

[2017] NZSSAA 011

Reference No. SSA 074/16

**IN THE MATTER** of the Social Security Act  
1964

AND

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

## **BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

**S Pezaro** - Chair

**C Joe** - Member

**Hearing at Wellington** on 17 March 2017

Appearances

For Chief Executive of the Ministry of Social Development: J Hume

For the Appellant: The appellant in person  
G Howell, representative

### **INTERIM DECISION**

#### **Background**

- [1] At the hearing on 17 March 2017 the subject of this appeal was disputed by the parties. Ms XXXX says that she appeals all decisions made by the Ministry since 1998.
- [2] The Ministry submit that the appeal is limited to the calculation of debt incurred by Ms XXXX since 2008.
- [3] We have determined the extent of the appeal as a preliminary issue because the question of which decisions are under appeal significantly impacts on the manner in which this hearing proceeds. We therefore heard all submissions from the parties on this issue and adjourned the substantive hearing for this issue to be determined.

**Which application for review was considered on 25 May 2016?**

- [4] The parties agree that the appeal is filed against the decision of the Benefit Review Committee which convened on 25 May 2016.<sup>1</sup> However the parties disagree about which application instigated that review and therefore the subject of the review by that committee.

*Ms XXXX's view*

- [5] Mr Howell argued that the application for review which was considered by the BRC on 25 May 2016 was the application lodged on 23 January 2013.<sup>2</sup>

- [6] This application for review is in the s 12 K report. It was filled out and signed on 23 January 2013 by Ms XXXX in the WINZ office. She amended it the next day when she was declined an advance for rent and bond.

- [7] The report issued on 28 February 2013 of the Benefits Review Committee records that the Committee reviewed the decision made on 24 January 2013 to decline an advance payment for rent and bond. In recording the case for the applicant, the BRC includes all reasons written by Ms XXXX on her application, including those she completed on 23 January 2013.

*The Ministry's view*

- [8] The report to the BRC that convened on 25 May 2016 was issued on 27 January 2015. The report states that the decision under review was made on 27 November 2014 which was the date on which the Ministry sent Ms XXXX a full breakdown of her debt for the period August 1996-June 2014.<sup>3</sup>

- [9] The report to the BRC cites an email from Mr Howell dated 2 December 2014 as containing the appellant's case. In its s 12K report the Ministry

---

<sup>1</sup> Submissions of G Howell dated 6 March 2017 at [6]; s 12K report at [3.4].

<sup>2</sup> Submissions of G Howell dated 6 March 2017 at [4] and [7].

<sup>3</sup> Section 12K report, Exhibit 61.

records that this email was the application to a BRC for review of a decision.<sup>4</sup>

### **Discussion**

[10] The email Mr Howell sent on 2 December 2014 responded to an email the previous day from Mr Ensor on behalf of the Ministry to Ms XXXX. Mr Ensor recorded that the parties had met and that the breakdown he attached to the email showed Ms XXXX's debt as \$281 at 20 September 2008.

[11] In response Mr Howell stated:

Thanks David for the breakdown of advances and RAP provided since 1996 and the debt recovery that took place up to 20 September 2009 when the debt was only \$281, and that this amount has been fully repaid as well. The review is into the entire outstanding debt of \$16,868. This means each individual amount is under review.

[12] Mr Howell then gave examples of amounts advanced to Ms XXXX since 3 October 2008.

[13] On 13 January 2015 a letter was sent to Ms XXXX acknowledging her application for a review of the decision to seek recovery of a debt, at that time calculated by the Ministry as \$16,768.09.

[14] The report was issued to the Benefits Review Committee on 27 January 2015 stated that the decision under review was made on 27 November 2014, the date on which the Ministry issued its breakdown of the debt. A copy of this report was sent to Mr Howell.

[15] The hearing of the Benefit Review Committee was scheduled for 25 May 2016. On 20 May 2016 Mr Howell sent his submissions to the Benefits Review Committee.

[16] These submissions refer to advances made to Ms XXXX going back to 15 May 1998. We understand that it is on this basis that Mr Howell argues that the review conducted on 25 May 2016, and consequently

---

<sup>4</sup> Section 12K report at [3.1].

this appeal, is in relation to decisions made about payments to Ms XXXX prior to 2008.

[17] For the following reasons we conclude that the subject of the application to the Benefits Review Committee, and therefore the subject of this appeal, is the decision issued on 27 November 2014, that is, the calculation of the debt that the Ministry states Ms XXXX owes from 3 October 2008:

- a. If Ms XXXX considered that the decision of the BRC issued on 28 February 2013 failed to address all matters in her application for review dated 23/24 January 2013, she could have either appealed the decision or sought judicial review. However there is no record of her taking such steps.
- b. The email from Mr Howell dated 2 December 2014 makes no reference to any pre-2008 payments to Ms XXXX or claims for overpayment prior to this time.
- c. Once the Benefits Review Committee issued its report, in response to Mr Howell's email, and sent a copy to Mr Howell and Ms XXXX, she was on notice that the scope of this review was post 3 October 2008.
- d. There is no record that Ms XXXX or Mr Howell disputed the scope of this review before 20 May 2016 and neither of them suggested that this occurred. Mr Howell referred to his 20 May 2016 document as submissions and we consider that is correct. This document was not an application for review.

[18] We do not consider it reasonable for Mr Howell to consider that he can extend the scope of a BRC review through submissions, particularly when they are sent some 18 months after the Report to the BRC.

[19] We note that Mr Howell raised questions about the delay in the Benefits Review Committee holding the review. His complaint about delay was based on his contention that the relevant application for review was the one dated 23/24 January 2013 which we have found was not the relevant application. Any delay in considering that application for

review or the 2 December 2014 application is not relevant to the question of the extent of this review.

[20] We also note that Mr Howell questioned whether the Benefits Review Committee had jurisdiction to amend its own decision, as it did after the 25 May 2016 hearing. We have not considered this issue at this stage of proceedings as it is not relevant to our decision on the scope of this appeal.

### **Conclusion and directions**

[21] The decision that is the subject of this appeal is the calculation of debt provided by the Ministry to Ms XXXX on 27 November 2014.<sup>5</sup>

[22] This appeal is to be set down for a half day hearing on 10 May 2017 at 10.00 a.m. The purpose of the hearing is the calculation of the amount, if any, owed by Ms XXXX to the Ministry since 3 October 2008.

[23] If Ms XXXX disputes any record of the Ministry in relation to any particular payment recorded as being received by her or deducted from payments due to her, she is to provide the Authority with the records on which she bases her dispute by 3 May 2017.

[24] Any amended or further submissions are to be filed in the Authority by 3 May 2017.

**Dated at Wellington** this 31<sup>st</sup> day of March 2017

---

**S Pezaro**  
Deputy Chair

---

**C Joe JP**  
Member

---

<sup>5</sup> At 171 to 175 of the s 12K report.