

[2017] NZSSAA 026

Reference No. SSA 028/16

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

**AND**

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

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

**S Pezaro** - Deputy Chair

**C Joe** - Member

**Hearing at Dunedin** on 27 March 2017

### **Appearances**

For Chief Executive of the Ministry of Social Development: M Sperring and E. Rutherford.

Counsel for the appellant: M Taylor–Cyphers.

## **DECISION**

### **Background**

- [1] XXXX appeals the decision of a Benefit Review Committee issued on 4 February 2016 to stop his supported living payment, accommodation supplement, disability allowance, and special benefit from 16 June 2014 due to excess income and to seek recovery of overpayment of benefits totalling \$54,689.46 paid to him between 2 August 2010 and 29 July 2013 and the decision to impose a penalty of \$4,251.07.
- [2] On 3 August 2009 Mr XXXX was transferred from a sickness benefit to an invalid's benefit on the basis of his medical condition, recorded as Meniere's Disease. At this time his declared income was \$126 per week earned in nine hours of employment at a XXXX.

- [3] Mr XXXX agreed in writing to tell Work and Income immediately if his work situation changed, he became self employed or started a business. He made various applications for renewal or review of his benefit and until 30 May 2011 declared that his sole income was from the Leviathan Hotel. From this date Mr XXXX declared he had no income.
- [4] On 14 October 2013 the National Fraud Investigating Unit of the Ministry asked Mr XXXX to meet to discuss his involvement in XXXX Limited. Mr XXXX did not attend this appointment although he sent a letter saying that he would seek legal representation.
- [5] On 30 May 2014 Mr XXXX completed his annual review form for the year ending 11 May 2014. He declared he was the director of XXXX Limited and that this was an unpaid position. He stated he received no income in the past year and did not expect to receive any income in the following year.
- [6] On 10 June 2014 the National Fraud Investigating Unit was advised that Mr XXXX was self employed. His benefit was suspended from 16 June 2014.

#### **Relevant law**

- [7] Income is defined in the Social Security Act 1964 (the Act) as:

**income**, in relation to any person,—

(a) means any money received or the value in money's worth of any interest acquired, before income tax, by the person which is not capital (except as hereinafter set out); and

(b) includes, whether capital or not and as calculated before the deduction (where applicable) of income tax, any periodical payments made, and the value of any credits or services provided periodically, from any source for income-related purposes and used by the person for income-related purposes; and

- [8] Section 74(1)(d) of the Act states:

#### **74 Limitation in certain other cases**

(1) Notwithstanding anything to the contrary in this Act or Part 6 of the War Pensions Act 1954 or the New Zealand Superannuation and Retirement Income Act 2001, the chief executive may, in the chief executive's discretion, refuse to grant any benefit or may terminate or reduce any benefit already

granted or may grant a benefit at a reduced rate in any case where the chief executive is satisfied—

...

(d) that the applicant has directly or indirectly deprived himself of any income or property which results in his qualifying for that or any other benefit or an increased rate of benefit:

[9] Section 74(1) requires a two-stage inquiry:

- (a) Whether the applicant for a benefit has deprived themselves of any income or property; and, if so,
- (b) Whether the deprivation resulted in the applicant qualifying for the benefit.

[10] In *Chief Executive of the Ministry of Social Development v Morgan*<sup>1</sup> the Court of Appeal concluded that this inquiry involves a straightforward application of the “but for” test to the facts of the case. If the answer to the first question is positive, the second step which is the inquiry into causation, requires consideration of whether there is a causal link between the deprivation of property and qualifying for the benefit. The Chief Executive has a discretion to grant the benefit, even where these two criteria are satisfied.

[11] In *Morgan* the Court noted the relevance of s(1A)(c)(i) of the Act which provides that people should use the resources available to them before seeking financial support under the Act.

### **The issues**

[12] The issues that we must determine are:

- a) Did Mr XXXX have an income or deprive himself of income during the relevant period?
- b) If he received an income, was he entitled to the benefits he received?
- c) If he deprived himself of income, did the deprivation result in him qualifying for a benefit?
- d) If Mr XXXX was not entitled to a benefit during the relevant period, is the amount claimed by the Ministry as an overpayment correct?
- e) If there has been an overpayment, is the Ministry entitled to impose a penalty?
- f) If so, what is the appropriate level for that penalty?

