

[2017] NZSSAA 025

Reference No. SSA 175/16

IN THE MATTER of the Social Security Act
1964

AND

IN THE MATTER of an appeal by **XXXX** of
Palmerston North 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 5 April, 2017.

Appearances

For Chief Executive of the Ministry of Social Development: Ms N M Self, lawyer,
MSD, Wellington.

For the Appellant: In person.

DECISION

Background

- [1] The appeal relates to a claim by the Ministry that the appellant was living in a relationship in the nature of marriage. The Ministry says his partner was receiving jobseeker support, and an accommodation supplement, and she was not entitled to have them if she was living with the appellant in a relationship in the nature of marriage at the time.
- [2] The Ministry also says the appellant is liable to repay the jobseeker support and accommodation supplement as he knowingly benefitted

directly or indirectly from the partner's fraudulent receipt of benefit payments; or ought to have known that he did.

- [3] The appellant represented himself. It was clear that he did not understand the legal issues affecting him. Accordingly, the Authority exercised its inquisitorial powers to identify the facts and matters in issue.
- [4] The Authority ascertained that the issues requiring determination were:
- a. whether or not the appellant and the putative partner (partner) were in a relationship in the nature of marriage;
 - b. whether or not the appellant knew, or ought to have known about the partner's benefit payments;
 - c. whether the appellant benefitted directly or indirectly from the benefit payments.

The legislation and issues to determine

Relevance of a relationship in the nature of marriage

- [5] The first issue the Authority has to determine is governed by s 63 of the Social Security Act 1964 (the Act). The relevant parts of the provision are:

63 Conjugal status for benefit purposes

For the purposes of determining any application for any benefit, or of reviewing any benefit already granted... the chief executive may in the chief executive's discretion —

- (a) regard as single any applicant or beneficiary who is married or in a civil union but is living apart from his or her spouse or partner:
- (b) regard as married any 2 people who, not being legally married or in a civil union, have entered into a relationship in the nature of marriage ...

- [6] If the Ministry fails to justify the application of section 63(b), then it fails in its contention that the partner was not entitled to a benefit; at least on the grounds it relied on for this appeal. For reasons discussed below there may be other reasons that disentitled her to a benefit, but they were not pursued by the Chief Executive in this appeal.

- [7] Section 86AA of the Act contains the power to recover benefits payments from a *spouse or partner*. The word *partner* in that phrase, relevantly to this case, means a *de facto partner*, pursuant to section 3 of the Act. *De facto relationship* is defined in sections 29 and 29A of the Interpretation Act 1999. Materially, the definition is:

29A Meaning of de facto relationship

- (1) In an enactment, **de facto relationship** means a relationship between 2 people (whether a man and a woman, a man and a man, or a woman and a woman) who —
- (a) live together as a couple in a relationship in the nature of marriage or civil union; and
 - (b) are not married to, or in a civil union with, each other; and
 - (c) are both aged 16 years or older.
- (2) ...
- (3) In determining whether 2 people live together as a couple in a relationship in the nature of marriage or civil union, the court or person required to determine the question must have regard to —
- (a) the context, or the purpose of the law, in which the question is to be determined; and
 - (b) all the circumstances of the relationship.
- [8] Section 63 uses the phrase “a relationship in the nature of marriage”, and the test in section 86AA turns on whether there is “a relationship in the nature of marriage or civil union” under section 29A of the Interpretation Act. Both tests are in the same Act, accordingly, at least in this case, it would appear that the question of whether there is a relationship in the nature of marriage applies equally to the application of both section 63 and section 86AA. There may be some cases where the addition of a relationship in the nature of a civil union for section 86AA may lead to a different result to the test under section 63; however, there are no facts that appear to found a distinction in this case.
- [9] Accordingly the first issue is whether or not the appellant and the partner were in a relationship in the nature of marriage.

[10] There is a secondary issue relating to this, namely the extent to which it is a live issue. Two factors bear on it:

- a. The appellant admitted he was in such a relationship with the partner; and
- b. The partner has been convicted in the District Court of offences founded on such a relationship existing.

