

[2017] NZSSAA 044

Reference No. SSA 073/16

IN THE MATTER of the Social Security Act 1964

AND

IN THE MATTER of an appeal by **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

Hearings at Auckland on 13 February 2017 and 20 April 2017

Appearances (20 April 2017)

The appellant in person and XXXX – support person

N Jaura – agent for the Ministry of Social Development

DECISION

Background

- [1] This appeal was scheduled for hearing on 13 February 2017. Although Mr XXXX did not attend that hearing he had appeared on an earlier date, unaware that the first hearing had been adjourned to 13 February. The notice of the 13 February hearing was issued on 27 January. Taking into account the statutory holidays, we did not consider that Mr XXXX had received adequate notice of this hearing. We therefore adjourned the hearing to 20 April 2017. Mr XXXX attended this hearing with his support person, Ms XXXX.

- [2] Mr XXXX appeals the decision of the Chief Executive, which was upheld by a Benefits Review Committee, to establish and recover overpayments of Jobseeker Support amounting to \$11,224.34 and Accommodation Supplement amounting to \$364 for the periods 19 August 2013 to 22 June 2014 and 25 August 2014 to 26 July 2015.
- [3] These overpayments occurred because the income that Mr XXXX earned while working part-time for XXXX firms exceeded the amount that he was entitled to earn before his benefits were reduced. The Ministry submits that Mr XXXX either failed to declare he was working or underdeclared the amount that he was earning during the relevant time.

The case for the appellant

- [4] Mr XXXX said he worked part-time and on call. He said that when he first got work he asked for wage slips but he did not get any until 2014 because he was working on call. He said that he had tried reporting his income online through RealMe but was not good with the computer.
- [5] Mr XXXX says that he gave the Ministry the information that it required to adjust his benefits to the correct rate. He says that the Ministry failed to make the adjustments and it is not his fault that there was an overpayment. However he accepts that he should not have continued to draw funds when he was being overpaid.
- [6] Mr XXXX does not dispute the Ministry's calculation of the overpayment.

The case for the Ministry

- [7] The Ministry concedes that it may have contributed to the overpayment occurring in the weeks beginning 2 September 2013, 7 October 2013, 3 February 2014, 4 March 2014, 29 April 2014 and 10 June 2014 because it did not make any adjustments as a result of the information that Mr XXXX provided about his work during this period.
- [8] However the Ministry submits that, even if it contributed to some of the overpayment, Mr XXXX could not have received the overpaid money in good faith. The Ministry says that he must have been aware of his obligations to declare his earnings because he reported his income about 10 times during the relevant period. In addition the Ministry says that the amount Mr XXXX

earned was such that he could not have expected to receive the full benefit at the same time.

- [9] The Ministry also says that Mr XXXX attended several jobseeker seminars where he was told about his obligations and the cut-off point for earnings. Ms Jaura said that Mr XXXX was given two Service Express cards, the first on 8 October 2013 and the second on 8 May 2014. These cards have an 0800 number and allow beneficiaries to call and declare their income without attending an office. The Service Express card is intended to be used by people working on a casual or irregular basis who need to provide WINZ with regular updates of their income.

Discussion

- [10] Mr XXXX accepts that he was overpaid jobseeker support and accommodation supplement as a result of his earnings and does not dispute the Ministry's calculation of the overpayment. His appeal is based on the fact that he says he gave the Ministry the correct information and it failed to properly process it. He also says that he was unable to use the RealMe or Service Express systems to tell the Ministry how much he was earning and that he had difficulty getting payslips from his employers. In the hearing Mr XXXX said he had not received a Service Express card.
- [11] At 2.4 of the s 12K report the Ministry records the dates between 4 September 2013 and 9 April 2015 when Mr XXXX made contact to say that he was working. During this time the Ministry sent him a number of letters setting out his obligations which included declaring his income. Based on this record, and on the information Mr XXXX gave us at hearing, we are satisfied that he was aware of his obligation to report his income.
- [12] However it was not until the Ministry carried out an information match with Inland Revenue on 13 April 2015 that the amount that Mr XXXX earned during this period became apparent. We conclude that while he did declare some of his income, Mr XXXX did not declare his full earnings.
- [13] The obligation to report any change in income is a heavy burden for people who work casual hours or part-time because each time their working hours change they are required to make contact with WINZ. They are also in a position where they may not know how much they have earned until they are paid. By that time, they may have already received their benefit for the corresponding period.

[14] We accept that Mr XXXX's hours of work changed frequently and that on several occasions he did provide information about when he was working to the Ministry. We also accept that Mr XXXX received the correct information setting out his obligation to tell the Ministry about any change in his circumstances including his working hours and how much he earned. Even though it may have been difficult for Mr XXXX to report his income, his acceptance that he should not have drawn on the overpaid funds indicates that he understood his obligations.

[15] We are satisfied that the amount of the overpayment is correct. However as the Ministry accepts that it contributed to this overpayment we have considered whether the Ministry is entitled to recover the full amount.

[16] Sections 86(9A) of the Social Security Act 1964 provides 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.

[17] The requirements of s 86(9A) are cumulative. If one of the criteria cannot be made out it is not necessary to consider subsequent criteria.

[18] Because Mr XXXX was aware of his obligations we consider that he must have known that the amount he was being paid meant that he was not entitled to receive the full benefit. We therefore do not accept that he received any of the overpayment in good faith. For these reasons we conclude that the Ministry is entitled to recover the full amount of the overpayment.

Order

[19] The appeal is dismissed.

[20] The Ministry is entitled to recover the overpayment of \$11,588.34 from the appellant.

Dated at Wellington this 7th day of August 2017

S Pezaro
Deputy chair

K Williams
Member

C Joe JP
Member