

**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**

**Mr G Pearson** - Chairperson

**Mr C Joe** - Member

**Hearing at Wellington** on 4 April 2017

### **Appearances**

For Chief Executive of the Ministry of Social Development: Ms J Hume (Agent)

For the Appellant: In person

## **DECISION**

### **Background**

- [1] Mr XXXX's primary source of income is from ACC. He is in receipt of a non-beneficiary Accommodation Supplement, and has been since 18 May 2006. Mr XXXX rent was \$241.50 a week. He had been receiving the Accommodation Supplement at the rate of \$40 until 28 March 2016, and as from that date it decreased to \$35 per week. The amount of the Accommodation Supplement was affected by the amount of income that Mr XXXX received from ACC. The issue that triggered Mr XXXXs' concern, he says, is that he reported an increase in his income of \$0.37 per week, and that triggered the decrease of \$5 in his accommodation supplement. That, accordingly, appeared disproportionate to him.

- [2] The details are as follows. The \$40 weekly Accommodation Supplement had been set following a discussion between a Ministry case manager and Mr XXXX on 16 October 2015. On 6 April 2016, Mr XXXX reported to the Ministry Contact Centre that his income from ACC had increased by \$0.37 per week. There were communications between Mr XXXX and the Ministry regarding his entitlement. This resulted in the Ministry evaluating the figures Mr XXXX reported. The Ministry concluded that Mr XXXX' correct entitlement at this point was \$35 a week not \$40 per week. The evaluation is based on the figures that Mr XXXX reported; it used a calculation to determine the gross income using the tax code the Ministry understood to be correct.
- [3] In preparing for the Benefits Review Committee and the appeal now under consideration, the Ministry has undertaken an extensive and costly process, which is as follows:
- (i) On 31 May 2016, the Ministry received an application from Mr XXXX for a review of its decision to reduce his entitlement from \$40 to \$35.
  - (ii) On 17 June 2016, the Ministry completed a review. It concluded the increase in Mr XXXX' income was more than \$0.37 above what it was when the \$40 figure was set. Therefore, the Ministry concluded that it was necessary to confirm Mr XXXX' income to establish the correct rate.
  - (iii) On 21 June 2016, the Ministry wrote to Mr XXXX and requested that he provide:
    - a. a copy of his ACC payment schedule for the last six months, or;;
    - b. a letter from ACC reporting on his income, or;
    - c. written authority for the Ministry to contact ACC directly so the Ministry could obtain the information, rather than having Mr XXXX put to the trouble of doing so.
  - (iv) On 5 July 2016, Mr XXXX gave notice that his ACC payments had increased by \$8.37 (\$541.74 net to \$550.11 net), and attached

verification of deposits into his bank account and particulars of his future rent increase.

- (v) On 11 July 2016, the Ministry completed an internal review of Mr XXXX' application for review.
- (vi) On 19 July 2016, Mr XXXX forwarded an email he had received from ACC regarding his current gross income. The Ministry made an appropriate adjustment. Using these figures it confirmed Mr XXXX' entitlement to the Accommodation Supplement remained at \$35 a week.
- (vii) The issue was then referred to a Benefits Review Committee which heard the matter on 24 August 2016. The Benefits Review Committee received a submission from Mr XXXX. It did not engage with the detailed reasons that the Ministry set out regarding the figures, and why it understood they were correct. Instead, Mr XXXX focused on the \$0.37 increase, which for the reasons the Ministry set out in its report appeared not to be the true position. Mr XXXX engaged in a personal attack on Ministry personnel saying that he had been lied to and named a number of Ministry personnel who he suggested were engaged in illegal activities in the course of their duties. Mr XXXX concluded by asking for an explanation as to how a \$0.37 increase could result in a \$5 decrease in his entitlement.
- (viii) The Benefits Review Committee in a written report set out a full analysis of the correct figures, and explained why Mr XXXX' claim that a \$0.37 increase resulted in a \$5 decrease in his entitlement was wrong, for the reasons that had already been given to Mr XXXX.
- (ix) Mr XXXX pursued this appeal against the Benefits Review Committee's decision. His grounds of appeal were that the Benefits Review Committee's decision was wrong, the Chairperson of the Benefits Review Committee was biased and his behaviour inappropriate, the decision was unlawful due to lack of notification, and the financial information had been "intentionally confused by WINZ".

