

[2015] NZSSAA 071

Reference No. SSA 165/14

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of
Auckland 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

DECISION ON THE PAPERS

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee to cancel his entitlement to Accommodation Supplement from 4 June 2014.

[2] The appellant's Accommodation Supplement was cancelled on the basis that the Ministry was not satisfied that the appellant's mortgage and its associated repayments were related to the acquisition of his property.

Background

[3] The appellant and his wife own their own home at 111 XXXX, Howick. The appellant has advised the Ministry that they purchased the house in 1987 for \$140,000. The property was purchased with the assistance of a first mortgage advance from United Building Society. The amount of the original mortgage is unknown. There was also a second mortgage to Metropolitan Life Insurance Company for \$7,967. The Building Society mortgage was subsequently replaced with

a mortgage to Housing New Zealand in 1989. The Housing New Zealand mortgage was later transferred to Nationwide Home Loans Limited and in 1999 the existing mortgages were discharged and replaced by a mortgage to the ANZ Banking Group Limited. This, in turn, was replaced by a mortgage to the Westpac Banking Corporation in 2001. There have been further changes in the mortgagee since that time. As at 4 February 2013, the balance owing on the mortgage was \$232,280. On 3 April 2013 all existing borrowing on the property was repaid and replaced by a mortgage to RESIMAC Homes Limited. The loan by RESIMAC Homes is for \$402,000 over a period of 25 years with repayments of \$2,772.33 per month, including principle and interest.

[4] The appellant sought Accommodation Supplement at the time he was applying for New Zealand Superannuation in August 2013. At that time the appellant's accommodation-related costs were assessed on the basis of property rates, water rates, house insurance, repairs and maintenance, totalling \$5,127.22 per annum. The mortgage repayments were excluded because the Chief Executive did not consider that the repayments related to the acquisition of the property.

[5] A further application for Accommodation Supplement was made by the appellant on 4 April 2014. The case manager considering his application apparently overlooked the fact that much of the borrowing secured against the appellant's home related to the appellant's business activities rather than borrowing to acquire the home. Accommodation Supplement was granted and backdated to 22 August 2013.

[6] On 28 April 2014, the appellant asked the Ministry why his Accommodation Supplement could not be backdated further. When the matter was reviewed, the fact that the appellant's mortgage had apparently increased significantly since the original acquisition of the property came to light. His request was declined and Accommodation Supplement cancelled from 4 June 2014.

[7] 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.

Decision

[8] Accommodation Supplement is to provide targeted financial assistance to help certain people with high accommodation costs meet those costs.

[9] Section 61E of the Social Security Act 1964 defines "accommodation costs" in the following way:

- (b) in relation to premises that are owned by the person, the total amount of all payments (including essential repairs and maintenance, local authority rates, and house insurance premiums, but excluding any service costs and any arrears) that—
 - (i) subject to section 68A, are required to be made under any mortgage security for money advanced under that security to acquire the premises, or to repay advances similarly secured; or
 - (ii) the chief executive is satisfied are reasonably required to be made:
- ...

[10] In *Stowers v Director-General of Social Welfare*,¹ Fisher J considered the definition of “accommodation costs” in s 61E and in particular, the phrase “for money advanced under that security to acquire the premises or to repay advances similarly secured”. He found:

[15] ... The first limb is “for money advanced under that security to acquire the premises”. The only possible meaning of those words is that the payments made under the mortgage must relate to money which had been advanced to the mortgagor “to acquire the premises”, in other words, acquire the house currently occupied by the beneficiary. I do not see any ambiguity or other possible interpretation.

[16] ... But however broadly one interprets “to acquire the premises”, it could not possibly extend to an advance to purchase a car for the mortgagor’s son or to take a trip to Samoa or something of that nature. On no possible interpretation could the purpose of such a debt be “to acquire premises”. So up to that point there is a clear limitation upon the scope of the advances which could qualify under para b(i).

[11] He also considered the phrase “to repay advances similarly secured” and found that:

[18] ... There are two reasons for adopting the latter interpretation. The first is that there would be no point in limiting the recognisable advances to those incurred “to acquire the premises” under the first limb in paragraph b(i) if that limitation could be immediately negated by repaying the original advance and replacing it with a new one. It would mean, for example, that a beneficiary could arrange an overdraft facility with a bank secured over the house, run up gambling debts of \$100,000 on the overdraft, repay that debt with a fresh advance from a second bank similarly secured over the house, and then claim the cost of the gambling debt as an accommodation cost. The result would make the original restriction to advances to acquire premises pointless. Legislation should not be interpreted in such a way as to produce contradictory or absurd results if a more sensible interpretation is open on the plain wording.