---

<sup>1</sup> *Chief Executive of the Ministry of Social Development v Morgan* [2015] NZCA 453 at [25].

### **Entities related to Mr XXXX**

- [14] The two business entities related to Mr XXXX are the XXXX Limited and traded on his own account under the name XXXX.
- [15] XXXX was incorporated on XX April 2005. At this time Mr XXXX was an undischarged bankrupt, and Ms XXXX was the sole director and shareholder. Mr XXXX was the nominated contact person for IRD. Since XX January 2007 the company's registered office has been Mr XXXX's residential address. On XX September 2010 Mr XXXX replaced Ms XXXX as the sole director. She remains the sole shareholder.
- [16] Since April 2005 Mr XXXX has been sole trader using the trading name XXXX. He holds a Kiwibank account in the name of XXXX. Ms Taylor-Cyphers confirmed that Mr XXXX personally holds a licence as a gold trader which enables him to trade gold overseas.

### **The appeal by Mr XXXX**

- [17] Mr XXXX did not attend the hearing to give evidence or make himself available for cross examination. His case is contained in his notice of appeal, his affidavit and the written submissions of Ms Taylor-Cyphers dated 25 July 2016 and her oral submissions at hearing. In his affidavit Mr XXXX says that:
- a) The Ministry has failed to provide any evidence that he has received an income.
  - b) He is not employed by the company and does not receive any fees as a director.
  - c) He has not derived any income or benefit from the company because it has always run at a loss which is evident from the audits carried out by Inland Revenue.
  - d) Ms XXXX has invested significant funds into XXXX and he would not take them away from her.
  - e) He did move funds between the sole trader account and the company but was not aware that any transaction out of his personal account is viewed by law as income.

- f) It takes time and effort to prepare financial accounts and they were not prepared for 2012. It is punitive for the Ministry to 'take the default position' that he must have been paid more than his entitlement because there are no accounts.

[18] In her written submissions Ms Taylor-Cyphers accepted that:

- a) The definition of income in s 3(1) of the Social Security Act 1964 (the Act) is different from the definition of income used in taxation legislation.
- b) Offsetting losses which could give rise to subsidisation is not compatible with the scheme of the Act or the definition of income in the Act.
- c) *Carswell v Director-General of Social Welfare* is authority for the principle that beneficiaries are expected to utilise their income before turning to the State for assistance, and that subsidisation of unprofitable ventures is not consistent with the purpose of the Act.<sup>2</sup>
- d) The use to which payments are put is relevant to accounting for income, to the extent of the principles in *Bramwell v Director-General of Social Welfare*.<sup>3</sup>

[19] Ms Taylor-Cyphers initially contended that the Ministry must establish at law that XXXX is a sham in order to prove the allegation of overpayment. However in opening she accepted that the Ministry's case does not need to go that far to succeed and said that the only question for the Authority is whether a company can be vested in its director without the consent of the shareholder.

[20] The sole authority on which Ms Taylor-Cyphers said she relies is the Companies Act, ss 35 and 36. She confirmed to the Authority that she does not rely on any case law to support her submissions for the appellant.

---

<sup>2</sup> *Carswell v Director-General of Social Welfare on behalf of the New Zealand Income Support Service* HC Christchurch AP132/98, 14 December 1999.

<sup>3</sup> *Bramwell v Director-General of Social Welfare* HC Auckland AP28-SW00, 28 June 2000 upheld by Court of appeal in *Bramwell v Director-General of Social Welfare* [2001] NZAR 890; CA179/00, 12 July 2001.

[21] She argued that by attributing transactions of the company to Mr XXXX, the Ministry is seeking to strip Ms XXXX of company ownership. Ms Taylor-Cyphers submits that the Authority has no jurisdiction to determine company ownership.

[22] In closing Ms Taylor-Cyphers submitted that the purpose of the transactions was to further the company and there was no benefit to Mr XXXX personally. She also argued that the 'broad brush' approach by the Ministry to the company transactions did not provide sufficient evidence that Mr XXXX received money or 'money's worth' in the form of other benefits from the company.

### **The case for the Ministry**

[23] The Ministry submits that Mr XXXX was not entitled to a benefit at the relevant time because of the income he accessed through XXXX and as a sole trader of XXXX.

