

[2016] NZSSAA 60

Reference No. SSA 092/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of Rangiora
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

[1] The appellant appealed to the Authority in respect of a decision of the Chief Executive upheld by a Benefits Review Committee to establish and recover an overpayment of New Zealand Superannuation paid in the period 5 May 2014 to 27 January 2015 amounting to \$2,161.22. The appellant lodged an appeal with the Authority on 26 July 2015.

[2] On or about 15 December 2015 a decision was made by the Chief Executive that the debt would not be recovered. The appellant was asked to withdraw her appeal.

[3] The appellant now seeks an order for costs. She claims that she incurred \$2,000 in respect of legal fees relating to her appeal.

[4] The Authority has power to award costs pursuant to s 12O(1) of the Social Security Act 1964. Where an appeal is allowed in whole or in part the Authority may allow the appellant the costs of bringing the appeal or any part thereof.

[5] We note the following:

- There is no suggestion that the overpayment was not correctly established in this case. However the overpayment was established in circumstances where the appellant had advised a change of her circumstances and the Chief Executive has accepted that the overpayment was caused as a result of Ministry error.
- Section 86(9A) of the Social Security Act 1964 requires that all the criteria of that section be made out before the Chief Executive can direct that a debt not be recovered.
- Initially the Chief Executive took the view that it would not be inequitable in all the circumstances, including the appellant's financial circumstances, to require recovery because it was considered that the appellant could afford to repay the debt. This decision was upheld by the Benefits Review Committee on 24 June 2015 which is the subject of this particular appeal.
- The Chief Executive has now accepted that it would be inequitable in all the circumstances, including the appellant's financial circumstances, to require recovery of the \$2,161.22.
- The Chief Executive's decision was made prior to the Section 12K Report being filed. The appellant was not required to prepare for a hearing before the Authority and the appellant has not been required to attend a hearing before the Authority.
- We note that the appellant lodged her appeal herself. There was no reference to an advocate or lawyers being involved.

[6] The appellant has produced three invoices from lawyers XXXX. The first of those invoices is dated 30 June 2015 and is an amount for professional services for the period 4 May 2015 to 30 June 2015. The heading is "Accommodation Expense Claim", the fee charged is \$2,221.50. The second invoice dated 30 June 2015, with the heading "Accommodation Expense Claim" is for \$1,186.50. The third invoice is dated 9 July 2014 and is for the amount of \$2,221.50. It has the heading "Temporary Accommodation Matter – Vero". It is difficult to believe that the accounts provided by the appellant refer to advice in relation to an overpayment of New Zealand Superannuation when the heading on each account indicates it relates to an accommodation expense matter.

[7] We note that the appellant had an appeal before the Authority on 13 April 2015 in relation to Temporary Accommodation Assistance. The Authority issued its decision on 18 May 2015. It dismissed the appellant's appeal. There is no basis on which the Authority

could award costs in relation to the issue of Temporary Accommodation Assistance when her appeal was dismissed.

[8] Furthermore the Benefits Review Committee decision which is relevant to this particular appeal is dated 24 June 2014. Any costs incurred by the appellant in preparing for the Benefits Review Committee hearing are not costs incurred in bringing this appeal.

[9] We are not satisfied that the appellant has incurred any costs in bringing this particular appeal. We are not prepared to award costs in relation to this matter.

[10] To the extent that the Ministry has reversed its decision to recover the overpayment established the appeal is allowed.

DATED at WELLINGTON this 17 day of June 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member