated 30 March 2016 is attention deficit

hyperactive disorder, anxiety with depression. The disability allowance is paid because of other psychological conditions, stress, and bipolar.

- [4] The appellant has a Bachelor of Arts Education and a Master of Arts. He received course participation assistance in 2010, 2014, and 2015. In November 2017 he received assistance of \$997 to complete a two day effective speaking course.
- [5] When the appellant applied for CELTA he stated that he was receiving income from Victoria University of \$82.24 per week. He recorded his employment history with the university as tutor, mentor, programming course coordinator, research assistant, consultant, and lecturer.
- [6] The reason given by the Ministry for declining the appellant's application was that the course fees exceeded the limit of \$1,000 as provided in the schedule to the Employment and Work Readiness Assistance Programme (EWRAP) and there was no discretion to exceed this limit.

#### **Relevant law**

- [7] Section 124(1)(d) of the Social Security Act 2018 (the Act) provides that the Minister for Social Development may establish and approve a welfare programme for special assistance, EWRAP. The schedule to the Regulation provides the type of assistance that can be provided. Clause 3 of the Schedule provides the level of assistance that can be given for education and employment related training.
- [8] Clause 3(a) states that actual and reasonable fees not exceeding \$1,000 in a 52-week period may be paid for short term employment-related training. Short term training is defined in the guidelines as being employment related and not more than 12 weeks' duration.
- [9] The Training Incentive Allowance guidelines which have been incorporated into the EWRAP guidelines provide that assistance cannot be provided for Level 4 qualifications and above.

#### **Case for the appellant**

- [10] The appellant's submissions focus on the suitability of the CELTA course for him and the unfairness of the process followed by the Ministry in considering

his application, conducting the review of his decision, and instructing a solicitor to appear for the Ministry on appeal.

- [11] The appellant states that the Ministry did not properly consider the provisions of EWRAP relating to purpose, interpretation, eligibility and discretion. He says that it is 18 years since he last graduated and he needs practical experience and updated educational knowledge to be eligible for employment. He argues that the Ministry has ignored his status as a person with a neurological disorder and psychiatric illness.
- [12] The appellant says he has been seeking supported full-time work since 2015 and wants to increase his knowledge and experience in order to obtain worthwhile employment. He says the CELTA programme is ideal because it has a ratio of one tutor to every three students and incorporates actual teaching practice. There is one-to-one guidance and mentoring which makes the programme suitable for a person with ADHD.
- [13] In relation to the review conducted by the Benefits Review Committee the appellant states that the panel ignored his life situation and his disabilities. However, as explained to the appellant, the Authority does not have jurisdiction to review the Benefits Review Committee process. The purpose of the Authority is to rehear his application for assistance, investigate the circumstances and make the decision based on the facts of the appellant's case and the relevant law.
- [14] As far as the Ministry's decision to instruct one of its solicitors to appear at the hearing, the Ministry is entitled to instruct a lawyer, as is the appellant. We do not accept that the appellant is disadvantaged by this decision as it is the role of the Authority to ensure that every appellant understands the process of the appeal and has an opportunity to provide all relevant evidence, both before and at the hearing.
- [15] In his submissions filed on 8 January 2019, the appellant further addressed his eligibility for EWRAP. He did not address the restrictions in the on funding short-term courses, however, at the hearing he submitted that funding could be approved as an incentive payment of up to \$5000 under cl 6A of the schedule to EWRAP. He also said that he would attend the equivalent course in Wellington as that would reduce the cost.

[16] The appellant did not accept that EWRAP contains any requirement for courses to be at a certain NZQA level or that the CELTA course has been assessed as Level 5, as the Ministry submits.

### **Case for the Ministry**

[17] The Ministry submits that the nature of the assistance provided by EWRAP is to assist with the costs of work-related training or education. The Ministry submits that the assistance that the appellant requested was for short term training courses and this type of assistance is provided for in Clause 3 of the Schedule 2 EWRAP. Clause 5 of the Schedule provides the level of financial assistance that can be paid to an eligible person. Short term employment-related training course is defined in Clause 4 of EWRAP as a course of employment-related training of not more than 12 weeks' duration. Therefore the Ministry argues that the CELTA course fell within the short-term definition and the appellant's request for \$3,300 for course fees could not be granted because there was no discretion to exceed the limit in Clause 3(a) of the EWRAP Schedule.

[18] The Ministry also says that as the CELTA course was at Level 5 of NZQA it was not eligible for funding. The Ministry cites a decision of the Authority in 2016.<sup>1</sup> The appellant had applied for assistance to enrol in a Level 4 NZQA course of study and the Authority considered whether the guidelines for providing employment or work readiness assistance were inconsistent with EWRAP. The Authority concluded that restricting assistance primarily to low level qualifications was not inconsistent with the intention of EWRAP which is to assist the greatest number of beneficiaries seeking enrolment in appropriate courses.

### **Discussion**

[19] The Ministry accepts that the appellant meets the threshold criteria for consideration for assistance, as set out in Clause 6 of the EWRAP. The question is whether his application for the CELTA course meets the criteria for assistance.

[20] The CELTA course is a short-term course as defined by EWRAP and the amount of funding that can be provided for such a course is clearly limited to \$1000. As there is no apparent discretion to exceed this amount, we

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<sup>1</sup> [2016] NZSSAA 096.

conclude that the appellant is not entitled to funding for the CELTA course under this provision.

[21] We then considered whether the assistance sought by the appellant fell within the definition of an incentive payment. The appellant argues that cl 6A(f) of the schedule to EWRAP which provides for a payment to 'enter into study or employment-related training' allows the Ministry to provide him with an incentive payment for the CELTA course. However, the criteria in cl 6A of the schedule, which provides for incentive payments, relate either to accepting a specific employment offer or to employment-related training.

[22] In our view, the CELTA course is not employment related because, while it provides a qualification, it is not a requirement for any particular occupation. We consider that in the context of the other criteria in cl 6A, an incentive payment intended to facilitate study or employment-related training must be intended to provide assistance for more targeted training than CELTA.

[23] We are satisfied that CELTA falls within the category of a short-term educational course. It is not the type of programme or activity which can properly be considered as qualifying for an incentive payment.

[24] For these reasons, we conclude that the appellant is not entitled to funding for the CELTA course.

**Dated at Wellington** this 15th day of January 2019

**S Pezaro**  
Deputy Chair

**K Williams**  
Member

**C Joe**  
Member