

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by **XXXX** of
Taumarunui 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 Wellington on 14 March 2017

Appearances

The appellant in person

G Howell, lay representative

R Signal, for the Ministry of Social Development

DECISION

Background

[1] XXXX appeals the decision on 20 May 2016 to cancel jobseeker support with effect from 7 March 2016. This decision was upheld by a Benefits Review Committee on 6 October 2016.

[2] Mr XXXX is self-employed and operates his own XXXX and XXXX business. His jobseeker support was cancelled after the Ministry conducted a reapplication process. As part of this process, the Ministry wrote to Mr XXXX seeking full business accounts, including a profit and loss statement, balance sheet and depreciation schedule. Mr XXXX provided the Ministry with a copy of his individual tax returns for the year ending 31 March 2015 (exhibit 8 to the Section 12K Report).

- [3] The Ministry was not satisfied that Mr XXXX had provided sufficient information to verify his income. It raised several concerns including an unexplained item identified as 'other expenses' of \$21,512 in the financial statement summary. This statement showed a gross income of \$35,365 and expenses totalling \$38,059.

The case for Mr XXXX

- [4] It is Mr XXXX's position that he has provided all information required by the Ministry. He asserts that it is not necessary to provide audited accounts as requested by the Ministry. He states that he has provided the most relevant accounts however at hearing Mr Howell accepted that certain pages of the financial statements were withheld from the original documents but said the missing pages for 2016 had been supplied.
- [5] Mr XXXX provided accounts dated 7 February 2017 prepared by Kiwi Tax Limited for the year ending 31 March 2016 at the hearing. These accounts included balances for the year ending 31 March 2015. He did not provide any explanation for the 'other expenses' referred to in [3] above.
- [6] Before the hearing Mr XXXX raised the question of the way in which a Ministry officer processed information that was provided on his behalf by Margaret XXXX at a meeting on 27 February 2017. The Authority declined to summons the witness prior to hearing because the witness was not identified and directed that if the appellant wished to have a witness summons issued he needed to identify the person.¹
- [7] This issue was raised again at the end of the hearing. The appellant and Mr Howell accepted that the evidence they sought to provide was of a technical nature and not relevant to the decision which the Authority must make.

The position for the Ministry

- [8] The Ministry's position is that it is unable to establish Mr XXXX's income as required by s 88M of the Social Security Act 1964 (the Act) in order to determine if he is entitled to jobseeker support. The Ministry initially gave Mr XXXX an extension of time of three months to provide the information it required and advised Mr XXXX that failure to provide this information would result in suspension of his benefit. At the end of the three months Mr XXXX informed his case manager that his accountant was no longer prepared to do any accounting work for him. Mr XXXX was then given two weeks to find a

¹ Minute issued 8 March 2017.

new accountant. He did not meet this timeframe and was given a further extension. This deadline was not met either.

- [9] After Mr XXXX provided accounts to the Ministry on 7 January 2016 the Ministry wrote to him asking for details of the 'other expenses' referred to in [3] above. As this information was not provided, the Ministry cancelled Mr XXXX's jobseeker support.

Relevant law

- [10] Income is defined in 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; ...

- [11] The definition of income in the Act is different from the definition of income used by IRD. The Ministry definition of income includes use of assets such as a vehicle and claims for reimbursement of private expenses, as well as net profit. Deductions are not allowed by the Ministry for depreciation, entertainment, home office or vehicle use.

- [12] S 12(1A) states:

The chief executive or any officer of the department acting with the authority of the chief executive may investigate the circumstances of any person who has been in receipt of a benefit as those circumstances existed immediately before the benefit was granted or during the period that the benefit was paid.

- [13] S 12(2) states:

It shall be the duty of every person (including the applicant) to answer all questions put to him by the chief executive or by any officer of the department concerning any applicant for a benefit or any person who is or has been in receipt of a benefit or concerning any statements contained in any application for a benefit, or concerning the means, earning capacity, and economic

circumstances of any person, for the purposes of section 46 or section 91 of the Family Proceedings Act 1980, or of any person who is or may be liable to maintain any applicant for a benefit or any beneficiary, or any dependant of such an applicant or of a beneficiary.

[14] S 81(1) states:

The chief executive may from time to time review any benefit in order to ascertain—

(a) whether the beneficiary remains entitled to receive it; or

(b) whether the beneficiary may not be, or may not have been, entitled to receive that benefit or the rate of benefit that is or was payable to the beneficiary—

and for that purpose may require the beneficiary or his or her spouse or partner to provide any information or to answer any relevant question orally or in writing, and in the manner specified by the chief executive. If the beneficiary or his or her spouse or partner fails to comply with such a requirement within such reasonable period as the chief executive specifies, the chief executive may suspend, terminate, or vary the rate of benefit from such date as the chief executive determines.

[15] Section 88B(4) of the Act requires an applicant for jobseeker support to have either no income or an income less than the amount that would fully abate the benefit. In accordance with s 88M of the Act the level of jobseeker support payable to a single person with no dependants, as in Mr XXXX's situation, is determined by income test 1. This test provides that the applicable rate of benefit is reduced by 30 cents for every dollar of total income over \$100 a week and by 70 cents by every one dollar over \$200 a week received by the beneficiary.

Discussion

[16] We do not consider the Ministry's insistence on audited accounts reasonable. Accounts prepared by a chartered accountant should be considered adequate provided that there is a full explanation of all items such that it is possible for the Ministry to determine what constitutes income under the Act.

[17] Any person who is engaged in commercial activity must keep proper records and analysis. Such records are necessary for tax purposes and, in this case,

to meet the obligation to provide an accurate calculation of income in order to meet the obligation to report to the Ministry for it to assess benefit entitlement.

- [18] Mr XXXX has not provided a complete record of his accounts or explained them fully. It is not acceptable for an amount of over \$21,000 to be categorised as “other expenses” without further explanation. Mr XXXX did not provide a breakdown of these expenses in the hearing.
- [19] There are other expenses claimed which potentially affect the level of Mr XXXX’s income. Amounts classified as deductible expenses in Mr XXXX’s account for entertainment, motor vehicle expenses, protective clothing, staff training, telephone and travel fall within the definition of income under the Act.
- [20] The amount declared for wages and salaries of \$4,500 indicates that the company has no full-time employee. However the claim in 2015 for motor vehicle expenses is over \$12,000 and the company lists nine vehicles including a furniture trailer, trucks and two three litre cars. The claim of \$32,817 expenses in 2015 compared with a gross surplus from trading of \$30,945 was not explained.
- [21] Mr XXXX has failed to comply with his obligations under s 12(2) of the Act to provide the information required for us to assess his income for the purpose of eligibility for jobseeker support. In the absence of the required information and an explanation from Mr XXXX for the expenses claimed in the accounts he has provided, we conclude that he had no entitlement to jobseeker support on 7 March 2016.
- [22] Accordingly this appeal is dismissed.

Dated at Wellington this 27th day of June 2017

S Pezaro
Deputy Chair

K Williams
Member

C Joe JP
Member