IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2018-404-2129
[2020] NZHC 852

UNDER	the Judicial Review Procedure Act 2016
IN THE MATTER	of an examination of the accuracy of the methodology and practices used by the Ministry of Social Development in their calculation of Disability Allowance and Temporary Additional Support
BETWEEN	LILLIAN ALICE TAYLOR Applicant
AND	THE ATTORNEY-GENERAL ON BEHALF OF THE MINISTRY OF SOCIAL DEVELOPMENT Respondent

Hearing:	24 April 2020 (by telephone)
Appearances:	No appearance by or on behalf of Applicant M Bryant and L MacKay for Respondent
Judgment:	30 April 2020

JUDGMENT OF BREWER J

This judgment was delivered by me on 30 April 2020 at 3:00 pm pursuant to Rule 11.5 High Court Rules.

Registrar/Deputy Registrar

Solicitors:
Crown Law, Wellington

Introduction

[1] Ms Taylor represents herself in a proceeding which she describes as an application for judicial review. The Court has done its best to assist her to clarify her claims and to bring them within the procedural requirements of the High Court Rules. As will become apparent, that effort largely failed.

[2] Ms Taylor's case is that the methodology used to calculate her Disability Allowance and Temporary Additional Support payments is wrong and unlawful. Her application for judicial review of decisions going to the calculation of her entitlements was given a hearing date of 24 April 2020. Due to the Covid-19 pandemic lockdown, counsel and Ms Taylor were to address the Court via telephone. Ms Taylor rejected this mode of hearing and refused to participate.

[3] At the hearing, once it was established that Ms Taylor could not be contacted, I suggested to Mr Bryant, counsel for the respondent ("the Ministry"), that I decide the case on the papers. Mr Bryant readily agreed.

Procedural background

[4] The Court first heard from Ms Taylor on her concerns about the calculation of her entitlements (which are focused on her entitlement to payment for additional electricity usage resulting from her disability) on 19 May 2016. Ms Taylor, by way of a case stated against a decision of the Social Security Appeal Authority ("the Authority") made her argument to Whata J. Justice Whata found against Ms Taylor.[1] Ms Taylor's application for leave to appeal Whata J's decision was subsequently declined by the Court of Appeal.[2]

[5] Ms Taylor commenced her current proceeding in October 2018. Originally she sued five respondents. All applied to have her claims struck out. Their applications were heard by Edwards J on 9 May 2019.[3] Justice Edwards gave comprehensive

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1 *Taylor v Chief Executive of the Ministry of Social Development* [2016] NZHC 1160.
2 *Taylor v Chief Executive of the Ministry of Social Development* [2016] NZCA 489.
3 *Taylor v Social Security Appeal Authority* [2019] NZHC 1718.

attention to Ms Taylor's case. I quote the Judge's description of events following Whata J's decision:

> [17] Ms Taylor's Temporary Allowance Support payment was reviewed again in 2016. On 29 September 2016, her additional power costs were removed from the calculation of her Disability Allowance payment. The Ministry determined that Ms Taylor was not using more electricity than the 'normal' group she was being compared with in the Powerswitch calculator.
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> [18] Ms Taylor applied to the Benefits Review Committee for a review of that decision. The Ministry acknowledged it had made an error in its earlier assessment and re-assessed Ms Taylor's entitlements in accordance with the 15 per cent of total usage methodology adopted by the Authority in 2015 and upheld by the High Court and Court of Appeal. That decision was communicated to Ms Taylor in letters dated 31 October 2016 and 22 November 2016. In the latter letter, the Ministry said:
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> > As you have already indicated that you do not consider that this change would settle the matter your review application will continue to the Benefits Review Committee for a hearing. You will need to show that there has been a change in your circumstances which makes the assessment in power costs in your current situation different to your situation as dealt with in the Social Security Appeal Authority, High Court and Court of Appeal rulings.
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> [19] Ms Taylor was still dissatisfied. On 21 February 2017, she sought a review of the Ministry's re-assessment of her power costs. Ms Taylor stated that her power usage had increased by 9.6 per cent, and her Disability Costs Allowance should be increased to reflect this.
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> [20] On 22 June 2017, the Benefits Review Committee overturned the Ministry's 29 September 2016 decision (based on the Powerswitch calculator) and recommended that Ms Taylor's additional power costs be calculated using the 15 per cent of total use methodology earlier applied.
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> [21] Ms Taylor lodged an appeal with the Authority on 18 October 2017. On 30 January 2018, the Authority convened a pre-hearing telephone conference and gave directions as to the progression of the appeal. The minute from that telephone conference records:
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> > [5] I note that at the telephone conference I explained to Ms Taylor that the Authority is bound by the decision of the High Court on her unsuccessful appeal against a decision of this Authority in 2016. That appeal raised one of the same issues Ms Taylor raises in this appeal, the way the Ministry calculates her power related disability costs. It appears from Ms Taylor's submissions to date and the witnesses that she intends to call that she is advocating for the same calculation methods that were not accepted by the High Court although she is contending that different circumstances now apply.
> >
> > [6] In upholding the decision of the Authority and finding that it was not required to follow the MaP process for which Ms Taylor continues to advocate, Whata J observed that the Authority has a broad discretion to set a disability allowance that is fair and practicable.

