

[2015] NZSSAA 04

Reference No. SSA 071/14

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX** of **XXXX**  
against a decision of a Benefits  
Review Committee

**BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

Ms M Wallace - Chairperson  
Mr K Williams - Member

**INTERIM DECISION ON THE PAPERS**

***Introduction***

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee to establish and recover overpayments in respect of certain benefits. The overpayments were established on the basis that the appellant was not entitled to the benefits because she was living in a relationship in the nature of marriage during certain periods and in other periods because she was in receipt of income which she did not declare to the Ministry.

[2] A preliminary issue has arisen in this case. On behalf of the Chief Executive it is submitted that the Authority is prevented by the doctrine of *res judicata* from considering whether or not the appellant was living in a relationship in the nature of marriage in certain periods as that issue has previously been determined by the District Court.

***Background***

[3] The appellant applied for and was granted Domestic Purposes Benefit, Accommodation Supplement and Disability Allowance from 28 September 2003. She was paid Special Benefit from 23 August 2004. She was paid Domestic Purposes Benefit on the basis that she was caring for dependent children and had lost the support of her spouse or partner.

[4] Accommodation Supplement was granted on the basis that the appellant represented that she was paying rent of \$250 per week in respect of a property at **XXXX**.

[5] An investigation commenced into the appellant's entitlement to benefit and a variety of information was gathered from which the Chief Executive concluded that

the appellant had been living in a relationship in the nature of marriage with XXXX from September 2003 until 11 May 2008.

[6] In addition, the appellant continued to receive income from XXXX from 12 May 2008 until 4 January 2009 which she did not declare to the Ministry.

[7] Furthermore, it was determined that the appellant was not paying rent of \$250 per week for the property at XXXX as she had claimed.

[8] As a result, overpayments of Domestic Purposes Benefit, Accommodation Supplement, Disability Allowance, Special Benefit and Special Needs Grants were established.

[9] In addition to establishing overpayments, 21 charges under the Crimes Act were laid in the District Court.

[10] Ultimately, the appellant pleaded guilty to nine charges of dishonestly using a document under s 228(b) of the Crimes Act 1961. The remaining charges were withdrawn. The appellant was duly convicted and sentenced. No reparation was sought by the Ministry.

[11] The Chief Executive now seeks to recover overpayments totalling \$81,185.48. The appellant has appealed that decision.

[12] On behalf of the Chief Executive it is submitted that it is implicit in the plea of guilty and the appellant's conviction in the District Court on the nine counts she pleaded guilty to that the appellant was living in a relationship in the nature of marriage in the periods outlined in the Summary of Facts and this issue should not be considered again by this Authority for those periods.

[13] The appellant acknowledges that the doctrine of *res judicata* applies to the payment of Accommodation Supplement between 4 February 2004 and 26 May 2010 and that she received income from XXXX between February 2004 and 26 May 2010. She denies that the doctrine applies in relation to the issue of whether or not she was living in a relationship in the nature of marriage with XXXX for any period. She says that her plea of guilty in relation to the various charges was made on the basis of her income from XXXX not on the basis of being in a marriage-type relationship with him.

### **Decision**

[14] Before we can find that the appellant should be prevented from relitigating a matter previously decided by a court we must be satisfied that:

- (i) The parties are the same.<sup>1</sup>
- (ii) There is co-extensiveness of proof between the court proceedings and the proceedings before the Authority.

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<sup>1</sup> Gregoriadis v Commissioner of Inland Revenue [1986] 1 NZLR 110.

- (iii) The issues decided in the previous proceedings are the same as the issues to be decided by this Authority.
- (iv) There is no new material relevant to the correctness or incorrectness of the decision which could not by reasonable diligence have been adduced in the earlier proceedings.<sup>2</sup>

*Are the parties the same?*

[15] We are satisfied that the parties in this case are the same as in the District Court prosecution proceedings. The appellant has not disputed this.

*Co-extensiveness of proof*

[16] As the standard of proof in the District Court criminal proceeding was “beyond reasonable doubt” and the standard required by this Authority is on the balance of probabilities, the standard of proof was higher in the District Court proceedings than will be required before this Authority.

*Issues previously decided*

[17] The central issue in this preliminary matter is whether the fact that the appellant was living in a relationship in the nature of marriage in the particular periods has already been determined in the District Court.

[18] The Ministry points to the fact that at the sentence indication hearing on 2 October 2013, the court was presented with a Summary of Facts that described offending in relation to a relationship in the nature of marriage during four specified periods. The court was advised of an overpayment which reflected non-eligibility for Domestic Purposes Benefit on the basis of a relationship in the nature of marriage.