[19] ... The second point is that the context limits the payments to those made for accommodation purposes. The whole point is to define “accommodation costs”. A debt incurred for gambling does not create an accommodation cost. It creates a gambling cost. ... It would be easy to confuse the original purpose of the debt itself with mere security for its repayment. The social security regime is concerned with matching benefits to financial needs, not matching benefits to various forms of property security.

¹ HC Auckland AP404-100-00, 27 September 2000.

[12] In short, repayment of advances secured by mortgage over the appellant's house are not accommodation costs unless they relate to the acquisition or maintenance of the house. Amounts borrowed for any other reason, for example to finance a business, a holiday or consumer spending, cannot be regarded as accommodation costs.

[13] The essential issue in this case is whether any part of the appellant's borrowing of \$402,000 and the associated repayments relate to the acquisition and maintenance of the house. The evidence available is limited. The position is exacerbated by the appellant choosing to have the matter heard on the papers. The appellant was requested by the Authority to provide further information but has not done so.

Accommodation costs

[14] The information available is that the appellant apparently first sought assistance with accommodation costs in January 2006. The house was originally purchased for \$140,000 and there was a second mortgage. The amount of the first mortgage was unknown. As at August 2005, the appellant and his wife had a mortgage of \$265,401 to Sovereign Insurance and their mortgage repayments were \$1,958.39 per month. It appears that a further \$30,000 was borrowed in April 2006.

[15] The appellant's accommodation costs in 2006 were assessed on the basis of the costs being paid at that time. Accommodation Supplement was paid on that basis. It appears that there was no inquiry into whether or not the full amount of the mortgage payments related to repayments of money used to acquire the premises.

[16] This particular grant of Accommodation Supplement continued until 2009.

[17] The only apparent explanation for the increase in mortgage from the time of the original purchase of the house was that the mortgage was increased for business purposes.

[18] The first point made by the appellant was that he was entitled to expect that paperwork he provided in 2006 would be retained by the Ministry and he should not be penalised because the Ministry have lost his paperwork.

[19] The evidence available does not suggest that the Ministry was provided with documentation or information about the original mortgage in 2006.

[20] In 2014, the appellant was asked to provide papers relating to the original loan but was unable to locate them.

[21] Exhibit 1 of the Section 12K Report sets out in detail the appellant's accommodation costs as they were known to the Chief Executive at 27 February 2006. We are not satisfied that the Ministry has lost any paperwork relating to the mortgage taken out in 1987 as alleged.

[22] The second point made by the appellant is that the original mortgage was for 30 years and it is likely, therefore, that it would not have been repaid fully until 2017, even had there been no further borrowing. We accept that, as at April 2014, it was possible there may still have been a small balance owing in respect of the original mortgage but this would depend on fluctuations in interest rates and the repayments made. It would, for example, be possible for a person who maintained their repayments at the level set in 1987 to have repaid the mortgage in less than 30 years as a result of the significant reduction in interest rates since that time.

[23] The Chief Executive advises that to be eligible for Accommodation Supplement the appellant's accommodation costs would need to have exceeded \$161 per week. It has been calculated that the outgoings in relation to rates, insurance and maintenance amount to \$98.60 per week. We would therefore need to be satisfied that any remaining mortgage payments would exceed \$62.40 a week. \$62.40 a week amounts to \$3,244.80 per annum.

[24] It is the appellant who is asking to be paid an Accommodation Supplement. He is the person who has within his knowledge the information necessary for a decision about whether he has any accommodation costs relating to the acquisition of his house. It is surprising that neither he nor his wife would have any recollection of the amount of the original mortgage, or written information confirming the amount of the original mortgage and its term.

[25] As we have no information as to the amount of the original mortgage, the repayments, or the amount remaining owing on that mortgage at the time that the appellant began borrowing for other purposes, we cannot be satisfied on the balance of probabilities as to precisely what mortgage repayments (meeting the definition of accommodation costs over and above the rates, insurance and maintenance) are payable.

[26] On the basis of the information available, we are not satisfied that the appellant was eligible for Accommodation Supplement as at 4 June 2014. We are therefore satisfied that when the Chief Executive became aware of the mistake made in granting the appellant Accommodation Supplement at that point, it was appropriate to cancel payment.

[27] The appeal is dismissed.

DATED at WELLINGTON this 19th day of October 2015

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member

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