> [7] At the conference Ms Taylor said that she did not accept that the Authority is bound by that decision. *However, as I explained to her, the High Court decision is binding on the Authority whether or not she accepts it. Therefore, raising the same arguments before this Authority will have a predictable outcome.*
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> [footnotes omitted and emphasis added]

> [22] A hearing of the appeal was set down for 5 December 2018. However, Ms Taylor withdrew her appeal on 27 November 2018 and the hearing did not proceed.
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> [23] Since then, Ms Taylor has continued to challenge the calculation of the payments she receives. She says that she has been told by the Ministry that they "refuse to reassess my [Temporary Additional Support payment] by any method other than the 15 per cent awarded by the Ministry". She has been told by the Ministry that the matter is *sub judice* because it is bound by the High Court decision. Her payments have not been reassessed since 2018.
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> [24] Ms Taylor complained about the way her allowances were calculated, and other matters, in letters to the Minister and the Ombudsman. The responses to these letters form the basis of the judicial review proceedings against the Minister and the Ombudsman.

[6] Justice Edwards struck out Ms Taylor's claims against all but the Authority and the Ministry.[4]

[7] Justice Edwards noted:

> [26] The statement of claim itself is lengthy and difficult to follow. At Fitzgerald J's direction, Ms Taylor filed a "decisions document" that identifies the decisions the subject of challenge. That document provides some assistance in navigating the pleading and understanding the nature of the challenges made…

[8] Justice Edwards identified the most salient failures by Ms Taylor to properly particularise her claims but considered Ms Taylor should be given the opportunity to re-plead. Accordingly, Edwards J directed:

> [71] By **4.00 pm, Friday, 23 August 2019**, Ms Taylor shall file an amended pleading that is consistent with the findings made in this judgment, and addresses the issues set out at [41] to [48] of this judgment. The amended statement of claim shall also comply with the requirements set out in the High Court Rules. It is of course a matter for Ms Taylor herself, but given the complex nature of the claim, and the skill involved in pleading a claim for judicial review, she is urged to consider obtaining some legal assistance with progressing her claim.

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4 Ms Taylor was granted leave to discontinue her claim against the Authority by Woolford J on 10 February 2020: see [21].

[9] Ms Taylor did not obtain legal assistance and did file further documents.

[10] Ms Taylor filed an amended statement of claim on 10 September 2019 but it was still not clear what decisions were challenged and why. By Minute of 12 September 2019, Palmer J directed a new amended statement of claim be filed by 19 September 2019.

[11] In a lengthy Minute dated 24 October 2019, Palmer J noted Ms Taylor had filed an amended statement of claim as directed. Justice Palmer said in his Minute:

> [6] At the call of the matter in the Judicial Review List, Ms Taylor confirmed that it is the decision of 29 September 2016 that she seeks to challenge. She submits it was only partially overturned because she asked for a review of two aspects of it and only one was addressed. She points to paragraph [10] of her affirmation. Ms Taylor wants the Court to acknowledge the original decision was incorrect or to order a new assessment. She says she can try to amend the statement of claim again but she does not think much would change…

[12] Justice Palmer went on to say:

> [7] I am reluctant to ask Ms Taylor to file a further amended statement of claim as I consider she is likely to have done the best she can to formulate this one. I am also reluctant to timetable another application for strike out. The process for applying for judicial review is supposed to be simple, untechnical and prompt. This claim was filed over a year ago. It has already been the subject of a strike-out application, which partly succeeded. If the existing statement of claim can be interpreted to contain an identifiable claim, the substantive claim should be heard.
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> [8] I consider it is clear enough that the current amended statement of claim seeks to litigate the following issues that they can be the subject of evidence and submissions at a substantive hearing:
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> (a) Did the Authority pre-determine Ms Taylor's appeal in its pre-hearing direction on 30 January 2018? Edwards J held this was reasonably arguable. The claim remains in the amended statement of claim. Ms Taylor does not explicitly seek relief for this claim. But, as she said at the call before last in the List, and my interpretation of paragraph [8.7] of her memorandum of 22 October 2019, she can be taken to be seeking to have the decision quashed and her appeal considered by the Authority.
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> (b) Did the Ministry's decision, communicated on 31 October and 22 November 2016, applying the 15 per cent methodology, overlook relevant considerations, take into account irrelevant considerations or fetter its discretion? In particular, did the Ministry fail to follow its own internal procedures, because the 15 per cent methodology had not become part of its MAP process and did it fail to make allowance for

> daily line charges and assume prompt payment of power bills? It is sufficiently clear Ms Taylor is challenging this decision, not only the 29 September 2016 decision. Edwards J identified fettering discretion as a potential ground of review. Ms Taylor put it somewhat differently in the amended statement of claim. But her memorandum of 22 October 2019 effectively makes that claim in submitting the Ministry was wrong to reapply the 15 per cent methodology which had been set down for an earlier period and specific amount of usage.
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> (Footnotes omitted)

[13] The case came before Palmer J again for callover on 7 November 2019. In his Minute of 8 November 2019, Palmer J records:

> [4] Ms Taylor disagrees with my 24 October 2019 minute about what the issues are in her statement of claim. She has now filed an "amended updated summary of decisions subject to challenge" and a further "final amended statement of claim", both dated 4 November 2019. The summary of decisions subject to challenge derives from Fitzgerald J's directions in a minute of 22 November 2018. The final amended statement of claim says it is "in addition to the statements of claim already filed". The Crown considers issues raised in Ms Taylor's latest amended statement of claim and amended summary of challenged decisions are outside the scope of the issues identified in the 24 October 2019 minute. It wants to know to which statement of claim it has to plead. Ms Taylor initially said "all of them" but, when pressed, identifies her latest "final amended statement of claim", of 4 November 2019.

[14] Justice Palmer directed the Ministry to prepare a statement of defence responding to the statements of claim of 19 September 2019 and 4 November 2019 having regard to the summaries of decisions to be challenged dated 23 October 2019 and 4 November 2019. However, the Judge stated that the issues he identified in his Minute of 24 October 2019 are the issues to be determined at the hearing, under s 14(2)(a) of the Judicial Review Procedure Act 2016. He added:

> [5] No doubt, at the substantive hearing, the parties will make their own submissions about the issues I identified, which the Judge at the substantive hearing can consider.

[15] Justice Palmer set the hearing date as 24 April 2020 and made a detailed timetable order.

[16] By Minute dated 4 February 2020, Palmer J addressed "points that arise from the minor deluge of memoranda filed in advance of [the hearing date], in order that the hearing may proceed more smoothly".

[17] Justice Palmer noted that the close of pleadings date was 20 December 2019. On 19 December 2019, Ms Taylor attempted to file, electronically, an amended statement of claim and then a hard copy on 23 December 2019. The registry returned the hard copy version and Ms Taylor filed an application that the amended statement of claim be accepted. Ms Taylor had also re-filed another copy of the amended statement of claim, dated 17 January 2020, which the registry received on 23 January 2020. Justice Palmer gave leave for the copy of the amended statement of claim received on 23 January 2020 to be filed and directed it would be the version which would be the subject of the proceeding.

[18] Justice Palmer also recorded his understanding that the only outstanding interlocutory application to be dealt with in a hearing scheduled for 10 February 2020 was an application by Ms Taylor for leave to apply for summary judgment against the Authority and the Ministry.

[19] It fell to Woolford J to preside at the hearing on 10 February 2020. In his Minute, Woolford J records Ms Taylor was not in a position to proceed with her application for summary judgment. Ms Taylor pointed to an application for discovery which she had made on 17 January 2020 and in respect of which she had not yet received the documents sought. Ms Taylor also considered the Ministry needed to file a statement of defence to her current amended statement of claim before she could argue her summary judgment application.