[24] It is not the Ministry's position that the company was a sham. Rather it is contended that Mr XXXX had free use of the company's capital and that the purpose of the benefits he received from the company is relevant. The Ministry submits that Mr XXXX's ability to take money and benefits in forms other than money from both entities disentitled him to a benefit. The Ministry contends that Mr XXXX's reliance on the IRD definition of income is not appropriate under the Social Security Act 1964.

[25] Evidence was given for the Ministry by Brian McMillan of Switch Accounting, Ms Carla Manhire, a chartered accountant employed by the Ministry, Derek Hananeia, a technical officer with the Ministry's Fraud Intervention Services Unit, and George Barbara, an investigator employed by the Ministry's Fraud Intervention Services Unit.

[26] The Ministry filed a brief of evidence from Ms XXXX and summoned her to give evidence however she did not appear.

### *Evidence of Brian McMillan*

[27] Mr McMillan said that Switch Accounting prepared accounts for XXXX, Mr XXXX personally, and Mr XXXX trading as XXXX. Instructions were usually given by Mr XXXX although Mr McMillan met with Ms XXXX for her to go through the financial statements and sign them off as shareholder.

[28] Mr McMillan stated that cash transfers occurred between the various entities. Mr Sperring questioned Mr McMillan about an email sent by Mr XXXX to Switch on 11 August 2013 stating: “..in respect to XXXX I would prefer a loss or zero balance as opposed to transferring any XXXX transactions to XXXX but I am also open to any suggestions you wish to make”.<sup>4</sup> Mr McMillan said that his understanding of Mr XXXX’s instructions was “that he does not want any income transferred from XXXX to XXXX”.

[29] Mr Sperring then asked Mr McMillan to explain why there would be a requirement to make transfers between these two companies to achieve a loss or zero balance. Mr McMillan responded that there was no specific need to transfer transactions between entities; that was how the client managed his cash flow.<sup>5</sup>

[30] Mr Sperring asked Mr McMillan to explain the purpose of category 221 in the XXXX ledger described as ‘Fine gold purchases’.<sup>6</sup> Mr McMillan said that category 221 was used to classify the purchase of gold or in some cases silver and there was no GST component to it.

**Mr Sperring:** Okay, so that’s the company acquiring assets is that correct?

**Mr McMillan:** Well stock purchase but a part of the sales process.

[31] Mr McMillan was then asked about a transaction in this 221 category recording a debit of \$99,671.65 as ‘Pay IRD - Q McFeat, IRD Drift Bay’.<sup>7</sup> Mr McMillan said he needed to consult his office records to clarify this transaction and was recalled after he had done so.

[32] He said that:

...Q McFeat was a recurring name that was used for purchases and I think some sales of gold, so it’s buying and selling between the parties.

[33] He explained that on 1 March 2013 a credit of \$104,962 was recorded under category 181 for ‘Sales – Fine gold’ in a HSBC account. This transaction is described as ‘Sale of Gold for Quentin’. Mr McMillan said that he treated this amount as income, based on a handwritten note by Mr

---

<sup>4</sup> Evidence 27 March 2017.

<sup>5</sup> Evidence 27 March 2017.

<sup>6</sup> P 759 of s 12K report.

<sup>7</sup> P 779 of s 12K report.

XXXX on the ledger pointing to the IRD payment for Q McFeat and stating: "in this case XXXX purchased fine gold and paid proceeds into client's IRD account at the client's request".<sup>8</sup>

[34] Mr McMillan said when the sum of \$99,671.65 was paid directly to IRD, the difference between this amount and the credit of \$104,962 was the margin made by XXXX.

[35] Mr McMillan also said:

I can clarify that that the HSBC account is in Mr XXXX's name...it's an Australian transaction so it's been a circle of money across...between the two entities. It's a good example of that. Money has gone to HSBC, the sole trader and back across to XXXX, a \$5,500 dollar margin made by the company.

[36] Mr McMillan said that XXXX appears to be the main trading entity and XXXX is used for overseas purchases. Mr XXXX holds the overseas licence as a gold trader. Mr McMillan said that XXXX made a profit in 2011 and a loss in 2014. Switch had not been asked to prepare accounts for 2012. Mr McMillan stated that he did not know what access Mr XXXX had to company profit but as director it is his responsibility to disburse any profit.

