

14 February 2018

Minister Kelly O'Dwyer
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister O'Dwyer,

Re: Early Release of Superannuation on Compassionate Grounds for Medical Reasons

Background:

I am a professional 42.5 year old woman seeking early release of approximately \$60,000 superannuation on compassionate grounds, to access 3 rounds of IVF, which my IVF specialist recommends occur urgently. This includes medical and transport costs, as I live in Alice Springs and need to travel interstate to receive IVF.

The written medical advice of my IVF specialist, which has been provided to Centrelink), is to undertake 3 rounds of IVF urgently and frequently (over 3 months) due to my age and because egg quality diminishes sharply at my age.

I have already had 2 miscarriages of 3 babies in the last 12 months, 1 through IVF. This has made me very clear about my priorities and clearly demonstrates without IVF recommended by my doctors, I will not be able to experience motherhood. It has left me with a profound sense of grief and anger. I have been diagnosed with anxiety and adjustment disorder with depressed mood as a result.

The problem:

I have applied to Centrelink for the early release for some of my superannuation under compassionate grounds. I have provided all the relevant documentary evidence (including reports from 3 treating practitioners and estimated costs). ***I have met the criteria for early release of superannuation under Regulation 6.19A (2) and (3)(a)(iii) and of the Superannuation Industry (Supervision) Regulations. Centrelink agree.***

The problem is that despite that, Centrelink will not release the funds to allow me to obtain the treatment recommended by my medical professionals. Instead, they have made a decision based on what they say is a written, internal policy i am not permitted to see:

- (a) to 'drip release' my superannuation in a way that will unreasonably delay my access to the treatment recommended by my doctors;

- (b) will cost me thousands of dollars because i will need to undertake lengthy appointments and obtain fresh expert reports each time;
- (c) will delay treatment by around 4-9 months; and
- (d) will in all likelihood defeat the purpose of the medical treatment.

I am told the Centrelink Policy is written, but i am not permitted to see it. I've been told if I apply for a copy under the Freedom of Information Act, they won't provide the policy because it's an internal document that's exempt.

I consider the policy is inconsistent with the Legislation and Regulations, in that it substantially more restrictive than what the Regulations provide, and are actually contrary to the spirit, intent and even the purpose of the Regulations.

What the Law Says:

The Superannuation Industry (Supervision) Regulations provide that superannuation can be released on compassionate grounds to pay for medical treatment or medical transport when 2 registered medical practitioners recommend it, in circumstances where the medical treatment is necessary to acute or chronic mental disturbance and the treatment is not available through the public health system: see Regulation 6.19A

Schedule 1 of the Regulations simply provides that a single lump sum of an amount that is "reasonably required" should be released to me, taking into account the (compassionate) ground and my financial capacity. It also provides that the amount to be released ought not exceed "an amount determined in writing by the Regulator".

What my doctors recommend:

Monthly treatment cycles for 3 months at a cost of E60,000 (\$50370 in medical costs and around \$9000 in travel costs)

What Centrelink have said they'll release:

"1 round" worth of costs at a time: \$ 19,000 (before or after tax, they have not clarified). I've been told if I can either accept this, or appeal, in which case I'll receive \$Zero and be subject to an appeal process that has no timeframe for resolution.

Why releasing 1 round is unreasonable:

The Centrelink Application is time-consuming and costly. If i do not have a lump sum for 3 rounds of treatment, I will need to apply at the end of each round, to say it was unsuccessful. The DHS process at a minimum will be 28 days and could be longer. Then I need to wait for their letter, then forward the email to my super fund by post, as my Super Fund requires the original. The super fund states their processing time is 2 weeks.

Post to Alice Springs is unreliable. Alice Springs is outside of the Express Post System, so i can't even express post it. Each application would cost me

approximately \$1,000 and require me to have at least 2 additional medical appointments, as I would need to have a long GP consult and fresh assessment and report done by a psychiatrist for each round. Just the psychiatrist report costs a minimum of \$600. The process would take weeks or months each time.

This is not reasonable. It is contrary to the medical recommendation of my treating practitioners. It will, in all likelihood, prevent me from having a child.

