[2014] AATA 922

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| Division | **GENERAL ADMINISTRATIVE DIVISION** |
| File Number | 2014/2495 |
| Re |  |
|  | APPLICANT |
| And |  |
|  | RESPONDENT |

# Decision

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| Tribunal | **Senior Member Bernard J McCabe** |
| Date | **10 November 2014** |
| Place | **Sydney** |

The decision under review is affirmed.

............................[Sgd]............................................

**Senior Member Bernard J McCabe**

**CATCHWORDS**

SOCIAL SECURITY – Special circumstances – Whether applicant satisfies special circumstances requirements – Applicant does not satisfy requirements provided for in s 1184K of the   
Social Security Act 1991 (Cth) – Decision under review affirmed.

**LEGISLATION**

Social Security Act 1991 (Cth), s 1184K

# REASONS FOR DECISION

**Senior Member Bernard J McCabe**

**10 November 2014**

# INTRODUCTION

1. A decision in these proceedings was delivered orally together with reasons at the conclusion of a hearing. The applicant subsequently requested written reasons be supplied. These written reasons have been distilled from the transcript of the hearing.
2. The applicant, Patrick Abed, was in receipt of a compensation effected payment –Newstart – for a period in 2008 after he stopped work because of an injury. In 2013 the applicant received a payout relating to that accident which included a component in respect of economic loss. Centrelink decided to recover an amount of $6,040.76 out of the settlement monies. It was entitled to do so because that was the amount Centrelink paid the applicant while he could not work because of his injury. If he was allowed to keep the Centrelink payments and the whole amount of the settlement, he would have effectively been paid twice in respect of the same period of unemployment.
3. There does not appear to be any dispute that Centrelink acted in a lawful and correct way when it recovered the amount in question. It is not entirely clear what the applicant did with the $14,000.00 or so that remained of the settlement. It appears he used at least part of it to pay out a debt in relation to his car. I accept the evidence he gave in relation to that issue.
4. The applicant continues to receive Newstart, which he has been receiving more or less continuously since 2008. The Newstart payment is reported by the applicant to be about $550.00 a fortnight. There have been some deductions which have reduced that from the ordinary amount because the applicant has other debts which he is required to service.
5. The applicant told me he felt discouraged and said at one point that he had given up looking for work. The applicant acknowledges he probably could work 15 hours a week in the right job, and in the right circumstances. His current position is that if he was to get back the $6,040.00, it would make a tremendous difference to him. The applicant identified three things he might do with the money.
6. The applicant wants to use the money to help investigate and perhaps re‑agitate some claims in respect of Worker’s Compensation issues. He also discussed obtaining access to private health insurance because he thinks that might be a better way of dealing with his particular issues, which include a back issue, but also include psychological issues. These psychological issues appear to be at least partly attributable to an unhappy experience he had in the workplace in 2013 when he briefly returned to work. The applicant also discussed the possibility of using the money to help him start a small business that could be eligible for government grants available to individuals who are prepared to move outside the metropolitan area.
7. I must identify whether there are any special circumstances that justify effectively setting aside the charge that was levied against the applicant after he received his settlement payout. That would mean the amount of the charge would be refunded to the applicant. I only have the power to do that where I am satisfied there are *special circumstances* within the meaning of s 1184K of the *Social Security Act 1991* (Cth). I cannot do that just because I feel sorry for the applicant even though I can see he is in a difficult state. I have to be able to establish the case falls into a particular legal category and that can be a difficult exercise.
8. What does ‘special circumstances’ mean? It means there must be circumstances that are unusual or different; circumstances that are special, which suggest that this case is different to that facing other people, and that suggest it ought to be dealt with differently, so that the usual rules do not apply.
9. The applicant referred to a number of things which *might* constitute special circumstances, in particular his straitened financial circumstances. The applicant has debts, most obviously his credit card debt. He has some relatively significant household expenses because he is paying board but he has to feed himself. The applicant reported paying approximately $275.00 a fortnight in board. That is not leaving a large amount left over to do the other things he needs to do. He is obviously not in a position to get private health in that sort of situation.
10. The applicant’s situation has changed a little in recent times. While he does have small debts owing to friends that he mentioned during the hearing, the reasonably significant debt he owes in respect of child support has not gone away but it is being managed for now because his wife is not inclined to pursue it. I accept he is in difficult financial circumstances, although it must be said lots of people in his position are in difficult financial circumstances.
11. The applicant has some health problems. He has the continuation of the back condition which he described during the hearing, and he presented some medical evidence in relation to that which shows degenerative change. The applicant also discussed the psychiatric issues which are probably his biggest issue at the moment. He appeared anxious, and sounded depressed, which is causing motivational issues. The applicant also has ongoing pain and discomfort associated with all of that.
12. The applicant is also worried he is not getting the benefit that he thinks he needs out of the current arrangements with the disability employment services providers – although there is no suggestion he is having any greater difficulty than anyone else in his position. I have heard the applicant say that while he has given up looking for work on the one hand, that does not mean that he has given up on life. He says he has plans and aspirations, and he wants to actually get himself back into a position where he can afford to look after his children, and “get his act together”.
13. If the applicant is given the $6,000.00 or thereabouts, would it actually make much difference to his current circumstances? I recognize the applicant thinks it will make a difference. However, after having heard the applicant’s submissions, I have my reservations because the applicant has real problems, in particular psychiatric issues. The psychological issues – the anxiety, and the depression, if that is what it is – are obstacles and that is one of the reasons why I asked Mr Lozynsky, the Centrelink advocate, to make some enquiries during an adjournment about whether it is possible to actually access appropriate services.
14. I have heard the applicant’s submissions regarding private health cover being preferable because that might give him quicker access to psychiatric services in private facilities. The applicant cannot afford to pay for those things and get an appointment from his treating psychiatrist of choice. But I was assured there are public services available. The applicant has not yet made a sustained effort to access those services. That could be achieved through one of the available services providers with a referral from the applicant’s general practitioner.
15. The applicant is not in such difficult, different circumstances to a lot of people that come before the Tribunal that I could say he finds himself facing *special circumstances*. I cannot fit the applicant into the special category that I am required to attempt to fit him into, in order to provide the applicant with the relief he seeks.
16. I would add it is clear the applicant needs to access the necessary psychiatric services, which can be done with perseverance. I would not in any event be helping the applicant if I told the Respondent to effectively cancel the charge and refund the money. I do not think it is actually the answer to the applicant’s problem. The answer to his problem is for him to access the psychiatric services that are available to him.

# Decision

1. The applicant does not satisfy the ‘special circumstances’ requirements as provided for in s 1184K of the *Social Security Act 1991* (Cth). The decision under review is affirmed.

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| I certify that the preceding 17 (seventeen) paragraphs are a true copy of the reasons for the decision herein of Senior Member B McCabe. |

..............................[Sgd]..........................................

Dated

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| Date of hearing | **10 November 2014** |
| Applicant  Solicitors for the Respondent | **In person**  **George Lozynsky, Department of Human Services** |