[2016] NZSSAA 108

Reference No. SSA 176/15

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an opposed appeal by way of Case Stated to the High Court by **XXXX** of Lower Hutt against a decision of a Benefits Review Committee

DECISION OF THE CHAIRPERSON IN RELATION TO APPEAL BY WAY OF CASE STATED

[1] The appellant has lodged an appeal in respect of the Authority's decision of 24 May 2016.

[2] Appeals from the Authority's decisions are limited to questions of law. There is no general right of appeal.

[3] In accordance with the provisions of the Social Security Act 1964, the appellant has been requested to lodge a draft Case Stated which includes the questions of law which she would like to be put to the High Court.

[4] In a recent High Court decision; *Lawson v The Chief Executive of the Ministry of Social Development*, the High Court has noted the following:[1]

[i] The Authority is not obliged to recognise all questions of law proposed as justifying the stating of the case for the decision of the High Court.

[ii] The Chair of the Authority must retain final control over a Case Stated and ensure that a case is confined to errors of law alone.

[iii] Not every legal issue is to be submitted to the High Court. Where some have obvious answers then there is no question to refer to the Court.

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1 [2016] NZHC 910.

[iv] Questions of law must raise some tenable basis for suggesting an error has been made.

[5] An essential issue for the Chairperson in settling a case stated, therefore, is whether the question in the draft Case Stated provided by the appellant proposes a question of law which raises a tenable basis for suggesting the Authority has made an error either in interpreting or applying the law.

[6] Some of the principles and factors applicable as to what constitutes a question of law which should be put to the High Court were conveniently summarised by the District Court in *O'Neil v Accident Compensation Corporation* at paragraph [24] as follows:[2]

[i] The issue must arise squarely from the decision challenged and not from non-material comments.

[ii] The contended point of law must be capable of bona fide and serious argument.

[iii] Care must be taken to avoid allowing issues of fact to be dressed up as questions of law.

[iv] Where an appeal is limited to questions of law a mixed question of law and fact is a matter of law.[3]

[v] A decision maker's treatment of facts can amount to an error of law but only where there is no evidence to support the decision, the evidence is inconsistent with and contradictory of the decision, or the true and only reasonable conclusion on the evidence contradicts the decision.

[vi] Whether or not a statutory provision has been properly construed or interpreted is a question of law.

[7] The courts have also found that questions of law must be precise and limited to an identified issue, see (*Hoe v Manningham City Council*[4]).

[8] The proposed question of law for the opinion of the Court in this case is whether the decision of the Authority was erroneous and in particular:

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2 [2008] NZACC 250 (8 October 2008) at [24].
3 But not where the law has been correctly understood and subsequently applied: *Bryson v Three Foot Six* [2005] 3 NZLR 733 (SC).
4 [2011] VSC 37 at [4].

[i] *That the Authority was wrong in law to regard that for entitlement to benefit purposes the GST refunds received by the appellant's company and paid by it into her own bank account was income under s 3 of the Social Security Act 1964?*

[ii] *That the Authority erred in law in finding that the money paid to the appellant by her company (XXXX Limited) was income for the purposes of s 3 of the Social Security Act 1969.*

[9] Both questions are essentially the same, the only difference being that the first question specifically refers to the source of a payment from XXXX Limited to the appellant as being from a GST refund.

[10] The Authority accepts that whether or not money received constitutes income as defined in s 3 of the Social Security Act 1964 may be a question of law requiring the interpretation of a statutory term.

[11] The simple fact, however, that the questions posed by the appellant amount to questions of law does not necessarily mean that they should be stated to the High Court. There must be some reasonably arguable ground that the Authority was wrong in its application or interpretation of the law.

[12] The assertion of the appellant that the payments received by XXXX Limited were sourced from GST refunds is immaterial. The Authority specifically noted in its decision that the exception applying to GST refunds in the definition of "income" in the s 3 definition, at subparagraph (f)(xi), clearly did not apply because the GST refund was not payable to the appellant. The Authority also found that "the deposits made to the appellant's account came from the company's funds generally and were not confined to the GST refund."

[13] Mr Howell on behalf of the appellant submits that as the Chief Executive has power to look behind a trust or corporate entity pursuant to s 74(1)(d) of the Act in assessing a person's entitlement to a benefit, this power should apply in reverse in the appellant's situation. Rather than treat the appellant's company as a separate entity, the money received by the company, including GST refunds, should be treated as being payable to the appellant personally. He suggests that the cases of *Fonu v Merrill Lynch Bank and Trust Company (Cayman) Limited & Ors*[5] and

[5] [2011] UKPC 17.

Clayton v Clayton[6] are authority for the proposition that the Authority should take this approach.

[14] The cases referred to by Mr Howell are not relevant. The powers of the Social Security Appeal Authority are limited to the provisions of the Social Security Act 1964 and other legislation in respect of which it has jurisdiction. Unless there is a provision in the Act which would enable the Authority to regard money paid to the appellant's company as money paid to the appellant personally, neither the Chief Executive nor the Authority has power to do as Mr Howell suggests. Section 74(1)(d) of the Act allows the Chief Executive to refuse to grant, or terminate or reduce any benefit granted where someone has directly or indirectly deprived themselves of property with the result that the person qualifies for a benefit or an increased rate of benefit. It does not allow the Chief Executive to look behind the incorporation of a company to enable a beneficiary to receive a benefit greater than would otherwise be payable as suggested by Mr Howell. Nor does any other provision of the Social Security Act 1964 give the Chief Executive power to overlook the fact that the appellant received her income from a company, or that the GST refund was not paid to her directly.

[15] There are no reasonably arguable grounds that the money the appellant received from her company was not income, and that the Authority erred in law by finding that the money received by the appellant from the company was income, which should have been declared to the Ministry and which affected the appellant's benefit entitlement. The argument that payments received by the appellant from the company are not "income" as defined in clause (a) of the definition of income in s 3 of the Act is untenable.

[16] In these circumstances, I am not prepared to state a case to the High Court.

DATED at WELLINGTON this 21st day of December 2016

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Ms M Wallace
Chairperson

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6 [2016] 1 NZLR 590.