Other requirements of section 86AA

[11] Section 86AA has some additional elements required to make a partner liable (the liable partner) for their partner's benefit entitlements, beyond the existence of the relationship in the nature of marriage:

- a. The benefit must be obtained by fraud (the liable partner does not need to be party to the fraud);
- b. The liable partner "knowingly benefited directly or indirectly from the beneficiary's fraud"; or
- c. The liable partner "ought to have known (even if [they] did not know) that [they were] benefiting directly or indirectly from the beneficiary's fraud."¹

[12] In this case, the partner is deemed to have obtained the benefit by fraud in the required sense. She pleaded guilty and, accordingly, was convicted of offences under section 228(b) of the Crimes Act 1961, and section 127 of the Act. The offences related to the benefit payments, and section 86AA((2)(b) provides the convictions are sufficient to establish that the benefit payments were obtained by fraud for the purposes of the section.

[13] The remaining questions arising under section 86AA that are live issues in this appeal are whether the appellant:

- a. knew or ought to have known that he benefitted; and

¹ In this case section 86AA(4) applied, as none of the benefit was apportioned to the appellant.

- b. did in fact benefit.

Discussion

The evidence presented

- [14] In this case, the Chief Executive produced various documents which the Authority considered. He did not call any oral evidence or produce any sworn statements.
- [15] The sole witness was the appellant, who attended the hearing, gave his evidence and was cross-examined by counsel for the Chief Executive.

The appellant's evidence

The relationship

- [16] The Chief Executive's claim is that the appellant was in a relationship in the nature of marriage with the partner between 8 July 2014 and 14 July 2015. The appellant was jailed for assaulting the partner at the end of that period.
- [17] A fundamental background when evaluating the relationship between the appellant and the partner is that the appellant says the partner was addicted to illicit drugs. She routinely used methamphetamine, cannabis and a range of other drugs. There was no significant challenge to this evidence. The appellant, in contrast, said that he disapproved of the partner's behaviour and was fearful that he would lose his employment because the partner was using drugs in his home; again, there appeared to be no significant dispute about that evidence.
- [18] The appellant had originally come to know the partner because they were neighbours. She was married, and her husband was abusive.
- [19] During the material times, the partner lived in the same house as the appellant. She had her own room, though there appears to be no dispute that there was a sexual relationship.
- [20] The partner agreed to pay \$165 a week towards the costs of running the appellant's home. She never paid any money to the appellant for those

costs. The extent of her contribution was to pay \$792 towards electricity accounts between July 2014 and October 2014. The appellant provided food for the house, though the partner did occasionally provide some food, she did not always eat there.

[21] The partner continued to remain in a sexual relationship with her husband. She was also in sexual relationships with other persons. The appellant said he understood these relationships were to gain access to drugs. The appellant's evidence is that approximately half of the time she would be at his home; and he believed the other half of the time she would be staying with other people, he understood she had sexual relationships with them, and engaged in drug-taking activities with them.

[22] While the partner was in the appellant's house, she was systematically stealing the appellant's property and selling it. About the time he was imprisoned for assaulting her, she stole his credit cards and used them fraudulently. By the time she had finished, his house had been completely stripped of property, she had sold his car and taken the money, arranged an electricity supply to the house under a false name, and incurred substantial debts through the fraudulent use of credit cards.

What the appellant knew about a benefit

[23] The Ministry claims that the appellant knew that the partner was illicitly receiving a benefit, as he assisted her to provide false information to the Ministry, and this link with the Ministry ought to have put him on notice of the benefit payments.

[24] The Ministry produced two documents addressed "to whom it may concern". One is dated 16 September 2013 and the other is undated. The Ministry accepted that the content of the two notes is not in the appellant's handwriting. The appellant accepted that his signature appears at the foot of the notes. However, he says that he had not seen the writing that is not his own before the Ministry showed it to him, and that he does not know how his signature appears on the notes with the writing above.

