

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 183
3093112

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| BETWEEN | MONICA WEBER Applicant |
| AND | MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Respondent |

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| Member of Authority: | Vicki Campbell |
| Representatives: | Applicant in Person Catherine Milnes, counsel for Respondent |
| Investigation Meeting: | 27 April 2021 |
| Submissions Received and further information: | 30 April 2021 from Applicant 27 April 2021 from Respondent |
| Determination: | 4 May 2021 |

DETERMINATION OF THE AUTHORITY

- A. Ms Weber is entitled to paid parental leave for the 22 weeks commencing on 22 October 2018.**

Employment relationship problem

[1] Ms Weber operates as a sole trader providing services in physiotherapy to humans and hoof trimming to horses. Ms Weber gave birth to a baby girl on 22 October 2018.

[2] On 13 January 2020 the Inland Revenue received an application from Ms Weber for paid parental leave (PPL) under the Parental Leave and Employment Protection Act 1987 (PLEPA) in respect of her baby born in October 2018.

[3] Ms Weber's application was declined on the grounds that the application was made more than 12 months after the child's date of birth.

[4] Ms Weber seeks a review of the decision to decline PPL and for orders that she is eligible for PPL under the PLEPA.

[5] MBIE maintains Ms Weber's claim was correctly denied by Inland Revenue because of the late application.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. While I have not referred in this determination to all the evidence received I have carefully considered all relevant material lodged with the Authority.

The applicable law

[7] Section 71ZB of the PLEPA enables an affected person to apply to the Authority for a review of decisions made by MBIE relating to that person's entitlement to a parental leave payment. Under this section the Authority has a wide discretion to confirm, modify or reverse MBIE's decision.

[8] Other relevant sections of the PLEPA include:

- a) Section 71A sets out the purpose of Part 7A, which is to entitle certain persons who become the primary carer in respect of a child and who stop working, or take a period of leave, to up to 22 weeks of parental leave payments out of public money.
- b) Under s 71D Ms Weber is entitled to a parental leave payment if she is an eligible self-employed person and takes leave from her self-employment during the period in relation to which she receives parental leave payments.

- c) Under s 71I applications for PPL must be made on the date on which Ms Weber returned to work or the date on which her child attained the age of 12 months, whichever is the earlier date.

Analysis

[9] There is no dispute that but for the timing of Ms Weber's application, she was an eligible self-employed person. She was the primary carer for the child and met the parental leave payment threshold test.¹

[10] In accordance with s 71K of the PLEPA, the commencement date for Ms Weber's entitlement to PPL was the day she became the child's primary carer - that is 22 October 2018. At that time the period covered by PPL was 22 weeks.

[11] Ms Weber told me she stopped working before her baby was born and returned to work on about 1 April 2019. This evidence was corroborated by Ms Weber's accountant.

[12] This means Ms Weber was required to have made her application for PPL on or before 1 April 2019. The forms completed by Ms Weber are dated December 2019 and the Inland Revenue has recorded the application as being received on 13 January 2020.

[13] Given the foregoing circumstances Ms Weber is not entitled to PPL.

[14] However, that is not the end of the matter. Ms Weber's omission falls under s 71IA which, amongst other matters, defines a failure to make the application for payment before the relevant date in s 71I, as an irregularity.

[15] Section 68 of the PLEPA confers on the Authority the discretion to grant relief in respect of an irregularity having regard to the good faith of the parties and any other matters it thinks proper. The s 68 power includes the ability to extend time for any procedure under the PLEPA, or waive any defect in compliance with a time limit.

[16] Ms Weber has provided the Authority with compelling evidence of her personal circumstances from April to October 2019. Ms Weber has told me of a violent domestic relationship, a separation followed by protection and parenting orders made by the Family Court.

¹ Parental Leave and Employment Protection Act 1987, s 2BA.

[17] I am satisfied Ms Weber's failure to comply with the notice requirements was in good faith and reasonable in all the circumstances existing for her at the time.

[18] Under s 68 of the PLEPA I waive the irregularity and extend the time for Ms Weber to apply for her entitlement to paid parental leave. Ms Weber is entitled to paid parental leave for the 22 weeks commencing on 22 October 2018.

Costs

[19] There is no claim for costs.

Vicki Campbell
Member of the Employment Relations Authority