[19] Following the sentencing indication, the appellant pleaded guilty to a number of the charges based on the Summary of Facts. Moreover, at the sentencing on 19 November 2013 she was sentenced on the basis of an overpayment figure of approximately \$52,000 and on the basis that she had been in a relationship in the nature of marriage.

[20] We note the following:

- (i) The periods the appellant was said to be living in a relationship in the nature of marriage outlined in the Summary of Facts were very specific periods.
- (ii) There is a record made by the prosecuting counsel in the criminal proceedings that defence counsel would not agree to change the periods which the Summary of Facts outlined as being the periods the appellant was living in a relationship in the nature of marriage.
- (iii) A number of charges were withdrawn at the time the guilty pleas were entered. The charges withdrawn relate to times not included in the

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<sup>2</sup> *Link Technology 2000 Ltd v Attorney General* [2006] 1 NZLR 1.

periods the appellant was said to be living in a relationship in the nature of marriage in the Summary of Facts.

- (iv) A new count, count 21, was introduced. It covers the issue of receipt of income by the appellant from Mr Walton throughout the period 4 February 2004 to 26 May 2010 as outlined in the particulars accompanying that count.
- (v) An accused person in criminal proceedings does not plead guilty to a Summary of Facts. Rather, the plea is made in relation to the charges faced. The significance of the Summary of Facts outlining the periods of the relationship in the nature of marriage was that this would form part of the basis of the sentencing. The Judge's notes on sentencing indicate the appellant was sentenced on the basis that she had been living in a relationship in the nature of marriage and had received a benefit to which she was not entitled because of that relationship.
- (vi) It is unlikely that the Summary of Facts would have remained as it was if the appellant was not acknowledging that she was living in a relationship in the nature of marriage for periods specified in 2004, 2007 and 2008.

[21] In summary, the appellant's plea of guilty and her conviction on counts 2, 3, 4, 12, 13, 15 and 16 indicate that the entry of the convictions were in effect an admission that the appellant was living in a relationship in the nature of marriage during the periods specified in the Summary of Facts.

[22] The guilty plea to the first eight counts is capable of being explained as an admission of receipt of income, but had that been the case then it would not have been necessary for Count 21 to be laid or reference made to the relationship in the nature of marriage in the Summary of Facts. We are satisfied that the appellant's guilty plea constituted an admission of the relationship in the period outlined in the Summary of Facts and that admission determined a key element of the charges laid.

[23] That, however, is not the end of the matter. There are significant periods where the Authority will still be required to consider whether or not the appellant was living in a relationship in the nature of marriage. The evidence the Ministry will need to call will be the same regardless of whether the issue has already been decided in some periods. A finding by the Authority that a relationship did not exist during a period outlined in the Summary of Facts will not necessarily undermine the conviction or confidence in the justice system as the appellant says her non-disclosure of income on various forms also justified a guilty plea.

[24] In *Arbuthnot v Chief Executive of the Department of Work and Income*<sup>3</sup> the Supreme Court found:

"Care must be taken not to allow the doctrine of issue estoppel designed to prevent injustice to one litigant (namely the unfairness of allowing relitigation of a matter which has been finally decided) from causing greater injustice to the other."

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<sup>3</sup> [2008] 1 NZLR 13 (SC).

[25] The Court indicated that there may be circumstances where over rigorous application of the doctrine would produce unfairness disproportionate to the objective of achieving finality in litigation. It advised a cautious and flexible approach to the doctrine. The circumstances of whether or not an appeal was available were particularly relevant.

[26] A significant matter in deciding whether or not the doctrine of *res judicata* should be applied in this case is that the appellant requests that the Chief Executive seek recovery of all or part of the debt from XXXX under s 86(3) of the Social Security Act 1964. XXXX is therefore a person with an interest in these proceedings.

[27] Natural justice dictates that he should be heard not only on the issue of his liability but also on the issue of whether any overpayments have been correctly established. This inevitably means he needs to be given the opportunity to contest the issue of whether he and the appellant were living in a relationship in the nature of marriage.

[28] Taking into account all of these matters, while we accept that the appellant has admitted living in a relationship in the nature of marriage during certain periods and convictions were entered on that basis, the need to hear evidence about the nature of the relationship for substantial periods not covered by the admissions in the case of the appellant, and to hear evidence for the entire period in the case of XXXX persuade us that at this stage it is not appropriate to make a final determination on the *res judicata* issue. The Authority will revisit this issue when XXXX position becomes clear.

[29] The appellant is now directed to provide the Authority with a report containing all of the evidence she has which supports her application to have XXXX joined to the proceedings. This report is to be provided by 6 March 2015.

**DATED** at WELLINGTON this 13<sup>th</sup> day of February 2015

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Ms M Wallace  
Chairperson

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Mr K Williams  
Member