[25] A potential construction of the notes is that they are intended to be presented to the Ministry to gain financial assistance. It appears that was how the partner did in fact use the notes. The only direct evidence

relating to the creation of these notes is the appellant's testimony. He says he did not sign the paper when the writing was on it. The Tribunal naturally views a denial of this kind with scepticism. However, the Ministry seemed to accept the content of the notes was not in the appellant's handwriting, and was in the partner's handwriting. The Ministry was on notice the appellant disputed any responsibility for the notes; but chose to neither call the partner to give evidence nor produce the original copies of the notes. Obviously, crude forgeries may be produced using a photocopy machine; the Authority has no evidence there is any original document where ink comprising the content of the notes and the signature appear on the same piece of paper.

- [26] The Ministry also relied on notes of phone calls made by an investigator employed by the Ministry. The first records (in note form not verbatim) identify a telephone call from the appellant on 31 October 2012. The essence of the telephone conversation is that the appellant complained about enquiries from the Ministry. He said was not in a relationship with the partner, and complained about the inquiry as: "he wasn't even on a benefit". That is to say, the appellant understood the enquiries about the relationship related to whether **he** (not the partner) was on a benefit to which he was not entitled due to being in a relationship with the partner.
- [27] There is no suggestion in the notes of this conversation that the Ministry investigator gave any indication that it was the partner's entitlement to a benefit rather than the appellant's entitlement to a benefit that was in issue. The investigator appears to have allowed the appellant to continue to think it was his entitlement to a benefit that was in issue.
- [28] The second note concerns a telephone conversation of 22 November 2012. The notes indicate that a different Ministry investigator spoke to the appellant; the gist of the record is that the appellant denied being in a sexual relationship with the partner at that time, and denied having had an affair with her at an earlier time. There is no indication in the notes that the Ministry official indicated to the appellant that the enquiries related to the partner's entitlement to a benefit rather than his entitlement to a benefit.
- [29] The appellant had been in receipt of a benefit at an earlier period, so his belief that the enquiries related to his entitlements were not implausible.

[30] The appellant's evidence was that he did not know about the partner's sources of income, apart from the fact that she was taking and selling his property, and appeared to derive support to fund her addiction to methamphetamine and other drugs through her relationships with other people.

What benefit did the appellant gain from the partner?

[31] The Ministry has only been able to identify the payment of \$792 between July 2014 and October 2014 as a financial gain. The Ministry contends that this, and potentially some minor contributions to food and the like, were funded from the benefit payments the partner received.

[32] The appellant says that he has no reason to believe, even in the light of all the information now available that the \$792, or anything else, did in fact come from benefit payments. He is aware that the partner had access to funds from selling his property, and also appeared to be able to finance the notoriously expensive cost of methamphetamine addiction; so he maintained, he has no reason to believe that there was any connection between the benefit payments and the payment of the power bill. The appellant's belief regarding the partner's ability to fund a methamphetamine addiction also has some bearing on the plausibility of his claim that he did not know she was receiving a benefit.

[33] Some dimension and perspective is given to the appellant's claim regarding the significance of paying \$792 toward the electricity bills by considering the list of fraudulent Mastercard transactions. After the partner stole the appellant's Mastercard, when he was imprisoned on 20 July 2015, the partner used the credit card fraudulently and paid \$854.16 to the electricity supplier. She also, apparently, dishonestly arranged a power supply in a false name; the appellant has had to deal with the consequences of that also.

What is required to establish a relationship in the nature of marriage

[34] The Court of Appeal's decision in *Ruka v Department of Social Welfare* [1997] 1 NZLR 154 is the leading authority on what the phrase "a relationship in the nature of marriage" means in section 63 of the Act. However, the context was quite different to this case. The appellant in the *Ruka* case was the victim of extreme domestic violence, the case

considered whether she was in a relationship in the nature of marriage with her abuser.

- [35] Unsurprisingly, the Court considered that the analysis required a comparison with a legal marriage. Richardson P, and Blanchard J observed:

The comparison must seek to identify whether there exist in the relationship of two unmarried persons those key positive features which are to be found in most legal marriages which have not broken down (cohabitation and a degree of companionship demonstrating an emotional commitment). Where these are found together with financial interdependence there will be such a merging of lives as equates for the purposes of the legislation to a legal marriage.²

- [36] Thomas J noted at p 181:

It is this underlying commitment to the relationship which distinguishes marriage from the relationship of couples who may nevertheless share premises and living expenses. A relationship will not be a relationship in the nature of marriage for the purposes of s 63(b), therefore, unless it exhibits this mutual commitment and assumption of responsibility. In the context of the Social Security Act, this will necessarily include financial support or interdependence or, at least, a mutual understanding about the parties financial arrangements of the kind I have suggested.