**Discussion**

- [4] When Mr XXXX attended the hearing he reiterated his allegations of illegality and improper conduct. He provided no proof that could be a foundation for upholding the serious allegations that he made. The Authority directed Mr XXXX' attention to the figures in the information that the Ministry had provided to him. The Authority pointed out to Mr XXXX that the Ministry had provided an extensive report in accordance with s 12K(4)(e) of the Social Security Act 1964. The report, together with the attachments, appeared to provide a fully reasoned and substantiated explanation as to why Mr XXXX' accommodation supplement entitlement had reduced from \$40 to \$35. The report also appeared to explain fully why Mr XXXX' claim that a \$0.37 increase in his income resulted in a \$5 decrease in his entitlement, was based on a misconception.
- [5] The Authority asked Mr XXXX to address the report. Mr XXXX then said that he did not have the report and had not seen the report. When it was pointed out to him that it had been posted to him, his explanation was that since the report came from the Ministry he decided not to open the envelope containing the report. He said that should he do so, in his view, opening the envelope would amount to an acceptance of the report.
- [6] It appears Mr XXXX had no intention of engaging with the issue that he claimed was the subject of this appeal. The only matter in issue is the decision that his \$40 accommodation supplement should decrease to \$35. He appeared to regard the hearing as an opportunity to make serious allegations against Ministry staff, without providing proof of them.
- [7] In these circumstances, we have no foundation to conclude that the Ministry's comprehensive explanation of the Accommodation Supplement is anything other than a correct analysis, and the decision was correct.

**Costs**

- [8] Pursuant to s 12O(2), where an appeal is not allowed, as is the case here, no award of costs may be made against the appellant unless in the opinion of the Authority the appeal was frivolous or vexatious or one that ought not to have been brought.

- [9] Mr XXXX has shown no reason to think there was any error in the reduction of his accommodation supplement, or that the Ministry's comprehensive explanation (which he has had throughout) is wrong. Furthermore, he used the hearing as an opportunity to make allegations against Ministry staff, rather than address the subject of his appeal. Accordingly, this is potentially a case where the Authority should make an award of costs in the Ministry's favour against Mr XXXX.
- [10] The Authority exercises its power to award costs against appellants with great care. Genuine appellants who bring an appeal because they believe they have a real concern, and address the concern are not at risk of having to pay costs. This Authority is constituted for that purpose; people are entitled to an independent decision on their concerns. The Authority also has a clear duty to have regard to the potential for vulnerable persons to bring genuine appeals, even if they are misguided; it will understand such persons are entitled to express their concerns, and be treated with insight and consideration.
- [11] This is a different case, as Mr XXXX appears fully able to understand and engage with the issues, but he has chosen not to do so; to the extent of not reading the appeal papers. Instead, he used the hearing as an opportunity to make unsubstantiated allegations against Ministry personnel. In the absence of an explanation which may explain why Mr XXXX behaved in that way, it appears abusive and may result in adverse consequences. If Mr XXXX has an explanation for his apparently poor judgement, the Authority will of course take it into account.

### **Decision**

- [12] The appeal is dismissed, because there is no basis to conclude that the decision relating to Mr XXXX' Accommodation Supplement was incorrect in any respect.
- [13] Leave is reserved for the Ministry to apply for an order that Mr XXXX pay all or part of the costs of the appeal.

### **Timetable**

- [14] The Ministry may within 10 working days of this decision file and serve a memorandum indicating whether it seeks costs, the amount of the costs,

and a schedule and any supporting evidence to establish the amount of the costs claimed.

[15] Mr XXXX will have a further five working days to provide a response to the claim for costs, if any.

[16] The Authority will then issue a decision on the material before it as to whether to award costs, and if so the amount.

**Dated at Wellington** this 20<sup>th</sup> day of April 2017

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**G Pearson**  
Chairperson

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**C Joe JP**  
Member