[20] When Woolford J pointed out there would be no time for a separate summary judgment hearing before the substantive hearing scheduled in April, Ms Taylor accepted that her summary judgment application would not proceed.

[21] I note that Ms Taylor had previously filed a notice seeking leave to discontinue her claim against the Authority. The Authority and the Ministry consented and leave was granted by Woolford J accordingly. That left the Ministry as the sole remaining respondent.

[22] By Minute of 1 April 2020, Lang J directed the hearing would proceed by way of telephone.

[23] On 3 April 2020, Ms Taylor applied for the hearing to be adjourned. Essentially, she said she was not ready for a number of reasons including lack of access to the Court file and unsatisfactory discovery. The Ministry opposed the application.

[24] By Minute of 7 April 2020, Lang J said:

> [2] Having reviewed the file I consider it is important that the proceeding be disposed of as soon as possible. For that reason I confirm that the fixture will proceed on 24 April 2020. The Judge will be present in the courtroom in Auckland with a Registrar, but counsel and Ms Taylor will attend by way of telephone. The Registrar will make contact with Ms Taylor and counsel for the respondent by telephone at 10 am on 24 April 2020.

[25] On 21 April 2020, Ms Taylor again applied for an adjournment. Her grounds included that the Covid-19 lockdown meant that she could not leave her home to complete the common bundle and that appearing via telephone would not permit her to present her case adequately:[5]

> 2.3 I am unable to attend court in person; I am unable to have the case heard by a jury; I am unable to show the court the workings of the Powerswitch website calculator; I am unable to present the court with any sort of PowerPoint or whiteboard presentation, and I am unable to call witnesses under the current protocols.

[26] This was never a jury trial and no witnesses were to be called. The working of the Powerswitch website calculator had been described in detail in the papers including in the decision of Whata J, the decision of Edwards J and in the documents filed by Ms Taylor

[27] The next day, 22 April 2020, Ms Taylor filed a memorandum saying she would not take part in the hearing:[6]

> 1. Pursuant to High Court Rules 7.5(3), 7.6(4A)(b), 7.7(2)(b)(c) and 9.71, The New Zealand Bill of Rights Act 1990 s27, The Human Rights Act 1993 21(1)(h)(viii)(i), 21(1)(i)(i), and Courts of New Zealand: High Court: COVID-19 Protocol, 9 April 2020, 8 April 2020, Update as at 2 April, 2 April 2020, 25 March 2020, and 18 March 2020, I advise that I will not be available to take part in a telephone conference of the substantive matter at 10am on 24 April 2020, as the timing and manner of the hearing as set down is in breach of my human rights.

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5 Interlocutory application for orders for adjournment and timetabling, dated 21 April 2020.
6 Memorandum of applicant, dated 22 April 2020.

> 2. I will be available once New Zealand returns to Level 1 of the Covid-19 Regulations and I am able to view the file so that I can properly prepare the common bundle.
>
> 3. I anticipate that I will need approximately 4 months of research time (the amount allowed by Palmer J in his original timetabling) between the country's return to Level 1 and my viewing of the file, and the production of the common bundle.

[28] I considered the hearing should proceed. A hearing by telephone was necessary because of the Covid-19 Level 4 restrictions. If the potential problems identified by Ms Taylor in her application of 21 April 2020 proved to be real and significant then steps could be taken to address them, including adjourning the hearing part-heard.

[29] Having received Ms Taylor's 22 April 2020 memorandum, and on the same day, I directed the registry to advise Ms Taylor and counsel for the Ministry that the hearing would proceed. Ms Taylor, as I have said, did not appear.

The issues

[30] Like Edwards J and Palmer J, I have difficulty identifying justiciable issues on judicial review because of the way Ms Taylor has expressed her claims. In her "Statement of Claim (Supplementary and Updated) (Re-Filed)" (filed on 23 January 2020 and accepted for filing by Palmer J), Ms Taylor says:

> This claim does not replace my further amended statement of claim of the 19 September 201[9] and the final statement of claim of 4 November 201[9], and is to be attached to them.

[31] I have read those documents and Ms Taylor's summaries of decisions to be challenged dated 23 October 2019 and 4 November 2019.