- [37] As that passage indicates, the Court³ took the view that in the context of the Act financial interdependence was a central consideration. The reasoning of the majority was that:

... an essential element is that there is an acceptance by one partner that (to take the stereotypical role) he will support the other partner and any child or children of the relationship if she has no income of her own or to the extent that it is or becomes inadequate. The commitment must go beyond mere sharing of living expenses, as platonic flatmates or siblings living together may do; it must amount to a willingness to support, if the need exists. There must be at least that degree of financial engagement or understanding between the couple. ...⁴

² *Ruka v Department of Social Welfare* [1997] 1 NZLR 154 (CA) at p 162, (see also Thomas J p.182 regarding the merging of lives).

³ Refer to *Ruka* at p 156, where Richardson P and Blanchard J discuss the central importance of this aspect.

⁴ *Ruka* at p 161.

[38] Ultimately, the Court found that the Courts below had applied the wrong test by failing to look primarily at the financial aspects of the relationship.⁵

[39] The Court noted that strategies to withdraw support to obtain a benefit would not be effective. However, it is clear that the central feature is commitment to financial responsibility, including commitment to support in future adverse circumstances.

[40] However, financial commitment is not sufficient to find there was a relationship in the nature of marriage. The Court also found emotional commitment was essential:

Where financial support is available nevertheless there will not be a relationship in the nature of marriage for this purpose unless that support is accompanied by sufficient features evidencing a continuing emotional commitment not arising just from a blood relationship. Of these, the sharing of the same roof and of a sexual relationship (especially if it produces offspring) are likely to be the most significant indicators. But, since the amendment to s 63 in 1978, the sharing of a household is not essential. And, particularly in the case of older couples, the absence of sexual activity will not in itself deprive the relationship of the character of a marriage.

The statutory context is of great importance in determining what is a "relationship in the nature of marriage". Other statutes use the same expression but for different legislative purposes. What is or is not such a relationship may be viewed differently for different purposes.⁶

[41] Ultimately, the Court emphasised the merging of lives, as noted in paragraph [35] above.

[42] In the *Ruka* case, the Court of Appeal considered some of the earlier authorities such as *Thompson v Department of Social Welfare* [1994] 2 NZLR 369, which placed some emphasis on a "checklist". While acknowledging the checklist approach may "give some assistance in deciding some cases", the Court considered a better approach was the more comprehensive consideration set out above.

⁵ *Ruka* at p 163.

⁶ *Ruka* at p 161

Evaluation of the evidence – the nature of the relationship

- [43] In our view, the appellant was a naive person, who was not particularly well equipped to deal with the effects of the partner's behaviour on him. He had an additional vulnerability as he had suffered a head injury a number of years ago. He was the only witness. It is of course necessary that we test his evidence against the contemporaneous written record, as far as it extends, and consider whether his evidence has been consistent, given that he was interviewed at an earlier point in time. Of course, we must also consider the plausibility of his evidence.
- [44] Given that we do have oral evidence tested by cross-examination we can give only limited weight to material produced by persons who have not given evidence before the Authority on oath so have not been available for cross-examination.
- [45] We do not have grounds to reject the appellant's evidence of his relationship with the partner. In conjunction with the statements he gave when formerly interviewed by the Ministry on 12 April 2016, he has provided a clear account of the relationship. There is a striking and fundamental deficiency in the way the Ministry investigated the appellant's circumstances. An examination of the 12 April 2016 interview indicates that the investigator believed it was sufficient to have the appellant accept that he was in "a relationship" with the partner. He apparently supposed that was sufficient to prove the statutory criteria for being in "a relationship in the nature of marriage". In *Ruka v Department of Social Welfare* [1997] 1 NZLR 154 the Court of Appeal pointed out this fallacy to the Ministry. Henry J made these observations at p 168:

This prosecution and others have hinged on whether or not the defendant had been in a relationship of the nature of marriage. That is because the practice of the department is to include a question to that very effect in the form of application, and the further practice to charge a defendant with failing to disclose that fact. As is now abundantly clear the concept of such a relationship and what facts need to coexist to establish it is a difficult one. In many cases its existence in a particular set of circumstances would be debatable. It would be beyond the ability of many beneficiaries to assess the issue properly in a complex situation such as we have here. Section 127 is designed to prevent the fraudulent provision or non-disclosure of information which is relevant to a benefit entitlement. In this case what is relevant is the information which the Director-General can properly take into account before making a decision that the relationship in fact exists, and then a further

decision whether or not to exercise his discretion to regard the parties as husband and wife. **We would have thought that the application form could be drafted and interviews constructed to achieve that object**, as could a charge when instituting a prosecution. Any prosecution would then be directed to the fraudulent provision or non-disclosure of pertinent and identified information. (emphasis added)

- [46] Those observations from the Court of Appeal are obvious, compelling, and must be understood by an investigator conducting an effective interview regarding issues such those in the present case. Instead, the interviewer simply proceeded on the assumption that there had been a relationship, whatever the investigator meant by that, and whatever the appellant understood by that. When the interviewer suggested that the appellant should accept: “the fact that from the point that [the partner] moved in with you ... you’ve been in a relationship and it lasted all the way up until July 2016? Yeah?”, the appellant’s response to the statement was “on and off. Very on and off.” The interviewer then said “Okay”. It appears clear that the investigator wholly failed to enquire into the true nature of the relationship, notwithstanding significant reservations expressed by the appellant.
- [47] We accept the evidence that the appellant was never in an exclusive relationship with the partner. She continued to have a relationship with her husband, which may have been a relationship in the nature of marriage, aside from the fact he was apparently her spouse. She also continued to engage in other sexual relationships with people. We accept that a relationship in the nature of marriage need not be an exclusive relationship. For example, one of the parties to a relationship in the nature of marriage could be a sex worker.
- [48] We accept the evidence that the partner was often absent from the appellant’s home engaged in other relationships; the best evidence we have is that she was away for that purpose approximately half of the time. Again, this is not a determinative matter; many spouses and persons in relationships in the nature of marriage agree between them, more or less willingly, that one or the other may be absent for periods of time.
- [49] In terms of financial interdependence, the Ministry contended that the payment of \$792 contributed towards power expenses demonstrated financial interdependence between the appellant and the partner. We do not agree. In terms of money, the main relationship between the partner

and the appellant on the evidence before us is that he was a victim of her dishonesty, but he lacked the skills to deal effectively with that. In our view, the evidence does not establish any kind of financial commitment on the part of the partner to the appellant. The reverse is equally the case. The appellant, in our view, had no financial commitment to the partner of any kind; what was alleged as financial commitment was actually a lack of knowledge of how to rid himself of her during the relevant period. It is important to bear in mind that the relevant period that we are concerned with is the approximately 12 months leading up to the point where the appellant, on the evidence, became so distraught about the risks of the partner's drug consumption in his house that he assaulted the partner and was imprisoned as a result. The evidence before us does not establish that there was ever any different type of relationship between the appellant and the partner than the one in that period.

[50] Accordingly, we find no element of commitment on the part of the partner to the appellant or the appellant to the partner. We are satisfied that on the evidence before us, the partner's objectives were wholly related to her exploitation of the appellant. From the appellant's point of view, we are satisfied that he disapproved of the partner's lifestyle and was concerned as to the effects that it had on him. He regarded her as a fundamentally dishonest person and a threat to him.

Evaluation of the evidence – did the appellant know, or should he have known that the partner was in receipt of a benefit?

[51] We find the notes that contained the partner's hand writing and the appellant's signature of no significant evidential value. The appellant says he never saw the writing until the Ministry showed it to him in the investigation long after the material time.

