

[2016] NZSSAA 098

Reference No. SSA 094/16

**IN THE MATTER**

of the Social Security Act 1964

**AND**

**IN THE MATTER**

of an appeal by **XXXX** of Lower  
Hutt against a decision of a  
Benefits Review Committee

**BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

Ms M Wallace - Chairperson  
Mr K Williams - Member

**HEARING** at WELLINGTON on 17 October 2016

**APPEARANCES**

The appellant in person  
J Hume for 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 Sole Parent Support amounting to \$820.76, paid in the period 22 August 2014 to 20 August 2015.

## **Background**

[2] At the time relevant to this appeal the appellant was in receipt of Sole Parent Support. She had the shared care of her son, who was at that time a preschooler.

[3] The appellant was first granted Domestic Purposes Benefit in 2011. Since March 2012 the appellant has been in employment. Her income from employment was charged against her benefit entitlement. The income charge has fluctuated from time-to-time and her benefit has been adjusted accordingly. Income is assessed on an annual basis in the case of Sole Parent Support. A review is carried out at the end of the benefit year to assess whether the beneficiary has been paid the correct amount. The information contained in the s 12K Report indicates the appellant has generally been very conscientious in reporting changes in her income. There have, on two previous occasions, been modest overpayments at the end of the review year. The appellant completed an annual review form on 12 August 2014 for the 52 weeks ending 8 June 2014. In this form she declared her weekly income to be \$344.50; however this was loaded into the Ministry's system as \$340.80 per fortnight rather than \$344.80 per week from 4 August 2014.

[4] On 30 October 2014 the appellant contacted the Ministry and advised that her usual income was 16.5 hours per week paid at \$20.97 per hour. At this point, it was noted that the Ministry was not charging her income correctly. From 10 November 2014 her income was charged at the correct rate of \$344.80 per week (instead of per fortnight).

[5] The appellant's total benefit payments paid prior to 14 October 2014 were \$358.63 per week. Following the correction by the Ministry they reduced to \$253.99 per week.

[6] In September 2015, the annual review of the appellant's income for the period 22 August 2014 to 20 August 2015 was carried out. This confirmed her income during this period to be \$17,503.54. It was determined that the appellant had been overpaid \$1,548.76. This was later reduced to \$820.76 when it was noted that a child care exemption of \$20 a week had not been applied to the income of \$17,503.54.

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

### **Decision**

[8] The appellant did not challenge the calculation of the overpayment. The sole issue for the Authority is whether or not the debt should be recovered.

[9] 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 enables the Chief Executive not to recover a debt in circumstances where:

- [a] the debt was wholly or partly caused 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 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.

[10] Pursuant to s 86(9B) of the Act, 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 or omission by an officer of the Ministry.

[11] 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.

[12] The first issue for the Authority in a case such as this is to consider whether or not the overpayment arose as a result of an error on the part of the Ministry. The Chief Executive concedes that the overpayment arose at least in part because the Ministry incorrectly charged the appellant's income as \$344.80 per fortnight instead of \$344.80 per week in respect of the period 22 August 2014 to 26 October 2014. The frequency of the income was not amended until November 2014.

[13] The Ministry suggest that the appellant was not without fault because on 2 October 2014, in applying for an advance of benefit, she signed a form acknowledging that her income was \$172.40 per week. The amount was not entered on the form by the appellant personally and the Ministry does not allege that the appellant intentionally contributed to the overpayment.

[14] The next matter which the Authority must consider in determining whether the criteria of s 86(9A) have been made out is whether or not the appellant received the payment of benefit in good faith. The question to be asked is did the appellant receive the overpayment believing she was entitled to it?

[15] On behalf of the Chief Executive, Ms Hume submitted that:

- [a] The appellant was aware of the effect income had on the rate of benefit payable to her.
- [b] As a result of an increase in her hourly rate in June 2014, the income charged was \$344.80 per week which reduced her Supported Living Payment to \$182.09 a week from June 2014. The total payment into her bank account at this point was \$349.72. At the time, this represented a reduction in her weekly benefit of \$55.40 in circumstances where her income had increased by \$79.25 per week. The appellant queried this reduction in her benefit.
- [c] The appellant's Family Tax Credit of \$92.73 ceased to be paid by the Ministry from 14 July 2014, as a result of which the appellant should have expected to see a significant reduction in her benefit payments from the Ministry. In reality, however, from August 2014 her benefit

payments increased to \$358.63 which is more than she had received when her Family Tax Credit payments were being paid by the Ministry.

- [d] A letter forwarded to the appellant on 12 August 2014 advised her that income was being charged at \$344.80, which equated an annual amount of \$7,924.80. The annual figure was significantly less than the actual annual salary she was receiving and should have alerted the appellant to the need to contact the Ministry and inform them of its error.
- [e] The appellant signed an application for an advance which incorrectly included the information that her weekly income was \$172 on 2 October 2014.
- [f] From her previous contact with the Ministry, the appellant knew that if the income charge was incorrect then she would be overpaid.

