LEGAL UPDATE

Decisions of the Central Appeals Tribunal relating to the Social Support Act have consequences for Social Support Act policy and regulations of municipalities

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In our Legal Update of 28 January 2016 we wrote that the lower courts had become unclear as to whether domestic help falls within the scope of the Social Support Act 2015. Our expectation at the time was that domestic help should fall within the scope of the Social Support Act 2015, as this is in line with legislative history. The Central Appeals Tribunal, the highest instance for social administrative law, confirmed in three judgments dated 18 May 2016 that domestic help does in fact fall within the scope of the Social Support Act2015. Below we will discuss the consequences of these three decisions for municipal Social Support Act policy and legal practice.

In the initial cases of the the first and second rulings, the Municipal Executive of Utrecht had determined that residents were entitled to a maximum of 78 hours of domestic help per annum under the Social Support Act 2015. This amounted 1.5 hours a week. Residents who received more domestic help under the old system would also have to settle for 78 hours of domestic help per year. In the case that was the subject of the third judgment, a general arrangement was made by the Municipal Executive of Aa en Hunze called 'house cleaning'. On the basis of this general arrangement, residents themselves had to conclude contracts with the providers of cleaning services and pay them the applicable hourly rate.

In all its decisions, the Municipal Executive states first and foremost that the municipalities are responsible for supporting the self-reliance and participation of people with disabilities, chronic, psychological or psychosocial problems. The Social Support Act 2015 places on municipalities the responsibility to support residents in their self-reliance and participation, so that they can continue to live in their own environment for as long as possible. The decisions of the Central Appeals Tribunal mean that municipalities, partly on the basis of the principle of due care and the principle that reasons must be given, must base their policy concerning the reimbursement for domestic help on objective and sound research into the time needed to obtain and keep a clean and liveable home. In the opinion of the Central Appeals Tribunal, the policy should answer the questions of *'what level of cleanliness is appropriate for a household, what activities should exactly be carried out for this purpose, how much time is needed for them and with what frequency should these activities be carried out in order to be able to speak of a clean and liveable home'.* A budgetary substantiation of the standard hours by the Municipalities no longer suffices. Moreover, we infer from the judgments that municipalities themselves must contract general facilities for domestic help and cannot leave this to the people entitled to it under the Social Support Act. It therefore seems inevitable that such general facilities must also be put out to tender.

Finally, the personal contributions must be determined by the Municipal Council in the Social Support Act bye-law and this power cannot be delegated to the Municipal Executive, as is currently often done. In our opinion, the decisions have far-reaching consequences for many municipalities in terms of their policy decisions and the way in which this policy is substantiated and elaborated in the regulation. It is advisable that municipalities review their Social Support Act policy and bye-law in the light of these rulings. In our opinion, the rulings of the Central Appeals Tribunal provide clear indications as to how the municipalities can do this without overly compromising their freedom of policy under the Social Support Act 2015.

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