

[2016] NZSSAA 066

Reference No. SSA 141/15

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX** of  
Hastings 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 has appealed to the Authority in respect of a decision of the Chief Executive confirmed by a Benefits Review Committee relating to the establishment of debts in the period 2003 to 2006.

[2] The issue is whether or not the debts, which have now been repaid, ought to have been recovered.

**Background**

[3] The appellant is aged 54 years. He is currently in receipt of Supporting Living Payment.

[4] The appellant was in receipt of Unemployment Benefit, Sickness Benefit and Accommodation Supplement in the period 2003 to 2006. These are all benefits which are abated if the beneficiary receives income from employment. It is apparent from the Ministry's computer records that the appellant had casual employment during the

period concerned and that he contacted the Ministry and advised of his income from employment regularly.

[5] In summary, there are 32 debts with a total value of \$3,630.77 established in the period 2003 to 2006. Ministry records state that these debts have been recovered. The list of debts to which the appeal relates is set out at pages 142 and 143 of the Section 12K Report. The overpayments can be grouped into three categories:

- (a) Overpayments of Unemployment Benefit and Sickness Benefit which the Ministry say arose when the appellant was late in declaring his income.
- (b) Overpayments of Accommodation Supplement which arose because on 17 June 2003, the appellant advised that he had moved in February 2003 and that he did not have accommodation costs at his new address due to the fact he was doing odd jobs in return for accommodation. In respect of the period 30 June 2003 to 10 August 2003 the Accommodation Supplement debt arose as a result of abatement of his entitlement from income.
- (c) Overpayments of Sickness Benefit in the period 26 April 2006 to 4 June 2006 because the appellant had advised he commenced full-time employment on 26 April 2006. Advice of this was apparently given some weeks after he commenced work.

[6] The appellant has elected to have this matter dealt with on the papers. He has not provided a detailed explanation of each debt. Rather he says that it is incorrect to say that the debts arose as a result of a late declaration of his income. He says all 32 payslips were declared the same week that they were given out. They were not adjusted in time "as they were bulk processed and also late; all the Ministry's doing and they have admitted to it".

## **Decision**

### *Sickness Benefit and Unemployment Benefit*

[7] As outlined in the Section 12K Report, Sickness Benefit and Unemployment Benefit are income tested benefits. If a beneficiary has earnings in the week in which

benefit was paid, then the benefit for that week must be abated in accordance with the relevant income test.

[8] The benefit must be adjusted in the week that the income is **earned** or entitlement arises rather than in the week that it was **received** or the payslip was received.<sup>1</sup>

[9] The Ministry have advised that the appellant's benefit was paid on Tuesday. To ensure that an overpayment did not occur in the period 2003 to 2006, the beneficiary needed to report their earnings by 8.00 pm on the Friday of the week he worked. There was a more limited ability to manually adjust a payment if income was reported by noon on Monday, where the benefit was paid on a Tuesday.

[10] In short, if earnings are paid into the beneficiary's account the week after they were earned, and the payslip is issued at that time then reporting the income at that point will be too late for the beneficiary to avoid an overpayment.

[11] We infer from the appellant's submission that he reported his income when he received his payslip. We also infer that he received his payslip after the money was earned, by which time it was too late for the Ministry to change his particular benefit payment.

[12] There are a number of notes made in the Ministry's UCV2 system during the relevant period when the appellant was reporting his income too late to avoid overpayments. On 7 July 2003, the appellant was specifically advised that he needed to advise the Ministry of his income in the weeks he worked to avoid debts. There is a record that on 31 October 2005, the appellant was advised of the need to call the Ministry every Friday and report his hours of work. It is reasonable to infer that this advice was given because it was identified at the time that the appellant was not reporting his income in time to avoid overpayments.

#### *Overpayment of Sickness Benefit – 26 April to 4 June*

[13] The Ministry's computer records record that on 26 April 2006, the appellant commenced full-time employment. The information available indicates that the appellant did not advise the Ministry of this until on or about 4 June. If the appellant was in full-time employment, he had no entitlement to a main benefit. The appellant has not provided any evidence to the contrary and did not seek a review of the

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<sup>1</sup> See *Tapp v Chief Executive of the Department of Work and Income* [2001] BCL 714; HC Wellington AP 264/00, 29 June 2001 and *Tapp v Chief Executive Officer of the Department of Work and Income* [2003] NZFLR 761 CA 267-02 14 May 2003.

decision at the time the debt was established. We are satisfied that this debt was correctly established.

#### *Accommodation Supplement*

[14] The debt relating to Accommodation Supplement has apparently arisen because in the weeks concerned, the appellant was not incurring accommodation costs. Rather, he was working in return for free accommodation. In those circumstances, the appellant cannot claim Accommodation Supplement.

#### *Recovery of overpayments*

[15] Generally speaking, overpayments of benefit 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 provides that the Chief Executive may not recover a debt in circumstances where:

- (a) the debt was wholly or partly caused as a result of an error;
- (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 or her position believing he or she was entitled to receive the money and would not have to repay it; and
- (e) it would be inequitable in all the circumstances, including the debtor's financial circumstances, to permit recovery.

[16] Pursuant to s 86(9B) of the Act, the term "error" means:

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

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

[18] The first issue we must consider is whether or not the overpayments in this case have occurred as a result of an error by an officer of the Ministry.

[19] We are not satisfied that the overpayments in this case have occurred as a result of an error by an officer of the Ministry. Therefore, we are not able to direct that the debts not be recovered pursuant to the provisions of s 86(9A) of the Act.

[20] Section 86(1), at the time relevant to this appeal, provided the Chief Executive with a discretion to take steps to recover a debt. In fact, according to Ministry records the debts have been recovered and the Chief Executive is not required to take any further steps to recover the debt.

[21] The appeal is dismissed.

**DATED** at WELLINGTON this 11<sup>th</sup> day of July 2016

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Ms M Wallace  
Chairperson

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Mr K Williams  
Member

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Lady Tureiti Moxon  
Member

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