

[2017] NZSSAA 028

Reference No. SSA 149/16

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by **XXXX AND
XXXX** of Auckland 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 17 February 2017

Appearances

XXXX – appellant in person

N Jaura – for the Ministry of Social Development

DECISION

Background

- [1] XXXX and XXXX have filed a joint appeal against the decision of a Benefits Review Committee on 22 July 2016 to establish and seek recovery of an overpayment of Non-beneficiary Accommodation Supplement (NBAS) paid for the period 20 April 2015 to 8 November 2015.
- [2] The Ministry originally sought recovery of \$2,073.50 from each appellant but this amount was reduced by the BRC to \$1,276.79 each after the BRC agreed with the appellant that an error had been made from 14 May 2015 to 30 July 2015. The Ministry therefore wrote off the debt created for this period.

The appeal

- [3] When Mr and Mrs XXXX applied for assistance with rent and bond Mr XXXX's declared income was \$27,500 gross per annum from self-employment. The employment was through his company of which he was a director and shareholder and his wife a shareholder.
- [4] In the notice of appeal Mr XXXX states that he was aware of the need to update his financial details. However he asserts that he did so when he called WINZ on 14 May 2015. He says the reason for this call was to discuss his debt balance of \$1,600 and to update his employer details and income.
- [5] He said that he trusted Work and Income New Zealand (WINZ) to process the information he provided about his increased income and to pay him the right amount. Mr XXXX says this information could not have been passed on to the appropriate department within the Ministry. He says this was an error made by the Ministry therefore he and his wife meet the criteria for a debt write-off under s 86(9) because they did not intentionally contribute to the error.
- [6] In addition Mr XXXX said that even when his income increased to \$80,000 he was still struggling because he has a substantial student loan. Because he was in difficult financial circumstances he believed he was entitled to the money he was receiving from WINZ.

The Ministry's position

- [7] The Ministry submits that there is no error for the period 20 April 2015 to 13 May 2015 and 31 July 2015 to 8 November 2015. The Ministry states that because there is no error for these periods there is no need to consider the criteria in s 86(9A)(a).
- [8] The Ministry says that the appellants have previously received other benefits and are aware of their obligations to notify any change in their circumstances.
- [9] The Ministry has a record of the call from Mr XXXX on 14 May 2015 but its record shows that this call related only to his debt repayments. The record states that he was asked details of his income and did not volunteer any information about the change in the nature of his employment or the amount he was earning.
- [10] On 31 July 2015 the Ministry sent a letter to Mrs XXXX in relation to the NBAS. The purpose of this letter was to confirm the details that the Ministry held of Mr XXXX's current income as \$27,500 and to ask Mrs XXXX to correct

this information if it was not up to date. The Ministry did not receive a response to this letter nor was it returned undelivered to the Ministry.

- [11] On 12 November 2015 Mr XXXX called the Ministry's Contact Centre and declared that his income from 20 April 2015 was \$60,000 per annum and had increased further from 9 November 2015 to \$85,000 per annum. Following this call the overpayment was established and the Accommodation Supplement reduced from 20 April 2015 to \$82 per week from the previous \$225 per week.

The issues

- [12] We need to consider whether between 20 April 2015 and 13 May 2015 and 31 July 2015 to 8 November 2015 the appellants fulfilled their obligation to inform the Ministry about their change in income. If they did so we then must consider whether any overpayment of NBAS was due to an error by the Ministry and, if so, whether the Ministry is entitled to recovery of any overpayment.

Relevant legislation

- [13] Section 61DH of the Social Security Act 1964 (the Act) provides that the purpose of an Accommodation Supplement is to provide targeted financial assistance to help certain people with high accommodation costs to meet those costs.
- [14] Section 80A of the Act requires every beneficiary to advise the Ministry of any change in circumstances which affects the right of that beneficiary to receive the benefit currently provided to that person or any change in circumstances which affects the rate of the benefit.
- [15] Sections 86(9A) and 86(9B) of the Act provide as follows:

Debts caused wholly or partly by errors to which debtors did not intentionally contribute

- (9A) The chief executive may not recover any sum comprising that part of a debt that was caused wholly or partly by an error to which the debtor did not intentionally contribute if—
- (a) the debtor—
 - (i) received that sum in good faith; and
 - (ii) changed his or her position in the belief that he or she was entitled to that sum and would not have to pay or repay that sum to the chief executive; and

- (b) it would be inequitable in all the circumstances, including the debtor's financial circumstances, to permit recovery.
- (9B) In subsection (9A), **error**—
- (a) means—
 - (i) the provision of incorrect information by an officer of the department;
 - (ii) any erroneous act or omission of an officer of the department that occurs during an investigation under section 12;
 - (iii) any other erroneous act or omission of an officer of the department; but
 - (b) does not include the simple act of making a payment to which the recipient is not entitled if that act is not caused, wholly or partly, by any erroneous act or omission of an officer of the department.

Discussion

- [16] Mr XXXX accepts that the NBAS is calculated on the basis of joint income and that he and his wife were obliged to notify any change to their income. He also accepts that he did not notify WINZ before 14 May 2015 of the increase in his income that took effect on 20 April 2015. It follows that there was no error by the Ministry in overpaying the NBAS between 20 April 2015 and 13 May 2015. Accordingly we conclude that the Ministry is entitled to recover an overpayment for this period of \$245.15 per appellant.
- [17] The letter of 31 July 2015 was addressed to the appellants' current address. As it was not returned to the Ministry, we do not find it credible that this letter was lost as Mr XXXX suggests. We are satisfied that this letter was received and that it put the appellants on notice that they were receiving the NBAS on the basis of a joint income which was no longer correct and significantly lower than their current income. They were then obliged to notify WINZ of the correct position.
- [18] Even if we did accept that the appellants did not receive this letter, they knew they were obliged to notify any change in their circumstances and must have known that the substantial increase in their joint income would reduce their entitlement to NBAS.
- [19] The appellants' assertion that they thought they were entitled to the full NBAS because they found their circumstances financially difficult, even with Mr XXXX's increased income, is not reasonable or credible.
- [20] For these reasons we do not accept that once their income increased the appellants received the unabated NBAS payments in good faith. We

conclude that it is not inequitable for the Ministry to recover the sum overpaid to each appellant of \$1,031.64 for the period from 31 July 2015 to 8 November 2015.

[21] The appeal is dismissed.

Dated at Wellington this 16th day of June 2017

S Pezaro
Deputy Chair

K Williams
Member

C Joe JP
Member