[37] Mr Sperring also questioned Mr McMillan about a debit on 19 December 2012<sup>9</sup> of \$180,000 to 'XXXX Ltd'. Mr McMillan stated the Forex account was Mr XXXX's account for purchasing gold in Australia and that as a director of XXXX Mr XXXX may transfer funds to his own account.

[38] Mr McMillan said that all information provided to Switch in relation to home office and vehicle expenses was supplied by Mr XXXX. Fringe benefit tax was calculated on the basis of the vehicle being available for private use. Mr McMillan confirmed that any expenses claimed for entertainment must have been incurred for the purpose of creating business.

[39] Ms Taylor-Cyphers questioned Mr MacMillan about whether Mr XXXX or Ms XXXX incurred the expenses claimed by XXXX and whether Mr

---

<sup>8</sup> Exhibit C produced by Brian McMillan on 27 March 2017 at p 5.

<sup>9</sup> Section 12K report at p 787.



McMillan was certain who used the vehicle. Mr McMillan responded that he believed that it was Mr XXXX who used the vehicle and the internet.

*Evidence of Carla Manhire*

- [40] Ms Manhire is a chartered accountant. She stated that she has been employed by the Ministry for 18 months. Previously she was a senior investigator at IRD for some 15 years.
- [41] Ms Manhire said that compliance with IRD is different from that required by the Ministry. The Ministry definition of income which is relevant to Mr XXXX's appeal includes use of assets such as a vehicle and claims for reimbursement of private expenses, as well as net profit.
- [42] Ms Manhire referred to Exhibit 88 (**attached**) which is a set of tables which she refers to in her affidavit. Ms Manhire stated that although this exhibit was prepared by John Grace, the Ministry's senior accountant, she had personally confirmed the calculations against the source documents.
- [43] These tables were prepared for taxation purposes as at 31 March 2011 and 31 March 2013 for XXXX Limited and XXXX. The tables include a schedule of funds contributed by XXXX and XXXX, and XXXX's owner's equity against which the Ministry has given an alternative estimate, based on its definition of income.
- [44] Ms Manhire said that, in order to determine income for the purposes of the Ministry income rules, Mr Grace added back amounts that were deducted for depreciation, entertainment, home office and vehicle use. These deductions are not allowed by the Ministry because depreciation is a non-cash deduction; entertainment is an inappropriate deduction for welfare purposes; home office is an apportionment of personal expenditure and FBT is a value received personally by the client.
- [45] In evidence, Ms Manhire said that Table 6 shows transactions where sales are reported as capital in the XXXX current account rather than being shown as profit and loss. She stated that the effect was to avoid reporting sales as income.
- [46] Ms Taylor-Cyphers did not question Ms Manhire on her analysis of these accounts. When she asked Ms Manhire if XXXX and Mr XXXX were the same and whether Mr XXXX owned XXXX, Ms Manhire responded that

although Mr XXXX may not own shares in XXXX, he has a vested interest in the company. In response to Ms Taylor-Cyphers' question as to whether the company was the personal property of Ms XXXX, Ms Manhire explained that shares are personal property.

#### *Evidence of Derek Hananeia*

- [47] Mr Hananeia has been employed for 13 years as a technical officer with the Ministry's Fraud Intervention Services Unit in Dunedin. He calculated the overpayments made to Mr XXXX based on the income figures calculated by Mr Grace. The original assessment produced on 19 June 2015 was revised on 18 May 2016
- [48] Ms Taylor-Cyphers did not question Mr Hananeia on these calculations. She asked him whether he was aware that Ms XXXX was a shareholder of XXXX.

#### *Evidence of George Barbara*

- [49] Mr Barbara stated that his initial investigation was into the relationship between Ms XXXX and Mr XXXX as well as the self-employment of Mr XXXX. The investigation into the relationship was not pursued.
- [50] Mr Barbara identified a number of transactions where XXXX paid accounts for expenses which appeared to benefit Mr XXXX such as payment of vehicle expenses, purchases at a coffee shop often five days a week, and payment of accounts for Vodafone, power and SKY TV. Mr Barbara also identified drawings by Ms XXXX from XXXX for supermarket, menswear, and travel costs.

