

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

HEARING at WELLINGTON on 10 February 2015

APPEARANCES

The appellant in person
Mr R Signal for the Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee to establish and seek recovery of an overpayment of Accommodation Supplement paid in respect of the period 29 August 2011 to 8 July 2012 amounting to \$1,474.58.

[2] The s 12K report filed by the Ministry outlines that the Chief Executive has now agreed to take no steps to recover the debt pursuant to s 86(1) of the Social Security Act 1964 as it applied at the time that the original decision was made. If the Ministry's decision is confirmed by the Authority, the Ministry's Collection Unit will "make application to the Chief Executive's appropriate delegate for write off of the debt".

[3] Despite the indication that the Chief Executive will not take steps to recover the debt the appellant wished to proceed with the hearing before the Authority to tell his story.

Background

[4] The appellant is aged 61 years. We understand he is single. He suffers from a back injury. We understand that he had been in receipt of Accident Compensation for his back condition for a number of years prior to 2011.

[5] In August 2011 the appellant received advice that his Accident Compensation (ACC) payments were to be discontinued from 21 August 2011. As a result he

applied for and was granted Sickness Benefit subject to a one week stand-down. His ACC payments stopped from 21 August 2011 and he was granted a benefit from 29 August 2011. He was also granted Accommodation Supplement and Disability Allowance. The total amount of benefit payable was \$252.55 per week. This was a significant reduction in his income of approximately \$424.20 net per week from the ACC payments that he had been receiving.

[6] The appellant challenged the decision to cancel his ACC payment and was successful. As a result his ACC payments were reinstated in July 2012 and backdated to the date it had been cancelled, namely 29 August 2011. On receiving advice that the appellant's ACC payments were to be reinstated, the Ministry conducted a backdated review of the appellant's benefit entitlement and overpayments of Sickness Benefit and Accommodation Supplement were established. No overpayment in respect of Disability Allowance was established as the level of weekly compensation payments received meant the appellant remained entitled to Disability Allowance.

[7] The overpayment of Sickness Benefit was recovered directly from ACC in accordance with s 252 of the Accident Compensation Act.

[8] Work and Income then sought to recover the overpayment of Accommodation Supplement which was calculated to be \$1,474.58 directly from the appellant. The appellant sought a review of the decision. The matter was reviewed internally. Unfortunately a problem arose in the course of the review process. The appellant questioned the calculation of the Accommodation Supplement overpayment. A case manager determined that the appellant was entitled to Accommodation Supplement for the period 29 August 2011 to 8 July 2012 as a non-beneficiary. It was calculated that he was entitled to receive \$1,288.43. Instead of offsetting this amount against the debt owed, this amount was paid to the appellant. As the Ministry note, unfortunately it was not recognised that the outstanding debt for Accommodation Supplement was for the same period and that an allowance for non-beneficiary Accommodation Supplement had been made in the assessment of the overpayment. A decision was made to write off the payment made by mistake of \$1,288.43, leaving the original debt of \$1,474.58 remaining owing. The Benefits Review Committee upheld the decision of the Chief Executive to recover the debt. However, as previously outlined in the process of preparing this appeal for the Authority, the Ministry has reconsidered its decision and determined that in the particular circumstances of the case it should not recover the debt of \$1,474.58.

[9] Further errors then occurred in the decision-making process between February 2014 and December 2014.

[10] The appellant spoke eloquently of the impact on him of losing his ACC payments and being forced to live on the significantly lower payments made to him pursuant to the Social Security Act 1964. In particular, he pointed out the following matters:

- (i) His ACC payments enabled him to get by and work on his projects but as ACC had never kept up with inflation, over the years he had become poorer and poorer.
- (ii) Faced with the relatively low level of his income prior to his applying for benefit, to impose a one-week stand-down prior to commencing payment of

a benefit to him caused him considerable stress. He did not have the savings with which he could meet his living costs that week and was obliged to borrow from his bank to meet his costs.

- (iii) Because the social security benefit was significantly less than the ACC payments he had been receiving, he was obliged to cut his budget. This included extending the term of his mortgage to reduce the regular payments. The payments were reduced from approximately \$100 per week to \$80 per week. He says the additional borrowing and extension of his mortgage cost him an additional \$1,500 in interest.
- (iv) The further budget measures he took to meet his more straightened circumstances included cancelling the insurance on the contents of his house, the insurance on his motor vehicle, and his landline.
- (v) There were significant increases in the insurance on his house and he was limited in his ability to reduce his power and gas costs because of the standard supply charges charged by the energy companies concerned.
- (vi) The appellant said that after payment of his basic costs he was left with \$60 to \$65 per week to purchase food.
- (vii) The appellant could not afford to fix his very old motor vehicle. He could not afford the cost of bus travel to travel to the supermarket or to travel out of the area he lives in to look for work. He resorted to a bicycle which exacerbated the problems with his spine.
- (viii) The experience of living on a social security benefit and his subsequent dealings with WINZ caused him significant stress and depression.
- (ix) While he was on a social security benefit he was unable to pursue his projects which relate to bronze casting, glass moulding and stone cutting which he hopes may allow him to earn an income in the future.
- (x) It has now transpired that he would have been eligible for Accommodation Supplement prior to his ACC payments being cancelled in 2011. He did not receive Accommodation Supplement prior to 2011.

[11] We acknowledge that the cancellation of the ACC payments and the resulting reduction in his income caused the appellant financial difficulty. The level of the single rate of benefit he received would have made it difficult for him to make ends meet. The appellant clearly did his best to reduce his costs.

[12] Taking into account all of the matters outlined by the appellant, including the fact that it seems likely that he has been eligible for Accommodation Supplement in the past and did not receive that assistance, we agree with the Chief Executive's decision to take no steps to recover the debt pursuant to s 86(1) of the Social Security Act 1964.

[13] We understand that the appropriate steps will now be taken to write-off the debt.

[14] The appeal is allowed.

DATED at WELLINGTON this 13th day of March 2015

Ms M Wallace
Chairperson

Mr K Williams
Member