[52] It is possible to speculate as to how the partner could have created a false document, it is certainly a known phenomenon for persons to do so. There are some surprising features of the photocopies provided. Notably, there is a large gap between the writing and the signature on the dated document and a very small gap on the undated document. That is consistent with the claim that the documents were not created by writing out the statement, and having the appellant sign the notes. However, there is little point in speculation of this kind. The simple fact is the appellant says he did not ever see the notes until the Ministry showed

them to him; that explanation cannot be dismissed as implausible, and it is not inconsistent with other evidence. We have no reason to reject the appellant's evidence that he never saw the writing at the time and had no knowledge of what the partner did.

[53] We also find that the telephone conversations with the Ministry staff do not provide evidence that the appellant knew the partner was in receipt of a benefit in 2012. The note of the first telephone call indicates that the appellant believed that the inquiries related to him, not the partner. He understood that the Ministry was concerned he was receiving a benefit, and that his relationship with the partner disentitled him to the benefit. The Ministry officials did not indicate that the appellant had misunderstood. That is not a criticism of the officials, as the current legislation relating to recovery of benefit obtained by fraud did not exist in 2012. The officials may have considered that they could not disclose the partner's circumstances to the appellant. However, we are left in the position where we cannot regard these communications as inconsistent with the appellant's evidence that he did not know, and had no reason to suspect the appellant was in receipt of a benefit.

[54] Accordingly, we are left with the appellant's evidence as to neither having knowledge that should or could have caused him to suspect the partner received a benefit, nor actual knowledge she did. His evidence is that he knew that the partner was funding a methamphetamine addiction, and he could have reasonably concluded that would not be affordable on assistance provided by the Ministry. Accordingly, we have no reason to reject the appellant's evidence on this issue.

Evaluation of the evidence – did the appellant benefit from the partner's fraud?

[55] In our view, the evidence does not establish that the appellant benefitted in any way from money the partner received from the Ministry. That is so even after looking at the issue in terms of benefit in the most indirect sense possible. The partner had chosen not to make the financial contribution she agreed. She had ultimately made a paltry contribution to the cost of electricity, and apparently did so in order to extend her access to the appellant's home, the benefits of remaining there, and to further exploit the opportunity of stealing from him. In our view, that is not a benefit no matter how remotely it is viewed.

[56] Given that the partner later fraudulently used a credit card, and then arranged an electricity connection in a false name for the same purpose, we find it would be a distortion of the word “benefit” to describe the contribution in those terms. The payments were an integral part of exploiting the appellant’s vulnerabilities.

Is the existence of a relationship in the nature of marriage a live issue

[57] In *Margison v Chief Executive of the Department of Work and Income*⁷, Justice Laurenson commented:

On an appeal to an Authority I am satisfied that once the Authority is faced with an appeal it is empowered by the inquisitorial nature of its function, its original power of decision and its full range of remedies, to seek out the issues raised by the appellant’s case and determine these afresh and establish whether the appellant can provide the justification for doing so or not.

[58] The Supreme Court also considered the nature of proceedings before the Authority in *Arbuthnot v Chief Executive of the Department of Work and Income* [2007] NZSC 55; it was resolute in requiring the Authority to reach the correct view on the facts, rather than being constrained by the earlier processes:⁸

There is nothing in s 12M to prevent the Chief Executive from then asking the Authority to consider any matter which may support the decision which is under appeal. Indeed, the thrust of the section is quite the other way: that the Authority is to consider all relevant matters.

..

In short, there is no right of appeal against the reasons for a judgment, only against the judgment itself.

...

The duty of the Authority was to reach the legally correct conclusion on the question before it, applying the law to the facts as it found them upon the rehearing without concerning itself about the conclusion reached by the BRC ...

⁷ *Margison v Chief Executive of the Department of Work and Income* HC Auckland AP.141-SW00, 6 August 2001 at [27].

⁸ *Arbuthnot v Chief Executive of the Department of Work and Income* [2007] NZSC 55at [20]–[26].