#### **Discussion**

- [51] For the purposes of this appeal, the assessment of Mr XXXX's income is made in accordance with the definition in s 3 of the Act. In order to determine Mr XXXX's entitlement to the benefit he received, we must decide whether any income he received was above or below the cut off level for entitlement.
- [52] We must decide this appeal on the evidence before us. MSD has investigated Mr XXXX's circumstances, produced evidence and given notice of the inferences and conclusions it says should be drawn from the

material. Mr XXXX has had the opportunity of responding after receiving notice of the information, and the potential conclusions. The financial transactions in which Mr XXXX has been engaged are matters where he alone has a full knowledge of the circumstances at the time. Mr XXXX has elected not to give evidence in person and to proceed with his appeal on a less than comprehensive disclosure of what those circumstances were; and failed to provide a full income analysis for the relevant period.

- [53] The accounts we can consider are the 2011 and 2013 accounts prepared by Mr XXXX's accountant for the relevant entities. There are no accounts for 2012. Mr XXXX did not provide evidence of income for himself or the associated entities for the year ending March 2012, which is relevant to the assessment of Mr XXXX's income between 1 August 2011 and 29 July 2012. Mr McMillan confirmed that Switch had not been asked to prepare these accounts.
- [54] We do not accept Mr XXXX's submission that the time or effort required to prepare the 2012 accounts justifies his failure to do so. As a beneficiary Mr XXXX was obliged to provide certain information, including a declaration of income to the Ministry, when required in order to establish his ongoing entitlement to the benefits he received. Persons who are engaged in commercial activity must keep proper records and analysis. Typically it is necessary for tax purposes; regardless, in this case, Mr XXXX was obliged to calculate his income for relevant periods to meet the obligation to report to MSD.
- [55] Ms Taylor-Cyphers claims the Ministry is seeking to deprive Ms XXXX of company ownership in favour of Mr XXXX. She relies on section 35 and 36 of the Companies Act 1993. They reinforce the elementary propositions that shares in a company are personal property and the shareholders in a company have ultimate control of a company. Implicit in that is the more limited executive authority exercised by the directors.
- [56] In essence Ms Taylor-Cyphers' contention is that as Mr XXXX was only a director of XXXX, he has no right to the company's income. Unless he was paid director's fees or remunerated in some other capacity that is the end of the matter; the company's income is irrelevant to any consideration of Mr XXXX's income that MSD may make.
- [57] The basic propositions are uncontentious. If Mr XXXX was simply the unremunerated director of a company, which made no profit for genuine

commercial reasons, the directorship, in itself, is not likely to affect his entitlement to a benefit. However, the submission fails to address the case MSD presented, namely:

- a) MSD has questioned aspects of the ownership and control of the company; and the decisions regarding disposition of its income.
- b) The company has produced financial statements that apparently treat income as capital.
- c) The sole shareholder of the company did not give evidence. While MSD attempted to call her as a witness, it was in fact Mr XXXX who would be expected to call the shareholder as a witness.
- d) There is no satisfactory evidence as to why the company would be incorporated when Mr XXXX was an undischarged bankrupt, and that he would later accept the onerous duties of being the sole director of the company.
- e) There is evidence that contrary to the company's records Mr XXXX did receive benefits from the company. It purchased goods and services for his personal benefit.
- f) There is also evidence that cash transfers occurred between the company and Mr XXXX, and Mr XXXX instructed that funds should not be transferred from the company to him as he "would prefer a loss or a zero balance".

[58] We found all witnesses for the Ministry credible and well qualified to give the evidence they presented. The reasons given by Ms Manhire for the Ministry's assessment of Mr XXXX's income was not challenged by the appellant.

[59] The evidence given by Mr McMillan on the way in which income and expenses, sales and purchases were treated in relation to XXXX, Mr XXXX trading as XXXX and Mr XXXX and Ms XXXX personally was the subject of limited examination by Ms Taylor-Cyphers and restricted to minor examples of fringe benefit allocation.

[60] It follows, the Ministry has raised a serious concern regarding Mr XXXX's control over XXXX, and quantified the extent of apparent profit available in XXXX and from his personal trading. That evidence demonstrated that Mr XXXX apparently controlled XXXX and deprived himself of income by leaving it in the company's hands though it was available to him. It also demonstrated that Mr XXXX received income he did not report.