The Centrelink requirement of fresh applications also will take too long to proceed with my treatment. The time frame is set by my endocrine system. It gives me 2 weeks between the end of a cycle before I need to start the next. The Specialist requires payment at the 2 week point, not on Centrelink's timeframe.

Why it isn't as simple as 'doing a cycle' and 'seeing if it works':

It appears that Centrelink have a misunderstanding about how IVF works, and what is a successful cycle. "1 cycle" = egg harvesting and proceeding to embryo genetic testing and freezing. Some patients would have the tested embryo put into their uterus at the end of each cycle. This is not recommended for me. As clearly outlined in my application, my specialist (a world renowned expert in this field, a Professor of Gynaecology, with a top Chair at UNSW, and Head of Department at The Hospital For Women) has planned to do back to back freeze cycles. This is for specific medical reasons.

Almost all of the relevant literature supports a fertility "cliff" reached at age 43. This emanates from the quality of the eggs produced after this age. A woman can carry a baby successfully after this age, but needs to remove eggs beforehand. This means I have 6 months to develop my embryos.

Unfortunately Centrelink has taken the view that the project officer who assessed my application knows better than a world renowned specialist in this field. The Centrelink officer could not even define the term 'in vitro' let alone understand the medicine involved. *That is why the specialist reports are required.* To be clear the Centrelink Officer's assertion that I could become pregnant after the first round is wrong. This is because any embryo produced would remain in a freezer until after August.

We are playing a numbers game. In my first cycle last year I produced one egg that died after day 1. That is did not make it to fertilisation, let alone survive and develop 5 days to testing and freezing point. I will be very lucky to gain one genetically good embryo per cycle. I will need several embryos, because the embryo will need to survive thawing, then implant, then survive gestation.

With the miscarriage of three babies inside of the last 12 months my only option is to follow the medical advise. Following the medical advise of Centrelink would be ill advised - it is a method that resulted in my most recent miscarriage of twins.

Duty of Care:

I note the Minister is a lawyer and would be well aware of the definition of duty of care.

I therefore will simply state that Centrelink is in receipt of two specialist reports and and a GP report which outlines my medical needs. They are in receipt of a clear Treatment Plan, with timeframes and an explanation of the consequences of failing to proceed in this fashion. They are well advised of the facts. They are choosing a contrary course of action which will be very bad for me, and against expert advise. This is a predictable outcome that an ordinary person could extrapolate. I also suggest that a reasonable person reading the facts would agree. Their current actions are already having detrimental effects on me. *This is a significant failure in their duty of care to me.*

No other way to challenge Centrelink's Application of Policy I am not Permitted to See:

I have had an absolutely extraordinary run around in trying to resolve this issue which I can outline to you if requested. In short however, I have been advised that none of the following have independent oversight, or can assist me to challenge the decision that has been made by Centrelink:

1. The Australian Information Commissioner
2. The Administrative Appeals Tribunal
3. The Superannuation Complaints Tribunal
4. Australian Prudential Regulation Authority
5. The Minister for Human Services (who only oversees the administration of the policy)
6. The Commonwealth Ombudsman

This in itself is a significant problem in the administration of government - a complete lack of accountability or oversight.

I have been told by Centrelink that I can either accept their decision, or use their "Appeals Process". I have also been told that this would suspend the release of the first cycle. The Centrelink Officer told me, when specifically asked, that there is no timeframe stipulated in their policy for the progress of an Appeal. In other words, if you question us you will go into a black hole of indeterminate depth and duration. The officer then explained to me that the Appeals process would not look at my case situation, but only whether they have implemented their policy. So, if the problem is the policy, I'm still disadvantaged, and there is no oversight body available.

This is a problem that affects not only me: it is a problem that aversely impacts women, and particularly older women. As such, it is discriminatory. I would like this to be rectified for the benefit of women in the future.

However, personally, i do not have the luxury of time. **I therefore request your urgent assistance and intervention, so that Centrelink releases the superannuation recommended by my medical practitioners and in line with the Regulations, without any further delay.**

Thank you for your urgent attention to this matter. I am available if you require anything further.

Yours sincerely,