- [59] When the appellant began giving evidence, it quickly became evident, on the evidence he gave, that whether there was ever a relationship in the nature of marriage was very questionable. The appellant appeared in person and had never received any legal assistance as far as we are aware.
- [60] The Authority made it clear to counsel for the Chief Executive that we considered that whether or not there was a relationship in the nature of marriage was a live issue, and it would be determined. She did not seek an adjournment, and proceeded on the evidence before the Authority.
- [61] While not significant, the Benefit Review Committee's approach did include an examination of whether or not there was a relationship in the nature of marriage.
- [62] The other issue is that the partner pleaded guilty to criminal charges based on her claiming benefit entitlements while in a relationship. Given that the partner had a source of income from stealing property from the appellant, and potentially other illicit activity, she may well have chosen to plead guilty rather than have her circumstances investigated more fully. The appellant was not a party to those proceedings, and there has been no judicial determination regarding the circumstances. Accordingly, nothing in those proceedings can in law or in terms of persuasive evidence influence our decision as to whether there was a relationship in the nature of marriage. The partner has not given evidence, so we cannot speculate as to her motives for pleading guilty. Furthermore, we do not have evidence that the partner understood what constitutes a relationship in the nature of marriage for the purposes of the Act.
- [63] Accordingly, our view is that the issue of whether or not the appellant was in a relationship in the nature of marriage is an issue for us to determine.

Applying the test for a relationship in the nature of marriage to this case

- [64] We are satisfied that the relationship between the appellant and the partner on any measure lay far from the threshold for a relationship in the nature of marriage.
- [65] First, there was no financial commitment. Neither of the two persons would have supported the other. The concept of commitment of any kind

was entirely lacking. The partner stole from the appellant rather than him supporting her. He tolerated her presence, in our view, because he lacked the skills to remove her. He had vulnerabilities, and it has emerged from both his evidence and the Ministry's interview that he was quite fearful of the partner's ability to manipulate him and other people.

[66] In terms of emotional support, the evidence before us does not even establish a relationship in the nature of friendship during the material time. It would appear that inevitably there must have been something of that nature when the partner first moved into the appellant's house. However, there is no evidence before us that is consistent with that having ever developed into a relationship involving commitment and support.

[67] The evidence does not establish that the appellant and the partner ran a common household. The appellant had a home, he allowed the partner to remain there for a time. We have been unable to establish any significant contribution she made to that home.

[68] We have been unable to ascertain any evidence that the appellant and the partner socialised as a couple, went on holidays together, or matters of that kind. There are some incidental references in the written material to the appellant and the partner appearing to be a couple or acknowledging themselves to be a couple. However, the references are slight, and counsel for the Ministry did not suggest in cross-examination that the appellant had ever meaningfully presented himself as being in a committed relationship with the partner, or that she had done so in relation to him. The evidence given by the appellant regarding the lack of commitment, exploitation and systematic dishonesty is the evidence before us going to the true nature of the relationship.

The appellant neither knew nor ought to have known of the partner's support payments; and did not benefit from them

[69] For the reasons discussed, we are satisfied the appellant did not know, and there is no reason he ought to have known the partner received support from the Ministry; and he did not benefit from that support.

Order

[70] The appeal is allowed:

- a. The appellant was never in a relationship in the nature of marriage or in the nature of a civil union with the partner in the period in issue (8 July 2014 to 14 July 2015);
- b. The appellant did not knowingly benefit directly or indirectly from the partner's fraud in the period in issue (8 July 2014 to 14 July 2015);
- c. The appellant had no reason why he ought to have known he benefitted directly or indirectly from the partner's fraud in the period in issue (8 July 2014 to 14 July 2015);
- d. The appellant neither benefitted in fact from the partner's fraud on the Ministry, nor had any reasonable reason to think he did.

[71] Accordingly, the Chief Executive's decision that the appellant is jointly and severally liable for an overpayment of \$11,720.50 is rejected; he is not liable for any of it.

[72] The parties are reserved leave to apply for any orders required to give effect to, or quantify, the Authority's decision.

Prohibition on publication

[73] The Authority orders that the names of the appellant and the partner, and any other information that may identify them is not to be published.

[74] The Authority makes the order particularly to protect the privacy of the partner as she has not given evidence, or been put on notice of potential findings regarding her conduct.

Dated at Wellington this 8th day of June 2017

G Pearson
Chairperson

C Joe JP
Member