Ministry of Health agrees to increase what was an unreasonably low offer of ex gratia payment

Legislation	Ombudsmen Act 1975
Agency	Ministry of Health
Ombudsman	Leo Donnelly
Case number(s)	419489
Date	2017

Ministry of Health's decision in December 2016 to offer complainant $8000 by way of an ex gratia payment for mistakes made by the Ministry and lengths complainant had to go to in having the Funded Family Care hours reinstated unreasonable—Ministry of Health agreed to increase the amount following the complaint.

The Ombudsman had already considered a complaint from the complainant about a decision of the Ministry's Individual Review Panel with regard to his entitlement for Funded Family Care. A new complaint was made to the Ombudsman concerning the complainant's dissatisfaction with the decision of the Director, Service Commissioning, Ministry of Health, to decline to offer him back-pay as redress for the maladministration by the Ministry acknowledged in her letter.

The complainant claimed that from the period July 2014 to November 2016, the complainant continued to provide the same level of care for his disabled son. Although the Ministry had already offered the complainant $8000 to compensate the losses incurred when the Ministry cut the level of funding, and to reinstate the hours it had cut, the Ombudsman considered that the Ministry's offer of $8000 as an *ex gratia* payment was inadequate in that it fails to give sufficient recognition for the amount of care the complainant provided for his disabled son throughout the period until the allocated hours of care were reinstated to 40 hours per week.

The Ombudsman considered that as the complainant continued to provide the same level of care for his disabled son, it was unreasonable for the Ministry not to give greater recognition to the amount of care he actually provided and that an ex gratia payment of $8000, on the

basis of between a quarter and one third of the $22,000 that would have been paid if the 40 hours had not been reduced, was unjust in the circumstances of this case.

The Ombudsman advised the Ministry of Health the general starting principle for Ombudsmen in investigating such cases where there has been maladministration is that, wherever practicable, persons affected by maladministration should be put back in the position that they would have been in had the maladministration not occurred. In the circumstances of this case, while there was a reasonable expectation by the complainant that he would be funded for 40 hours per week of care for his son, there was no legal entitlement to compensation.

The Ombudsman believed the Ministry had not taken additional factors into account when it arrived at the sum it had. This is because in agreeing to reinstate the 40 hours of care as a discretionary exception to policy (the 2:1 care), the Ministry had implicitly accepted that funding for the complainant for providing 40 hours of care for his disabled son was justified. Given the Ministry's acceptance that a discretionary exception to policy was justified the Ombudsman considered that the Ministry should have given greater recognition to the fact that the same level of care had continued to be provided by the complainant throughout the period that the 40 hours care had been reduced.

The Ombudsman therefore considered that an ex gratia payment greater that a half but no more than two thirds (of the amount the complainant would otherwise had received) is more appropriate to address the distress caused to the complainant and the lengths he had to go to seek redress for the Ministry's mistakes.

The Ministry confirmed it was prepared to increase the ex gratia payment from $8000 to $14,000 which the complainant accepted.

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