[32] I have sympathy for Ms Taylor. She is a beneficiary with physical disabilities aged in her 70s. She regards the Ministry as an indifferent bureaucracy which will not listen to her. I do not discount the significance to her of even one or two dollars a week of income. Further, Ms Taylor has tackled the challenges of bringing this proceeding with great industry and tenacity. But, the Ministry is entitled to know the case against it and to know what to respond to. The Court is entitled to a coherent claim that identifies justiciable issues and the relief sought. In short, Ms Taylor is

bound to comply with the High Court Rules which regulate the form and content of pleadings. Ms Taylor's documents do not comply with the High Court Rules and do not coherently identify justiciable claims and the relief sought.

[33] If it were not for the following, I would strike out Ms Taylor's claims for breach of the High Court Rules:

(a) The judgment of Edwards J in which the Judge declined to strike out all of Ms Taylor's claims against the Ministry because the Judge discerned possible grounds for judicial review which might be justiciable if pleaded adequately;

(b) Justice Palmer's identification of issues that he considered should be heard;

(c) The Ministry has filed a statement of defence, and submissions addressing Palmer J's formulation of the issues.

[34] I discern that much of Ms Taylor's documentation relates to her dissatisfaction with the decision of the Ministry of 29 September 2016 to remove her additional power costs from the calculation of her Disability Allowance payment on the basis that Ms Taylor was not using more electricity than the single 'normal' group she was being compared with in the Powerswitch calculator. However, the Ministry quickly acknowledged it had made an error and reassessed Ms Taylor's entitlements in accordance with the methodology upheld by Whata J. Therefore, the decision of 29 September 2016 is spent. It has no effect on Ms Taylor. It does not matter that the decision might have failed to address all of Ms Taylor's arguments on the use of the Powerswitch calculator. If the process by which the Ministry consulted with Ms Taylor prior to making its decision of 29 September 2016 was flawed, that does not provide a ground for judicial review either. The decision of 29 September 2016 was acknowledged to be wrong and was superseded by the Ministry's October 2016 decision.

[35] In my view, it is the October 2016 decision which can be examined on judicial review. I adopt Palmer J's formulation of the issues:

> Did the Ministry's decision, communicated on 31 October and 22 November 2016, applying the 15 per cent methodology, overlook relevant considerations, take into account irrelevant considerations or fetter its discretion? In particular, did the Ministry fail to follow its own internal procedures, because the 15 per cent methodology had not become part of its MAP process and did it fail to make allowance for daily line charges and assume prompt payment of power bills?

Discussion

[36] A focus of Ms Taylor's complaint about the October 2016 decision is that it is wrong. An outcome can be relevant in judicial review if it is based on an error of fact, or if it is so perverse it cannot be allowed to stand. Nothing in the evidence establishes either ground of relevance. The Ministry applied the methodology approved by Whata J.

Relevant considerations

[37] The Ministry was obliged to consider matters relevant to the exercise of its power to determine Ms Taylor's benefit entitlements. Specifically, the Ministry had to correctly determine the extent to which Ms Taylor has "additional [power costs] of an ongoing kind arising from [her] disability".[7]

[38] I accept the following submission from Mr Bryant:[8]

> 42. Pursuant to the Act the Ministry must determine the extent to which the individual circumstances of a person with a disability result in that person incurring power costs which exceed those of a person without a disability or health condition. However, the Act does not specify how an applicant's additional power costs must be calculated. It is Ms Taylor's individual circumstances that are relevant to the Ministry's decision.

[39] I have read the affidavits of Ms Jennifer Allan filed by the Ministry. I accept Mr Bryant's summary of the Ministry's method as accurate:

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7 Social Security Act 1964, s 69C(2A)(a).
8 Submissions of the respondent, dated 16 April 2020.

> 43.1 The Ministry compared the total cost of Ms Taylor's power usage with the appropriate range of power costs on the Powerswitch website. This resulted in the removal of Ms Taylor's power costs from her disability allowance costs (as communicated in the September 2016 decision).
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> 43.2 The Ministry considered the information available to it at the time about Ms Taylor's level of disability and her need for additional power.
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> 43.3 The Ministry considered the application of the Authority's 15% of total power usage methodology which Whata J stated "involved identifying [Ms Taylor's] specific needs and fixing an amount by reference to them".
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> 43.4 Having taken into account Ms Taylor's circumstances, in particular Ms Taylor's failure to evidence any change in circumstances since the Authority's April 2015 decision, the Ministry considered whether a departure from the 15% of usage methodology was justified.

