

[2015] NZSSAA 017

Reference No. SSA 147/14

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
Lady Tureiti Moxon - 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 recover an overpayment of Supported Living Payment paid to the appellant and his wife in respect of the period 23 June 2014 to 13 July 2014 amounting to \$561.40.

Background

[2] At the time relevant to this appeal the appellant and his wife were receiving a partial payment of Supported Living Payment. The appellant's wife also received ACC payments and Disability Allowance. In July 2014 the appellant advised the Ministry of a change in his wife's ACC payments. As a result of this, the Ministry updated its records. Unfortunately, a mistake was made in updating the records in that the case manager concerned added the gross amount over a two-week period instead of the net weekly amount.

[3] When a letter was sent to the appellant and his wife advising them of the change in their payments, the appellant realised that the Ministry had made a mistake and promptly informed the Ministry with the result that the Ministry's records were corrected and an overpayment was established in respect of the period 23 June 2014 to 13 July 2014. The amount of the overpayment is \$280.71 for the appellant and \$280.69 for his wife.

[4] The appellant and his wife feel that they have done nothing wrong and informed the Ministry of the error promptly, therefore they should not have to repay the debt.

Decision

Calculation of the overpayment

[5] The calculation of the overpayment is set out in paragraph 6.4 of the s 12K Report. The appellant did not raise any issues relating to the calculation.

Recovery of the debt

[6] The issue in this case is whether or not the overpayment should be recovered.

[7] Generally speaking, overpayments of benefits are debts due to the Crown and must be recovered. There is a limited exception to this rule contained in s 86(9A) of the Social Security Act 1964. This provision gives the Chief Executive the discretion not to recover a debt in circumstances where:

- (a) the debt arose as a result of an error by an officer of the Ministry;
- (b) the beneficiary did not intentionally contribute to the error;
- (c) the beneficiary received the payments of benefit in good faith;
- (d) the beneficiary changed his position believing he was entitled to receive the money; and
- (e) it would be inequitable in all the circumstances, including the debtor's financial circumstances, to permit recovery.

[8] Pursuant to s 86(9B) of the Social Security Act 1964 the term "error" includes:

- (a) the provision of incorrect information by an officer of the Ministry;
- (b) an erroneous act or omission occurring during an investigation of benefit entitlement under s 12; and
- (c) any erroneous act by an officer of the Ministry.

[9] The criteria of s 86(9A) are cumulative; if one of the criteria cannot be made out it is not necessary to consider subsequent criteria.

[10] We are first required to consider whether or not there was an error on the part of an officer of the Ministry which caused the debt. The Ministry does not dispute the fact that the overpayment was caused as the result of an error by a Ministry case manager. It is accepted that the appellant and his wife did not intentionally contribute to the overpayment; indeed the appellant informed the Ministry of its error promptly when he became aware of it.

[11] We are then required to consider whether or not the appellant and his wife received the benefit monies in the period the benefit was overpaid believing that they were entitled to the full amount of the overpayment. The appellant very honestly told

the Authority that he knew that the Ministry had made a mistake and that they had been overpaid. We cannot therefore be satisfied that the appellant and his wife received the money believing that he was not entitled to it.

[12] Because we are not satisfied that the appellant and his wife received the money believing they were entitled to it, strictly speaking we are not required to consider any of the subsequent criteria of s 86(9A). We note in passing, however, that had we been required to consider whether or not it would be inequitable in all the circumstances including the appellant's financial circumstances to require recovery, we would have had regard to the appellant's ability to repay the debt. There is no dispute that the appellant and his wife have approximately \$138,000 in cash assets. They live in their own home. Simply because the Ministry makes a mistake in making a payment does not mean that the recipient of the extra money is entitled to keep it. We appreciate that the appellant and his wife have been inconvenienced by the Ministry's error but as with the situation when a bank pays money in error, the recipient does not automatically become entitled to keep it. We do not consider it would be inequitable in all the circumstances, including the appellant's financial circumstances, to require recovery.

[13] The appeal is dismissed.

DATED at WELLINGTON this 13th day of March 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member