

[2017] NZSSAA 010

Reference No. SSA 124/16

IN THE MATTER of the Social Security Act
1964

AND

IN THE MATTER of an appeal by **XXXX** of
Ohope against a decision of
a Benefits Review
Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

S Pezaro - Deputy Chair

K Williams - Member

C Joe - Member

Hearing at Auckland on 16 February 2017

Appearances

No appearance for the appellant

I Ji for the Chief Executive of the Ministry of Social Development

DECISION

Background

[1] Mr XXXX appeals against a decision of the Benefits Review Committee (BRC) issued on 4 July 2016. The BRC upheld the decision of the Ministry to recover an overpayment of \$1,235.92 for Jobseeker Support and Accommodation Supplement to Mr XXXX. At the time of the BRC hearing

Mr XXXX had made payments of \$132.50 leaving a balance of \$1,103.42.

- [2] There are two periods when the Ministry says Mr XXXX was overpaid: 16 March 2015 to 26 April 2015 and 29 June 2015 to 26 July 2015.
- [3] The Ministry acknowledged in its 12K report that it had made an error in relation to Mr XXXX's entitlement to an Accommodation Supplement as a non-beneficiary during the period that he was found not to be entitled to Jobseeker Support. As a result of this error the amount that the Ministry now seeks to recover is \$863.42.¹

The appeal

- [4] Mr XXXX did not appear at the hearing however we are satisfied that he was served with the notice of hearing. Therefore we have determined Mr XXXX' appeal on the basis of his written submissions and the written and oral submissions of the Ministry.
- [5] Mr XXXX says that he gave the Ministry the correct information about his work and rate of pay. Therefore he argues that any overpayment is not his responsibility. Mr XXXX states that he was completely honest and cannot afford to repay the amount in issue. He also says that he has a back injury, works part-time, and is on the minimum wage.

The Ministry's position

- [6] The Section 12K Report sets out the relevant chronology, the communication with Mr XXXX and adjustments made to his benefit. The Ministry accepts that, at least from 18 June 2015, it may have overpaid Mr XXXX in error because the case manager failed to follow up on Mr XXXX' advice that he was working 35 hours per fortnight.²
- [7] The Ministry concludes that this may have impacted on the overpayment for the period 29 June 2015 to 26 July 2015 which the Ministry calculates at \$568.92.
- [8] However, the Ministry submits that Mr XXXX could not have received this overpayment in good faith. Therefore the Ministry argues that it is entitled to recovery.

¹ Paragraphs 3.7 and 3.8 of the s 12K report dated 23 January 2017.

² At 6.3(5) of the Report

Relevant law

[9] Generally, 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 prohibits the Chief Executive from recovering a debt in circumstances where:

[9.1] the debt was wholly or partly caused as a result of an error;

[9.2] the beneficiary did not intentionally contribute to the error;

[9.3] the beneficiary received the payments of benefit in good faith;

[9.4] the beneficiary changed his position believing he was entitled to receive the money and would not have to repay it; and

[9.5] 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 Social Security Act 1964, the term "error" means:

[10.1] the provision of incorrect information by an officer of the Ministry;

[10.2] an erroneous act or omission occurring during an investigation of benefit entitlement under s 12; and

[10.3] any erroneous act or omission by an officer of the Ministry (not including the act of making a payment to which the recipient is not entitled to, if that act was not caused, wholly or partly, by an erroneous act or omission of the 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.

Discussion

[12] Mr XXXX does not dispute the calculation of the amount in issue. He says it was not his fault that he was overpaid. Therefore the issue that we must address is whether the Ministry is entitled to recover the overpayment. We have considered the two periods of overpayment separately.

[13] We accept that Mr XXXX' hours of work changed frequently in a short space of time and that on several occasions he did provide information about these changes to the Ministry. We also accept that Mr XXXX received the correct

information setting out his obligation to tell the Ministry about any change in his circumstances including his working hours.

[14] On 22 May 2015 Mr XXXX told the Ministry that he had not worked from 27 April 2015 due to a back condition. However on 23 June 2015 the Ministry identified through the Inland Revenue Information Sharing programme that Mr XXXX had received employment income of \$1379 from the month of April. The Ministry subsequently obtained pay slips for this period.

[15] On this basis we conclude that Mr XXXX did not receive in good faith the sum overpaid by the Ministry for the period 16 March 2015 to 26 April 2015. Accordingly, we find that the Ministry is entitled to recover the overpayment for this period.

[16] For the second period in issue, the Ministry accepts that an officer failed to follow up on Mr XXXX' advice that he was working 35 hours a fortnight and, therefore, caused or contributed to the overpayment.

[17] However, in order for the Chief Executive to be prohibited from recovering this part of the debt, the three tests in s 86(9A) (above at [10.3] to [10.5]) must be met. Mr XXXX must have received the money in good faith, changed his position as a result, and it must be inequitable to recover the debt.

[18] Mr XXXX accepts that he was obliged to declare any change in his income. Given the number of hours that he was working at this time, he must have known that he was not entitled to the full amount of the benefit he received in addition to this income.

[19] Therefore we conclude that although Mr XXXX was not responsible for the overpayment, he did not receive it in good faith and is obliged to repay it. For these reasons this appeal is dismissed.

[20] The Ministry of Social Development is entitled to recover the sum of \$863.42 from XXXX.

Dated at Wellington this 31st day of March 2017

S Pezaro
Deputy Chair

K Williams
Member

C Joe JP
Member