[61] Mr XXXX has largely failed to engage with this evidence, and has not provided any sensible explanation. Accordingly, the evidence of Mr McMillan and Ms Manhire satisfies us that:

- a) Amounts classified as deductible expenses arising from entertainment, travel, food, clothing and personal use of phone and vehicle fell within the definition of income in the Act.
- b) XXXX made a profit on some transactions.
- c) Mr XXXX had access to the profits of XXXX.
- d) Mr XXXX had assets including bank deposits which he did not declare as income when providing the information required by the Ministry to establish his eligibility for benefits.

## **Conclusions**

[62] Mr XXXX failed to provide evidence to directly determine his income for the 2012 period as requested by the Ministry, either at the time it was requested or at the hearing. The financial records for the 2011 and 2013 years are the best indication of the results for 2012. Mr XXXX neither provided evidence of the actual income, nor provided evidence of circumstances having changed during 2012. Accordingly, we find that the best evidence is that Mr XXXX's income was similar in 2012 to that of the previous year.

[63] Having considered all the evidence before us, we make the following findings:

- a) Mr XXXX both received income and deprived himself of income between 2 August 2010 and 29 July 2013.

- b) The income he received and deprived himself of was, throughout the period above the level he was permitted to earn while receiving a benefit; and at a level that disentitled him to any benefit.
- c) From 2 August 2010 Mr XXXX was not entitled to a benefit and he is liable to repay all amounts paid to him by the Ministry after this date.
- d) The amount of the overpayment to Mr XXXX is \$54,689.46, as calculated by the Ministry.

*Should a penalty be imposed on Mr XXXX?*

[64] The Ministry seeks to impose a penalty on Mr XXXX under s 86(2) of the Act. Counsel agreed to make their submissions on penalty at the conclusion of the hearing. Ms Taylor-Cyphers submitted that as there is a discretion not to impose a penalty, Mr XXXX's circumstances should be taken into account. He has poor health, is unemployed and has difficult personal circumstances.

[65] Mr Sperring submitted that there was sufficient evidence to find fraud. He referred to pages 52 to 175 and the Ministry's s 12K report which contain applications and declarations by Mr XXXX to the Ministry for the purpose of eligibility for benefits. The Ministry submits that a 10% penalty is reasonable in the circumstances when it is entitled to seek three times the amount overpaid.

[66] Section 86(2) provides that if a person has obtained any payment in excess of the amount to which they are entitled and, in the opinion of the chief executive, that payment was obtained by fraud the chief executive may recover by way of penalty an amount not exceeding three times the amount of the overpayment.

[67] The question of whether any overpayment has been obtained by fraud is determined on the balance of probabilities, though with regard to the gravity of the finding.<sup>10</sup>

---

<sup>10</sup> *Director-General of Social Welfare v Ilyes* [1992] NZAR 292.

- [68] In accordance with s 86(2)(C) a person shall be considered to have obtained a payment by fraud if they receive a payment as a result of making any statement knowing it to be false in a material manner, or knowingly say or do anything or omit to do or say anything in order to mislead the Ministry and they receive payments as a result.
- [69] Despite being specifically required to declare any business interests or income from business activities between 2 August 2010 and 28 July 2013 Mr XXXX failed to disclose that from 1 September 2010 he was a director of XXXX or that he was the sole trader of XXXX from April 2005.
- [70] The Special Benefit Review forms which he signed during this period gave extensive examples of income from other sources, which is relevant to the declaration being made. Included in this list is business income including drawings. Working on these forms is defined to include non-monetary benefits including payments in kind or drawings from an unprofitable business.
- [71] The inevitable conclusion is that we are satisfied that Mr XXXX knowingly failed to disclose or declare information which would have disentitled him to the benefits he received in the relevant period. Therefore he obtained these benefits by fraud.
- [72] We consider that the circumstances of this case justify the Authority exercising its discretion to impose a penalty on Mr XXXX. In reaching this conclusion we have taken into account Mr XXXX's repeated concealment of his business interests and the benefits he derived from them.
- [73] However, in relation to the level of penalty we have had full regard to Mr XXXX's personal circumstances, as did MSD. It is for that reason the penalty is low in relation to the maximum that could be imposed, and what would be imposed if the gravity of the conduct were the only factor issue.

### **Decision**

- [74] The appeal is dismissed.
- [75] XXXX is to pay the Ministry of Social Development the sum of \$58,940.53 immediately.

**Dated at Wellington** this 12<sup>th</sup> day of June 2017

---

**S Pezaro**  
Deputy Chair

---

**C Joe JP**  
Member