

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 9 June 2015

APPEARANCES

The appellant in person
Ms S Singh for the Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The appellant appeals against a decision of the Chief Executive to suspend payment of her Supported Living Payment from 23 November 2014.

[2] The appellant's Supported Living Payment was suspended as a result of her failure to provide financial information which would enable the Chief Executive to review her income support payments.

[3] The issue in this case is whether it was appropriate to suspend the payments.

Background

[4] The appellant suffers from Rheumatoid Arthritis and meets the medical criteria to receive Supported Living Payment. Supported Living Payment is also an income-tested benefit.

[5] At the time relevant to this appeal, the appellant was living in a *de facto* relationship with **XXXX**. Mr **XXXX** has a small business. He works from home designing and manufacturing electronic equipment, particularly circuits. As a result of his work, Mr **XXXX** earns an income which needs to be taken into account in assessing the appellant's entitlement to the benefit.

[6] Unfortunately Mr **XXXX** allowed the accounting side of his business to fall seriously into arrears. By the time of the annual review of the appellant's benefit in September 2014, his business accounts had not been completed for the year ending 31 March 2009 or subsequent years.

[7] The Ministry had accommodated this lack of information about Mr XXXX's precise income for a number of years and particularly in the years ending 31 March 2012 and 31 March 2013 following the earthquakes in Christchurch.

[8] The appellant has had annual reviews of her benefit entitlement since at least 1998. Information included in the s 12K report indicates that Mr XXXX has routinely been requested to provide accounts for his business so that entitlement to benefit could be assessed.

[9] At the time of the 2005 review, the Ministry was still requesting information for the years ending 31 March 2003 and 31 March 2004. On 27 June 2005, the Ministry contacted Mr XXXX and specifically warned him that the benefit would be cancelled if appropriate income information was not provided. Ultimately, it appears that information for the year ending 31 March 2004 was not provided until May 2006.

[10] In July 2007, a letter was sent to the appellant and her partner explaining the Chief Executive's right to review benefit, to request information about income and to suspend benefit if it was not provided within a reasonable timeframe. On 9 July 2007, the appellant and her partner were advised that they should provide business accounts or tax returns for the year ending 31 March 2006 within 10 working days if their benefit payments were to continue.

[11] A letter to the appellant of 28 October 2010 explains (amongst other things):

"As stated I have to do a review of your benefit payments for the last 12 months. This involves charging the actual income received by your partner against the prospective figure charged against benefit payments."

[12] In short, the contact with the appellant and her partner over a number of years should have left the appellant and her partner in no doubt about what was required of them to ensure their benefit payments continued.

[13] In the 2012 and 2013 annual reviews the Ministry accepted letters from Mr XXXX that his income from employment would be \$10,000. A similar letter dated 27 August 2014 was provided with the review for the 52 weeks ending 3 August 2014.

[14] On 11 September 2014, the appellant was requested to provide business accounts for 2013 and 2014 by 28 September 2014.

[15] This information was not supplied and, on 28 October 2014, a letter was sent advising that the appellant's benefit had been stopped from 27 October 2014 because the appellant had not replied to the request for information. Following further representations from the appellant, this decision was amended. On 13 November 2014 the appellant's benefit was resumed and she was advised that it would be stopped from 23 November 2014, if the necessary information was not received by that date. As the Ministry had not received the necessary business accounts by 23 November 2014 her benefit was suspended from that date.

[16] The appellant sought a review of decision. The matter was reviewed internally and by a Benefits Review Committee. The Benefits Review Committee upheld the decision of the Chief Executive. The appellant then appealed to this Authority.

[17] The appellant and Mr **XXXX** say that it was unreasonable for the Ministry to expect them to provide information when the information did not exist at the time it was requested, in the timeframe available.

[18] Mr **XXXX** explained that he had been in arrears with his business accounts at the time of the 2010 earthquake in Christchurch. His accountant at the time had done nothing for “a couple of years”. The firm had in fact closed its premises following the September 2010 earthquake and moved to a different site. In 2013, the accountant ceased to be Mr **XXXX**’s agent for tax purposes. Mr **XXXX** did not employ a new accountant until March of 2015. Mr **XXXX** explained that since employing the new accountant the company’s accounts have all been brought up-to-date and tax returns filed. It is the first time he has been up to date with his business accounts for many years.

[19] On behalf of the appellant, Mr **XXXX** submitted that the Ministry had taken a less rigorous approach to requiring income information between 2011 and 2013 leading himself and the appellant to believe that the Ministry would be happy to receive the accounts when they were available. It was unreasonable to be expected to catch up with six years of accounts in the short timeframe allowed. The appellant said it was very stressful for her to lose her income for six months. She was obliged to rely on her Visa card to finance her living costs. The Ministry ought to have followed up more in previous years.

[20] The Ministry concede that it may have been lenient with requiring Mr **XXXX**’s financial information in the past but that situation could not continue. The Chief Executive is bound by law to pay only the amount of benefit which a beneficiary is entitled to receive. It was therefore essential that the correct income be charged against the appellant’s benefit entitlement to avoid overpayments.