[16] In summary, it is submitted that the appellant ought to have known that the payments that she was receiving between 22 August and the end of October 2014 were not correct. She could not, therefore, have received the payments in good faith.

[17] The appellant told the Authority that in relation to the letter dated 12 August 2014, she noted the figure of \$344 at the top of the letter. The letter does not specify whether the payment was weekly or fortnightly. She did not particularly note the annual figure specified. Nor did she notice the income figure of \$172.40 per week specified on the advance application form she completed on 2 October. She had been in a rush at the time.

[18] The appellant said that she had had overpayments previously and was very anxious to avoid overpayments. She had rung the 0800 number on a number of occasions to check that her income was correctly recorded.

[19] She also noted that it had taken at least two months to start receiving the Family Tax Credit from Inland Revenue instead of the Ministry. She assumed, having provided the correct information to the Ministry, that the Ministry were

calculating her benefit entitlement correctly. She did not recognise that she was receiving more than she ought to.

[20] We accept that the appellant did not pick up the error in the letter of 12 August 2014. The letter specifies that the appellant's income is comprised of \$344.80. The letter does not specify whether this amount was being charged weekly or fortnightly. The appellant was entitled to assume that the charge was being made weekly which is what she had advised the Ministry. The figure of \$344.80 would have meant more to her than the annual figure below. We are also prepared to accept that the appellant did not particularly note the incorrect income amount specified on the advance application of 2 October 2014.

[21] Ministry records indicate that in June 2014, the appellant was receiving total payments of \$349.72 from the Ministry. On 20 June 2014 she received a letter advising her that payment of her Family Tax Credit by the Ministry would stop from 14 July and from 15 July it would be paid by Inland Revenue. Her payments decreased to \$337.45 in July 2014. The letter of 12 August 2014 tells the appellant that she will in future be paid \$358.63 per week, but as is common with letters from the Ministry there is no clear explanation of how this amount is comprised. Ultimately, when the appellant's earnings were correctly charged from November 2014, her benefit payments dropped to \$253.99 a week. This is a significant decrease and raises a question over whether the appellant seriously believed the payments she was receiving were correct.

[22] The Ministry ceased making payments of Family Tax Credit to the appellant from 17 July 2014, at least a month before the benefit payments were adjusted on review. It appears little significance can be attached to the fact that the appellant had ceased to receive the Family Tax Credit.

[23] Had the letter of 12 August 2014 clearly set out the components of the payment of \$358, the appellant may have been alerted to the fact that she was being paid incorrectly, but the letter does not do so. The letter is most unsatisfactory.

[24] Furthermore, where a beneficiary's income is assessed on an annual basis, it will not necessarily be the case that an overpayment will result if the rate paid is

too high for a short period. A variety of changes might occur throughout the year which even-out any short period of overpayment. It follows that the beneficiary will not necessarily be aware that the amount they are receiving at any particular point may result in an overpayment at the end of the year.

[25] We accept that there are some indications in this case that the appellant ought to have realised something was not correct about her payments, but on balance we are prepared to give the appellant the benefit of the doubt and accept that she believed she had given the Chief Executive the correct information, the Ministry were calculating her benefit payments correctly, and therefore the payments she was receiving were what she was entitled to receive.

[26] If we are satisfied that the appellant received the payments of benefit in good faith, we must then consider whether she changed her position believing that she would not have to repay the amounts received. We are prepared to accept that the appellant received the payments believing she was entitled to them and that she changed her position believing that she would not have to repay them.

[27] We are then required to consider whether it would be inequitable in all the circumstances, including the appellant's financial circumstances, to require recovery.

[28] The appellant no longer receives a main benefit. She relies on her income from part-time earnings, non-beneficiary Accommodation Supplement, Family Tax Credit and Child Support payments to support herself and her son. Her household income is approximately \$625 per week from which she pays \$350 per week in rent.

[29] Where a beneficiary is receiving income from employment which is assessed annually, it will often be the case that underpayments and overpayments will arise. The beneficiary may well end up with an overpayment to be repaid at the end of the year. This can present difficulties for a person on a low income. It is therefore important that the Ministry enter information about income accurately.

[30] Taking into account all the circumstances, particularly the error by the Ministry and the appellant's financial circumstances, we consider it would be inequitable to require the appellant to repay the debt.

[31] The appeal is allowed. We direct that the Chief Executive not recover the amount of \$820.76 overpaid to the appellant in the period 22 August 2014 to 20 August 2015.

**DATED** at WELLINGTON this 21<sup>th</sup> day of November 2016

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Ms M Wallace  
Chairperson

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Mr K Williams  
Member