[40] The reference to "Ms Taylor's failure to evidence any change in circumstances" is important. If Ms Taylor had provided the Ministry with evidence of a change in her circumstances which might affect the calculation of her entitlements then it would be an error for the Ministry not to take them into account.

[41] There are three documents relevant to this issue:

(a) The letter from the Ministry to Ms Taylor dated 31 October 2016 in which the Ministry advised Ms Taylor of the outcome of the review of her Disability Allowance and Temporary Additional Support. The letter contained this paragraph:

> Please tell us straight away about any changes in your circumstances that could affect your payments, such as Income or living arrangements, so we can make sure you are receiving the right payments. You can find examples of what can affect your payments in the 'general information' section at the back of this letter.

(b) The Ministry's letter of 22 November 2016 to Ms Taylor advising her of the outcome of the Ministry's internal review of the decision set out in its letter of 31 October 2016:

> Your application for a Review of Decision.

> We have completed an Internal review of the decision to reassess your allowable costs for our Disability Allowance as totalling $102.83 per week resulting in a Disability Allowance payment at the maximum rate of $61.69 and a Temporary Additional Support payment of $60.67 per week.
>
> We found that the decision needs to be changed. This means that we have now reassessed your allowable costs for our Disability Allowance as totalling $106.75 per week resulting in a Disability Allowance payment at the maximum rate of $61.69 and a Temporary Additional Support payment of $64.49 per week. This correction was made to align the decision with the recent decisions of the Social Security Appeal Authority, High Court and Court of Appeal.
>
> As you have already indicated that you do not consider that this change would settle the matter your review application will continue to the Benefits Review Committee for a hearing. You will need to show that there has been a change in your circumstances which makes the assessment in power costs in your current situation different to your situation as dealt with in the Social Security Appeal Authority, High Court and Court of Appeal rulings.

Included with the letter was a copy of the Ministry's report to the Benefits Review Committee. The report, which is comprehensive, contains the following paragraph:

> The Applicant has not established any change in her circumstances which would suggest that her situation now differs from her situation when the Social Security Appeal Authority, High Court and Court of Appeal decisions about the calculation of her Disability Allowance extra power costs were made.

At the conclusion of the report there is the following passage:

> Until the Applicant provides the verification of power costs as requested which would enable the Ministry to follow the directive of the Social Security Appeal Authority, the High Court and the Court of Appeal in assessing Disability Allowance extra power costs in the Applicant's case the Ministry can only estimate these costs.

(c) In a letter dated 22 June 2017 to the Benefit Review Committee, the Ministry advised it had received further submissions from Ms Taylor. The letter summarised the issues raised by Ms Taylor. The letter contains the following passages:

> The Ministry further noted that the Social Security Appeal Authority had recently assessed the extra power cost for the Applicant at 15% of total power costs and this decision was subsequently upheld by the High Court who at [35] gave the basis for the 15% calculation, The Ministry considered that as the Applicant still lived alone at the same address, there would be no substantial change to her circumstances, so an assessment of her extra power costs at 15% of her total costs was still appropriate. The Ministry therefore changed the assessment of the cost of extra power/heating from $0 to $3.92. This was based on the same incomplete evidence which the Applicant provided for the original assessment. The Ministry stated that this position may not be correct, and that the Ministry would reassess this position once the Applicant provided the evidence needed.
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> The Applicant however requested that the decision continue to the Benefit Review Committee because she does not consider this outcome to reflect the true costs of her extra power usage. She has stated in submission 3 on page 7 that her cost of extra power should be assessed at $5.50 per week or $5.83 per week, and in submission 5 on page 11 that her cost of extra power should be assessed at $5.50 per week.
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> The Applicant has stated that her circumstances have changed from the time of the Social Security Appeal Authority hearing, In submission 3, page 2 the Applicant has stated that her power use has increased by 9.6%. In submission 4, page 3 and in submission 5, page 5 she states that the change is due to no longer being able to turn her hot water heating off during the day. As far as the Ministry is aware, the Applicant has provided no proof of this. As the Applicant has herself recognised in submission 4 on page 90, verification is required if an expense has increased.
>
> As noted above, the Benefit Review Committee is required to reconsider the decision being reviewed by considering how the evidence of the Applicant's circumstances aligns with the requirements of the Social Security Act 1964.