Decision

[21] The appellant is in receipt of an income-tested benefit. The amount she receives in respect of benefit depends on an accurate assessment of her partner’s income. If his income is not assessed accurately, there may be underpayments or overpayments.

[22] Section 81 of the Social Security Act 1964 provides for the Chief Executive to review a beneficiary’s entitlement to benefit from time-to-time to ensure that the amount he or she is receiving is correct and that they are neither being underpaid nor overpaid. Section 12 of the Act also imposes on the Chief Executive an obligation to investigate claims for benefit and for beneficiaries to supply any information requested.

[23] It is apparent from the evidence that Mr **XXXX** devotes a great deal of time to his business; he suggested 40 to 50 hours per week. It is equally apparent that he has been making a fundamental mistake in relation to his business, namely failing to ensure that the accounting side of the business is up-to-date. It seems that for a period he was employing an accountant who was not suited to his business but that does not explain why between 2012 and 2015 he took no steps to prepare accounts or have accounts prepared or file tax returns.

[24] The only real way the Ministry has of accurately assessing Mr **XXXX**’s income is by viewing his business accounts and tax returns. All companies earning income are

required to file returns with the Inland Revenue Department every year. If this requirement is complied with then there should be no real difficulty in providing the necessary information to the Ministry of Social Development.

[25] A successful business needs to have up-to-date financial information. It does not make sense for Mr **XXXX** to be working 50 hours a week and to have no real idea of what profit he is making. He had let the situation in relation to his accounts get totally out of hand. Given the history of requests for copies of the accounts, there should have been no doubt in the minds of the appellant and Mr **XXXX** that the Ministry would require copies of the business accounts for benefits to be paid. The situation could not be left to drift on indefinitely.

[26] In the letters provided to the Ministry by Mr **XXXX** in August 2012 and August 2013 for the reviews in those years, Mr **XXXX** made it clear that he understood that the Ministry required his accounts and gave various explanations as to why they had not been completed and when they would be available.

[27] The appellant says that a more relaxed approach taken by the Ministry in 2012 and 2013 should have meant more warning should be given. Mr **XXXX**'s accounts were already in arrears at the time the earthquakes struck in 2010 and 2011. A period of less vigorous requirement by the Ministry to have accounts completed was exacerbated by the fact that the business accounts were not up-to-date prior to the earthquakes. We find it difficult to accept that, knowing he was in arrears in 2010 and 2011, Mr **XXXX** did nothing to either obtain a new accountant or otherwise get his accounts into order apparently until 2015. Indeed, even when the appellant's benefit was stopped in November 2014 it appears that a new accountant was not instructed until March 2015. When the new accountant was appointed he was apparently able to get the business accounts up-to-date within a matter of two or three months.

[28] It is true that the Ministry did not follow up on the letters presented with the 2012 and 2013 reviews. There is no evidence that the Ministry requested accounts later in the year as they should have done. The letters of 29 August 2012 and 28 August 2013 are almost identical. They promise that accounts will be provided. The Ministry ought to have been proactive in following up Mr **XXXX**'s promises, however, the fact that they did not does not necessarily excuse the appellant and Mr **XXXX**.

[29] The Ministry's initial request on 11 September 2014 for the accounts for the year ending 2013 and 2014 by 28 September 2014 was not unreasonable. The Ministry would not have been aware that the accounts for those years had not been completed at that point. However, apparently without further discussion or warning, the appellant's benefit was suspended from 27 October 2014. We are in no doubt that the appellant ought to have received a warning that her benefit was about to be suspended and that to suspend her benefit retrospectively and without warning was highly inappropriate. This is particularly the case given the Ministry's history of failing to follow up on requests for the copies of accounts in the preceding years. The decision to resume the appellant's benefit for a further 28 days on 13 November 2014 was, in the circumstances, completely appropriate.

[30] The issue for the Authority is whether the decision to suspend from 23 November 2014 was a reasonable exercise of the Chief Executive's discretion, taking into account that by this time the Ministry was aware that the accounts were unavailable.

[31] In this regard, we note the following:

- (i) The appellant and Mr **XXXX** were not left without income, they had income from Mr **XXXX**'s business.
- (ii) The Ministry have calculated that the appellant and her partner had 73 days' warning from the date of the first letter requesting their financial information to the date their benefit was actually suspended.
- (iii) Mr **XXXX** apparently did not hire a new accountant to get the company's accounts and his tax returns in order until March 2015, almost six months after he was first asked to provide this information.
- (iv) The need for business accounts to be supplied to the Ministry was explained to the appellant and Mr **XXXX** on many occasions prior to 2014.

[32] We are left with the distinct impression that if the Chief Executive had not suspended the appellant's benefit, there would have been further lengthy delays in completing the accounts and providing the type of information necessary to enable the Ministry to assess the appellant's entitlement to benefit.

[33] Taking into account all of the above matters, we are satisfied that the Chief Executive's decision to suspend the appellant's benefit from 23 November 2014 was not unreasonable, and that it was appropriate to do so in the absence of reliable information about Mr **XXXX**'s income.

[34] The appeal is dismissed.

DATED at WELLINGTON this 1st day of July 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member