

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 278
3169162

BETWEEN

REBECCA WALTON
Applicant

AND

MINISTRY OF BUSINESS
INNOVATION AND
EMPLOYMENT
Respondent

Member of Authority: Sarah Kennedy

Representatives: Rebecca Walton, Applicant
Greg La Hood, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 4 April 2022 from the Applicant
13 April and 23 June 2022 from the Respondent

Date of Determination: 28 June 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Rebecca Walton applies to the Employment Relations Authority for a review of the decision to decline her application for paid parental leave (PPL) under the Parental Leave and Employment Protection Act 1987 (the Act). For the reasons that follow, the Authority reverses the decision of the Ministry of Business Innovation and Employment (MBIE) to decline PPL and orders it to take the necessary steps so that Ms Walton receives the parental leave entitlements she would have received, had wrong advice not been given as soon as practicable.

The Facts

[2] On 8 September 2020, Ms Walton called the Inland Revenue Department (IRD) in respect of her eligibility for PPL. The officer was uncertain and sought advice from a more senior officer who advised that Ms Walton was not eligible for payments.

[3] Ms Walton was advised by an officer of the IRD that she was ineligible for parental leave payments because she was not currently in employment. Ms Walton accepted the advice and did not make an application for paid parental leave.

[4] Ms Walton's child was born on 9 December 2020, and she returned to work (in new employment) in April 2021. Ms Walton enquired again about entitlement to PPL on 27 October 2021 and was informed that she was ineligible for payments as her child was over one year old at that time and she was referred to MBIE.

[5] MBIE then advised Ms Walton that as she had not applied for PPL before her child's first birthday or before she returned to work, she was now ineligible.

Discussion

[6] After a case management conference with the parties on 23 May 2022, the Authority requested further information. The new information from IRD makes it clear that Ms Walton would have met the parental leave threshold test had she been given the correct advice when she contacted the IRD. She had worked the required 26 weeks out of the 52 weeks prior to her child's birth.

[7] This means that in September 2020 Ms Walton was told incorrectly that she was not entitled to PPL because her employment had ceased when she sought to make her application. The IRD incorrectly linked Ms Walton's current employment to paid parental leave.

[8] Then the position became that Ms Walton had not applied for parental leave payments before her child's first birthday or before she returned to work, meaning she was ineligible for paid parental leave under s 71I of the Act.

[9] MBIE accepts that IRD provided incorrect advice and information to Ms Walton on the first occasion, and Ms Walton relied on that information and decided to return to work in April 2021, believing that she was ineligible for payments.

[10] Ms Walton's child was born on 9 December 2020, and she returned to work in new employment in April 2021 before making an application, and she did not apply before 9 December 2021.

[11] It is correct that under s 71I of the Act, a person is not entitled to PPL unless they make an application before the earliest of the date on which the person returns to work, or the date on which the child reaches the age of 12 months old. In this case, MBIE now accepts that Ms Walton received incorrect advice from IRD and that in the circumstances it appears reasonable that she would rely on that advice and that advice appears to be what led her not to make an application in the first place.

[12] The Authority has jurisdiction to review decisions on PPL applications under s 71ZB of the Act. Under this section the Authority may "confirm, modify, or reverse the decision of the Department".

[13] MBIE also has a statutory discretion in s 71IA of the Act to approve the making of a PPL payment to a person despite the application for payment not being made in time and in compliance with s71I of the Act.

[14] The Authority also has discretion to grant relief under s 68(5) of the Act in respect of irregularities when considering the nature of the irregularity, good faith of the parties, and any other matters it considers proper.

Conclusion and orders

[15] In accordance with s 71ZB of the Act, I consider it is appropriate to exercise the Authority's discretion and to reverse the decision made by MBIE that Rebecca Walton is not eligible for paid parental leave payments.

[16] Rebecca Walton is entitled to a parental leave payment in accordance with the Parental Leave and Employment Protection Act 1987.

[17] MBIE should now take the necessary steps to ensure Rebecca Walton receives the paid parental leave payments due to her as soon as practicable.

Costs

[18] Ms Walton was self-represented, so costs are limited to reimbursement of the Authority's filing fee of \$71.56. That is payable given Ms Walton's success. She can reasonably recover this amount from MBIE which is to be paid 28 days after this decision is issued.

Sarah Kennedy
Member of the Employment Relations Authority