[42] Ms Taylor does not allege she provided the Ministry with evidence of a change in her power usage (as opposed to assertions) which should have resulted in a changed outcome. As I have said, much of her focus is on the earlier decision of September 2016.

[43] The Ministry has an internal document called Manuals and Procedures (MAP or MaP). It is a guidance document and contains a seven-step formula for assessing a person's additional power costs arising from their disability. The formula compares a

person's actual power usage to an estimate obtained from Consumer New Zealand's Powerswitch website of the normal power usage of a similar sized household.

[44] Ms Taylor argues that the Ministry misused the MAP in calculating her power usage. Ms Taylor also appears to argue that use of the MAP is compulsory and so the Ministry was obliged to use it properly. Therefore, the 15 per cent calculation methodology approved by Whata J and used by the Ministry in its October 2016 decision was not available to the Ministry.

[45] Section 69C of the Social Security Act 1964 confers on the chief executive a discretion to grant a Disability Allowance. There is no obligation on the Ministry to apply the MAP guidance formula. It is one method of calculating a Disability Allowance. It is a method the Ministry found inappropriate for use in Ms Taylor's case. I respectfully agree with Whata J as to the status and operation of the MAP:

> [34] This complaint also has insurmountable hurdles to overcome. First, the Authority is not expressly bound by the legislation or regulation to follow the MaP specified process. Second, as noted by the respondent, the MaP is an internal Ministry guidance document to assist Ministry staff. It does not purport to bind the Ministry to the outcome of the MaP procedure and so does not give rise to any legitimate expectation that it will be followed and the allowance set by reference to Step 4. Third, Step 7 of the MaP process envisages that there may need to be discussion about the outputs of the Powerswitch assessment to ensure that they are realistic. Fourth, and in any event, the Authority identified the outputs of the Step 4 Powerswitch assessment and rejected them, for cogent reasons, including those identified by Ms Taylor (e.g. inputting actual usage to establish an estimate for notional household equivalent).
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> (Footnotes omitted)

[46] Ms Taylor cannot argue in this proceeding that the Ministry misused the MAP guidance. That argument could be relevant only to the September 2016 decision. Neither can she succeed with an argument that the Ministry had to use the MAP guidance for its October 2016 decision.

[47] I conclude that the Ministry considered the matters relevant to the exercise of its power to determine Ms Taylor's benefit entitlements.

Irrelevant considerations

[48] The Ministry was obliged not to consider matters irrelevant to the exercise of its power to determine Ms Taylor's benefit entitlements. Ms Taylor criticises the Ministry for applying the 15 per cent of total usage methodology when calculating her additional power costs in October 2016. Ms Taylor considers the previous decisions of the Authority and Whata J to be irrelevant to the Ministry's decision.

[49] In my view, the Ministry had to take into account Whata J's decision. That decision upheld the methodology applied by the Ministry in its previous assessment of Ms Taylor's allowances. The passages I have quoted at [41] from the Ministry's letters show that the Ministry was aware the methodology would need to be revisited if Ms Taylor showed evidence of a change in her circumstances. Since she did not, it was not irrelevant to consider the previously approved methodology should continue to apply.

Fettering

[50] In deciding Ms Taylor's entitlements the Ministry was exercising a discretion.[9] The law is that a decisionmaker must not unlawfully fetter their discretion conferred by statute. In other words, a decisionmaker must not apply a rigid approach that leaves no room for judgment or the exercise of their discretion. Consistent with natural justice, a decisionmaker must be ready to hear and consider what an applicant has to say.

[51] Ms Taylor, going back to her focus on the September 2016 decision, contends that the Ministry did not listen to her.

[52] Again, the September 2016 decision is not at issue here. The issue is whether the process by which the October 2016 decision was made was lawful. The passages I have quoted at [41] from the Ministry's letters demonstrate the Ministry had not closed its mind to Ms Taylor's circumstances. It adopted the 15 per cent of total usage

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[9] Social Security Act 1964, s 69C(1).

methodology because Ms Taylor did not provide evidence of any change in her circumstances that should require a different methodology to be applied.

[53] I see no error of process, or perversity of outcome, which should lead to judgment in Ms Taylor's favour.

Decision

[54] Ms Taylor's application for judicial review is dismissed.

Costs

[55] If the Ministry seeks costs it must file a memorandum no later than 31 May 2020.

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Brewer J